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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th November, 2018

+ W.P.(C) 4674/2015 & CM APPL. 8469/2015

GHANSHYAM KUMAR Petitioner

Through Mr. Sarvesh Kumar Dubey, Adv.

versus

PUNJAB NATIONAL BANK & ORS Respondents

Through Mr. Sangam Kumar, Mr. Vikas
Verma and Mr. Shahid Akhtar, Advs.
for R-4

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby directing the respondent no.1 to give the joining to the petitioner on the post of Probationary Officer / Management Trainee in Punjab National Bank, considering that the petitioner's result was declared prior to 01.07.2013, and consequently to set aside the order dated 13.04.2015, which was received by the petitioner on 01.05.2015, through which the candidature of the petitioner for the said post was rejected by R-1, the Punjab National Bank.

2. The case of the petitioner is that the provisional mark sheet was issued to the petitioner on 26.06.2013 certifying that he had

completed his Graduation. Cut-off date set by IBPS i.e. respondent no.2 for the candidates appearing for the IBPS exam was 01.07.2013. The mark sheet of the petitioner was printed on 28.08.2013 and the common written exam for the selection of the post in question was held in the month of October, 2013. The petitioner participated in the common written examination and succeeded in the said examination. The petitioner attended the interview on 05.01.2014.

3. Counsel appearing on behalf of the petitioner submits that similar issue came before High Court of Allahabad in ***Writ Petition No. 93 (S/B) of 2014*** and the same was disposed of vide order dated 04.03.2014 directing the opposite party to interview the petitioners therein within a period of one month by the same Board and declare the result of the petitioners accordingly along with other candidates.

4. Counsel for the petitioner submits that the petitioner got degree in the month of June, i.e. prior to 01.07.2013, therefore, his candidature was wrongly cancelled by the respondent no.1.

5. Counsel for the respondent has drawn the attention of this Court to the affidavit filed by respondent no.3, whereby it is stated that the examination of 8th Semester of BE/B.Tech under the respondent no.3 University, in the year 2013 was held in the month of May-June 2013 and the result of 8th Semester Engg. Examinations was declared on 26.06.2013.

6. Counsel for the respondent further submits, as per the additional affidavit of the petitioner the 5th Semester was passed by the petitioner in the month of July, 2013, whereas cut of date was 01.07.2013. The respondent has drawn the attention to page 206 of

the paper book whereby it is stated that the petitioner appeared for his 5th semester subject i.e. 06CV54 Examination on 28.06.2013 and the results of the 5th Semester were announced on 31.07.2013. Learned counsel further submits that when the University itself has certified that he cleared his degree after the cut of date, the petitioner has no case and the petition is liable to be dismissed.

7. At this stage, learned counsel for the petitioner submits that even if it is assumed that he did not cleared his 5th Semester before 1.07.2013, however, at the time of the interview, he was a Graduate/B Tech and he secured the marks more than the other candidates. Therefore, the respondents should not have rejected his candidature for the reason that the respondents had to select the best talents available among the candidates.

8. Similar issue came before the Supreme Court in case of ***Ashok Kumar Sharma v. Chander Shekher 1993 Supp (2) SCC 611*** whereby Hon'ble Supreme Court has held that the recruiting authority was able to get the best talents available, therefore, it was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification.

9. Hon'ble the Supreme Court has recorded in para 23 of ***Ashok Kumar Sharma (supra)*** as under:

“23. What has persuaded me, however, to allow the appeals, is not that there was no illegality in calling the appellants for interview or that the Board was justified in taking the decision to follow the practice of Commission but similar claim of the respondents had been rejected earlier by the High Court and by the time it was allowed more than ten years had elapsed since the examination

was held and selection was made. The High Court for this very reason did not enter into the question of eligibility and tried to adjust the equities between the parties by directing that all those candidates, namely, the appellants who were not qualified on the date of application should be placed as junior to respondents who had applied earlier and were qualified. The order of the High Court, in my opinion, is manifestly unjust. Once the eligibility bar was lifted by the High Court, for whatever reason may be as said by it due to passage of time or because of erroneous application of Rule 37 of the Public Service Commission Rules, the appellants who were subjected to same interview as the respondents and were found better qualified and secured higher marks, could not be placed junior to others. The equity does not know the half way. Once the appellants were held to be eligible may be not strictly under law but on equitable considerations, then it was wholly unjust to place them junior and under those who in the same examination secured lesser marks.”

10. It is not disputed that on the date of interview i.e. 15.03.2014, the petitioner was having the required qualification and he had secured the marks more other than some of the other candidates.

11. In the similar circumstances, Allahabad High Court has considered, wherein the Bank of Baroda was the interviewing agency, whereas in this petition respondent no. 1 is the appointing agency and respondent no.2 is the recruiting authority. Petitioner was allotted PNB as the appointing Bank after succeeding in exams and interview

Since the petitioner has the qualifications required on the date of interview, in view of the judgment of the Allahabad High Court mentioned above and the Supreme Court in **Ashok Kumar Sharma (supra)**, I hereby allow the present petition, while directing the

respondents to allow the petitioner to join the respondent no.1 Bank.

12. Consequently, the respondent no.1 shall issue Appointment Letter to the petitioner within four weeks from the receipt of this order.

13. As far as the issue of seniority is concerned, the seniority of the petitioner shall be reckoned with the same batch, wherein the other candidates were selected along with the petitioner.

14. I hereby made it clear that the petitioner shall not be entitled to any of the back wages.

15. Impugned order dated 13.04.2015 is set aside accordingly.

16. Petition is allowed with no order as to costs.

NOVEMBER 16, 2018
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SURESH KUMAR KAIT, J

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