
(2015) 05 UK CK 0017
In the Uttarakhand High Court
Case No : Special Appeal No. 503 of 2014

Union Bank of India and Others

APPELLANT

Vs

Vikash Kumar and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 16(4)

Citation : (2015) LabIC 2734

Hon'ble Judges : K.M. Joseph, C.J.;V.K. Bist, J

Bench : Division Bench

Advocate : Arvind Vashistha, Senior Advocate, Monika Pant and T.C. Agarwal, for the Appellant; Siddhartha Sah, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J.—Appellants are respondent Nos. 3 to 5 in the writ petition. An Advertisement was issued for filling-up the posts of Probationary Officer in 19 public sector banks on 28.02.2012. Writ petitioner submitted his candidature for the said post by way of an online form through a cyber cafe in Dehradun. According to him, he is born blind. The form was filled-up, according to him, by the operator of the cyber cafe. The written examination was proposed to be held on 17.06.2012. According to the writ petitioner, on getting the admit card, he came to know that he was put in a wrong category, namely, OBC (VI) instead of SC (VI), to which latter category he belonged. He, according to him, wrote a letter. Thereafter, he sat for the examination; the result was declared on the website; and his name was placed among the successful candidates. The letter written by him, seeking change, was responded to by Annexure No. 5, letter, wherein it was stated as follows:

08.11.2012 BY SPEED Post "Mr. Vikash Kumar, TCABNIVH, 116 Rajpur Road, Dehradun 248 001 Uttarakhand

Dear Candidate,

Re: Your letter dated 29.10.2012

SUB: Common written examination (CWE) conducted for recruitment of P.O./M.T. Officers 2012.

We have received your above referred letter and noted the content therein.

Kindly note that, it is not possible now to make the change in the information registered by the candidate at the time of on-line registration. Kindly refer the detailed advertisement published by IBPS in the employment news and also exhibited on our website for the Common Written Examination (CWE) for the recruitment of Clerical cadre. Please note that all the particulars mentioned in the online application including Name of the Candidate, Post applied, Category. Date of birth, Address, Email Id, Cell Number, State, Center of Examination etc. will be considered as final and no modifications will be allowed after submission of the online application form. Candidates are hence requested to fill in the online application form with the utmost care as no correspondence regarding change of details will be entertained.

It is clearly mentioned there as Request for change correction in any particulars in the Application Form shall not be entertained under any circumstances after the last date specified for submitting the application details. IBPS will not be responsible for any consequences arising out of furnishing of incorrect and incomplete details in the application or omission to provide the required details in the application form.

Yours truly Sd/- Manager, Administration"

The writ petitioner, it appears, was called for the interview and was also favoured with an order appointing him in the appellant Bank. In the appointment order, he was shown as belonging to OBC (VI) category. Thereafter, when he went to join in the appellant Bank and produced his caste certificate showing himself as a Scheduled Caste; in terms of the appointment order, itself, appellant Bank refused to appoint him.

2. Accordingly, the writ petition was filed. The prayer sought in the writ petition is as follows:

"(i) Issue, a writ order, or direction in the nature of mandamus commanding and directing the respondent No. 2 to place the petitioner in category SC (VI) and accordingly direct the respondent No. 4 or any other bank to appoint him as Probationary Officer, according to his merit and rank in the common entrance examination 2012 held by I.B.P.S. Mumbai."

3. The learned single Judge allowed the writ petition taking the view that the admitted mistake on the part of the writ petitioner must be treated as having been rectified. The learned single Judge also, obviously, borne in mind the fact that the writ petitioner is visually handicapped and, in that regard, the learned single Judge referred to The Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995. The learned single Judge also took note of the fact that the writ petitioner was permitted to appear in the written test and interview after examining his credentials, which would show that the mistake was rectified. He referred to the principles of fair play and justice, which should be the principles, which govern the modern democracy. The writ petition was, thus, disposed of as follows:

"15. This writ petition therefore succeeds. A mandamus is issued to the respondents to forthwith give joining to the petitioner on the post of Probationary Officer at Union Bank of India, Union Bank Bhawan, IIInd Floor, Vibhuti Khand, Gomti Nagar, Lucknow to which he was selected, and in case such post has been filled, they must give him a posting to another suitable place.

17. Having made the above determination, where this Court is convinced that after having been selected and appointed as a Probationary Officer, the petitioner who is visually challenged had to undergo hardship, being driven to this wholly unnecessary litigation, he should be meaningfully compensated. This Court has been informed that, the petitioner would have joined his duties on 15.04.2013, had he not been denied joining. Therefore, it will be deemed that the petitioner has been given his joining and will be given all benefits including 50% of the arrears of his salary from 15.04.2013, within a period of two months from the date of production of a certified copy of this order."

4. It is feeling aggrieved by the same that the present appeal has been filed.

5. We have heard Mr. Arvind Vashistha, learned Senior Counsel for the appellants; Mr. T.C. Agarwal, learned counsel for the writ petitioner; and also Mr. Siddhartha Sah, learned counsel appearing for respondent No. 3 Institute.

6. The learned Senior Counsel for the appellants would submit that the learned single Judge was in error in issuing the impugned directions; appellants cannot be called upon to appoint a Scheduled Caste candidate; the Bank had authorised the recruiting agency to conduct the selection; in the selection process, writ petitioner was selected as OBC candidate; the writ petitioner presented himself with a caste certificate, which, admittedly, showed that he is a SC candidate; and, therefore, he cannot be issued an order of appointment contrary to the appointment order.

7. Per contra, Mr. T.C. Agarwal, learned counsel appearing for the writ petitioner, would submit as follows:

A mistake was committed. We are reminded that the mistake is sought to be attributed to a blind person and the normal principle would not apply to such a person. The Court must also remind itself that it is not a there court of law; but, it is also a court of equity and justice and, in the facts of this case, principle of equity should prevail. He would submit that it is a case, where the writ petitioner, upon realising the mistake that he had shown himself as belonging to OBC category in the online application form, on receiving the admit card, had made

the application for rectification and had sat in the examination. He also drew our attention to a communication issued, which showed that, at the time of interview, writ petitioner was expected to produce his caste certificate and he would point out that, once the writ petitioner was called for the interview and he had produced the caste certificate showing himself to be belonging to the SC category, he poses a question as to how the writ petitioner could have been declared successful and given an appointment order as OBC candidate and, therefore, he submits that the writ petitioner should be treated as belonging to SC category and, at this stage, it is not open to the Bank to deny him appointment under SC category. He would also submit that interview is a part of recruitment process and, therefore, when the matter was rectified at least at the stage of the interview, it is not open to the appellants to turn around and contend that the writ petitioner was selected as OBC candidate. He would further submit that the principle *littera scripta manet*, which, essentially, is to the effect that, when a literate person signs a document, he must be attributed the knowledge of the contents of the document and he cannot wriggle out of it; is not applicable to the case of a blind person. He would also point out that making reservation for the blind is covered under Article 16(1) of the Constitution and he drew our attention to the judgment of the Hon'ble Apex Court in the case of *Mahesh Gupta and Others Vs. Yashwant Kumar Ahirwar and Others*, AIR 2007 SC 3136 : (2007) 115 FLR 613 : (2007) 10 JT 556 : (2007) 10 SCALE 485 : (2007) 8 SCC 621 : (2007) 2 SCC(L&S) 965 : (2007) 9 SCR 578 : (2008) 2 SLJ 187 : (2007) AIRSCW 5683 : (2007) 6 Supreme 276 : (Mahesh Gupta and Others Vs. Yashwant Kumar Ahirwar and Others, AIR 2007 SC 3136 : (2007) 115 FLR 613 : (2007) 10 JT 556 : (2007) 10 SCALE 485 : (2007) 8 SCC 621 : (2007) 2 SCC(L&S) 965 : (2007) 9 SCR 578 : (2008) 2 SLJ 187 : (2007) AIRSCW 5683 : (2007) 6 Supreme 276). There, he points out that the Hon'ble Apex Court has held that clause (1) of Article 16 does not have anything to do with Article 16(4). Article 16(4) deals with vertical reservation; whereas, Article 16(1) deals with horizontal reservation. He, further, pointed out that handicapped persons cannot be further divided in SC, ST or General category. He would submit that, in terms of being a disabled person, writ petitioner was entitled to be treated irrespective of his caste and, on that basis, he should be given appointment.

8. Mr. Siddhartha Sah, learned counsel appearing for respondent No. 3, would submit that it was made very clear by Annexure No. 5 letter, which has been produced by the writ petitioner himself, that there will be no change and there is no challenge to the same. It is submitted that it is too late in the day to consider any request for being allotted to any other bank.

9. Mr. Arvind Vashistha, learned Senior Counsel for the appellants, would submit that the argument based on the judgment of the Hon'ble Apex Court should not be accepted. According to him, in this case, the reservation was vertical reservation for SC, ST & OBC and there is horizontal reservation in each class.

10. We have already extracted the prayer made in the writ petition. There is no

dispute that the writ petitioner belongs to SC category. There is also no dispute that the writ petitioner is blind. The writ petitioner, admittedly, applied online describing himself as falling under OBC category. We have already perused and referred to the communication by the recruiting body that, after the online application, no request for change will be accepted. We must, at once, notice that there is no challenge to the said communication. There is a case for the Senior Counsel for the appellant Bank that a large number of applicants went through the process of the interview and, therefore, the fact that the writ petitioner was interviewed and, thereafter, selected should not mean that, what is provided in the appointment order that he was selected as an OBC candidate, should be given a go by. It may be true that the writ petitioner did point out that he is an SC candidate. It may also be true that, at the time of interview, he may have produced the caste certificate. But the fact remains that he was favoured with an appointment order, wherein he was not shown as SC. On the other hand, recruiting body, in terms of its policy that there will be no change effected after the last date mentioned for making online application, did not permit the writ petitioner to change the category from OBC to SC. Thus, the fact with which we are concerned is that the recruiting body, which was recruiting the candidates on the basis of the requisition sent by the appellant Bank, has recruited the writ petitioner as an OBC candidate; but, showing himself as an SC candidate, writ petitioner goes to the appellant Bank. It is thereafter that the appellant Bank refused to give him appointment showing him as an SC candidate contrary to the appointment order. It is in this context that we must appreciate the request for a mandamus. Mandamus is granted when there is a legal duty and a corresponding legal right. Does the writ petitioner have a legal right to call upon the appellant Bank to appoint him as an SC candidate, when he is appointed in OBC category? We would think that it may not be appropriate or just to direct the appellant Bank to issue an order appointing him as an SC candidate contrary to the appointment order. Equally, we cannot direct the appellant Bank to appoint him as belonging to OBC category because he does not belong to OBC category. This is a peculiar situation with which the Court is faced, wherein, on the one hand, we are also not oblivious of the considerable compassion that the writ petitioner would, otherwise, command from us; on the other hand, we are also reminded that, while the court is a court of equity and of law, when the command of law does not reconcile with the demand of equity, it is the command of law which will prevail over the demand of equity. The fact that the writ petitioner is a blind person cannot mean that he can get rid of the requirements inserted in a public advertisement issued for appointment for a post by an authority under Article 12 of the Constitution. This is not some document, which the writ petitioner is trying to wriggle out in private law jurisdiction. This is a public law jurisdiction and the imposition of a principle, which is based on the rule of law and also the mandate of Articles 14 and 16, cannot be overridden by the principle, which the learned counsel for the writ petitioner would request us to accept, which is apposite in private law.

11. Not having challenged Annexure No. 5 letter and having courted an order of appointment treating himself as belonging to OBC category, it is certainly not open to the writ petitioner to get a command to the appellant Bank to treat him as belonging to SC community. This is not a case also, where the recruiting body has, actually, accepted his request for rectification; as, otherwise, he would have been shown as belonging to SC category in the appointment order. In these circumstances, it was, at least, incumbent upon the writ petitioner to challenge Annexure No. 5 letter and also the appointment order. Without any challenge to either of these documents, it does not lie in the mouth of the writ petitioner to merely seek a mandamus to the appellant Bank to appoint him as belonging to SC category.

12. As far as the question relating to appointing the writ petitioner on the basis of his belonging to visually handicapped category is concerned, we do not see any such request in the prayer portion, as everything turned on his right to be appointed as an SC candidate and not as a visually handicapped candidate. Therefore, we are not inclined to consider the said issue. In such circumstances, the appeal is to be allowed. The appeal succeeds; the judgment of the learned single Judge is set aside; and the writ petition will stand dismissed. There will be no order as to costs.