

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 15th May, 2015

+ **LPA No.201/2014, CM No.4059/2014 (for condonation of 275 days delay in filing the appeal, CM No.8759/2014 (for stay) & CM No.5189/2015 (for directions).**

ALL INDIA EX-SERVICEMEN BANK EMPLOYEES' FEDERATION (REGD.)

..... Appellant

Through: Mr. Rakesh Tiku, Sr. Adv. with Mr. Sanjay Mani Tripathi, Mr. Kamal Kant Tripathi & Mr. Sandeep Kumar, Advs.

Versus

**THE CHAIRMAN
STATE BANK OF INDIA & ORS.**

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Rajiv Kapur, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 22nd April, 2013 of the learned Single Judge of dismissal of W.P.(C) No.2533/2013 preferred by the appellant.

2. Notice of the appeal as well as the application for condonation of delay was issued. A reply has been filed on behalf of the respondents opposing the application for condonation of delay of 275 days in filing the appeal. We heard the senior counsel for the appellant as well as the senior counsel for the

respondents on the application for condonation of delay as well as on the merits of the appeal and reserved judgment.

3. The writ petition from which this appeal arises was preferred pleading/contending, (i) that the appellant is a federation of All India Ex-Servicemen working with Banks; (ii) that Shri Uma Shankar Sharma, Shri Balam Singh Rawat and Shri Manish Kumar (not parties to the writ petition), all retired from Armed Forces joined the respondent Bank as 'Assistant' on 5th January, 2009 and 18th December, 2010 respectively under the Ex-Servicemen category; (iii) those joining the respondent Bank as an 'Assistant', have an opportunity of 1st promotion to the Officer Grade as Trainee Officer or JMGS-I; (iv) that the Government of India vide Notification dated 2nd April, 1992 has prescribed that ex-servicemen candidates who have already secured employment under the Central Government in Group 'C' and 'D' will be permitted the benefit of age relaxation as prescribed for ex-servicemen for securing 'another employment' in a higher grade or cadre in Group 'C' and 'D' under the Central Government; that vide another Notification dated 10th October, 1994 the aforesaid benefit was extended for securing 'another appointment' to the Group 'A' and 'B' posts also; (v) that the respondent Bank, vide Circulars dated 5th March, 2013 and 6th March, 2013 invited applications

from the employees of the Bank for appearing in the written examination scheduled on 21st April, 2013 and 27th April, 2013 for promotion to the Officer Grade; (vi) however the Circular dated 5th March, 2013 provided upper age limit of 40 years as on 1st April for General Candidates and also provided that there will be no age relaxation for ex-servicemen; vide Circular dated 6th March, 2013 the upper age limit was revised to 45 years; (vii) all the three ex-servicemen aforesaid submitted their applications for appearing in the examination but were not permitted to take the examination on the ground of being overage; and, (viii) that the representations made did not meet with any success.

4. Accordingly, in the writ petition, reliefs of, (i) a mandamus commanding the respondent Bank to allow the said three ex-servicemen to appear in the examination; and, (ii) a direction to the respondent Bank to implement the Notifications aforesaid for providing age relaxation was claimed.

5. The learned Single Judge, by the impugned judgment, dismissed the writ petition on the grounds, (i) that the cause of action if any was of the three ex-servicemen who had not approached the Court and not of the appellant; (ii) that there is no policy of the Central Government for granting age relaxation to ex-servicemen, so far as promotion is concerned; (iii) that even on merits, neither

the ex-servicemen nor the appellant had any case; the concerned Notifications provide for age relaxation for the first civil employment and for “securing another employment in a higher grade” and not for promotion; and, (iv) that there was no merit in the contention of the appellant that the expressions “securing another employment in a higher grade or cadre” and “securing another appointment in any higher post or service” would include promotion.

6. The delay of 275 days in preferring the appeal is explained by pleading that the appellant after the judgment of the learned Single Judge tried its best to persuade the concerned Government Departments and the respondent Bank for sympathetic consideration and decided to file appeal only upon not succeeding therein. It is further pleaded that since the members of the appellant are spread over the whole country, it took time to take a decision to prefer the appeal.

7. The appellant, in the additional affidavit in support of the application for condition of delay filed in pursuance to the direction dated 3rd March, 2014 has pleaded that the impugned order affects the future prospects of thousands of ex-servicemen working in the respondent Bank; that after the impugned judgment several meetings were held to decide the course of action to be adopted and the Government of India was approached (particulars of which are given); that as

the matter was being favourably considered, it was deemed appropriate to await result and the appeal was filed when no success could be met.

8. The respondent Bank has opposed the condonation of delay by relying on *D. Gopinathan Pillai Vs. State of Kerala* (2007) 2 SCC 322, *Ram Lal Vs. Rewa Coalfields & Ltd.* AIR 1962 SC 361, *Balwant Singh Vs. Jagdish Singh* (2010) 8 SCC 685, and on *The Municipal Council, Ahmednagar Vs. Shah Hyder Beig* (2000) 2 SCC 48 and by pleading that the appellant Federation is not recognized by the respondent Bank and has no *locus standi* as already held by the learned Single Judge and the application does not disclose any sufficient cause.

9. The senior counsel for the respondent Bank besides contending that the application for condonation does not disclose any sufficient cause has also contended that the proceedings have in fact become infructuous as the examinations for promotion, owing to denial of taking which the writ petition was filed, have since been held.

10. The senior counsel for the appellant contended that a large number of ex-servicemen employed in the respondent Bank continue to face the issue agitating which the petition was filed and thus it cannot be said that with the

holding of one promotional examination the proceeding has become infructuous. He has further contended that the writ petition was filed by the appellant Association instead of by the three ex-servicemen who at the time of filing of the writ petition were desirous of but had been denied permission to appear in the promotional examination then being held, in as much as the issue is a recurring one affecting a large number of ex-servicemen employees with the respondent Bank.

11. Though strictly speaking the long delay of 275 days has not been explained but considering the fact that the issue agitated is of general importance to the all ex-servicemen working in the respondent Bank we deem it appropriate to condone the delay in filing the appeal and proceed to consider the claim of the appellant/writ petitioner on merits.

12. The senior counsel for the respondent Bank has raised another preliminary contention. It is contended that the Notifications dated 2nd April, 1992 and 10th October, 1994 on which the case of the appellant Association before the learned Single Judge was pegged, have since been superseded by the Office Memorandum dated 5th September, 2013 issued by the Ministry of Finance, Department of Financial Services and the cause of action if any to the

appellant Association on the basis of the Notifications dated 2nd April, 1992 and 10th October, 1994 does not survive.

13. We have perused the Office Memorandum dated 5th September, 2013. The same is on the subject of “Age relaxation to ex-servicemen employees in PSBs while competing for promotion to higher post” and is in response to the representations dated 7th November, 2012 and 24th June, 2013 of the Ministry of Defence and in the context of the judgment of the learned Single Judge impugned in this appeal. The Ministry of Finance in the said Office Memorandum has agreed with the version of the respondent Bank and opined that ex-servicemen are not entitled for any age relaxation in a case of promotion in their own line of hierarchy.

14. We are of the view that the Office Memorandum dated 5th September, 2013 cannot be said to be superseding the Notifications dated 2nd April, 1992 and 10th October, 1994 for it to be said that the cause of action if any to the appellant on the basis of the Notifications dated 2nd April, 1992 and 10th October, 1994 has ceased to exist and the right if any of the appellant Association is to challenge the Office Memorandum dated 5th September, 2013. The Office Memorandum dated 5th September, 2013 merely supports the interpretation adopted by the respondent Bank of the Notifications dated 2nd

April, 1992 and 10th October, 1994 and rejects the interpretation thereof of the Ministry of Defence. We therefore do not find any merit in the said preliminary objection of the senior counsel for the respondent Bank.

15. We also do not agree with the first reasoning given by the learned Single Judge for dismissal of the writ petition i.e. of the cause of action being of the three ex-servicemen mentioned in the writ petition and not of the appellant Association. It could not be disputed by the respondent Bank that besides the said three ex-servicemen, a number of other ex-servicemen are also in its employment and who also when become eligible to take a promotional exam seek or are likely to seek age relaxation. An Association of all such ex-servicemen, as the appellant Association claims to be, in such circumstance would be entitled to file the petition in as much as a favourable order if any obtained by a particular ex-serviceman may not be treated as binding on the respondent Bank vis-à-vis other similarly situated ex-servicemen.

16. However as far as the merits of the case are concerned, we are in agreement with the findings of the learned Single Judge. At least on the basis of the Notifications dated 2nd April, 1992 and 10th October, 1994 it cannot be said that ex-servicemen in a Bank are entitled to age relaxation in the matter of promotion also. The Notification dated 2nd April, 1992 merely provides that

“ex-servicemen candidates who have already secured employment..... will be permitted the benefit of age relaxation as prescribed for ex-servicemen for securing another employment in a higher grade or cadre in Group ‘C’ and ‘D’.....” and the Office Memorandum dated 10th October, 1994 merely extends the benefit granted vide Notification 2nd April, 1992 to “securing another appointment in any higher post or service” and has removed the limitation of the same being in Group ‘C’ and ‘D’ posts only.

17. The senior counsel for the appellant argued that the expression “securing another employment in a higher grade or cadre” would include seeking a promotion to a higher grade.

18. We are unable to agree. The title to the Notification dated 2nd April, 1992 itself is “Age relaxation as admissible to Ex-servicemen will be admissible for securing another higher Civil appointment”. There is a difference in law between ‘employment’ and ‘appointment’ on the one hand and ‘promotion’ on the other hand. While both may be to a higher grade or post but while the words ‘appointment’ and ‘employment’ in service jurisprudence connote the initial act of recruitment in a service, the word ‘promotion’ connotes an act subsequent to the initial recruitment i.e. of advancement to higher position, rank, grade or honour even if by a process of selection, within the same service. This, at least

qua Notification dated 2nd April, 1992 and 10th October, 1994 is placed beyond any doubt by use therein of the expression “securing another” before “employment” and “appointment” and in juxtaposition with the expression “already secured employment”. If the word “another” had not been used, may be it could have been said that employment includes promotion.

19. A nine Judge bench of the Supreme court in the *Indra Sawhney Vs. Union of India* (1992) 3 SCC 217, overruling the earlier settled view, held that reservation of appointment or post under Article 16(4) is confined to initial appointment only and cannot extend to provide reservation in matters of promotion. It was held that promotion is an incident of service which comes after appointment and ‘appointment’ simpliciter means initial appointment to a service. To undo the effect of the said dicta, the Constitution 77th Amendment, introducing Article 16(4-A) to expressly provide for reservation in promotions was brought.

20. The ex-servicemen employed in the respondent Bank i.e. members of the appellant Association cannot thus take advantage of the Notifications dated 2nd April, 1992 and 10th October, 1994 for seeking age relaxation in promotion.

21. The senior counsel for the appellant argued that it is even otherwise unjust to deprive an ex-serviceman from promotional avenues on the ground of

age. It was argued that the very fact that an ex-serviceman is given a relaxation in age at the time of initial appointment means that he would be of much more in age than his contemporaries. It was contended that he should not, after having been allowed to join, be made to stagnate and be deprived of exploring the avenues of promotion available to his contemporaries, on the ground of being overage.

22. Though the argument cannot be said to be totally unfounded but the senior counsel for the respondent Bank rightly contended that the same is a matter to be raised while settling the terms of employment which are settled by Bipartite Agreements signed between the Bank and its employees and with which even the ex-servicemen are bound. It was contended that once the ex-servicemen, as per the said Bipartite Agreement, are not entitled to age relaxation in promotion, the question of their being entitled to such a benefit beyond the Bipartite Agreement in any case does not arise. Moreover, this is a matter of policy and unless the policy permits, this Court, even if thinks otherwise, cannot extend the benefit of age relaxation.

23. There is another aspect of the matter. Now the Ministry of Finance itself has after considering the rival contentions, vide Office Memorandum dated 5th September, 2013, not agreed with the view / interpretation given by ex-

servicemen, canvassed through the Ministry of Defence, and agreed with the view of the respondent Bank.

24. The senior counsel for the appellant also argued that a similar issue has also been raised before the High Court of Punjab & Haryana in CWP No.6681/2014 titled *All India Ex Servicemen Bank Employees Federation Vs. Union of India* and which vide an interim order dated 7th April, 2014 has permitted the ex-servicemen concerned therein to take the examination subject to the outcome of the writ petition which is still pending consideration. He has also referred to us to the order dated 26th May, 2010 of the Division Bench of the High Court of Kerala in W.P.(C) No.15138/2010 (S) titled *Union of India Vs. M.K. Vincent, Sepoy, Central Excise* dismissing a writ petition challenging the order of the Administrative Tribunal holding the Notification dated 2nd April, 1992 to be applicable to promotion in the department of Central Excise.

25. We, with respect, and for the reasons recorded hereinabove are unable to agree with the view taken by the Division Bench of the Kerala High Court. Moreover, the order of that Court is merely of dismissal of the writ petition against the order of the Administrative Tribunal taking the said view and does not itself give any reason. There can be several reasons for the High Court to not entertain a writ petition.

26. As far as the Punjab & Haryana High Court is concerned, it has merely by an interim order permitted the ex-servicemen concerned therein to take the exam and has not rendered any final verdict as yet.

27. We may also record that the senior counsel for the respondent Bank informed that it is not as if the ex-servicemen once employed have no promotional avenues whatsoever. It was informed that the subject examination is only for out of turn promotion; else the said employees are promoted when become eligible by passage of time. It was yet further informed that the three ex-servicemen named in the writ petition have already been promoted.

28. We accordingly, though dismissing the appeal, clarify that the same will not come in the way of ex-servicemen employees of the respondent Bank claiming the same relief on a basis other than the Notifications dated 2nd April, 1992 and 10th October, 1994 to which this proceeding was confined.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 15, 2015
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