

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.19706 OF 2008

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in not calling the petitioner for interview held on 19.2.2007 for promotion to the post of Junior Management Grade (JMG) as illegal and arbitrary, and consequently, to direct the respondents to give promotion to the petitioner as Junior Management Grade or give benefits treating the petitioner as Junior Management Grade from the date of interview.

2. Heard Sri S. Prabhakar, learned Counsel for the petitioner and Sri E. Madan Mohan Reddy, learned Counsel for the respondents.

3. The case of the petitioner in brief is as follows:

(i) The petitioner belongs to SC community and he joined as cashier in the respondent-Bank on 19.2.1979 and he was promoted as Senior Assistant in the year 1999 and as Special Assistant in the year 2003, and thereafter, he retired from service on 31.3.2007 on Exit Option Scheme introduced by the Bank.

(ii) The Executive Committee of the Central Board (ECCB) of the respondent-Bank approved the Exit Option

Scheme on 24.8.2006 and introduced on 31.8.2006 for the clerical and subordinate employees of the Bank, who feel frustrated and demotivated due to lack of career prospects or any other reason, which makes them frustrated or demotivated. The scheme opened on 1st September, 2006 and closed on 31.3.2007.

(iii) The petitioner opted for the above said scheme and retired on 31.3.2007. Meanwhile, interviews were held on 19.2.2007 for the next higher post of Junior Management Grade. He came to know that one of his juniors B.V. Krishnaiah was called for the above interview. The petitioner was not called for that interview though he is fully eligible to attend the said interview. If the petitioner was called he would have attended the interview and he would have been promoted to the post of JMG grade, and in such circumstances, he would have withdrawn his option to retire under the Exit Option Scheme. The petitioner made so many representations to the respondents to rectify the injustice done to him but the respondents were not responding. In those set of circumstances, the petitioner filed this writ petition.

4. The respondents filed counter-affidavit stating that the then Branch Manager tried to deliver the call letter in person to the petitioner for interview for JMG and called him over phone, but the petitioner stated that he was sick. The petitioner

submitted an application under Bank's Exit Option Scheme on 15.11.2006 much before the date of call letter and therefore, he was disinterested to take the call letter in person. The Branch Manager dispatched the call letter on 17.2.2007 to the petitioner. The allegations of the petitioner are incorrect. The petitioner was well aware of his eligibility for being called for interview for promotion to JMG under seniority channel. But he himself has chosen to set his retirement as on 31.3.2007. He was informed about his interview. But the petitioner has not chosen to withdraw the application under exit scheme. As the petitioner opted for exit scheme, he has no right to claim for compassionate appointment or any other benefits. If the petitioner had any grievance on his alleged non-promotion, he would have raised the same before receipt of benefits under exit option scheme including terminal benefits. After receiving all terminal benefits without any protest and after lapse of more than one year from the date of his retirement, the petitioner is raising the present claim, only with a view to derive undue advantage from the bank. The petitioner is not entitled for any relief prayed in this writ petition. Moreover, the case of the petitioner was considered for promotion on several occasions while he was in service. But, he could not come up within the zone of consideration for promotion. The respondents introduced exit option scheme so as to enable the persons who feel frustrated and who would not have better prospects in their

career. The petitioner on his own applied for the said scheme vide application dated 15.11.2006. Insofar as the interviews, which were scheduled to be held on 19.02.2007 are concerned the petitioner was informed about the same but he has not attended the interview. The contention of the petitioner that had he faced the selections he would have been promoted and he would have withdrawn his option for exit option scheme is too hypothetical. There are no merits in this writ petition and the writ petition is liable to be dismissed.

5. The learned Counsel for the petitioner relied upon the unreported judgment of the Delhi High Court in **Ex Havildar Tilak Raj Singh Vs. Union of India and others in W.P.(C) No.22970 of 2005**, and contended that in that case, the Hon'ble Delhi Court declared that the petitioner therein is entitled to be promoted as Naib Subedar from the date when his batch mates were so promoted, with all consequential benefits, pay allowances and extension of tenure of service over and above the rank of Naib Subedar.

6. This Court having considered the above judgment is of the view that the petitioner in that case was punished on the charge of not physically checking instruments deposited with the workshop while taking over the duties of Kote NCO. The punishment given to the petitioner therein was set aside in terms of communication dated 20.10.2005. However, no relief

was provided to the petitioner on the issue of denial of promotion. In those circumstances, the Delhi Court while holding that the petitioner was denied of promotion, directed that the petitioner be promoted. But in the instant case, the circumstances are different and the said judgment has no application in the present case.

7. The learned Counsel for the petitioner further relied upon the judgement of the Hon'ble Supreme Court in **Nalini Kant Sinha Vs. State of Bihar and Others**¹, in which case, the petitioner was denied promotion, and appropriate relief was granted by the Hon'ble Supreme Court for wrongful denial of promotion. In the instant case, the grievance of the petitioner is that call letter for interviews scheduled to be held on 19.2.2007 was not communicated to him. Basing on that ground, the contention raised by the petitioner that had he appeared for the interview he would have been selected, he would have been promoted and he would have withdrawn his option from the exit option scheme is too hypothetical. The counter-affidavit discloses that the petitioner accepted his terminal benefits without any protest on 17.5.2007. If the petitioner was really aggrieved by non-communication of call letter for interview, which was held on 19.2.2007, he would not have received the terminal benefits.

¹ 1993 Supp (4) SCC 748

8. Further, in the counter, it is specifically stated that the Regional office vide its letter dated 14.2.2008 advised the Branch Manager of Gudur, where the petitioner was working at the relevant point of time, to relive the petitioner along with two other employees to attend for interview for Junior Management Grade Scale I to be held on 19.2.2007 to 21.2.2007 at Tirupati.. The petitioner was on sick leave for 15 days and the petitioner also enclosed medical certificate dated 12.2.2007 issued by Dr.B. Gangadhara Reddy declaring that the petitioner is suffering from Typhoid fever w.e.f. 12.2.2007 and requires complete bed rest upto 26.2.2007. When the petitioner was on sick leave, the contention of the petitioner that had he received interview call letter for the interview scheduled to be held on 19.2.2007, he would have appeared for the interview, he would have been selected, he would have been promoted and he would have withdrawn his option from the exit option scheme is too hypothetical. Moreover, the petitioner has not filed any reply denying the contention raised by the respondents in the counter-affidavit stating that information was communicated to him over phone about the interviews scheduled to be held on 19.2.2007. In the absence of any reply of the petitioner denying the contentions of the respondents in their counter, it cannot be said that the petitioner has no knowledge about the interviews. There are no merits in this writ petition.

9. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

28th December, 2018
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28.12.2018

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