

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 20941 of 2011 (O&M)

Date of decision : January 11, 2016

Ashish Someshwar Murarkar

.....Petitioner

Versus

Vijaya Bank and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Pathania, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate
for the respondents.

LISA GILL, J.

1. Challenge in this writ petition is to orders dated 22.11.2010 (Annexure P20) and 31.01.2011 (Annexure P22) passed by respondent No. 1 whereby services of the petitioner have been dispensed with during the period of his probation.

2. It is contended that petitioner applied for the post of Senior Manager Marketing in MMG (Scale III) with respondent No. 1- Vijaya Bank. He was selected and appointed against Scheduled Caste category vide appointment letter dated 07.08.2007, Annexure P-2. As per his request, he was afforded extension of time for joining at Regional Office, Chandigarh uptill 26.11.2007 but his request for change of place of posting was denied. Prior thereto, petitioner

worked with one AAR GEE Associates from September, 1997 to October 1998 as Manager Associate (Marketing Executive), thereafter as Direct Sales Associates with ICICI Bank from November 1998 to August, 2000. He subsequently worked with M/s Shriram Transport Finance Company Limited as Field Officer from January 2001 till May 2005 and then as Marketing Officer with M/s ORIX Auto and Business Solutions Limited till December 2005.

3. Petitioner thereafter joined Dena Bank as Manager (MMG) Scale II in January 2006 and his service was confirmed with Dena Bank vide memo dated 23.07.2007. However, on his selection as Senior Manager, Marketing in MMG (Scale III) with respondent No. 1, he left the said job at Dena Bank. As per appointment letter dated 07.08.2007 issued by respondent No.1, probation period is two years from the date of joining, which may be extended by the respondent-Bank in its discretion for a period not exceeding another one year. Vide circular dated 25.08.2008 (Annexure P-4) issued by the Head Office of all Deputy General Managers it was decided to reduce the probation period from two years to six months in case of officers who had worked with public sector banks/financial institutions. Respondent-Bank confirmed the services of some similar situated employees, details of whom are mentioned in para 6 of the writ petition. It is contended that in a mala fide manner, service of the petitioner was not confirmed. He was denied perquisites like conveyance allowance, mobile phone, tie with logo pin and entertainment allowance, additional 25 litres petrol allowance etc. He

was not allowed to work on the post he was appointed i.e. Specialist Officer in Marketing, despite communication dated 06.04.2009 to all Regional Offices. It is specifically mentioned in this communication that Marketing officers should be exclusively utilised for marketing the products of the Bank and business development and not for work unrelated to marketing. Petitioner was transferred from Regional Office, Chandigarh to the Branch Office, Bank at Patiala under respondent No. 3 vide order dated 24.04.2009 (Annexure P-10). Petitioner was assigned all types of general banking duties other than marketing and he was allegedly subjected to harassment by respondent No. 3 at the behest and in collusion with respondent No. 2. His bills were also not cleared.

4. Probation period of the petitioner was extended for another six months vide letter dated 25.05.2010 (Annexure P-19). Petitioner's services were dispensed with vide impugned order dated 22.11.2010 (Annexure P-20) on the ground that his performance during the period of probation was not satisfactory.

5. Learned counsel for the petitioner vehemently argues that probation period of an officer like the petitioner is specified to be six months as per Annexure P-4. It could not have been extended beyond six months from 26.11.2007 i.e. the date when the petitioner joined the Bank. Respondents perpetuated the illegality by extending the probation period subsequently for six months each on two occasions.

6. Furthermore, petitioner was forced to work as a

Generalist Officer whereas, he is a Marketing Specialist officer. In such a situation, appraisal of his work and performance to be unsatisfactory for a job he was not conversant is manifestly unjust. It is also submitted that as per circular No. 203 of 2005, there is a specific procedure provided for appointing a Specialist Officer in a Generalist Officer category. There is no adherence to such procedure.

7. It is argued that respondent No. 2-Deputy General Manager was neither competent to transfer the petitioner to the Patiala Branch as a General Banking Officer nor was he competent to change the cadre of petitioner from Specialist Officer to General Banking Officer. Learned counsel for the petitioner submits that the Board of Directors of respondent-Bank has delegated its power regarding appointment, transfer and termination to Managing Director therefore, respondent No.2 is not competent. In these circumstances it is prayed that this writ petition be dismissed.

8. Per contra, learned counsel for the respondent while refuting the said arguments, refers to clause 4 and 6 of appointment letter dated 07.08.2007 of the petitioner on the post of Senior Manager - Marketing to submit that respondent-bank at its discretion can extend the probation period by a further period of one year beyond the stipulated period of two years. Period of probation is as per Regulation 15 of the Vijaya Bank (officers) Service Regulations, 1982. In respect of Annexure P4, it is submitted that the said circular has been issued subsequently. Such benefit had never been

extended to the petitioner. Work and performance of the petitioner was already under appraisal prior thereto, therefore, he would be governed by the terms and conditions of his appointment letter.

9. Reference is made to clause 6 of the appointment letter to submit that the Bank is well within its right to allot any duties to petitioner for which it may consider him competent and the Bank also has the right to post/transfer the petitioner to any of its Branches/offices depending upon the exigencies or requirement.

10. It is specifically submitted that cadre of the petitioner was never changed. He was, in fact asked on 21.06.2010 to exclusively work on the marketing side vide Annexure P16. Petitioner was advised to concentrate exclusively on the marketing work but still his performance was not found satisfactory as is apparent from Annexure P18. Various letters, Annexures R1 to R4 were issued to the petitioner to improve his performance but there was no improvement.

11. All allegations of malafides against officers of respondents No. 2 and 3, who are employees of the bank are denied being incorrect and baseless. On the contrary, it is submitted that petitioner has deliberately concealed various letters addressed to him for bringing about improvement in his work.

12. Having heard learned counsel for the parties and going through the file, I do not find any ground which calls for interference by this Court. Clause 3 and 4 of the appointment letter (Annexure P-2) read as under:-

“3. You will be on probation for a period of two years from the date of your joining the Bank and you will be considered for confirmation in the service, subject to your satisfactory performance, conduct and satisfactory report from the Police Authorities about your character and antecedents.

4. During the period of probation, your services can be terminated by giving one month's notice or payment of one month's emoluments in lieu thereof. The Bank may, however, in its discretion extend your probation by further period not exceeding one year. If you desire to leave the services of the Bank at any time during the period of probation, including the extended period thereof, if any, you shall give 3 month's notice to the Bank or pay in lieu of notice period. This is in addition to the conditions stipulated in point No. 11 (k) of this letter.”

13. Regulation 15 of the Vijaya Bank (Officer's) Service Regulations, 1982 dealing with appointment, probation, confirmation, promotion, seniority and termination of employees in the officer grade (produced in Court today) reads as under:-

15 (1) An officer directly appointed to the Junior Management Grade shall be on probation for a period of two years.

(2) An employee of the Bank promoted as an officer in the Junior Management Grade shall be on probation for one year.

(3) An officer appointed to any other grade shall be on probation for such period as may be decided by the Bank. Provided that the Competent Authority may in the case of any officer, reduce the period of probation or dispense with probation.”

14.

Reference to circular/communication dated 25.08.2008

(Annexure P-4) is of no avail to the petitioner. Petitioner is undoubtedly governed by conditions of his appointment as well as regulations. Vide memo dated 25.08.2008, reduction of probation period has been permitted in case of officers who had already worked in public sector banks/financial institutions based on their overall performance in the bank. It does not constitute a mandate for reduction of probation period in case of all the employees already appointed de hors their performance and conduct. There can be no deemed confirmation of the petitioner's services on expiry of six months on joining the bank. It is apparent that petitioner was afforded numerous opportunities to improve his work and conduct but no such improvement was found.

15. Contention of learned counsel for the petitioner that services of the petitioner were confirmed with Dena Bank, therefore, action of the respondent-Bank in not confirming his service is illegal, is unacceptable. His confirmation with Dena Bank does not have any bearing with the controversy in hand, neither can it entitle him for automatic confirmation with respondent No. 1, which has no connection whatsoever with Dena Bank and is admittedly a separate independent entity.

16. Equally devoid of merit is the argument that petitioner was forced to work on the post of Generalist Officer whereas he is a Marketing Specialist Officer, therefore, appraisal of his work and performance is faulty. It is borne out from the record that he was working on the post of Senior Manager Marketing. He was informed

of his poor performance. Vide Annexure R-4, dated 27.07.2010 he was duly apprised of his performance being under par. It is specifically mentioned that petitioner was entrusted exclusively with duties of marketing of various products of bank. He was advised to improve his performance by the Chief Manager of the Branch but he did not pay heed to the assigned marketing duties. Argument that respondent No. 2 was not competent to transfer the petitioner remains unsubstantiated as there is no such pleading to this effect neither any such resolution has been brought to my notice.

17. It is vehemently argued that criteria for switch over to Generalist cadre is prescribed in circular 203 of 2005. As the petitioner never applied for change of his cadre, therefore, transferring him to Branch office at Patiala from Regional Office at Chandigarh and assigning the general banking duties, is improper and unwarranted. On the contrary, documents on record do not reflect any change in cadre of the petitioner. It appears that such averments have been raised only with a view to camouflage his own poor performance. In fact, it is evident that sufficient opportunity was afforded to the petitioner to improve his performance. It is only when he did not come upto mark, that his services were dispensed with during the period of probation.

18. It is a settled proposition of law that the employer is well within its rights to dispense with the services of an employee in case his performance is not found satisfactory during the period of probation. Petitioner has no vested right to confirmation or to

continue on the post of Senior Manager Marketing with respondent No. 1.

19. Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order.

Writ petition is, accordingly, dismissed.

January 11, 2016
rts

(Lisa Gill)
Judge