

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22952 of 2013

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Saurabh Kumar Son of Devendra Nath Sinha, Resident Of Mohalla-Satyarganj (Near Shiv Mandir), Police Station Islampur, District - Patna

... .. Petitioner/s

Versus

1. The Madhya Bihar Gramin Bank Through Chairman-Cum-Managing Director, Meena Plaza, South, South Of Patna Museum, Patna - 1
2. The Chairman-Cum-Managing Director, The Madhya Bihar Gramin Bank, Meena Plaza, South of Patna Museum, Patna - 1
3. The General Manager, The Madhya Bihar Gramin Bank, Meena Plaza, South of Patna Museum, Patna - 1
4. The Senior Manager, The Madhya Bihar Gramin Bank, Meena Plaza, South of Patna Museum, Patna
5. The Indian Banking Personnel Selection Board through it's Chairman, Mumbai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh
		Mr. Anil Kumar Singh,
For the MBG Bank	:	Mr. Suresh Prasad No. 1
		Kumari Rahmi
For the IBPS	:	Mr. Siddhartha Prasad

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 18-07-2018

The present writ petition has been filed for quashing the letter dated 23.10.2013 issued by the Senior Manager, Madhya Bihar Gramin Bank whereby and whereunder reply has been sent to the lawyer of the petitioner that I.B.P.S., Mumbai has sent a communication to the effect that the case of the petitioner comes under the category “copying cases”. It has been further



prayed that the Respondents be directed to issue appointment letter in favour of the petitioner herein.

2. The brief facts of the case are that an advertisement was issued by the Madhya Bihar Gramin Bank for making appointment against the different post as mentioned in the said advertisement whereafter, the petitioner had applied for being appointed on the post of office Assistant (M.P.). The petitioner had appeared in the written exam and was declared successful under the OBC category whereafter, interview call letter was sent to him and then, the petitioner had also appeared for the interview test. Finally, the petitioner was not selected. The petitioner is stated to have filed R.T.I application seeking information with regard to the marks obtained by him in the written examination as well as the interview. In reply, the Respondents had communicated to the petitioner that he had secured 64 marks in the written examination and 15 marks in the interview. Thereafter, the petitioner had filed an appeal before the R.T.I., Appellate Authority on 06.06.2013 and the cut off marks for appointment under the OBC Category was furnished to the petitioner which is 78 marks. The petitioner had issued a legal notice to the respondents with regard to his non selection on 24.09.2013, however, by the impugned letter dated



23.10.2013, the lawyer of the petitioner was communicated that the I.B.P.S., Mumbai has informed to the Respondent-Bank that the case of the petitioner comes under the category “copying cases”.

3. The learned counsel for the petitioner has submitted that though the cut off marks for selection under the OBC Category is 78 marks and the petitioner has got 79 marks but he has been denied appointment illegally and in order to shatter his claim, the respondents have come out with a new plea that the case of the petitioner is that of a “copying case”.

4. Per contra, the learned counsel for the Respondents has referred to Clause 13 of the advertisement, which reads as follows:-

“13. Action Against Candidates Found Guilty of Misconduct:

Candidates are advised in their own interest that they should not furnish any particulars that are false, tampered, fabricated and should not suppress any material information while filling up the application form. At the time of written examination / interview, if a candidate is (or has been) found guilty of-

- (i) using unfair means during the examination or
- (ii) impersonating or procuring impersonation by any person or
- (iii) misbehaving in the examination hall or taking away the question booklet (or any part thereof) / answer sheet from the examination hall or
- (iv) resorting to any irregular or improper means in connection with his/her candidature for selection or
- (iv) obtaining support for his / her candidature by unfair means.

Such a candidate, in addition or rendering himself / herself liable to criminal prosecution shall be liable:



- (a) To be disqualified from the examination for which he /she is a candidate.
- (b) To be debarred either permanently or for a specified period from any examination or recruitment conducted by Madhya Bihar Gramin Bank.
- (c) For termination of service, if he / she has already joined the Bank.

The Bank would be analyzing the responses of a candidate with other candidates to detect patterns of similarity. If as per the laid down procedure, it is suspected that the responses have been shared and scores obtained are not genuine / valid, the bank reserves right to cancel his / her candidature.”

The learned counsel for the Respondents has submitted that the Respondent-Bank was well within its power to analyze the responses of a candidate with other candidates to detect patterns of similarity and if as per the laid down procedure, it is suspected that the responses have been shared and scores obtained are not genuine / valid, the Bank reserves right to cancel the candidature of such candidates. It is further submitted that the Respondents have a well detailed procedure of analyzing responses of all the candidates appearing in the objective test for identifying the cases of use of unfair means and the I.B.P.S. has indigenously developed software for identifying such cases of adopting use of unfair means based on an internationally accepted method. Certain responses of each candidate are compared with the responses of the remaining candidates and matched for identical responses. The software



generates report of all such pairs of cases which have identical responses mainly identical wrong responses whereafter, the report is critically reviewed by a high power committee including the Heads of Divisions of I.B.P.S and a final decision is taken.

5. In order to cut short the matter and maintain brevity, the detailed method of detecting as to whether unfair means has been used or not, has been placed by the respondents in the counter affidavit filed on behalf of the Respondent No. 5 in paragraph nos. 12 to 15, hence, the same is not being reproduced hereinbelow. It is further submitted by the learned counsel for the respondents that upon analyzing the present case, it was found that the marks of the written examination of the petitioner herein has been reported under copying cases by the I.B.P.S., Mumbai, hence, the Respondent-Bank has disqualified the petitioner herein on account of malpractices adopted by him in the written examination.

6. I have heard the learned counsel for the parties and gone through the materials on record and I find that several orders of various Courts have been produced to buttress the point that the I.B.P.S., Mumbai is certainly not amenable to writ jurisdiction of a high court under Article 226 of the Constitution of India.



From the said judgments, I find that as far as I.B.P.S., Mumbai is concerned, the law has been settled by various Courts of our country to the effect that I.B.P.S., Mumbai, being not a State within the meaning of Article 12 of the Constitution of India, is not amenable to the writ jurisdiction under Article 226 of the Constitution of India.

7. Now coming to the second issue of the petitioner having been disqualified on the basis of I.B.P.S., Mumbai submitting a report that the case of the petitioner comes under the “copying cases”, the petitioner has failed to bring anything on record or allege that the system being followed for the purposes of discovering cases where unfair means is being resorted to, is illegal or unworkable or is not practicable. In fact, there is no challenge to the declaration made by the I.B.P.S., Mumbai having declared the petitioner under the copying cases category. In any case, the petitioner has not been able to show that any discrimination has been meted out to the petitioner herein in view of the fact that the I.B.P.S. Scientific test is uniformly applied by the Bank for the purposes of identification of candidates resorting to unfair means.

8. It is a trite law that the Courts should normally refrain from substituting their own opinion for that of an expert body.



In this regard, it would be useful to refer to a judgment dated 06.02.2013 passed by the Hon'ble Delhi High Court in the case of ***Varun Bhardwaj and Ors. Vs. State Bank of India & Ors.*** in W.P.(c) No. 3707 of 2011 and the one rendered by the Hon'ble Bombay High Court in the case of ***Mohan Laxman Gamare Vs. Institute of Banking Personnel Selection (IBPS) & Anr.*** by a judgment dated 07.05.2014 passed in W.P.(L) No. 1042 of 2014. In this regard, it would be useful to refer to a judgment dated 21.05.2015 rendered by the Hon'ble Jharkhand High Court at Ranchi in W.P.(S) No. 2327 of 2013, relevant portion whereby is reproduced hereinbelow:-

“In reply, learned counsel for the respondents by referring to statements made at para-14 to 20 of the counter affidavit submits that the institute has developed a software, which is intentionally accepted to detect the cases where unfair means have been adopted by using of highly refined technology of analyzing response of all candidates in the objective test. Certain example of use of such method have also been given in the said paragraphs. It is also submitted that Delhi High Court in the case of ***Varun Bhardwaj and Ors. Vs. State Bank of India & Ors.*** passed in ***W.P. (c) No. 3707 of 2011 vide judgment dated 06.02.2013***, Annexure-D, in a similar challenge made before it by unsuccessful candidates where also the question of identification of use of unfair means, it was held that when IBPS Scientific test is uniformly applied by the bank and there is no discrimination against the petitioner, the Court should not substitute its



own opinion for that of an expert body. Learned counsel for the respondents has referred to the judgment rendered by the Bombay High Court in the case of ***Mohan Laxman Gamare Vs. Institute of Banking Personnel Selection (IBPS) & Anr.*** passed in ***W.P. (L) No. 1042 of 2014 vide judgment dated 07.05.2014***, Annexure-A wherein it has been held that the respondent-Institute of Banking Personnel Selection (in short IBPS) is not a “State within the meaning of Article 12 of the Constitution of India and thereafter it is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore merit of the case were not gone into.

Having considered the aforesaid stand of the respondent, this Court is not inclined to interfere in the writ petition as no case is made out. Moreover, the petitioner has also failed to show that the respondent -IBPS comes within the meaning of “State” under Article 12 of the Constitution of India.

Accordingly, the writ petition is dismissed.”

9. Although the present writ petition is fit to be dismissed on the ground mentioned hereinabove, as is the consistent view of various High Courts of our country, however, the other issue is regarding the present writ petition involving disputed questions of facts which cannot be gone into in a writ petition by this Court under Article 226 of the Constitution of India since the same requires leading of evidence, proving of documents etc. for which the remedy of the petitioner lies elsewhere.



10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, accordingly, the present writ petition is dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.10.2018
Transmission Date	NA

