

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11296 of 2012 (O&M)
Date of Decision:- 10.08.2016.

Dharam Chand Machhal

.....Petitioner

Versus

Punjab National Bank and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. A.S. Virk, Advocate for the petitioner.

Mr. Arvind Rajotia, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

CM No.9570-CWP of 2016

CM for placing on record affidavit in view of the order dated 01.06.2016 is allowed for the reasons stated in the application as well as affidavit. In para 7 of the affidavit, it is stated that *“no requisite directions have been received from the Ministry of Finance for providing reservation to Scs/STs in promotion.”* Vide Office Memorandum dated 14.1.2010. Further it was stated that in Review Petition (Civil) No.891 of 2015 Supreme Court while allowing it was directed that *“to the State to take stock of the ground realities and take a decision as to whether it is necessary to make a provision for reservation in promotions from Scale I to Scale II and upward, and if so, up to which post”*. Whereas in the present case title of the circular dated 19.2.2009 of the Respondent-Bank (Annexure P-1) is as follows:-

“PROMOTION POLICY FOR OFFICERS – PROMOTION FROM JMG SCALE-I TO MMG-II, MMG SCALE-II TO MMG SCALE-III AND MMG SCALE-III TO SMG SCALE-IV” read with para 12. Thus, respondent-Bank have already policy in hand, therefore, the observation of the Supreme Court and its implementation may not arise.

CWP No.11296 of 2012

1.) Pursuant to the order dated 1.6.2016, the respondents are of the view that interpretation of Government Memoranda dated 13.8.1987 and 14.1.2010 it was observed by Apex Court in Review Petition (Civil) No.891 of 2015 in Civil Appeal No.209 of 2015 as follows:-

“33. Result of the aforesaid discussion would be to allow these appeals and set aside the judgment of the High Court. While doing so, we reiterate that it is for the State to take stock of the ground realities and take a decision as to whether it is necessary to make a provision for reservation in promotions from Scale I to Scale II and upward, and if so, up to which post. The contempt petition also stands disposed of.”

2.) Therefore, the petitioner is not entitled for reservation in promotion to SMG Scale-IV from MMG Scale-III. The decision of the Apex Court is in respect of Central Bank of India and others. In the present case, Punjab National Bank have issued a circular No.516 dated 19.2.2009 by HRD Division relating to promotion policy for officers and promotion from JMG Scale-I to MMG Scale-II, MMG-Scale-II to MMG Scale-III and MMG Scale-III to SMG Scale-IV. Para 12 reads as under:-

“12. SC/ST OFFICERS

The SC/ST candidates will be entitled to the

benefit of reservations and relaxations, if any, in accordance with the guidelines received, on the subject, from time to time, from Ministry of Finance, Department of Economic Affairs, Banking Division, New Delhi.”

3.) Perusal of the circular No.516 dated 19.2.2009 title read with Para 12 is to extend benefits to SC/ST officers is irrespective of JMG Scale-I to SMG Scale-IV. In view of the para 12 of the circular No.516, the contention of the respondents that reservation in promotion is restricted only to promotion to MMG Scale-II from the cadre of JMG Scale-I is liable to be rejected since circular No.516 relates to JMG Scale-I to SMG Scale-IV. Therefore, the petitioner is entitled for promotion to SMG Scale-IV with reference to title of the circular read with para 12 of the circular No.516 dated 19.2.2009. Having regard to the object of the respondents Bank in issuing circular No.516, it is evident that reservation in promotion is to be extended to MMG Scale-II up to SMG Scale-IV. The Supreme Court in the case of **Nair Service Society vs T.Beermasthan & Ors 2009 (2) SCT 625** has held as follows:-

“45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the opinion that the High Court has placed a wrong interpretation on the

relevant Rules.”

4.) In view of the above decision of the Supreme Court, view of the respondent-Bank that decision of the Supreme Court in the Review petition would be hurdle is incorrect and decision rendered in Central Bank of India's case (Review Petition) is not relevant for the present case for the reasons that circular No.516 of the Punjab National Bank dated 19.2.2009 vide Annexure P-1 would enure benefit to the reservation in promotion up to the post of SMG Scale-IV.

5.) That every employee has a right to be considered for promotion and that this consideration cannot, therefore, be postponed except on rationale grounds. Such right emerges from Article 14 and 16 (1) of Constitution of India. Supreme Court in case of **Ajit Singh (II) Vs. State of Punjab 2000 (1) S.C.T. 770** it was held as under:-

“22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that sub-clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said sub-clause particularizes the generality in Article 14 and identifies, in a constitutional sense "equality opportunity" in matter of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone

of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1)."

6.) The Supreme Court in case of **Superintending Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh (1997) 1 S.C.R. 454** and others it is held as follows:

"23. The question which now falls to be considered is the manner in which the Comptroller and Auditor- General of India is required to exercise the discretion conferred by the said Office Memorandum dated January 21, 1977, and the manner in which he has, in fact, exercised it. The said Office Memorandum dated January 21, 1977, refers to two other office memoranda, namely, the Office Memorandum dated December 23, 1970, and the Office Memorandum dated November 27, 1972. Under the Office Memorandum dated December 23, 1970, where a sufficient number of Scheduled Castes and Scheduled Tribes candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, they may also be considered for promotion provided they are not found unfit for such promotion, and to achieve this, the said office memorandum directs that the qualifying standard in such examinations can be relaxed in their favour in keeping with the above criterion. The Office Memorandum dated November 27, 1972, fixes the

reservation quota for the members of the Scheduled Castes at 15% and the Scheduled Tribes at 7 1/2% in appointments filled by promotion on the basis of seniority subject to fitness. Under the said Office Memorandum dated January 21, 1977, if a sufficient Tribes candidates are not available in the qualifying examinations on the basis of general standard to fill all the vacancies reserved for them in the promotional posts, suitable relaxation in the qualifying standard for such examinations should be made in the case of the Scheduled Castes and the Scheduled Tribes candidates bearing in mind all relevant factors including, namely, (1) the number of vacancies reserved, (2) the performance of the Scheduled Castes and the Scheduled Tribes candidates as well as the general candidates in that examination, (3) the minimum standard of fitness for appointment to the post, and also (4) the overall strength of the cadre and that of the Scheduled Castes and the Scheduled Tribes in that cadre. The said Office Memorandum dated January 21, 1977, thus postulates two qualifying standards-one, a general qualifying standard and the other, a relaxed or lower qualifying standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes. Paragraph 4 of the said Office Memorandum dated February 8, 1968, reproduced earlier, shows that in the case of direct recruitment through a qualifying examination a minimum standard is generally to be fixed and that in such cases, a lower minimum qualifying standard should be fixed for the candidates belonging to the Scheduled Castes and the Scheduled Tribes, taking into account the minimum standard necessary for the maintenance of efficiency of

administration, and that if the minimum qualifying standard for general candidates is reviewed at a later date, the lower minimum qualifying standard applicable to the Scheduled Castes and Scheduled Tribes candidates should also be reviewed. The Office Memorandum No.1/1/70-Estt. (SCT) dated July 25, 1970 which deals with examination for direct recruitment also speaks of a general standard and of a lower standard for candidates belonging to the Scheduled Castes and the Scheduled Tribes, the standard being required to be relaxed in their case to make up the deficiency in the reservation quota provided they are not found unfit for such post or posts. As seen above, a similar provision exists in the said Office Memorandum dated December 23, 1970, with respect to departmental competitive examinations for promotion and in departmental confirmation examinations.

This principle of power coupled with duty was succinctly stated by Earl Cairns L.C. in the House of Lords of Julius V/s. Lord Bishop of Oxford [5 App. Cas. 214 at 222-223] quoted with approval therewith by this Court in Commissioner of Police, Bombay V/s Gordhandas Bhanji [(1952)] SCR 135 at 147] thus:

There may be something in the nature of this thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is responded, to exercise that power when called upon to do so.

It would thus be clear that the petitioner was under constitutional duty coupled with power. Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement constitutional policy under Articles 16(4), 16(4-A), 15(4) 335 and all inter-related directive principles, should exhibit transparency in implementation and should be accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the brochure issued by the Government of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate the public policy. It is deducible from the facts that the petitioner failed to perform that constitutional duty. The Administrator of the Union Territory of Chandigarh should look into and take appropriate action against the concerned erring officers and report compliance to the Registry of this Court within two months.

The Tribunal, therefore, had rightly held that in the year 1988, the vacancy ought to have been filled up by promoting the respondent when R.K. Sood was considered and vacancy reserved for Scheduled Tribes was filled up without considering the case of

the respondent. Omission thereof amounted to violation of constitutional duty and avoidance of implementation of the rule of reservation and the roster provided by the Government. The view of the Tribunal, therefore, is correct in law warranting no interference.

The special leave petition is accordingly dismissed.”

7.) In case of **Badrinath Vs. Government of Tamil Nadu 2000 (8) SCC 305**, it was held that under Article 16 of the Constitution, right to be “considered” for promotion is a fundamental right. It is not the mere “consideration” for promotion that is important but the “consideration” must be “fair” according to established principles governing service jurisprudence. In other words existing provision for promotion is to be followed. In the present case promotion policy relating to JMG Scale-I to SMG Scale-IV vide Annexure P-1 dated 19.2.2009 cannot be side tracked by the respondents as long as policy is in vogue.

8.) In view of the above facts and circumstances, the respondents are directed to reconsider the claim of the petitioner for promotion to the cadre of SMG Scale-IV read with title of the circular and para 12 of the circular No.516 dated 19.2.2009 vide Annxure P-1 within a period of three months.

9.) Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

August 10, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.