
(2009) 03 SHI CK 0048
In the High Court Of Himachal Pradesh

State Bank of India and Others

APPELLANT

Vs

Ranjit Kumar and Another

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Citation : (2009) 2 ShimLC 6 : (2009) 7 SLR 347

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—By means of present writ petition, petitioners-State Bank of India and two of its functionaries have sought judicial review of award dated 16.6.2004 passed by Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, whereby order dated 8th August, 1996 passed by petitioner No. 3, regarding dismissal of respondent Ranjit Singh as upheld by the Appellate Authority by order dated 15.11.1996, has been set aside and it has been ordered that respondent Ranjit Singh is to be treated on duty right from the date he was ordered to be dismissed from service.

2. Relevant facts may be stated thus. Respondent Ranjit Singh passed his matriculation examination in the year 1986. In the year 1992, petitioner No. 1 sent a requisition, Annexure P-2, to Regional Employment Officer, Dharamsala for sponsoring candidates for appointment as messengers. As per this requisition, educational qualification was as under:

(a) Messengers Educational qualifications.-Undermatriculation (minimum 8th standard for post of messengers) on the date of eligibility prescribed below. Ex-servicemen for the post of messenger need not possess the said minimum educational qualification. They should have served in the Army after attestation for six months and have been awarded "Exemplary" character at the time of discharge. They may preferably have been awarded medical category "AYE" but candidates awarded "B" and "C" category may be considered subject to their

satisfying the Bank's prescribed medical criteria.

3. Several names were sponsored and those included the name of respondent Ranjit Kumar also. Ranjit Kumar filled in Form, Annexure P-4, column No. 5 of which was as follows:

5. Educational qualifications.-Furnish details in respect of 8th standard onwards in case you are applying for a post in subordinate cadre.

-----	Name of							
school/Board	Year of Class	or % of	No. of sitting	and No. of	& examination			
passed	passing	Division	Marks	attempts	in which	examination	was	passed
-----	HP							
Board	of	School	March	84	48.5%	1	Education	8th
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4. Even though respondent Ranjit Kumar was matriculate, at the time when form Annexure P-4 was filled in, he did not make mention of his having passed matriculation examination. Respondent was selected and offered appointment, vide Annexure P-5 dated 28.1.1994. He accepted the offer and joined as a Messenger. After the appointment of respondent, petitioners somehow came to know that he was in fact a matriculate and this fact he had not disclosed. Departmental proceedings were initiated against the respondent for not disclosing that he was a matriculate, which fact would have allegedly rendered him ineligible for the post of Messenger. Inquiry was conducted. Respondent took the plea, in the course of disciplinary proceedings, that he had appeared for matriculation examination in the year 1986 and then left his village and did not come to know till he appeared for the interview for the post of Messenger, whether he had passed the matriculation examination, or not. On the culmination of departmental proceedings, respondent was dismissed from service, vide order Annexure P-9, and departmental appeal against that order was dismissed vide order, Annexure P-10. Respondent then approached Central Government Industrial Tribunal-cum-Labour Court at Chandigarh. The Tribunal has passed the impugned order.

5. Reasons given by the Tribunal, in support of the impugned order, are that there is nothing on the record, indicating that the respondent was knowing at the time he filled in Form, Annexure P-5, that candidates who had passed matriculation examination were ineligible and, therefore, he cannot be said to have committed the act of misconduct of suppressing material information. Writ petitioners have sought review of the order of learned Tribunal.

6. We have heard the learned Counsel for the parties and perused the record.

7. Admittedly, Rule 29 of Staff Rules of petitioners-bank prescribes the educational qualification, for the post of Messenger, as follows:

undermatric. Minimum 8th standard for the post of messenger. However, ex-servicemen for the post of messengers/guards need not possess the said

minimum qualification.

8. Of course, there is one circular, Annexure P-3 dated 11.4.1988, which says that educational qualification for the post of Messenger is 8th class pass, but not 10th class pass, but there is nothing on the record suggesting that the Employment Exchange at Dharamsala, to which requisition was sent, was apprised of the aforesaid fact or the respondent himself was apprised of this fact at the time he filled in the form or appeared for the interview or even at the time of his appointment and joining the post. On the contrary, form Annexure P-4, filled in by the respondent, suggests that candidates with qualification higher than 8th standard pass were eligible for the post, because column No. 4, pertaining to educational qualification, as reproduced above, seeks details of qualification from 8th standard onwards. In any case, this form also does not indicate that candidates possessing higher qualification than undermatric were ineligible.

9. Again, we find on record a document relied upon by the petitioners themselves which suggests that not only that the respondent was not apprised that matriculate candidates were not eligible for the post, but he was given the impression that such candidates were eligible. This document is letter of offer of appointment, Annexure P-5. In Para 2(i) of this letter it is written that candidate (the respondent) should furnish a character certificate issued by the Headmaster/Principal of the school/college last attended. Now when the petitioners were looking for a character certificate issued inter alia by the Principal of the college last attended, that implies that candidates who had passed matriculation examination were also eligible for the post of Messenger, because it is a well known fact that only those students are admitted to the colleges, who possess at-least 10th standard pass qualification.

10. Learned Tribunal has placed reliance upon a judgment of this Court in coming to the conclusion that respondent Ranjit Kumar is not guilty of withholding of any information or suppression of material facts, amounting to misconduct. The particulars of the precedent are Prem Lal Sharma v. State Bank of India and Anr. CWP No. 348 of 1997, decided on 25.11.1999. The facts of the case were in pari materia with the facts of this case. The Division Bench which decided the case held that it was neither a case of non-disclosure of material information nor a case of suppression of any information, amounting to misconduct.

11. Learned Counsel for the petitioners has drawn our attention to several judgments to seek interference with the award of the learned Tribunal. The first judgment relied upon by him is of the Hon'ble Supreme Court in Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, In that case the educational qualification clause, contained in the rules, provided that the candidate should not possess higher qualification than 8th standard pass. The facts of the case, as appearing in para 2 of the judgment, are indicative that the candidate at the time of submission of his application was in the know that a person with qualification higher than 8th standard pass was ineligible. He was a matriculate

and suppressed this fact. He was removed from service. Hon''ble Supreme Court upheld the order of his dismissal. The aforesaid judgment of the Supreme Court does not apply to the facts of the case in hand for the reason that, as already noticed above, there is nothing on the record that respondent Ranjit Kumar or even the Employment Exchange, which sponsored his name, was knowing that persons possessing higher qualification than undermatric were disqualified for the job.

12. Learned Counsel has also placed reliance upon a judgment of Andhra Pradesh High Court in Ch. Papanna v. The Personnel Manager and Ors. CWP No. 13127 of 1998, decided on 7.9.1995. A copy this judgment has been produced and is taken on record. The question involved in that case was different from the question involved in the present case. There the question was whether the recruiting authority could prescribe that a person possessing higher qualification than the qualification mentioned in the rules is ineligible for the post.

13. Three more judgments have been relied upon by the learned Counsel. They are in support of the contention that there is no place of generosity or sympathy on the part of the Judicial Forums in interfering with the departmental action. The citations are Kerala Solvent Extractions Ltd. v. A Unnikrishnana and Anr. (2006) 13 SCC 61 ; Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad, and U.P. State Road Transport Corporation Vs. Vinod Kumar, . The contention of the learned Counsel in support of which these judgments have been relied upon is not relevant in the present case, because the Tribunal has not shown any sympathy or generosity in favour of the respondent while deciding the matter. It has simply analyzed the facts and the legal position and applied a Division Bench judgment of this Court to come to the conclusion that dismissal of the respondent is not justified.

14. In view of the above stated position, we see no ground for interfering with the order of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh. Consequently, the writ petition is dismissed.