IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.117 of 2018 (O&M) in
CWP No. 15788 of 2012
Date of decision: 21.02.2018

Canara Bank and another

…. Appellants

Versus

Paramjit Sharma and others

…… Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. D.S. Nalwa, Advocate for the appellants.

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B.S. Walia, J.

[1] Intra-court appeal has been filed against the order of the Writ Court dated 19.09.2017 holding respondent No.1/petitioner entitled to be considered for appointment to the post of Financial Analyst in JMG Scale-I (hereinafter referred to as 'the FA [JMGS-I]') by setting aside order dated 12.04.2012 (Annexure P-7) and directing the appellant/respondent – Bank to reconsider respondent No.1/petitioner's candidature for the post of FA [JMGS-I] as if cut-off marks for qualifying in interview as 50 was not fixed or in the alternative, appellant/respondent – Bank was directed to extend relaxation provision contained in its decision dated 09.12.2005 read with Government of India Office Memorandum dated 29.12.2005 and to consider the name of respondent No.1/petitioner for appointment to the post of FA [JMGS-I] with effect from the date of issuance of appointment orders to other eligible candidates.

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[2] Brief facts of the case leading to the filing of the intra-court appeal are that respondent No.1/petitioner challenged the validity of communication dated 12.04.2012 (Annexure P-7) whereby the appellant/respondent – Bank declined to consider the name of respondent No.1/petitioner for the post of FA [JMGS-I] under the Orthopedically Challenged Category. Written examination for the post in question was held on 12.12.2010. Results were announced on 03.03.2011 in which respondent No.1/petitioner secured 113 marks in the written examination. Thereafter, interviews were held from 21.03.2011 to 25.03.2011 in which Respondent No.1/petitioner was awarded 49.33 marks. Thereafter on 07.04.2011, the appellant/respondent – Bank issued office note relating to the recruitment in question stipulating 50 or more cut-off marks for qualifying in interviews for the reserved category. Relevant extract of the office-note is reproduced as under:-

> "**OUR VIEWS/RECOMMENDATIONS:**
>
> The cut-off marks for qualifying in interviews have been reckoned as **55 or more for** unreserved category candidates and **50 or more for** reserved category candidates."

[3] Aggrieved against the non-consideration of his candidature, respondent No.1/petitioner approached the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India, whereupon on 23.02.2012 directions were issued to appellant/respondent – Bank to consider respondent No.1/petitioner's matter positively with reference to para 22 of DOPT's O.M. dated 29.12.2005 (Annexure P-5) which provides for relaxation of standard to those

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candidates who claim reservation under the Disability Act read with Government Policy.

[4] The Writ Court by relying upon the decision of **Ram Niwas and another v. Rakesh Kumar and others, AIR 1981, Punjab & Haryana 397** and **Smt. Rajbir Kaur and another v. M/s S. Chokosiri and Co., AIR 1988 Supreme Court 1845,** which in turn relies upon **Ram Sarup Gupta v. Bishun Narain Inter College, AIR 1987 SC 1242** rejected the contention that challenge to proceedings dated 07.04.2011 was not in accordance with law to the extent of approving the proposed cut-off marks for qualifying in interviews to the extent of 55 for unreserved category and 50 for reserved category candidates on account of the same not having been pleaded in the writ petition, while rejecting the plea the Writ Court held that respondent No.1/petitioner was eligible to challenge the proceedings dated 07.04.2011 on the ground that candidates had not been informed of the change which was required to be communicated to them in advance and the proceedings dated 07.04.2011 having been placed on record pursuant to the directions of the Court, respondent No.1/petitioner was entitled to challenge the same. As regards the plea that fixing of cut-off marks for qualifying in interview as 55 and 50 for unreserved and reserved category was yet to attain finality so as to operate the same for issuance of appointment of FA [JMGS-I), the Writ Court took into account that proceedings dated 07.04.2011 of appellant/respondent – Bank were only by way of proposal before the Board of Directors who were required to approve the cut-off marks, whereas Board of Directors had merely signed the proposal since proposal was cut-off marks for qualifying in interviews as 55 or more and 50 or more for unreserved and reserved category candidates respectively. The Writ Court further took into account that there was no determination of cut-

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off marks whether it should be 55 or 50. Therefore, it could not be presumed by appellant/respondent – Bank that its Board of Directors had approved particular marks i.e. 55 and 50 respectively for unreserved and reserved category candidates. With the aforementioned background, the Writ Court held that the proceedings dated 07.04.2011 were only by way of proposal since the Board of Directors had not considered and passed order to the extent of fixing particular cut-off marks for qualifying in interviews i.e. 55 and 50 or any other figure for unreserved and reserved category candidates, respectively; besides, no resolution had been passed which was one of the requirements as noted by the appellant/respondent – Bank in its decision dated 09.12.2005. In the aforementioned background, the Writ Court held that appellant/ respondent – Bank was bound by whatever criteria was stated in the advertisement i.e. "Maximum marks for interview is 100 and the final selection shall be on the basis of marks secured by the candidate in Test and/or interview, as decided by the Bank."

[5] As regards the plea that respondent No.1/petitioner's candidature being under Orthopedically Challenged Category out of which one post had been filled up and the other remaining unfilled the Writ Court by referring to Government of India Office Memorandum dated 29.12.2005 providing for 'Relaxation of Standard of Suitability' held that since respondent No.1/petitioner had secured 49.33 marks in the interview and even if cut-off marks for qualifying in interview was stated to be 50 even then in view of the aforementioned relaxation clause, respondent No.1/petitioner was entitled for relaxation of cut-off marks in the interview.

[6] We have heard learned counsel for the appellants who contended that the Writ Court had accepted a new plea which was not raised by respondent No.1/petitioner through the writ petition. Proposal of the

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Recruitment Cell for laying down cut-off marks required for clearing the interview with 50 in the case of reserved candidates was approved by the Board of Directors. Although the Writ Court had directed grant of relaxation in terms of Government of India Office Memorandum dated 29.12.2005, the same was without taking into account that in fact relaxation of 05 marks had already been granted in the case of reserved category candidates in comparison to general category candidates.

[7] We have considered the submissions of learned counsel for the appellants but for the reasons recorded hereunder, are unable to agree with the same.

[8] Admittedly, written test for the post in question was held on 12.12.2010. Results were announced on 03.03.2011 in which respondent No.1/petitioner secured 113 marks, whereafter interviews were held between 21.03.2011 to 25.03.2011 in which respondent No.1/petitioner was awarded 49.33 marks. The advertisement did not stipulate Bench Mark of 50 marks to be obtained in the interview. Bench Mark was introduced after the interviews were over whereas the advertisement stipulates “the change, if any, shall be communicated to the candidates in advance.” The change in the criteria was not communicated to the candidates in advance nor was made available to the candidates such as respondent No.1/petitioner and it was only during the course of proceedings before the Writ Court that pursuant to the directions of the Writ Court, proceedings dated 07.04.2011 were placed on the record which contained views and recommendations for applying cut-off marks for qualifying in interviews as 55 or more for unreserved category candidates and 50 or more for reserved category candidates.

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[9] Challenge to the said condition on the ground that there was no pleading, was rightly rejected by the Writ Court in the light of the decision of this Court in the cases of Ram Niwas; Smt. Rajbir Kaur and Ram Sarup Gupta's cases (Supra). We also find no merit in the submissions made by learned counsel for the appellants regarding decision of applying the changed criteria having been approved by the Board of Directors of the bank as what was signed by the Board of Directors was merely a proposal either to fix 55 or more and 50 or more cut-off marks for unreserved and reserved category candidates for qualifying the interview. The proposal was submitted for consideration and orders. However, there is no material on the basis of which it can be inferred that the Board of Directors had considered the orders of fixing particular cut-off marks for qualifying in the interview i.e. 55 in the case of unreserved category candidates and 50 in the case of reserved category candidates; besides, no resolution had been passed by the Board of Directors in respect thereto. Even if it be assumed that cut-off marks had been stipulated at 50 in the case of candidates belonging to the reserved category even than respondent No.1/petitioner has rightly been held entitled to the benefit of relaxation in terms of Government of India Office Memorandum dated 29.12.2005, relevant extract of which reads as under:-

> "22. **Relaxation of Standard of Suitability:** If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the

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> number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/posts in question."

[10] In the light of the position as noted above, we do not find any infirmity with the order of the Writ Court warranting intervention in this intra-Court appeal.

[11] Accordingly, the appeal is dismissed. Consequently, application seeking condonation of delay in filing the appeal is also dismissed.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.

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