

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.11477 of 2010

Date of decision: 18.12.2015

Punjab National Bank

... Petitioner

Versus

The Presiding Officer, Central Government Industrial Tribunal-cum-Labour
Court-I, Chandigarh and others.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjiv Ghai, Advocate,
for the petitioner.

Mr.VB.Aggarwal, Advocate,
for respondents No.3 and 4.

Mr.Harkesh Manuja, Advocate, Amicus Curiae

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

Heard.

2. Respondents No.3 and 4 based their claim for promotion/appointment before the labour court on the matriculation certificates issued by the Central Board of Higher Education, New Delhi obtained while in service of the Bank. On the basis of these certificates, they claim promotion to the post of Clerk-cum-Cashier and that they should have been permitted to appear for the prescribed test and compete for the post.

3. As a non-matriculate candidate, the case of respondent No.3

has been considered by the Bank seven times while in the case of

respondent No.4 five times but they remained unsuccessful in their attempts to clear the criteria from that source. Their efforts to fast track their promotion on the basis of the disputed matriculation certificate has met a stone wall when the Bank did not permit respondents No.3 and 4 to appear for the test holding them unqualified as per the rules of the Bank. No evidence has been produced by respondents No.3 and 4 before the labour court when the burden of proof was on them to show that the Central Board of Higher Education, New Delhi is a recognized institution which can award valid degrees, diploma or certificates.

4. The judgment of the Division Bench of the Rajasthan High Court relied upon by learned counsel for respondents No.3 and 4 in **Chatradhar Sharma v. State of Rajasthan and others**; 1996 (1) SCT 772 is misplaced. The Division Bench dealt with the case of admission of students for pursuing further education. Their candidature had been rejected for the reason that the certificate obtained from Central Board of Higher Education, New Delhi was forged and bogus. The Division Bench of Rajasthan High Court held that the institution issuing such certificates may be unrecognized but for this solitary reason, the certificates cannot be held to be forged and bogus. Such certificates may at the most be held not valid for want of equivalence and recognition. On facts, the Jodhpur University had granted admission to their respective courses when the discovery was made that their certificates were invalid and this the Court thought was highly unfair on the students who would be thrown out and not allowed to take the final examination. The equities were balanced in favour of the students in an appropriate manner as was then found just to the decision.

5. In the present case, the employees are seeking promotion where third party rights are involved by claiming right to compete in the Test which would entitle them for consideration for promotion to the post of Clerk-cum-Cashier.

6. The Labour Court answered the reference in favour of the claimant workmen, the respondents No 2 and 3 and directed the management to accord appointment/promotion to the claimants with effect from the date when the benefit was given to one Sham Sunder Batra a Bank employee said to be similarly situated who had been appointed/promoted in the year 1985 holding a matriculation certificate from the same institution.

7. Mr.Sanjiv Ghai appearing for the petitioning Bank asserts that plea was strongly raised before the Labour Court that the benefit accorded to Sham Sunder Batra was unlawful and was a result of a mistake committed by the Bank. To substantiate his contention he refers to the written statement filed by the Bank before the Labour Court to this effect.

8. The Labour Court has held that the appointment may be illegal but still it has proceeded to apply the principle of parity and equal treatment and afforded the same benefit to the claimants. It is well settled that an illegal order would not give rise to passing of another illegal order.

9. Mr.Ghai points out that the Bank issued a show cause notice to Sham Sunder Batra of reversion to the lower post of Peon on the ground that the matriculation certificate produced by him was not from a recognized Board of any State or Central Government.

10. Against the show cause notice, Sham Sunder Batra approached this Court in CWP No.13477 of 2010 which was decided on August 2, 2010.

Since the petition had been filed only against the show cause notice, the Court held that it was open to him to submit his reply thereto taking all the pleas available and the competent authority was obligated to consider the pleas that may be taken by the petitioner in his reply to the show cause. However, keeping in view the fact that Batra is working on the clerical cadre for the last more than 25 years, it was deemed fit to direct that if the competent authority in the Bank decided to revert the petitioner, such reversion order shall not be given effect for a period of one month from the date of its receipt by the petitioner with due acknowledgment, to enable him to challenge the same before the appropriate forum. The petitioner returned to this Court in CWP No.20042 of 2010 challenging the notice dated July 14, 2010 and the subsequent impugned order dated October 11, 2010 reverting him to the lower post. This petition was disposed of on July 6, 2010 directing that Batra would continue in the promoted post by setting aside the order of re-designation of the petitioner as Peon-cum-Daftri. It is recorded in the order that the matter was considered only on the basis of equity and the same shall not be treated as a precedent in other cases and the facts of each case will be considered on merits.

11. Aggrieved by the order, the Bank filed LPA No.2200 of 2012 which was dismissed on March 12, 2013 holding that no cause for interference was made in the appeal.

12. It is recorded in the judgment that the order of the learned Single Judge was given on its own facts and the question as to whether a person who has acquired a qualification from the school which is not recognized, that is, the Central Board of Higher Education, New Delhi and

on that basis, can seek promotion is not touched by the Court. Thus, the solitary question was not determined and was left open.

13. In view of the above position, the impugned award passed by the learned CGIT-cum-Labour Court-I, Chandigarh dated April 21, 2010 cannot be sustained in the eyes of law. There is a fundamental error of law and of jurisdiction in granting relief to the petitioner on the weakest of foundations. It may be recorded that respondents No.3 and 4 were not actually promoted to the higher post and, therefore, no equity of the kind claimed by Batra can enure in their favour. This is obvious because they were not permitted to sit in the examination and their march was forestalled as they were not educationally qualified for the post and thus the equity claimed is not available to them. The plea based on unfair discrimination is misjudged.

14. Accordingly, the writ petition is allowed and the impugned award is set aside. The amounts lying deposited in this Court may be released in favour of the petitioner-Bank.

(RAJIV NARAIN RAINA)
JUDGE

December 18, 2015

Paritosh Kumar