

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.16527 of 2009

ORDER:

Seeking issuance of a writ of mandamus to declare the action of the 3rd respondent in not accepting the joining report of the petitioner, for training, as directed by the 2nd respondent and the show-cause notice dated 24.07.2009 issued by the 2nd respondent in denying to avail the benefit under Ex-serviceman status, as illegal and arbitrary, the present Writ Petition came to be filed.

2) The facts in issue are as under:-

The petitioner herein joined in the Indian Navy as a Sailor in the year 1987 and worked there till September, 2002. Having obtained the status of an ex-serviceman, he applied for the post of Sub-Inspector in RPF/RPSF basing on the notification dated 15.09.2007. Out of 993 posts to be filled-up, 99 posts were reserved for ex-servicemen. The last date for submission of the application form was 22.10.2007. Accordingly, the application of the petitioner was accepted and he was issued a call letter bearing No.620044, directing him to appear for physical efficiency test on 28.12.2007, in which he was successful. Thereafter, he attended the written examination, which was held on 20.04.2008. Meanwhile, the State Bank of India issued a notification dated 31.05.2008, for recruitment

of clerical staff. In response to the said notification, the petitioner also submitted his application under ex-serviceman quota. He attended all the tests and ultimately he was selected and given appointment on 03.01.2009. Insofar as the recruitment to the post of Sub Inspector in R.P.F., the petitioner was called for an oral interview on 17.01.2009 and he was provisionally selected for the post of Sub Inspector, which intimation was received by the petitioner on 20.03.2009, asking him to appear for medical examination. The petitioner appeared for the same on 31.03.2009 by producing all relevant certificates. On receiving the letter of appointment from R.P.F., the petitioner submitted his resignation to his post in State Bank of India, which was accepted on 16.05.2009 and a letter to that effect was also given. The said letter was produced before the second respondent herein, who, inturn, issued a letter on 18.05.2009 directing the petitioner to report before 3rd respondent on or before 20.05.2009 for initial training. Immediately, thereafter, the petitioner appeared before the 3rd respondent for initial training, who refused to permit the petitioner for training as he reported late. The petitioner made a representation on 16.06.2009 requesting the authorities to permit him for reporting before the 3rd respondent, on which there was no action. However, a show-cause notice came to be issued by the 2nd respondent, as to why the appointment of the petitioner in R.P.F. should not be rejected as he has already availed the benefit of ex-serviceman status, while getting employment as an

Assistant in State Bank of India. It was further stated that any representation in this regard should be made in writing and should reach the 2nd respondent within two weeks from the date of receipt of the said notice. Within two weeks of the date of receipt of the said notice, the petitioner made a representation to the 2nd respondent, whose inaction lead to filing of the present Writ Petition.

3) While issuing rule nisi, this court, on 20.08.2009, directed the respondent to permit the petitioner to participate in the training for the post of Sub Inspector, subject to further orders. It is stated that pursuant to the interim orders passed, the petitioner was selected and is now posted in the regular employment.

4) A counter came to be filed disputing the averments made in the Affidavit filed in support of writ petition. It is stated that the petitioner is not entitled for appointment to the post of Sub Inspector as he himself submitted letters, dated 18.04.2009 and 11.05.2009, to the second respondent, seeking deletion of his name from the list of selected candidates. It is further stated that since the petitioner herein has been appointed on permanent basis, under Ex-serviceman quota in State Bank of India, and was under probation for a period of six months commencing from 05.01.2009, he cannot avail the very same benefit in getting employment in R.P.F.

5) The short question that falls for consideration is; "Whether the petitioner herein, who was selected as an Assistant in

State Bank of India, in regular employment, under Ex-serviceman quota, can claim employment again in R.P.F. under the very same quota ?"

6) As seen from the dates mentioned in the record, the process of selection in R.P.F. and also in State Bank of India was going on parallelly. The notification for appointment to the post of Sub Inspector in R.P.F. was issued on 15.09.2007, whereas the notification for appointment to an Assistant in State Bank of India was issued on 31.05.2008. By the date of notification issued by the State Bank of India, the petitioner herein succeeded in physical fitness test and also in the written test conducted by the R.P.F. His oral examination was scheduled on 17.01.2009. From the above, it is clear that the entire process of recruitment for the post of S.I., in R.P.F., was for a period of nearly 1 $\frac{1}{2}$ years. Notification for the post of Assistant in State Bank of India came to be issued on 31.05.2008 and the order of appointment is dated 03.01.2009.

7) The material placed before this Court would further show that the petitioner herein joined in the Bank on 05.01.2009, as an Assistant (Accounts and Cash) at Vayalapadu branch, Chittoor District, and his probation was for a period of six months commencing from the date of reporting to duty in the Bank. But, before completion of the probation, he resigned his job on 15.05.2009. It is true that the post for which the petitioner was appointed was a

permanent one, but before completion of probation, he resigned for the said job, which was accepted immediately. No objection certificate, dated 15.05.2009, was issued by the State Bank of India, Vayalpad branch, showing his appointment in State Bank of India on 05.01.2009 and further stating that in the event of selection in the RPF/RPSF, the candidate will be spared for joining the same, subject to fulfillment of Bank's terms and conditions. The medical examination in R.P.F. was on 18.04.2009 and thereafter he was supposed to report for the training on 20.04.2009. As he was late, he was not allowed to undergo training at Kharagpur and was sent back to Secunderabad cantonment. On 11.05.2009, the petitioner reported at the office of second respondent with a representation requesting him to join him in training for the post of Sub Inspector at Zonal Railway Protection Force/Training Centre/Kharagpur. The same was returned on 20.05.2009, directing him to report before South Central Railway stating that the last date for reporting for initial training was 18.05.2009. Thereafter, the impugned show cause notice was issued in the month of July 2009, rejecting his request for appointment to the post of Sub Inspector.

8) From the above, it is clear that it is not a case where the petitioner sought employment in one organization under the ex-serviceman quota and thereafter resigned the said post and again applied for another post in another public sector undertaking under

ex-serviceman quota. As stated earlier, the appointment process in both the organizations was going on parallelly. As the order of appointment, on probation, in S.B.I., was earlier in point of time, he joined the said organization informing the S.B.I., about the process of his appointment in R.P.F. After getting the employment order in R.P.F., he took no objection certificate from the Bank and submitted the same to the authorities of R.P.F.

9) It is not a case of suppression of any material fact. Everything was transparent with regard to the process, which he was undergoing in both the organizations. As the subsequent appointment in R.P.F. was found to be to his interest, he resigned to his earlier post, much prior to completion of his probation and opted to join in R.P.F. The reason for rejecting his application was that he cannot avail the benefit for getting employment in two organizations. Strictly speaking, it cannot be said that he has availed the said benefit in getting employment in two organizations. The process of selection was such that one organization took nearly one year eight months to complete the entire process, whereas in the another organization, the process was over within a period of eight months. While the process of appointment for the post of Sub Inspector in R.P.F. was under progress, notification for the post of an Assistant in S.B.I., was issued, to which the petitioner applied under the said quota. After getting selected in R.P.F., he resigned to the post of the

Assistant in S.B.I., before the completion of his probation period. Things would have been different, had the petitioner applied for any of the two posts after getting employment in any one of them. Therefore, it cannot be said that the petitioner has misused or violated the status of an ex-serviceman in getting employment.

10) Having regard to the above; as the petitioner underwent training for the post of Sub Inspector in R.P.F., pursuant to the interim orders passed by this Court and since he is now employed in the said organization, this Court is of the opinion that the request of the petitioner can be accepted holding the show-cause notice issued to the petitioner as illegal and improper.

11) Accordingly, the Writ Petition is allowed. No costs. Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 23.03.2017

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B/o.GM