

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.07.2013

+ **LPA 384/2013**

M.R. BHARDWAJ & ANR.

..... Appellants

versus

THE DELHI STATE COOPERATIVE BANK LTD. & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr Sunil Malhotra

For the Respondents : Mr Anand Yadav

CORAM:

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, THE ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, ACJ (ORAL)

CM No.9006/2013 (condonation of delay)

We have heard the learned counsel for the petitioner as well as the learned counsel for respondent No.1, who is the main contesting respondent. The delay of three days is condoned.

The application stands disposed of.

LPA 384/2013

1. This appeal is directed against the judgment dated 19.03.2013 passed by a learned Single Judge of this Court in W.P.(C) No.4163/1992. The first

appellant before us was the petitioner No.1 in that writ petition. The petitioner No. 2 in that writ petition has chosen not to file any appeal.

2. The second appellant was the petitioner in W.P.(C)396/1993 which was also disposed of by the common judgment 19.03.2013. We shall be referring to the facts of the case of the appellant no. 1 which are similar to those of the appellant no. 2.

3. The only point raised by the appellants in the said writ petitions was that they were wrongly denied promotion from the post of Clerk/Supervisor to the post of Accounts Officer. The complaint of the appellants was that their names did not figure in the list of promotees which was issued on 17.11.1992. The appellants were working with the Delhi State Cooperative Bank.

4. The relevant service Rules of the bank pertaining to promotions were as under:-

“PROMOTION:-

Rule 1.8(a).

Subject to provision contained in rule 7.A(vii), all posts falling vacant shall be filled in through PROMOTION from the next below category. The promotion shall be made only against a vacant post or a newly created post. The promotion shall be made by Establishment Sub-Committee after considering the following:

ELIGIBILITY :-

- i. The promotions will be made on the basis of Seniority-cum-merit.

- ii. At least 3 years service must have been put in lower cadre.
- iii. He must have received good confidential repro for atleast 3 consecutive years about his work and conduct from his incharge.
- iv. A suitability report of the General Manager will be required in each case.”

5. The learned counsel for the appellants urged before us that one of the conditions for promotion apart from seniority was that the candidate should have received three confidential reports for atleast three consecutive years which indicated that his work was “good”. According to the learned counsel for the appellants, the respondents despite repeated directions from the learned Single Judge had not produced the record which would have, in the words of the learned counsel, shown as to whether the appellant No.1 had received the good ACRs for the three years immediately prior to consideration for promotion i.e., in respect of 1989-90, 1990-91 & 1991-92.

6. On going through the impugned judgment, we find that the learned Single Judge has considered this aspect but has arrived at the conclusion that from the record available there is no clarity with regard to whether the appellant No.1 had or had not satisfied this condition with regard to the ACRs. The learned Single Judge, however, went on the principle of ‘no work no pay’ and followed the decisions of the Supreme Court in the case of Union of India v. B.M. Jha: 2007 (11) SCC 632, Union of India v. Tarsen Lal & Ors.: 2006 (10) SCC 145 and A.K. Soumini v. State Bank of Travancore & Anr.: 2003 (7) SCC 238 and distinguished the judgement of the Supreme Court in the case of State of Kerala & Ors. v. E.K. Bhaskaran

Pillai: 2007 (6) SCC 524, which had been relied upon by the appellant herein.

7. We may also point out at this stage that the appellant No.1 had subsequently been appointed as Accounts Officer. The present appeal pertains only to the benefits for the intervening period that is approximately 4 years and 9 months. The learned Single Judge also observed that apart from 'no work no pay' principle, it was also not clear as to whether the said appellant could at all have been promoted to the post of Accounts Officer at the relevant time.

8. After having heard the learned counsel for the appellants and the learned counsel for the respondent/bank who appeared on advance notice, we are of the view that since Rule 1.8 of the relevant Rules have not been challenged, they needed to be complied with before the appellants could claim promotion at the relevant time. Apart from the condition of the ACRs, there was another important condition and that was the requirement of the suitability report from the General Manager. It is apparent that such suitability report was not there in the case of the appellant No.1 at the relevant time. That being the case, even if the other conditions were satisfied the appellant could not have been promoted to the post of the Accounts Officer at the relevant point of time. Therefore, de-hors the condition of the ACRs and the issue of 'no work no pay' and the distinction drawn by the learned Single Judge insofar as the decision of the Supreme Court in ***State of Kerala v. E.K. Bhaskaran Pillai*** (*supra*) was concerned, this factor in itself clinches the issue against the appellant. The fact being that there was no suitability report from the General Manager and in the

absence thereof, the appellants could not have been promoted to the post of Accounts Officer at that point of time.

9. In view of the foregoing, we do not find any merit in the appeal, the same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, ACJ

VIBHU BAKHRU, J

JULY 04, 2013
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