

(2016) 11 DEL CK 0100

In the Delhi High Court

Case No : Writ Petition (C) No. 5932 of 2012

Subhash Chandra

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ADDelhi 42

Hon'ble Judges : Mr. Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : None, for the Respondents; Mr. Ashok Bhalla, Advocate with Mr. I.P. Singh, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. Valmiki J. Mehta, J.(Oral) - This writ petition under Article 226 of the Constitution of India is filed by the petitioner/Sh. Subhash Chandra against his employer/respondent no.1/Punjab National Bank seeking various reliefs which are in fact basically for grant of promotion to the petitioner as a Scale IV officer from the present Scale III post to which the petitioner was appointed/promoted w.e.f 15.1.2001. By the writ petition and the reliefs prayed therein, the petitioner firstly seeks quashing of the Order dated 6.1.2012 passed by the respondent no.1/employer/bank rejecting the representation of the petitioner to review the earlier appellate decision dated 16.8.2008 declining the grant of promotion to the petitioner from Scale III to Scale IV. Petitioner also seeks quashing of his Performance Appraisal Report (PAR) for the year 2007-08 as per which the petitioner by reviewing authority was given only 56 marks. Petitioner also seeks direction for the implementation of the memorandum issued by the Government of India for reservation for physically challenged persons and consequently for grant of promotion to the petitioner from Scale III officer to a Scale IV officer. The reliefs prayed for in the writ petition read as under:-

"I. Issue a writ of certiorari or any other appropriate writ, order or direction in

the nature of certiorari quashing/setting aside the order dated 6.1.2012 passed by Respondent Punjab National Bank with all consequential benefits.

II. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing/setting aside the downgrading PAF of the Petitioner for the year 2007-2008 certified copy of which was supplied along with letter dated 5.6.2012 (Annexure P-16 Colly) with all consequential benefits.

III. Issue a writ of mandamus or any other appropriate writ, order of direction in the nature mandamus commanding directions to the Respondents No.1-3 to implement the Office Memorandum/Corrigendum No.36035/7/95-Estt.(SCT) dated 16.1.1998 (Annexure P-3) with all consequential benefits to the Petitioner, as available to him till 29.12.2005 as being physically handicapped person.

IV. Issue any other writ, order or direction and/or such further or other orders or directions as this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case."

2. To consider the first prayer for quashing of the decision dated 6.1.2012, the said decision is reproduced as under:-

"COSD/HRD/MR/2011

6th January, 2012

Incumbent Incharge

BO: Sansad Marg

New Delhi

Reg: Request for re-consideration of appeal dated 16.08.2008 against non-approval I promotion to SMG Scale-IV in Seniority Channel-Shri Subhash Chandra (PF No.49586).

This is with reference to Shri Chandra's letter dated 27.12.2011 addressed to HRDD HO, requesting to consider the appeal made during the year 2008 against non promotion in the Promotion process held in 2008 for promotion from MMG Scale-III to SMG Scale-IV.

In this regard, we have been informed by HRDD HO that there shall be no review on the appeal dated 16.8.2008 in terms of the extent Promotion Policy as the decision on his appeal has already been communicated to Shri Subhash

Chandra on 06.11.2008.

Please inform Shri Chandra accordingly.

Sd/-

Chief Manager-HR"

3. A reading of the writ petition shows that the petitioner for the year 2007-08

was only granted 56 marks by the reviewing authority and which action of the reviewing authority was challenged by the petitioner by filing an Appeal dated 16.8.2008 to the Chairman and Managing Director (CMD) of the respondent no.1/ employer/bank. This appeal was dismissed by the CMD on 6.11.2008. In the counter affidavit filed by the respondent no. 1/employer/bank, it is pleaded that the decision challenged by the petitioner dated 6.1.2012 is effectively and really a challenge to the first decision of the CMD dated 6.11.2008, and the challenge to the first decision in the appeal dated 6.11.2008 cannot be done four years later in the year 2012 when the writ petition was filed, and thus the writ petition is liable to be dismissed on the ground of delay and laches.

4. The relevant paras of the writ petition with respect to the issue of downgrading PAR of the petitioner for the year 2007-2008 and the decision of CMD dated 6.11.2008 dismissing the appeal of the petitioner, and the preliminary objections raised on behalf of the respondent no. 1/employer/bank in response are as under :-

"Relevant Paras of writ petition xi. The Performance of the Petitioner for year 2007-2008 was assessed by the Appraising Authority by giving 88 marks (Excellent) however Shri R.K. Dubey, the then General Manager, Delhi Circle as Reviewing Authority acted with malafide intentions and downgraded the PAF of the Petitioner by giving 56 marks (Average) which marred the promotion chances of the Petitioner for the next 5 years. Such malafide action of Shri R.K. Dubey had resulted in lowering the prestige of the Petitioner in the eyes of all his fellow colleagues as the Petitioner could not be get further promotions.

xii. It is pertinent to mention that the Petitioner had worked only 3 months under Shri R.K. Dubey, the then General Manager, Delhi Circle, as such, he was not competent to Review the performance of the Petitioner. His action is reviewing the performance appraisal as AVERAGE was malafide as during the previous year 2006-07, the same assessing authority has assessed the Petitioner as Excellent and it was reviewed as Excellent. The performance of officer cannot go down from Excellent to Average without any cogent reasons.

xiii. In June 2008, the Petitioner had participated in Promotion Process/Appeared in Interview for promotion to SMG/Scale-IV but was not selected.

xiv. In these circumstances, the Petitioner had submitted an Appeal dated 16.8.2008 to the Chairman & Managing Director of Punjab National Bank, against non-selection of the Petitioner to promotion to SMG/S-IV. A True copy of Appeal dated 16.8.2008 is annexed hereto and marked as ANNEXURE P-6.

xv. The Appeal of Petitioner was rejected by the Chairman and Managing Director on 6.11.2008, a true copy of which is annexed hereto and marked as ANNEXURE P-7.

Preliminary objection I of counter affidavit filed by respondent No.1

I. The deponent submits by way of preliminary objections to the maintainability

of the writ petition that in the present case the petitioner is questioning non promotion from Middle Management Grade Scale III to Higher Management Scale IV in the promotion process carried out in the year 2008. It is also stated that after promotion process in 2008 the petitioner filed an appeal under the Promotion Policy and the said appeal was rejected on 6.11.2008 as is evident from Annexure P-7(Page 92) of the petition. It is stated that such belated challenge to the promotion process carried out in 2008 whereby number of officers had been promoted would cause serious disruptions in the administrative working of the Respondent Bank if interfered at this stage by the Hon''ble Court. The present petition filed in 2012 challenging the non promotion of the petitioner in the year 2008, is thus barred on the grounds of delay and laches and may be dismissed as such."

5. The Supreme Court in the recent judgment in the case of State of Orissa and Another v. Mamata Mohanty (2011) 3 SCC 436 has held that though the Limitation Act, 1963 in the strict sense does not apply to writ jurisdiction, but, since the doctrine of limitation is based on public policy, if a writ petition is filed beyond the period of limitation, the same is liable to be dismissed on the ground of delay and laches. This is so observed by the Supreme Court in paras 52 and 53 of the judgment in the case of Mamata Mohanty (supra) and which paras read as under:-

"Delay/Laches

52. In the very first appeal, the respondent filed Writ Petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part.

Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at the appellate stage because in some of the cases it may go to the root of the matter. (See Lachmi Sewak Sahu v. Ram Rup Sahu and Kamlesh Babu v. Lajpat Rai Sharma.)

53. Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986."

(underlining added)

6. Therefore the present writ petition which is filed on 12.9.2012 cannot be entertained to question the decision of the CMD of the respondent no.1/employer/bank which is dated 6.11.2008 and the writ petition is therefore liable to be dismissed on the ground of delay and laches. Merely because the petitioner again filed various review petitions before the CMD of the respondent no.1/employer/bank to seek review of the decision dated 6.11.2008, and which were rejected, cannot mean that actually it is not the original decision dated 6.11.2008 which is challenged in the writ petition, and therefore, merely filing repeated review petitions will not extend the period of limitation because essentially the petitioner by the review petition before the CMD of the respondent no.1/employer/bank and the present writ petition is impugning the original order of the CMD of the respondent no.1/employer/bank dated 6.11.2008 denying promotion to the petitioner from Scale III to Scale IV including the ground of rejecting of the challenge of the petitioner to the PAR of the year 2007-08. Writ petition is liable to be and is accordingly dismissed on the ground of delay and laches so far as the same challenges the decision dated 6.1.2012 because really and actually the challenge by the petitioner is to the original decision dated 6.11.2008.

7. For the sake of arguments let this Court take as if the writ petition is not to be dismissed on the ground of delay and laches and therefore let it be examined as to whether the petitioner should be promoted from Scale III to Scale IV for the promotion process of June, 2008 or even for that matter for the process of the year 2009-10 when once again the petitioner was not selected, and in both of which processes interviews were conducted. The relevant paras of the policy pertaining to the promotion of the officers of the respondent no. 1/employer/bank from Scale III to Scale IV, and which are a part of the circular of the respondent no.1/employer/bank dated 21.3.1991, read as under:-

"XXXXX

XXXXX

V. SELECTION PROCESS FOR MMG SCALE-III TO MMG SCALE-IV

The selection for filling up the vacancies in MMG Scale-IV shall be on the basis of the following two parameters:

PARAMETERS

MAXIMUM MARKS

MINIMUM MARKS

QUALIFYING

Performance

60 marks

-

Interview

35 marks

7

Total

95 marks

- Performance (60 marks):

The marks for performance of the 3 preceding years will be evaluated as follows:-

RATING

MARKS FOR THE RATING

Very Good

20

Good

16

Satisfactory

13

Unsatisfactory

0

-Interview (40 marks)

The minimum qualifying marks in the interview shall be 7.

XXXXX

XXXXX

VIII. PREPARATION OF MERIT PANEL:

a) In the promotion from JMG Scale-I to MMG Scale-II and MMG Scale-II to MMG Scale-III, the marks obtained by the officers in various parameters prescribed, shall be aggregated and a list will be prepared in the order of merit based on aggregate marks.

b) In case of promotion from MMG Scale-III to SMG-IV for the purpose of preparing the merit list in the order of aggregate marks, only those candidates who secure the minimum qualifying marks in the parameter of interview will be considered.

c) In case two or more candidates secure same no. of aggregate marks, their ranking in the merit list shall be decided on the basis of their inter-se seniority in

the existing grade/scale.

d) PANEL:

From the merit list, the Bank shall prepare a panel of selected candidates to the extent of 125% of the estimated vacancies in the next higher scale for which the selection is being conducted.

e) The promotions will be offered to the extent of the no. of vacancies in the order of merit. The inter-se seniority of the candidates promoted shall remain unchanged in the next higher scale irrespective of their ranking in the merit list. However, the candidates from the panel, who are offered promotions subsequently against refusals, etc. shall rank junior to the candidates who have been promoted in the first instance and the inter-se seniority amongst these candidates will be maintained in the same manner as in the former case.

f) VALIDITY OF PANEL:

The panel will be valid for a period of 15 months from the commencement of the financial year in which the panel has been approved by the competent authority for approving the promotion. The Board in its discretion may extend the validity of the panel keeping in view the exigencies.

XXXXX

XXXXX

XI. INTERVIEW

In all the promotions covered under this policy, the interview committee, would make an overall assessment of the candidate on the basis of various components such as job knowledge of his present assignment; knowledge and potential for shouldering higher responsibilities; leadership qualities; decision-making and communication skills. However, there shall be no distinct allocation of marks for these components of interview."

(underlining added)

8. As per the aforesaid guidelines contained in the Circular of the respondent no.1/employer/bank dated 21.3.1991 promotion from Scale III to Scale IV is on the basis of various criteria under two heads/aspects. The first aspect is that the selection will be on the basis of performance of the officer for the past three years and the second aspect is of marks obtained by the candidate in the interview process to be conducted. The next step in the selection process thereafter is that a merit panel is prepared with respect to various candidates who appear in the interview and which is based upon the aggregate marks given for firstly the performance of past three years and secondly the marks obtained in the interview. A merit panel thereafter is prepared of the selected candidates with persons who get more marks being placed in a higher position than the persons who get lesser marks.

9. If we read the writ petition, it is found that the writ petition is conspicuously silent as to what were the marks obtained by the petitioner in the interview, as to how if the PAR of the petitioner for the year 2007-08 if was more than 56 marks then he would be selected in the promotion process, how the petitioner would stand selected in the selection process for the promotion as per the number of vacancies because of better position of the petitioner in panel of the merit list candidates as compared to the other candidates who appeared. Thus, the writ petition cannot be entertained, much less reliefs be granted, because, the petitioner had to plead/give the number of posts for which promotions were to take place, who were the merit list selected candidates, as to what is the ranking of the petitioner qua the other candidates if the petitioner is taken to have a better PAR for the year 2007-08, what were the marks of the petitioner in the interview taken with the total aggregate marks, and all of which would place the petitioner within vacancies available for the selected merit list candidates if the PAR of the petitioner for the year 2007-08 was not of 56 marks. In the absence of all such details, and which require extensive pleadings, and such pleadings being supported by the necessary documents, showing placement of the petitioner in the merit list with and without the bad PAR of 56 marks for the year 2007-08, the petitioner hence cannot be granted the relief of promotion as claimed in the writ petition from Scale III to Scale IV inasmuch as it is not known that even if the petitioner would have got a better/higher PAR for the year 2007-08, yet would the petitioner still be placed higher in the merit list of selected candidates for promotion process of the year 2007-08 and also for that matter of the subsequent year 2009-10. Accordingly, no relief of promotion can be granted to the petitioner from Scale III to Scale IV in view of the fact that writ petition really lacks cause of action to show as to how the petitioner would stand automatically selected because of the interview processes of June, 2008 and of the year 2009-10 assuming that PAR of the petitioner for the year 2007-08 has to be upgraded.

10. (i) Learned counsel for the petitioner then argued that the reviewing authority which gave less marks of 56 to the petitioner for the PAR of the year 2007-08 could not be the reviewing authority because under the reviewing authority the petitioner had worked for just around three months and the reviewing authority could only review the performance of the petitioner only if the service of the petitioner under the reviewing authority was for at least six months. This aspect is argued by the petitioner by placing reliance upon para 7 of the Annexure "A" to the New Performance Appraisal System Circular no.189 dated 3.1.2004 of the respondent no.1/employer/bank. This para 7 reads as under:-

"7. Appraisal by the Appraising Authority, under whom the officer has worked for more than 06 months during the review period. The Authority who has overseen the performance of the officer for 06 months and above during the review period will assess the performance in all cases."

(ii) Though this argument need not be examined by this Court in view of the above discussion as regards lack of requisite pleadings for the petitioner to be granted promotion even if the PAR of the petitioner of the year 2007-08 has to be upgraded, yet, let this argument be still considered on merits subject to the discussion below.

11. In the counter affidavit, while responding to this stand of the petitioner, the respondent no.1/employer/bank has stated that the para 7 only applies to the assessing officer and not the reviewing officer i.e performance has to be assessed by an officer if the employee has worked under the first assessing officer for six months, and that the reviewing officer can review the PAR of the concerned employee even if the period is less than six months i.e for three months so far as the petitioner is concerned. I may note that in the Circular no.189 dated 3.1.2004, there is no paragraph or provision as to what should be the period for which the employee must have worked under the reviewing officer before the reviewing officer decides the PAR of the employee for the year, and therefore, in the facts of the present case without interpreting para 7 of the Circular no.189 dated 3.1.2004, this Court holds that it would not like to interfere in the concluded promotion processes of June, 2008 and the year 2009-10 because this Court agrees with the stand of the respondent no.1/employer/bank stated in the preliminary objection para 1 of its counter affidavit (already reproduced above) that promotions having taken place for the year 2007-08 and also for the year 2009-10 on the basis of promotion processes of these years, and the promoted officers have occupied and have been working in their posts, consequently such officials who have got promotions should not be displaced by granting promotion to the petitioner instead of one of the officers in the promotion list for the promotion processes of June, 2008 and the year 2009-10. The petitioner, if he was interested in seeking an exercise of the discretionary and extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, then, the petitioner should have approached this Court immediately after the promotion processes of June, 2008 and of the year 2009-10, and which the petitioner has not done and this writ petition is filed much later in September, 2012. In fact, I must note that with regard to promotion processes of the year 2009-10, there is no detailed factual cause of action laid out in the writ petition except one para 21 and this para reads as under:-

"xxi. The petitioner had again participated in promotion process from MMG/S-III to MMG/S-IV during the years 2009-10 through Interview Channel but was not selected."

12. Therefore, in the facts of the present case, the petitioner is not entitled to the relief of promotion on account of delay and laches for both the promotion processes of June, 2008 and also for the year 2009-10. Also, this aspect has to be taken with the fact that it is not established either by pleadings or its substantiation in the writ petition as to how the petitioner would be placed in such a position in the merit panel of the select list for automatically being

granted promotion from Scale III to Scale IV taking that the PAR of the petitioner for the year 2007-08 is liable to be reviewed. Of course, I would hasten to add that the challenge to the promotion process of the year 2009-10 is also based only on account of pleadings as per para 21 of the writ petition and which para is totally bereft of requisite factual pleadings including not stating as to how the petitioner would stand promoted by satisfying all the criteria and being placed higher in the merit list than the other selected candidates for the promotion process of the year 2009-10.

13. The final ground which is pleaded in the writ petition is of illegal process of promotion being carried out by the respondent no.1/employer/bank without reserving post for physically challenged persons. For such purpose, the petitioner relies upon circulars of the Government of India dated 18.2.1997 and 29.12.2005. It is however seen that these circulars are of Government of India, Ministry of Personnel and they will only apply to the Government employees and not to the employees of the respondent no.1/employer/bank because it is not shown by the petitioner as to how these circulars are applicable to the employees of the respondent no.1/employer/bank. In fact, the cause of action laid out of the petitioner being a physically challenged person for him being granted promotion from Scale III to Scale IV is on the basis that before the selection process, the posts for physically challenged persons ought to have been carved out and consequently the petitioner had entitlement to promotion in the reserved quota for physically challenged persons for the years 2007-08 and 2009-10, and thus this cause of action could only have been enforced prior to the petitioner participating in the promotion processes of June, 2008 and of the year 2009-10 by first seeking reservation quota for physically challenged persons such as the petitioner for such promotion process of June ,2008 and the year 2009-10, and since the petitioner participated in the processes as a regular candidate and being unsuccessful for grant of promotion, cannot now seek to turn the clock back by seeking an entirely new process for promotion by carving out a reserved category with respect to physically challenged persons for the years in question. Also, once there is no policy of the respondent no.1/employer/bank with respect to physically challenged persons, the petitioner should have first asked for framing of a policy by the respondent no.1/employer/bank with respect to reservation of posts for physically challenged persons in accordance with applicable laws, and which would have to be done by the petitioner by pleading appropriate cause of action with respect to legal provisions or directions and guidelines issued by the competent Ministry dealing with the banks, but the petitioner having not done so, now cannot after being unsuccessful in two promotion processes seek to turn the clock back by filing the writ petition seeking promotion on the ground that the petitioner is a physically challenged person.

14. In view of the above, there is no merit in the present writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.