

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1070 of 2017

Date of Decision: 24.03.2017

Mohan Lal and another

... Petitioners

Versus

Punjab National Bank and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Alka Chatrath, Advocate,
for the petitioners.

Mr. Saurav Verma, Advocate,
for respondents No.1 to 3.

Mr. Akash Soni, Advocate,
for respondents No.4 & 5.

Ms. Anju Arora, Advocate,
for respondent No.6.

Mr. Kapil Kakkar, Advocate,
for respondent No.7.

Mr. Akashdeep Sethi, Advocate,
for respondent No.8.

RAJIV NARAIN RAINA, J.(Oral)

1. On January 27, 2017 this Court passed the following interim order:-

“Ms. Chatrath submits that when the criteria in the advertisement regarding 40% and 60% weightage is given to results of Class 10th and 12th examination, the petitioners scores higher in merit than some of the selected candidates. She points out to the result sheet of further recruitment of Peons-2016 in District Fazilka at page 40 of the paper

book (Annex P-10) submitting that candidates from Kanchan Bala and downwards have secured less marks than the petitioners. The petitioner No.1's marks are 76.51 while petitioner No.2 has secured 76.53 marks. Both the petitioners are OBC candidates and belong to the same category as Kanchan Bala. Two posts of OBC were advertised.

Notice of motion returnable by 16.02.2017.

Process dasti as well.

In the event of success of the petition and appointment of the petitioners as Peons the tail-enders in the category/upwards adjustments in order of merit will be informed to them in writing that their selection will remain subject to this petition and they would not have any right to the post till the final decision of this case. They will not claim equity in case they are to be disengaged to accommodate the successful petitioners, in case, it were to happen as a result of Court orders.”

2. On the next date, appearances were put in by the respondents and the case was adjourned to March 17, 2017 when the following order was passed after hearing Ms. Alka Chatrath, learned counsel for the petitioners, Mr. Saurav Verma, learned counsel for respondents No.1 to 3, Mr. Akash Soni, learned counsel for respondents No.4 and 5 & Ms. Alisha Arora, learned counsel for respondents No.6 and 7:-

“Short reply on behalf of respondents No.1 to 3 filed in Court is taken on record. Copy supplied.

On the oral request of Ms. Chatrath, Shivam son of Subhash Kumar, resident of H.No.231, Street No.1, Nanak Nagri, Abohar is arrayed as party – respondent No.8.

Let notice be issued to the newly added respondent

In addition, Ms. Chatrath may handover a copy of the paper-book to Mr. Saurav Verma together with the pleadings filed today. The Bank would inform newly added respondent namely Shivam of the pending proceedings and the next date of hearing.

Having regard to the short reply filed by the Bank, there remains no doubt that a glaring mistake has been discovered and the Bank is willing to rectify the mistake and rectify the selection list. In the affidavit, it has been explained that both the petitioners belonging to OBC category had secured higher marks than some of the General category candidates, the result of which is that petitioner No.2 comes at merit position No.2 below the topper namely Vicky Bansal and after petitioner No.2, petitioner No.1 be shifted from OBC to General category, therefore, both the petitioners have a right to appointment by reallocation from OBC to open general merit, so that their further time is not wasted in litigation, which is apparently bound to end in their favour in view of the admission of the Bank in their reply.

Accordingly, this Court thinks it appropriate to issue an ad interim mandamus to the Bank to offer appointments to the petitioners to service as per merit after completing the necessary formalities.

At this stage, Mr. Verma has expressed his compunction against piece meal adjudication contending that the entire matter should be settled in one go i.e. induction of the successful petitioners and the fate of respondents No.7 & 8 after they are heard by this Court. This would save Mr. Verma from any embarrassment in the Bank. His request is accepted. There is merit in the safety sought since the fate of respondents 7 & 8 lies tide up as they will fall out of the list of general category etc.

Accepting this request as genuine the case is adjourned to hear the newly added respondents. The operation of the first part of this order containing interim mandamus to the Bank as above is kept in abeyance till the next date of hearing.

List again on 24.03.2017 for final disposal.

To be shown in urgent list.

Reply/pleadings, if any, receivable from the parties be filed by 23.03.2017 with an advance copy to the opposite side.

It may be recorded that respondents No.7 & 8 were

appointed recently this year.”

3. Today, Mr. Kapil Kakkar, appears for respondent No.7 with no objection from Ms. Arora.

4. The newly added respondent appears through Mr. Akashdeep Sethi, Advocate.

5. After hearing the respective counsel and especially Mr. Saurav Verma, learned counsel for the Bank this Court is left with the only residual issue arising for determination presently is regarding the rights of respondents No.7 & 8 who will face immediate termination when the two petitioners are accommodated as per merit within the nine vacancies advertised for the post of Peons in the respondent-Bank. While drawing up the selection list, the candidature of both the petitioners was ruled out on account of their wrongly been treated as Graduates while they were still in mid study for the Bachelor of Arts programme. This reason for ousting is not acceptable since the minimum qualification advertised was 10+2 for Peons which both the petitioners have qualified and, therefore, they have a right of consideration as per merit as was crystallized in the interim orders reproduced above.

6. The petitioners are OBC candidates who have secured superior merit than the last general category candidate appointed. Since the Bank has corrected its own mistake to bring their decisions in accordance with law and leave no impurity on record, the case of the petitioners has to be allowed and they would require to be issued appointment letters and the codal formalities can follow, like character verification and medical check up etc and remain subject to it.

7. As a result, the writ is allowed.

8. However, before parting I may say a few words more. The dilemma in this case is what is to be done about respondents No.7 & 8 for whom Mr. Kakkar has made an impassioned address since they are going out of the list of nine vacancies. Can the Court exercise any equity on grounds of sympathy and compassion in their favour as one of the aspects which may require attention. The Court is at the same time confronted with the principle that appointments cannot go beyond advertised vacancies and any further appointment can be nullified. Another aspect which requires consideration is the argument of Mr. Verma which I believe to be the correct position in law is that the Bank has made a mistake, rectified it and cannot be compelled to make a mistake a second time by inducting respondents No.7 & 8 beyond the advertised vacancies. The fourth factor is not to create a bad precedent however poignant the situation is with the axe falling on the two respondents. There are cases where after years of service on a Court declaration an employee is under threat of termination then in such cases the Court may protect an employee on the ground that he has served for long, have not practiced deceit, misrepresentation or fraud, then Court may consider whether supernumerary post can be created or a post deducted from future vacancies to save imminent termination. In this case, the appointment was made recently on January 07, 2017. The service is of short duration. The writ petition was filed on January 19, 2017 which came up for hearing for the first time on January 20, 2017 when it was adjourned for January 24, 2017. On January 24, 2017 it was adjourned for the date when the first effective order was passed reproduced above.

9. Keeping all these factors in view, I do not think that respondents No.7 & 8 can have a legitimate right to continue as Peons even though they have not misrepresented, practiced deceit or committed fraud with the Bank in securing the appointment willingly offered to them recently. Creation of a supernumerary post will be hit by Hoshiar Singh v. State of Haryana and others, AIR 1993 SC 2606. Misplaced compassion and sympathy have been ruled out in such cases even though it may cause heartburn. I would, therefore, not venture to find a by-lane to accommodate respondents No.7 & 8 by a mandamus. Disappointed they must be but the Court has got no tool to forge to save them from the disaster. Needless to say that in the next cycle of recruitment of Peons, respondents No.7 & 8 will have a right to compete and in case, the Bank formulates preference by way of policy, then the Bank can lend their helping hand to the discharged respondents whose appointments were rendered extra by forensic debate but not illegal per se, and consider their special case in whatever ways in the next round, if can be legally or theoretically devised within the law.

(RAJIV NARAIN RAINA)
JUDGE

24.03.2017

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Whether speaking/reasoned *Yes*

Whether reportable *No*