

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 11534 of 2013 (O&M)

Date of Decision : 5.10.2016

...

Kuldeep Singh

.....Petitioner

vs.

Central Bank of India and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Pankaj Katia, Advocate for the petitioner

Mr. C.S. Pasricha, Advocate for respondents No. 1 and 2.

Mr. H.C. Arora, Advocate for respondents No. 3, 5, 7 to 25

Mr. Ashish Verma, Senior Manager - in person.

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P.B. Bajanthri, J.

In the instant writ petition, the petitioner has questioned the selection procedure dated 28.2.2013 held by respondents No. 1 and 2 for the selection of Safai Karamchari-cum-sub staff (hereinafter, for short 'Safai Karamchari') and further communication dated 30.3.2013 by which the petitioner has been denied to appear in the interview held for the post of Safai Karamchari and also sought for a direction to the respondents to permit the petitioner to participate in the interview process.

2) The respondent – Bank advertised for the post of Safai Karamchari on 8.11.2012, classifying the posts – 17 for general merit, 12 for other backward classes and 6 for schedule caste candidates, while fixing last date for submission of application as 17.11.2012.

3) The petitioner is one of the candidate for recruitment to the post of Safai Karamchari under OBC category. He belongs to Ghirth caste. As on the last date proscribed for making application for the post of Safai Karamchari, namely 17.11.2012, the petitioner was aged about 25 years, 6 months and 25 days. He has secured 74% in 8th standard examination and he has passed Matriculation examination.

4) On 14.8.2012, the HRD Department (Recruitment and Promotion Division) directed all Zonal/Regional offices to recruit Safai Karamchari while forwarding procedure for selection and interview. For the purpose of deciding present litigation, two criterias are relevant:-

i) Age of the petitioner to consider his name under OBC category.

ii) Mode of personal interview:

(a) Cut off age not less than 18 years and not above 26 years. Relaxation in age limit is permissible for candidates of SC/ST to the extent of 5 years, for OBC to the extent of 3 years, for ex-servicemen - maximum years + service years + 3 years, total of which shall not exceed 45 years, for physically

handicapped/PWD - 10 years and for widow, divorced, legally separated ladies who have not remarried - 9 years (maximum age General category : 35 years, SC/ST : 40 years, OBC : 38 years).

(b) The candidate so applied and sponsored by District Employment Exchange shall be interviewed by a committee formed separately for each category of posts and the candidates found suitable as per the standards fixed for the same from time to time shall be recruited in the Bank to the extent of district wise vacancies earmarked for the purpose in the respective category.

Read with interview rating sheet of eligible candidate for appointment of Safai Karamchari-cum-sub staff and /or sub-staff.

- 5) The petitioner was called for interview on 28.2.2013 in the office of 2nd respondent vide interview letter dated 23.2.2013. Pursuant to the interview letter, he attended the interview on 28.2.2013. Staff of the 2nd respondent after perusal of the documents of the petitioner, not permitted the petitioner to attend the interview stating that petitioner is overage on the prescribed date. The petitioner is stated to have apprised the staff that his candidature is required to be considered under OBC category and he is aged about 25 years, 9

months and 25 days. Therefore, his candidature is to be considered under the OBC category, as well as, general category, he is entitled to participate in the process of selection to the post of Safai Karamchari. However, staff of respondent No.2 did not appreciate the petitioner's plea. Consequently, the petitioner made a correspondence with the 2nd respondent that denial of interview and participation in the process of selection would be arbitrary and discriminatory. The respondent – Bank replied to the petitioner's plea stating that petitioner failed to produce OBC certificate at the time of scrutiny of documents and he did not attend interview under general category. Thereafter, petitioner sought information under RTI relating to selection and appointment to the post of Safai Karamchari. The respondent – Bank supplied information. The petitioner noticed certain irregularities in the process of selection that overage persons and backward class persons have been selected, which is contrary to the eligibility criteria to participate in the process of selection to the post of Safai Karamchari. Thus he has presented this petition.

6) Learned counsel for the petitioner submitted that the petitioner's candidature for the post of Safai Karamchari has been rejected at the time of interview stating that he is overage. When he made correspondence with the respondent – Bank, it took a different stand that the petitioner failed to produce OBC certificate and he did not appear for interview under general category. The stand of the respondent – Bank is not supported by any material evidence like correspondence to the petitioner. In fact the petitioner did have the

OBC certificate. For no reason his candidature has been rejected at the time of interview. Thus the contention of the petitioner is that his candidature is required to be considered under OBC category, having regard to the fact that he is aged about 25 years, 9 months and 25 days as on September 2012. For OBC category, age relaxation is upto 5 years i.e. upto 29 years and for general category maximum age is 26 years. Therefore, denial of participation in the process of interview is highly arbitrary and illegal.

7) Learned counsel for the petitioner further submitted that the post of Safai Karamchari was not notified for backward classes, whereas the contesting respondents, namely, Malkit Singh, Mandeep and Jaskaran Singh, who have applied under BC category, their names have been considered under OBC category. It is not disputed by the respondents, in fact respondents have admitted in their affidavit stating that even though they have filed application under BC category, but still having regard to their caste, the same would fall under OBC category, as per the Punjab Government notification respondent – Bank treated them as OBC candidate. Whereas, the petitioner had genuine OBC certificate and he belongs to Ghirth caste, his name was not considered. On the contrary, respondent – Bank has considered above three candidates, holding that their caste would fall under OBC category. Therefore, permitting the above candidates to participate in the process of interview and respondent – Bank declaring that their caste fall under OBC and selection and appointment under OBC are illegal.

8) It was further submitted by learned counsel for the petitioner that respondent No.4 is overage for OBC category, for the reasons that her age is 40 years, 4 months and 28 days, whereas the maximum age prescribed for OBC category is 38 years. In view of the above, irregularities in the process of selection and appointment of the contesting respondents, the selection and appointment to the post of Safai Karamchari is arbitrary and illegal. It was further submitted by the petitioner's counsel that during the course of arguments, when the records were summoned, the Court was pleased to notice that in the absence of criteria for interview, the 2nd respondent has adopted his own criteria and even in the absence of empowering him by the competent authority. Therefore, prescription of interview marks criteria by the 2nd respondent is without authority of law and further awarding of marks for various aspects was restricted to 25 and the 2nd respondent fixed the interview marks to 50 in the absence of provision of law and so also, without authority of law.

9) Learned counsel for the respondent – Bank resisted the claim of the petitioner and contended that the petitioner did not produce the OBC certificate and failed to appear for interview under general category. Therefore, now he cannot come and contend that there are irregularities in the process of selection. The counsel for respondent – Bank further contended that selection procedure for candidates is as follows :-

“The candidate so applied and sponsored by

District Employment Exchange, shall be

interviewed by a Committee so formed separately for each category of posts and the candidates found suitable as per the standards fixed for the same from time to time, shall be recruited in the bank to the extent of District wise vacancies earmarked for this purpose in the respective category”

The above procedure has been followed by the 2nd respondent for the purpose of selection process. Prescription of 50 marks for interview by the 2nd respondent is in order, in order to select merited candidates. Such procedure has been proscribed by the 2nd respondent. Therefore, there is no infirmity in assigning 50 marks for the interview and in respect of personality, job knowledge, attitude, communication skills and mannerism, 5 marks for each of the aspect has been assigned by the HRD Department (Recruitment and Promotion Division). Even though there are no rules, but under the directions of the Central Office, the process of recruitment has been carried out.

10) Counsel for the respondent – Bank further submitted that even though selection criteria for award of interview marks is prescribed for 25 marks, however, selecting authority could prescribe 50 marks for interview and choose his own method for the purpose of awarding interview marks in order to select best candidate. Therefore, there is no infirmity in prescribing 50 marks for interview and awarding marks. It was further submitted that in so far as selection of Malkit Singh, Mandeep and Jaskaran Singh, even though

their application was under BC category, their candidature has been considered under OBC category, having regard to their caste with reference of Punjab Government notification. In view of the facts and circumstances, the petitioner has not made out a case so as to interfere with selection and appointment of the contesting respondents, in the present case.

11) Learned counsel for the respondent – Bank relied on decision of this Court passed in *Varinder Kumar vs. Life Insurance Corporation of India, 1993 (4) SCT 821*, wherein it is held that selection to the post of Peon challenged on the ground of excessive marks reserved for interview, it was held that in view of the nature of the posts, interview alone is the appropriate method and therefore any amount of marks kept for interview cannot be termed as illegal and arbitrary.

12) Learned counsel for the contesting respondents, submitted that petitioner has not arrayed selected and appointed candidates at the time of filing of the writ petition. During pendency of the litigation, he has impleaded the contesting respondents. It was submitted that there were no allegations levelled against the contesting respondents. It was further contended that fixation of 50 marks for interview was with an objective and elimination of any irregularities, therefore there is no infirmity. It was also contended that contesting respondents are working since 2013. After lapse of 3 years, if their selection is held to be bad, for no fault of the contesting respondents, selection and appointment cannot be disturbed.

- 13) Heard learned counsel for the parties.
- 14) The petitioner was not permitted to attend the interview on the ground that he was overage. Later on the respondent – Bank took a different view that he did not produce OBC certificate and his name was considered in general merit category and he has failed to appear for interview under general merit category. There is no correspondence to that extent by respondent – Bank i.e., inviting petitioner to attend interview under general category. When the petitioner submitted that he had OBC certificate and he is entitled to be considered both under OBC category and general merit category, the respondent – Bank should have considered his name under the OBC category, assuming for the sake of arguments that he did not have OBC certificate, his name should have been considered under general merit category. Therefore, respondent – Bank has failed to produce necessary material of correspondence that petitioner's case would be considered under general merit category. The petitioner has pointed out that three candidates from BC category and one overage person, have been permitted to participate in the process of selection and they were selected. Selecting authority has no authority to consider the names of BC candidates while converting their application that their caste would fall under OBC and selecting them and further 4th respondent was overage under OBC category. No reasons have been assigned. When the respondent – Bank have exercised suo moto power to convert application of Malkit Singh, Mandeep and Jaskaran Singh, from BC category to OBC category, the

respondent Bank should have also given same concession to petitioner, if he was overage. Therefore, there is discrimination and arbitrariness, in so far as selection of Malkit Singh, Mandeep, Jaskaran Singh and 4th respondent, while compared to the petitioner's case.

15) Perusal of records, it is revealed that HRD Department of respondent – Bank stipulated selection procedure for the purpose of interview that committee would be formed separately for each category of posts and the candidate found suitable as per the standards fixed for the same from time to time. In the present case, interview rating sheet of eligible candidates for appointment of Safai Karamchari, a form has been prescribed, in which aspects to be seen contain column consisting of 1) personality; 2) job knowledge; 3) attitude; 4) communication skills; and 5) mannerism. Marks allotted to each aspect is 5. Total marks allotted is 25. When procedure of interview is already prescribed by the HRD Department of respondent-Bank prescribing 25 marks for five aspects. Whereas, the selecting authority has chosen 50 marks without authority of law and in the absence of delegation of power by the HRD Department, Central Bank of India, to adopt particular mode of interview by the selecting authority - 2nd respondent. In other words, the 2nd respondent has tinkered the process of interview by fixing 50 marks. The Supreme Court time and again held that selecting authority has to select the candidates in accordance with the rules of recruitment governing the post. In the present case, HRD Department

(Recruitment and Promotion Division), prescribed a particular method. Whereas, the 2nd respondent has given go by in so far as, conducting of interview of the candidates to the extent of prescription of 50 marks and proceeded to select and appointment. Thus the selecting authority - 2nd respondent in the process of selection of Safai Karamchari for the year 2012-13 committed irregularities in fixing 50 marks for the interview, converted BC category candidates into OBC category and entertained applications of the BC category and overage persons, in other words manipulated the process of selection to the post of Safai Karamchari in order to favour some of the candidates cited Supra.

16) Learned counsel for the respondent – Bank relied on decision in Varinder Kumar's case (Supra), the same is not applicable to the present case for the reasons that HRD Department of the Bank prescribed 25 marks for 5 aspects, whereas, the selecting authority - 2nd respondent fixed 50 marks. Accordingly, marks have been awarded ranging from 47 to 39. Therefore, cited decision is not assisting in support of the respondent – Bank's contention.

17) The Supreme Court in the case of Krishna Chandra Sahu (Dr.) vs. State of Orissa (1995) 6 SCC 1, held as under :-

“31. Now, power to make rules regulating the conditions of service of persons appointed on Government posts is available to the Governor of the State under the Proviso to [Article 309](#) and it was in exercise of this power that the present

rules were made. If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislature, or, for that matter, by the Governor of the State, it would be open to the appropriate Government (the Central Government) under [Article 73](#) and the State Government under [Article 162](#)) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. (*See" Sant Ram v. State of Rajasthan*).

32. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homeopathic Medical Officers, as the basis for determining their suitability.

33. The members of the Selection Board or for that matter, any other Selection Committee, do

not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the rules made under [Article 309](#). It is basically the function of the Rule making authority to provide the basis for selection. this Court in [State of A.P. v. V. Sadanandam](#), observed as under (SCC pp. 583-84, para 17):

“We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old rule and for personnel belonging to either zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that *the mode of recruitment and the category from which the recruitment to a service should be made* are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in *choosing the mode of recruitment of the categories from which the recruitment should be made as they*

are matters of policy decision falling exclusively within the purview of the executive.” (emphasis supplied)

34. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In *P.K. Ramachandra lyer v. Union of India*, it was observed : (SCC pp. 180-81, para 44)

“By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm.”

35. Similarly, in *Umesh Chandra Shukla v. Union of India*, it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Sh Durgacharan Misra v. State of Orissa* and the limitation of the Selection Committee were

pointed out that it had no jurisdiction to prescribe the minimum "marks which a candidate had to secure at the viva-voce test.

36. It may be pointed out that rule making function under [Article 309](#) is legislative and not executive as was laid down by this Court in [B.S. Yadav v. State of Haryana](#). For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.”

18) The Supreme Court held that selection Committee/appointing authority has no power to relax the qualification. An extract of the judgment reported in **Shainda Hasan versus State of Uttar Pradesh and others (1990) 3 SCC 48** is as under:-

"5. The High Court has rightly held the relaxation granted by the Selection Committee to be arbitrary. In the absence of statutory rules providing power of relaxation, the advertisement must indicate that the Selection Committee/Appointing Authority has the power to relax the qualifications. Regarding "Working knowledge of Urdu" we do not agree with the High Court that the said qualification

Chandigarh is unjust. The college being a Muslim minority institution prescribing the said qualification for the post of Principal, is in conformity with the object of establishing the institution."

19) The Supreme Court in the case of *Orissa Public Service Commission and another versus Rupashree Chowdhary and another 2011(8) SCC 108* held that selection authority should not debate from the statute. An extract of the judgment is reads as follows:-

"13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration."

20) In the case of *State of Gujarat and others versus Arvindkumar T.Tiwari and another (2013) 1 SCT 117*, Supreme

Court has held as follows:-

"11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law.

Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: [Prit Singh v. S.K. Mangal & Ors.](#), 1992(3) S.C.T. 738 : 1993(1) SCC (Supp.) 714; and [Pramod Kumar v. U.P. Secondary Education Services Commission & Ors.](#), 2008(2) S.C.T. 699 : AIR 2008 SC 1817)."

In the case of **Public Service Commissioner, Uttranchal versus Jagdish Chandra Singh Bora and another, 2014 (8) SCC 644**, the Supreme Court has held that executive orders cannot supplant the rules framed under the proviso to [Article 309](#) of the Constitution. In the present case not even executive order has been passed on their own, the selection committee took a decision to consider candidature

of the petitioner ignoring that she do not have the essential qualification. An extract of the judgment is reproduced herein:-

"28. However, we find substance in the submission made by Mr. C.U. Singh that 2004 clarification Chandigarh would not have the effect of amending 2003 Rules. Undoubtedly, 2004 clarification is only an executive order. It is settled proposition of law that the executive orders cannot supplant the rules framed under the proviso to [Article 309](#) of the Constitution of India. Such executive orders/instructions can only supplement the rules framed under the proviso to [Article 309](#) of the Constitution of India. In spite of accepting the submission of Mr. C.U. Singh that clarification dated 29th April, 2004 would not have the effect of superceding, amending or altering the 2003 Rules; it would not be possible to give any relief to the respondents. The criteria under the 2003 Rules governs all future recruitment's. We have earlier already concluded that no vested right had accrued to the respondents, the trained apprentices, under the 2001 Rules. We do not accept the submission of Mr. C.U. Singh that the claim of the respondents (trained apprentices)

would be covered under the 2001 Rules by virtue of the so called amendment made by 2003 Rules. We are of the opinion that the High Court committed an error, firstly, in holding that the 2003 rules are applicable, and secondly, not taking into consideration that all the posts had been filled up by the time the decision had been rendered."

The Supreme Court in the case of *D.M. Prem Kumari Versus The Divisional Commissioner, Mysore Division and others, 2009(12) SCC 267*, held as follows:-

"15) "The law is merciless", is a most frequently quoted saying. It has led people to mistakenly think that it is separated from feelings of righteousness. We have become used to the understanding that such emotions as indignation, sorrow and compassion should not exist in legal cases, especially not in judiciary. This, in our view, is a mis- understanding. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. We hasten to add, judiciary does not believe in misplaced sympathy."

21) The contesting respondents are seeking sympathy that they have worked for the last 3 years and not to disturb their selection

and appointment. Supreme Court in the case of **M.S. Patil (Dr.) vs. Gulbarga University and others (2010) 10 Supreme Court Cases 63,**

held as under :-

“15. Once the facts of the case are narrated, there remains hardly anything to adjudicate upon. The facts of the case lead to only one conclusion that the appellant was wrongly appointed to a post that was reserved for ‘Group B’ category. The High Court has also found that the appellant’s selection for appointment to the post was tainted by the participation of the Head of the Department of Kannada, who was related to him, in the selection process. In those facts and circumstances, all that is needed is to dismiss the appeal without further ado.

16. But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr. Patil, learned senior counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as lecturer and from where he had resigned to join to this post.

17. We are unimpressed. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour.

18. The matter can also be looked at from a slightly different angle. It is noted above how the appellant was able to secure the appointment and how he managed to continue on the post. By notification dated August 13, 2004, the appellant was discharged from the service of the University on the post of Reader in Kannada but was asked to continue on ad-hoc basis until the appointment of the new incumbent to the post. His position is, thus, only ad-hoc till the appointment of the new incumbent and in that position he is continuing on the basis of the direction of this court to maintain status quo. We see no reason to continue this ad-hoc arrangement any further and we do not wish to

stand any longer in the way of the post being filled up on a regular basis.”

In view of the above facts and legal issues and oblique motive and miscarriage of justice in the process of selection, selection and appointment of the private respondents are hereby set aside. Consequently, impugned communication dated 30.3.2013 (Annexure P-11) is also set aside. The respondent – Bank is further directed to proceed with the selection to the post of Safai Karamchari from the defective stage, namely, calling for interview afresh including petitioner herein. Respondent – Bank is directed to complete the process of selection and appointment in accordance with procedure prescribed by the 1st respondent within a period of 4 months from today. In the interest of administration not to relieve the contesting respondents from the post till the above exercise is completed. Those contesting respondents are once again selected, they be continued with all service benefits and if the petitioner is selected, appointment order be issued with all consequential benefits on par with selected candidates including monetary benefits.

October 05, 2016
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(P.B. Bajanthri)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No