

(2019) 08 CAL CK 0213

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1029 Of 2019, Civil Application (CAN)
No. 7123 Of 2019

State Bank Of India & Ors

APPELLANT

Vs

Apratim Mukherjee

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0213

Hon'ble Judges : Biswanath Somadder, J;Tirthankar Ghosh, J

Bench : Division Bench

Advocate : Subrata Kumar Sinha

Final Decision : Disposed Of

Judgement

Biswanath Somadder, J

On 8th August, 2019, this Court passed the following order:-

"Let the affidavit of service filed in Court today in terms of this Court's order dated 31st July, 2019, be taken on record.

Perusing the same, it appears that the respondent/writ petitioner has been effectively served. In spite of such service, the respondent/writ petitioner remains unrepresented even at the time of second call.

We give the respondent/writ petitioner another opportunity to be represented when the matter is next taken up for consideration. As such, we adjourn the matter till 19th August, 2019."

Even today at the time of second call, the respondent/writ petitioner remains unrepresented. An affidavit of service filed in Court today indicates that the respondent/writ petitioner has been communicated, once again.

This appeal arises out of a judgment and order dated 18th June, 2019, passed by a learned Single Judge in WP 7480 (W) of 2019 (Apratim Mukherjee vs. State

Bank of India & Ors.) and has been preferred by the State Bank of India and some of its officers.

By the impugned judgment and order, the learned Single Judge -while coming to a finding that an integral part of the cause of action had arisen within the jurisdiction of this Court - proceeded to dispose of the writ petition with certain directions upon the concerned authority of the State Bank of India. For convenience, relevant portion of the impugned judgment and order is set out hereinbelow:-

"It appears from records that even though the petitioner was successful all along but the appointment letter was not issued in his favour as he could not clear his medical examination. The communication of the bank dated 26th February, 2019 clearly mentions that the petitioner was declared provisionally unfit on account of high myopia and he was asked to report back for review within a month's time by the bank's Medical Officer but the petitioner did not report back to the Medical Officer for review and reexamination of his eye.

The petitioner has categorically mentioned in his writ petition that he went to Delhi for reexamination of his eye. The Medical Officer of the bank informed the petitioner that he has to undergo lasik surgery to get his job. The petitioner has obtained opinion from the eye specialist who advised the petitioner against undergoing the said surgery. The petitioner asserts that he has undergone treatment and the condition of his eye has improved. The petitioner submits that he is capable of performing his duties by wearing spectacles.

The bank is only required to see that the petitioner can perform his duties normally by wearing spectacles or contact lens as the case may be. There is no reason why the Medical Officer of the bank is insisting on undergoing lasik surgery.

The advertisement has provision for candidates with blindness or low vision by providing reservation for them.

In my opinion, in these hard days with increasing unemployment, instead of throwing away the petitioner on account of high myopia when he has cleared his preliminary, main examination as well as the interview and has become successful for appointment in the post in question, an opportunity should be given to the petitioner to get himself reexamined. It cannot also be lost sight of the fact that the petitioner cleared the preliminary and the main examination online, i.e. the petitioner is able to work long hours at the computer even with high myopia. The bank can examine the petitioner to ensure whether he can perform his duties after correction of his vision by wearing spectacles, contact lens or the like.

This order is being passed on the expressed submission made by the petitioner that though the petitioner has got high myopia but after correction the petitioner has a perfect vision of a normal eye. It has been categorically submitted that the

vision of the petitioner will not create any hindrance in the normal day to day business activity of the bank.

In view of the discussions made hereinabove the instant writ petition is disposed of directing the Medical Officer of the bank to reexamine the medical fitness of the petitioner and to assess whether the petitioner will be able to function normally upon correction of his vision.

The aforesaid exercise shall be conducted by the bank within a period of six weeks from the date of communication of a copy of this order. In case the petitioner is successful the bank will take steps to issue appointment letter in favour of the petitioner at the earliest.

If the petitioner fails to clear the medical test, the bank will explore the possibility of accommodating the petitioner in the category of candidates having low vision. The bank may also consider entrusting the petitioner with such duties which may not cause any strain in his eyesight.

With the aforesaid observation W.P.No.7480 (W) of 2019 is disposed of accordingly."

The main ground which has been taken - apart from the point of jurisdiction - appears to be with regard to the learned Single Judge not taking into consideration the medical report which disentitled the respondent/writ petitioner from being considered for the post in question on the ground of his poor eyesight. Another ground taken by the State Bank of India is that the learned Single Judge erred in not accepting the medical standard requirement for recruitment in State Bank of India, which has been standardised by an Expert Committee approved by the Executive Committee of the Central Board and is applicable across the country.

The facts of the case reveal that the respondent/writ petitioner made an online application in the "General Category" for being recruited as a "Probationary Officer" of the State Bank of India pursuant to an advertisement published by the bank. He was selected for an online preliminary examination, which was scheduled to be held on 1st July, 2018. The respondent/writ petitioner was successful in the said examination and was shortlisted for an online main examination, which was scheduled to be held on 4th August, 2018. The respondent/writ petitioner succeeded in the said online main examination and was found suitable for appearing in the interview and group exercise. The respondent/writ petitioner duly appeared in the interview and by a letter dated 30th October, 2018, the respondent/writ petitioner was informed by the Local Head Office of the State Bank of India, New Delhi, that he was provisionally selected for appointment as a "Probationary Officer" in the State Bank of India and was allotted "New Delhi Circle". It was stated in the said letter that his appointment was subject to satisfactory completion of the appointment formalities including medical examination. The respondent/writ petitioner was thereafter directed to report to the Local Head Office at New Delhi on 10th

December, 2018, for medical examination. The respondent/writ petitioner duly reported for medical examination on the scheduled date and time. During medical examination, the respondent/writ petitioner was informed that in normal course, candidates having negative power in the eye - maximum of minus eight (-8) - was considered fit for appointment but as the respondent/writ petitioner had minus nine (-9) power in the left eye and minus seven (-7) power in the right eye along with cylindrical power, he was advised to undergo "lasik surgery" in order to get appointed. The respondent/writ petitioner was advised to continue eye treatment and report back after a month for reexamination.

Before the learned Single Judge it was submitted on behalf of the respondent/writ petitioner that he consulted an ophthalmologist who advised him not to undergo "lasik surgery" as there was some problem in his retina, but the doctor continued with his eye treatment. Thereafter, as per the instructions of the concerned authority of the bank, the respondent/writ petitioner reported to the bank after one month for reexamination of his eye. On 1st January, 2019, the respondent/writ petitioner sent a letter to the bank via e-mail indicating that he had undergone treatment in Kolkata and reported to the Local Head Office of the bank in New Delhi for reexamination of his eye. On 2nd January, 2019, the respondent/writ petitioner was informed by the bank via e-mail that he was declared temporarily unfit by the bank's Medical Officer and advised to contact the said Medical Officer. The respondent/writ petitioner submitted before the learned Single Judge that he had contacted the Medical Officer who informed him that he would not be able to help him in any manner.

The respondent/writ petitioner submitted before the learned Single Judge that in the advertisement there was a provision for reservation of vacancies for persons with disability. There was reservation for candidates who were visually impaired and candidates who suffer from blindness or low vision. According to the respondent/writ petitioner he was better off than candidates who were blind or had low vision. He further submitted that after treatment, the power of his eye had reduced considerably and did not have any difficulty in performing his duties after correction of his vision by wearing spectacles and he - being eligible in the selection process - ought to have been issued a letter of appointment.

The learned Single Judge considered all aspects of the matter including the point of territorial jurisdiction. According to the learned Single Judge, in the facts of the instant case and from the chain of events, it could be concluded that not only a substantial part but an integral part of the cause of action arose in Kolkata. Therefore, High Court at Calcutta had the territorial jurisdiction to entertain the issue.

We do not find any cogent or justifiable reason to differ from the view expressed by the learned Single Judge with regard to the jurisdictional issue since this issue has been discussed threadbare in the impugned judgment and order. However, so far as the other part of the direction issued by the learned Single Judge upon the State Bank of India is concerned, that is, to explore the possibility of

accommodating the respondent/writ petitioner in the category of candidates having low vision in case he failed to clear the medical test and the Court's further observation that the bank may also consider entrusting him with such duties which may not cause any strain in his eyesight, perhaps could not have been issued by the learned Single Judge in the facts and circumstances of the instant case, since the respondent/writ petitioner had only applied for the post in question, i.e. "Probationary Officer" and that too, without a disability certificate. In fact, he had applied under the "General Category".

As such, the impugned judgment and order shall stand modified only to the extent as indicated above. The time limit for the appellant/bank to conduct the exercise, as directed by the learned Single Judge, however, shall stand extended for a further period of six weeks from the date of this order.

The appeal and the application for stay stand disposed of accordingly.