(2013) 04 PAT CK 0022

In the Patna High Court

Case No : LPA No. 1708 of 2012 in CWJC No. 21986 of 2011 and Interlocutory Application No. 7178 of 2012 in LPA No. 1708 of 2012

The Chairman-cum-Managing Director and Others APPELLANT

Vs

Ashish Kumar and Another RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 3 PLJR 837

Hon'ble Judges : R.M. Doshit, C.J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Rupak Kumar, for the Appellant; Prakash Srivastava, for the Respondent

Judgement

R.M. Doshit, C.J.—Feeling aggrieved by the judgment and order dt. 16th August, 2012 passed by the learned single Judge in CWJC No. 21986 of 2011, the respondent-Bank of India (hereinafter referred to as "the Bank") has preferred this Appeal under Clause 10 of the Letters Patent. Pursuant to its letter dated 1st February, 2011, the Bank made campus recruitment of Agricultural Officers in Junior Management Grade/Scale-I in the Rajendra Agricultural University, Pusa, Samastipur. The communication specifically mentioned the eligibility criteria, the educational qualifications, age limit and other conditions precedent. As to the age limit, the communication referred to:--Age limit as on 31.3.2011: Mini. 21 years and Max. 30 years with relaxation to Reserved category such as:

(i) 5 years for SC/ST

(ii) 3 yews for OBC

(iii) 10 years for PWD on cumulative basis for SC/ST/OBC candidates.

2. Pursuant to the said communication, on receipt of the statement of the candidates short listed by the Principal of the College, after holding campus interview, the Bank, on 6th May, 2011, prepared a merit list of around 18

candidates. The writ petitioner was placed at Sl. No. 18 (general category). After the said merit list was prepared and circulated, on 24th August, 2011 the Bank informed the writ petitioner that he being overage, he was not eligible for appointment in the Bank.

3. Feeling aggrieved, the writ petitioner approached this Court under Article 226 of the Constitution in above CWJC No. 21986 of 2011.

4. The petition was contested by the Bank. According to the Bank, the writ petitioner had applied as a general category candidate; he having crossed the age of 30 years as on 31st March, 2011, he was not eligible for appointment in the Bank. Even if he were considered as a candidate from Other Backward Classes and were given the benefit of relaxation of age by three years, he completed the age of 33 years on 28th February, 2011. On 31st March, 2011, the cut-off date, he had crossed the age of 33 years.

5. The learned single Judge allowed the writ petition. According to the learned single Judge, on the date of communication i.e. on 1st February, 2011, the petitioner had admittedly not attained the age of 33 years. He was, therefore, eligible for appointment in the Bank. The learned single Judge also considered the factum that the writ petitioner had no knowledge of the age bar and that he having been selected and placed on the merit list, he could not have been non-suited on the ground of being overage as on 31st March, 2011.

6. Feeling aggrieved, the Bank has preferred this Appeal.

7. We have heard the learned advocates extensively. Mr. Rupak Kumar has appeared for the Bank. He has submitted that evidently it was made known to the Principal that 31st March, 2011 was the relevant date for considering the age of the candidates. Further, it was emphatically mentioned that "the eligibility norms approved by the Bank, will have to be advised to the students/candidates by the college; (1) it is joint/combine responsibility of the college/student to ensure that the shortlisted candidate is not under-age or overage as on relevant date i.e. 31st March, 2011".

8. Mr. Rupak Kumar has submitted that although the Bank was very specific about the age limit, the statement shortlisted by the Principal contained the name of the writ petitioner who was indisputably overage as on 31st March, 2011. It was a sheer mistake or inadvertence that his name was included in the final select list. He has submitted that mere inclusion in the final select list also did not confer right to appointment upon the writ petitioner.

9. Mr. Prakash Srivastava has appeared for the respondent. He has contested the Appeal. Mr. Srivastava has submitted that once the name of the writ petitioner was included in the select list, he acquired indefeasible right to appointment in the Bank. He has also submitted that the date of communication i.e. 1st February, 2011 was the commencement of the recruitment process. 1st February, 2011 was, therefore, the relevant date for the purpose of determining

the age of the candidates.

10. We see no merit in the submission made by Mr. Srivastava. As recorded hereinabove, the Bank was specific about the eligibility criteria including the age. There was no possibility to hold that any date other than the 31st March, 2011 would be the relevant date for the purpose of determining the age. The contention that 1st February, 2011 was the date of commencement of the recruitment process and, therefore, that was the relevant date and that by sheer inclusion in the final select list, the writ petitioner had acquired an indefeasible right to appointment are contrary to the settled law of service jurisprudence and need to be rejected outright.

11. As recorded hereinabove, admittedly on the relevant date i.e. on 31st March, 2011, the writ petitioner had crossed the maximum age determined by the Bank. The writ petitioner, therefore, was not eligible for appointment in the Bank. If his name were included in the select list overlooking the age bar, the same did not confer a right to appointment upon the writ petitioner. The claim made, by the writ petitioner is misconceived and frivolous and deserves to be rejected outright.

12. For the aforesaid reasons, the Appeal is allowed. The impugned judgment and order dated 16th August, 2012 passed by the learned single Judge in CWJC No. 21986 of 2011 is set aside. CWJC No. 21986 of 2011 is dismissed.

13. It is apparent that this litigation could have been avoided if the Bank were vigilant. We, therefore, believe that the Bank is required to pay cost to the writ petitioner. The cost is quantified at Rs. 5,000/-. The amount of cost will be paid to the writ petitioner within four weeks from today. Interlocutory Application stands disposed of.