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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3925/2013

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11th January, 2017

SHRI HARI KISHAN

..... Petitioner

Through: Mr. S.Hari Shankar, Sr. Adv.
with Ms. Ashly Cherian, Adv.

versus

STATE BANK OF INDIA & ANR.

..... Respondents

Through: Mr. Rajiv Kapur and Ms.
Khushboo Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of being appointed to the post of Assistant Manager (Law) with the respondent no.1/Bank, and 42 of such posts were advertised by the respondent no.1 in terms of its Advertisement No. CR PD/SCO/2012-13/02 dated 28.09.2012.

2. Though in the writ petition various issues were raised, today, the limited issue which arises in view of the completion of pleadings by the parties, and so argued before this Court on behalf of the petitioner, is that the total number of vacancies of the respondent no.1 for the posts of Assistant Manager (Law) were 42 in number and which on account of merger of certain

posts of Managers with the posts of Assistant Managers (Law) came to be increased to 55 as per the circumstances of less appointments in the self-same recruitment process being made to the post of Manager (Law) of the respondent no.1, and that since the total appointments of the posts of Assistant Manager (Law) are 55, and of this only 25 appointments are in the General Category, hence the position which emerges is that reservation exceeds 50% of the posts of Assistant Manager (Law), and consequently the recruitment process is required to be set aside to the extent of excess appointments above 50% for the reserved category.

3. Before proceeding further, it is required to be noted that though the petitioner qualified in the written examination and was called for the interview, the petitioner was however not successful when the final select list was taken out, inasmuch as, the petitioner only had secured 59 marks being 44 marks in Professional Knowledge and 15 marks in Interview and the last candidate selected for the post of Assistant Manager (Law) was having 60 marks. Therefore the only issue which survives is as to whether the reserved category appointments done by the respondent no.1 exceeds the limit of 50% for the reserved categories.

4. As per the advertisement, it was provided that the number of vacancies can vary as per the actual requirements of the bank. It cannot be disputed in law that such variation of posts to a reasonable extent from those as

advertised is valid because an employer is not confined strictly for filling in only the posts as advertised to be filled in, and an employer has a right as per the exigent circumstances to reasonably vary the posts which are advertised as compared to the posts which are filled in, provided of course that there is no huge/wide variance and when it will then in fact amount to fraud/illegality in the recruitment process.

5. It is seen that as per the subject advertisement for the post of Assistant Manager (Law), 42 vacancies were advertised, of which 6 were in the SC Category, 3 were in the ST Category, 11 were in the OBC Category and 22 were in the General Category and thus making the total of 42 posts. For the post of Manager (Law) again the self-same number of vacancies were advertised in the same proportion as of the posts of Assistant Manager (Law). As per the counter-affidavit filed by the respondent no.1, it transpires that respondent no.1 could not in the very recruitment process fill in all the posts of Manager (Law) totaling to 42 in number, and hence it was decided to merge the vacant posts of Manager (Law) towards the posts of Assistant Manager (Law). Resultantly the position which ensued is stated in the counter-affidavit of respondent no.1 as regards the posts and which is as under:-

Post/particulars in respect of vacancies of SBI	SC	ST	OBC	GEN	Total
Manager (Law) Vacancies	6	3	11	22	42

Vacancies filled	1	-	9	19	29
Unfilled vacancies	5	3	2	3	13
Assistant Manager (Law) Vacancies	6	3	11	22	42
Reserved vacancies of A.M (Law) after adding unfilled vacancies detailed in SL.No.3	11	6	13	25	55
A.M.(Law) Vacancies filled	10	2	13	25	50

6. A reading of the aforesaid chart shows that out of the vacancies of Manager (Law) the vacancies which were filled in were only 29 and hence there were 13 unfilled vacancies of the posts of Manager (Law). These 13 vacancies were by decision of the respondent no.1 merged with the 42 posts of Assistant Manager (Law), and therefore, the total posts of Assistant Manager (Law) became 55 in number. Out of the 55 posts, only 50 were filled in, and therefore, 50% of the 50 posts come to 25 in number. The aforesaid chart shows that out of 50 posts, 25 are in the General Category and 25 are in the Reserved Category and hence there is no crossing of the barrier of 50% for reserved vacancies. Accordingly, I cannot agree with the arguments urged on behalf of the petitioner that the limit of 50% of vacancies has been crossed in this particular case.

7. In view of the above, there is no merit in the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 11, 2017/ib

VALMIKI J. MEHTA, J