

(2015) 04 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14659 of 2014

Satvinder Singh

APPELLANT

Vs

Institute of Banking Personnel Selection (IBPS)

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 04 P&H CK 0087

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : Suneel Ranga, for the Appellant; Aayush Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepak Sibal, J.

1. Replication along with Annexure P-14 to the reply of the respondent has been filed in the Court today and the same is ordered to be taken on record.

Main Case

2. Through the present writ petition, the petitioner prays for quashing of impugned orders Annexure P-6 and Annexure P-11 through which his candidature for selection to the post of Probationary Officers/Management Trainees in Participating Organizations has been cancelled for not producing the required caste certificate in the prescribed format at the time of interview.

3. A few facts may be noticed.

4. In pursuance to an advertisement, the petitioner applied under the Other Backward Class category for appointment to the post of Probationary Officer/ Management Trainee in any of the participating Banks so mentioned in the advertisement. The petitioner had applied online. Thereafter, the petitioner appeared in the examination which was also conducted online and having

successfully cleared the same he was called for interview on 03.01.2014 to be conducted at Rohtak. As the petitioner had applied under the OBC category, at the time of interview, he was asked to submit his original caste certificate in the prescribed format as given in the advertisement. On his inability to do so, his candidature was rejected vide the orders which are impugned by him in the present writ petition.

5. I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

6. Through the present writ petition, the petitioner seeks the issuance of a direction to the respondent-Institute. A scrutiny of the contents of the writ petition leave no room for doubt that the petitioner has made no averment so as to how the respondent-Institute would come under the definition of "State" as per the Article 12 of the Constitution of India and thus, amenable to the writ jurisdiction of this Court. On the other hand, the stand taken by the respondent-Institute to oppose the writ petition forcefully projects that the respondent-Institute is not covered under the definition of "State" under Article 12 of the Constitution of India and further that as it does not perform any public function. It is thus submitted that it would not be amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. It is submitted that the respondent -Institute is only a test conducting agency which provides service to various Banks and other organizations and being a purely private organization does not fall under the definition of "State" under Article 12 of the Constitution of India. To buttress the above submission, the respondent relies upon two Division Bench Judgments of the High Court of Judicature at Bombay which are (i) Writ petition (L) No. 1042 of 2014 decided on 07.05.2014 filed as "Mohan Laxman Gamare versus Institute of Banking Personnel Selection (IBPS) and another" and (ii) Writ Petition No. 2616 of 2014 decided on 18.11.2014 titled as "Shri Arun Kumar Sharma versus The Director, Institute of Banking Personnel Selection and another".

7. In Mohan Laxman Gamare's case (supra), a Division Bench of the Bombay High Court on the issue of maintainability of a writ petition against the respondent-Institute has held as under:-

"We are of the view that Respondent No. 1 Company is not a "State" within the meaning of Article 12 of the Constitution of India. It does not have any public function and it is not amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India. In view of this, we do not think that it is necessary to go into the merits of the case. Hence, writ petitions are dismissed."

8. Similarly, in Sh. Arun Kumar Sharma's case (supra) another Division Bench of the Bombay High Court while considering the same issue has held as under:-

"In view of order dated 13.11.2014 in Writ Petition No. 2617 of 2014-Shri Manoj Kumar vs. The Director, Institute of Banking Personnel and another, which squarely applied to the present facts and circumstances and for the same reason,

the present petition is dismissed as not maintainable as the Respondent No. 1 is not "State" within the meaning of Article 12 of the Constitution of India."

9. The above referred judgments of the Bombay High Court were considered and followed by me in a recent judgment passed in CWP No. 16912 of 2014 decided on 19.03.2015 titled as "Anupam versus Institute of Banking Personal Selection (IBPS) and another".

10. Learned counsel for the petitioner made no attempts to distinguish either of the two Division Bench judgments delivered by the Bombay High Court or the judgment rendered by me in Anupam's case (supra). He, however, relied upon the following judgments of this Court : 1) "Amandeep Singh versus Institute of Banking Personnel Selection IBPS and others" in CWP No. 1597 of 2014 decided on 05.05.2014 and 2) CWP No. 6208 of 2013 decided on 16.05.2014 titled as "Soni versus Chairman Institute of Banking Personnel Selection and others".

11. Learned counsel for the petitioner further relied upon a judgment of the Delhi High Court in W.P.(C) No. 1878 of 2014 decided on 13.02.2015 titled as "Usha versus Institute of Banking Personnel Selection through its Director and others" and a judgment of the Rajasthan High Court in S.B. Civil Writ Petition No. 3329 of 2014 decided on 15.07.2014 titled as "Aman Nagar versus Institute of Banking Personnel Selection and another".

12. Learned counsel for the petitioner further referred to the affidavit filed by the respondent-Institute wherein it is stated that the respondent-Institute is governed by a Governing Board consisting of nominees of Ministry of Finance, Govt. of India, RBI, NIBM and representatives of public sectors banks. He thus submitted that in view of the above fact, the respondent-Institute would be amenable to the writ jurisdiction of this Court.

13. So far as the above referred issue of the respondent-Institute being amenable to the writ jurisdiction of this Court on the ground that its Governing Board consists of nominees of the Government/Banks is concerned I find the same to be vague and unsubstantiated. Simply because the Governing Board of the respondent consists of nominees from Ministry of Finance, Govt. of India, RBI, NIBM and representatives of public sectors banks it would not bring the respondent-Institute under the definition of "State" as per Article 12 of the Constitution of India. Neither the full Constitution of the Governing Board nor the extent of the control exercised by the nominees of the Government with regard to the decision making power of the Governing Board has been shown. It has further not been shown whether the above said nominees are in majority in the Governing Board. It has also not been disputed that the respondent- Institute is a private organization and performs no public function. For bringing, the respondent-Institute under the preview of Article 12 of the Constitution of India, the petitioner was required to show that either the Government had deep and persuasive control in managing the affairs of the respondent-Institute or that majority of the funding of the respondent- Institute was by the Government. The

petitioner could further show that the respondent-Institute was undertaking any public function. None of the above has been shown.

14. I have gone through all the judgments cited by the learned counsel for the petitioner and find that in none of them was an issue of a maintainability of a writ petition against the respondent-Institute even discussed.

15. That being so, according to me, the judgments are of no help to the petitioner's case.

16. Even otherwise, having heard the counsel for the petitioner, I find that even on merits the petitioner has no case. The relevant terms and conditions governing the interview as spelt out in the advertisement are reproduced below:-

"While appearing for the Interview, the candidate should produce valid prescribed documents given below.

List of Documents to be produced at the time of interview (as applicable)

The following documents in original and self attested photocopies in support of the candidate's eligibility and identity are to be invariably submitted at the time of interview failing which the candidate may not be permitted to appear for the interview.

(i) Printout of the valid Interview Call Letter.

(ii) Valid system generated printout of the online application form registered for CWE-PO/MTs-III.

(iii) Proof of Date of Birth (Birth Certificate or SSLC/Std.

X Certificate with DOB).

(iv) Photo Identity Proof as indicated in Point G of the advertisement/

(v) Marksheets and Certificates for Graduation or equivalent qualification etc. Proper document from Board/University for having declared the result on or before 01.07.2013 has to be submitted.

(vi) Caste Certificate issued by competent authority in the prescribed format as stipulated by Government of India in case of SC/ST/OBC category candidates.

In case of candidates belonging to OBC category, certificate should specifically contain a clause that the candidate does not belong to creamy layer section excluded from the benefits of reservation for Other Backward Classes in Civil post and service under Government of India. OBC Caste certificate containing the Non-Creamy layer clause should be issued during period 01.04.2013 to 31.03.2014. Caste Name mentioned in certificate should tally letter by letter with Central Government list/notification.

Candidates belonging to OBC Category but coming under creamy layer are not entitled to OBC reservation. They should indicate their category as General in the

online application form." [emphasis supplied by me.]

17. In view of the above reproduced Clause (vi) of the advertisement, the caste certificate to be produced at the time of interview was required to be issued during the period 01.04.2013 to 31.03.2014. The advertisement is admittedly dated 10.07.2013 and the date of interview was 03.01.2014. Thus, the petitioner had adequate notice and enough time of more than six months to obtain the caste certificate as required which he admittedly did not have at the time of interview as the certificate produced by him through the interview was issued on 15.03.2013 i.e. not between 01.04.2013 to 31.03.2014. The petitioner cannot be allowed to take benefit of his own wrong. Further, no power of relaxation to the terms and conditions governing the interview have been shown to me and it is the un-rebutted case of the respondent-Institute that this criteria has been applied by them to one and all. Still further, the above referred clause of the advertisement under which the case of the petitioner was rejected has also not been challenged.

18. I am informed that while making selections, the respondent- Institute processes lacs of applications and before finalizing the selection, thousands of candidates are also interviewed. In the case in hand, selections have been finalized and the final results have also been displayed. Entertaining of claims like the present one, at this stage, especially when the petitioner is himself at fault would unsettle the already finalized selection and where lacs of candidates are involved it could result in chaos.

19. The above view taken by me finds support from a judgment of a Division Bench of the Allahabad High Court in Writ-A No.-20547 of 2014 decided on 09.04.2014 wherein while considering the same advertisement and a similar issue, it has been held as under:-

"Here it would be relevant to place on record that the advertisement is dated 10.07.2013 and the date of interview was announced in December, 2013, fixing 05.01.2014. The petitioner had enough time of more than six months to obtain the Caste Certificate as indicated under the terms of advertisement itself. The petitioner therefore made an attempt at the last moment himself.

Consequently, there is no merit in the writ petition. The writ petition is dismissed."

20. To the same effect is a judgment by the Madras High Court dated 29.04.2014 in W.P. (MO) Nos. 6147 to 6150 of 2014, wherein while considering a similar issue it has been held as under:-

"In this case, the petitioners participated in the selection process to the post of Probationary Officers. For selecting to the said post, a notification was issued by the respondents on 10.07.2013. In the said notification clause (E) deals with interview. In the said clause, the respondents have specifically stated as to what are all the documents to be produced at the time of interview. Under sub clause

(vi) of the said instructions, it has been stated as follows:-

"Caste Certificates issued by the competent authority in the prescribed format as stipulated by Government of India in case of SC/ST/OBC Category candidates.

In case of candidates belonging to OBC category, certificate should specifically contain a clause that the candidate does not belong to creamy layer section excluded from the benefits of reservation for Other Backward Classes in Civil post and Services under Government of India. OBC Caste certificate containing the Non-creamy layer clause Name mentioned in certificate should tally letter by letter with Candidates belong to OBC category but coming under creamy layer are Candidates belong to OBC category but coming under creamy layer are not entitled to OBC reservation. They should indicate their category as General in the online application form."

Further, it is also stated that candidates failing to submit those certificates cannot be permitted to appear for the interview.

7. From the above said conditions imposed in the notification. It can be seen that the petitioners have to obtain the O.B.C. Certificates containing the non creamy layer clause issued between the period from 01.04.2013 to 31.03.2014. If the said certificates is not produced at the time of interview, then, certainly the petitioners cannot seek any later indulgence, because having accepted the terms and conditions they have applied to the said post.

8. In my considered view, the petitioners are estopped from contending that the certificate obtained by them at a later point of time should have been considered for the selection to the post. Needless to say that the persons who participated in the selection process after having accepted the terms and conditions of the selection, cannot challenge the said process subsequently.

9. Therefore, I am of the view that the petitioner's claim in all these writ petitions cannot be considered in the light of the conditions imposed in the notification issued by the respondents. Accordingly, I find no merits in these writ petitions. Consequently, all the writ petitions are dismissed and the miscellaneous petitioners are also dismissed."

21. In view of the above, finding no merit in the present writ petition, the same is ordered to be dismissed.

22. No costs.