

\$~6 & 7

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

+ **LPA 28/2019 & CM APPL. 2075/2019**

PUNJAB NATIONAL BANK Appellant
Through: Mr.Jagat Arora with Mr.Rajat Arora
& Mr.Murad Khan, Advocates.

versus

GHANSHYAM KUMAR & ORS Respondents
Through: Mr.Sarvesh K.Dubey, Advocate.

+ **LPA 30/2019 & CM APPL. 2113/2019**

INSTITUTE OF BANKING & PERSONNEL SELCTION Appellant
Through: Mr.Jagat Arora with Mr.Rajat Arora
& Mr.Murad Khan, Advocates.

versus

GHANSHYAM KUMAR & ORS Respondents
Through: Mr.Sarvesh K.Dubey, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE MANOJ KUMAR OHRI

ORDER
29.04.2019

%

Dr. S. Muralidhar, J.:

1. These two appeals are directed against the same impugned judgment

dated 16th November 2018 passed by the learned Single Judge allowing WP (C) 4674 of 2015 filed by Respondent No.1.

2. The background facts are that the Institute of Banking and Personnel Selection ('IBPS') issued an advertisement on 10th July 2013 for recruitment on the post of Probationary Officers/Management Training ('PO/MT') on behalf of a large number of banks which included the Punjab National Bank ('PNB'), the Apellant in LPA 28 of 2019. One of the conditions/eligibility criteria as specified in advertisement was that a candidate who applied in terms thereof should have all the educational qualifications from a recognised university/institution and further that the result of such examination should have been declared on or before 1st July 2013.

3. It was further stipulated in the advertisement as under:

“(2) All the educational qualifications mentioned should be from a recognized University/Institution and the result should have been declared on or before 01-07-2013.

Proper document from the Board/University for having declared the result on or before 01-07-2013 has to be submitted at the time of interview. The date of passing the examination which is reckoned for eligibility will be the date of passing appearing on the mark sheet/Provisional certificate.”

4. Respondent No.1 appeared in the written examination and cleared it. He was issued a call letter for the interview to be held on 7th January 2014. On scrutiny of the papers brought by him it was noticed that the documents were not in accordance with the requirements of the advertisement. Accordingly, Respondent No.1 was not issued permission to appear in the

next stage of the recruitment process i.e. for the interview.

5. Meanwhile, 18 persons who had taken the written exam had not received the call letters for interview, including Respondent No.1 herein, filed a writ petition being Case Service Bench No. 93 of 2014 in the High Court of Judicature, Allahabad, Lucknow Bench. It is important to note that while other banks were made parties to the said petition, PNB was not.

6. In certain petitions of other aggrieved persons similarly placed, an interim order was issued by the Division Bench (DB) of that High Court on 9th January 2014 permitting the said Petitioners to appear for the interview. Subsequently, by an order dated 18th February 2014 in Case Service Bench 93 of 2014 the DB of that High Court noted that the said Petitioners had already appeared for the interview and that “whatever the result of the interview is, that could be acted upon” by IBPS. The said petition was disposed of accordingly.

7. Soon thereafter an application for modification of the order dated 18th February 2014 was filed in Case Service Bench No. 93 of 2014 by the Petitioners in that case before the DB of the High Court of Judicature, Allahabad, Lucknow Bench. It was pointed out that “that the order dated 18.02.2014 has wrongly been transcribed in this writ petition as the Petitioners have not appeared in the interview and their case is similar to the case of the petitioners of Writ Petition No. 91.(S/B) of 2014.” It was, therefore, prayed that “the aforesaid order may be modified/corrected to the extent of the order passed in Writ Petition No. 91(S/B) of 2014.”

8. The said application was allowed by the DB of that High Court on 4th March 2014 and the orer dated 18th February 2014 was modified/corrected to read *inter alia* to the effect that the IBPS

“wrongly rejected the candidature of the petitioners and has wrongly stopped them from appearing in the interview. Once the requirement was complete as contemplated under the law, the opposite party no. 4 was bound to allow the petitioners to appear in the interview. The opposite party has misdirected itself and has taken a wrong decision without application of mind, instead of adverting to the correct decision as contemplated under the law. Admittedly, the result was declared on 26.06.2013. We are, therefore, of the considered opinion that in the present case the requirement of declaration of result on or before 01.07.2013 was satisfied and assuch the opposite parties have wrongly denied the petitioners to appear in the interview.”

9. The basis on which the Allahabad High Court came to the above conclusion was that: “Admittedly, in the present case the result- was declared prior to 01.07.2013 that is 26.06.2013 and this fact has also been mentioned in the marksheet that the result has been declared on 26.06.2013.”

10. It appears that on the basis a call letter for interview was issued by IBPS to Respondent No.1 asking him to appear for the interview on 15th March 2014. Pursuant to the interview, Respondent No.1 was provisionally allotted the post of PO/MT in PNB by a letter dated 31st March 2015. The said letter made it clear that:

“(1) The provisional allotment is subject to your fulfilling the eligibility criteria for Participating Organisations and identity

verification to the satisfaction of PUNJAB NATIONAL BANK
This does not constitute an offer of employment.

(2) In case it is detected at any stage of the recruitment process that, you do not satisfy the eligibility criteria your candidature/chance in the process shall stand forfeited.

(3) If you do not avail the offer/ appointment from the Participating Organisation named above your candidature/chance in the process shall stand forfeited.

(4) The decision of IBPS in allotment of Organisations shall be final and binding upon the selected candidates. However IBPS reserves the right to cancel, reallocate Organisation-wise allocation depending upon exigencies or otherwise. Offer of appointment is solely the decision of the Participating Organisations and shall be final and binding. IBPS has no role here.”

11. Respondent No.1 attended the interview and submitted a certificate dated 1st January 2014 and 20th April 2015 certifying that he had passed examination before the cut off date i.e. 1st July 2013. However, by an order dated 13th April 2015 the PNB cancelled the provisional offer of appointment issued to Respondent No.1 on the ground that he had obtained the requisite eligibility qualification beyond the cut off date of 1st July 2013. It was stated by PNB that on scrutinising of the marksheets submitted by the Respondent No.1 in respect of the fifth semester course it was observed that the month and year of passing the paper in Geo Technical Engineering was beyond 1st July 2013.

12. Aggrieved by the rejection of his candidature by PNB, the Respondent No.1 filed WP (C) 4674 of 2015 in this Court seeking a direction to PNB to

permit him to join in the post of PO/MT thereby setting aside the order dated 13th April 2015 passed by PNB.

13. The learned Single Judge in impugned order dated 16th November 2018 took note of the fact that the Allahabad High Court had disposed of the writ petitions on 4th March 2014. The learned Single Judge also took note of the fact that a certificate had been issued by the Visvesvaraya Technological University (Respondent No.3 – ‘VTU’) to the effect that ‘Respondent No.1 appeared in the one fifth semester subject on 28th June 2013, the results for which were announced on 31st July 2013.’ Nevertheless, the learned Single Judge was of the view that since the Respondent No.1 had obtained the requisite qualification prior to the date of his interview i.e. 15th March 2014 he ought to have been appointed. The seniority of Respondent No.1 was to be reckoned with the same batch wherein the other candidates had been selected.

14. Aggrieved by the above order of the learned Single Judge the present appeals have been separately filed by the PNB and the IBPS. On 18th January 2019, while directing notice to issue in the appeals, this Court stayed the operation of the impugned judgment.

15. Mr. Jagat Arora, learned counsel for the Appellants, pointed out that the critical date for determining eligibility was 1st July 2013. On that date, the Respondent No.1 had still one paper to clear in the 5th semester. He passed in that paper only on 31st July 2013. Clearly, therefore, as of 1st July 2013, he was not eligible. The mere fact that he cleared that paper by the date of

the interview would not make him eligible for appointment as PO/MT. Mr. Arora pointed out that neither was PNB a party to the proceedings in the Allahabad High Court, Lucknow Bench, nor were the above peculiar facts concerning Respondent No.1 brought to the notice of that High Court. He relied upon the decision in *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18.

16. Mr. Sarvesh Kumar Dubey, learned counsel for Respondent No.1 submitted that once the Allahabad High Court had permitted Respondent No.1 to attend the interview, it was not open to the PNB to cancel his candidature thereafter.

17. The above submissions have been considered. The learned Single Judge correctly noted that the cut off date for determining whether the candidate possessed the requisite qualification was 1st July 2013. The admitted position is that as on that date, Respondent No.1 was yet to clear one paper in the fifth semester. The certificate dated 16th June 2017 issued by the VTU reads thus:

“ This is to certify that Mr./Ms. Ghanshyam Kumar bearing University Seat. No. 1AY09CV006 was a bonafide student of Acharya Institute of Technology, Bangalore which is affiliated to Visvesvaraya Technological University Belagavi, has completed the degree of Bachelor of Engineering (Civil Engineering). The results of the said candidate for the final semester were announced on 26th June 2013. However, the said candidate has appeared for his 5th semester subject i.e. 06CV54 examination on 28th June 2013 and the results of the semester were announced on 31st July 2013.

The candidate has already taken 3 letters from the University in this regard i.e., 1st January 2014, 20th April 2014 and 2nd June 2014.

The results of 5th semester will not affect the final semester results.”

18. In other words, there was one paper in the 5th Semester remaining to be cleared by Respondent No.1 as on 1st July 2013. He cleared the said paper only on 31st July 2013. In the circumstances, the learned Single Judge was in error in concluding that it was sufficient that Respondent No.1 obtained the requisite qualification by the time of the interview. That clearly amounted to shifting the cut off date from 1st July 2013 and, therefore, seeking to re-write the conditions of appointment, which is not permissible in law.

19. The legal position in this regard has been settled in the decision of a three Judge Bench of the Supreme Court of India in *Ashok Kumar Sharma v. Chander Shekhar IB* (*supra*). That decision was rendered by reviewing the earlier judgment in *Ashok Kumar Sharma v. Chander Shekhar 1993 Supp (2) SCC 611* where by a majority of 2:1, the Supreme Court held that the relevant date for determining eligibility could be the date of interview. On this issue the Review Bench disagreed and held:

“So far as the first issue referred to in our order dated 1st September, 1995 is concerned, we are of the respectful opinion that majority judgment (rendered by the Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law, the proposition that **where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to**

that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their application ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgement. This is also the proposition affirmed in *Rekha Chaturvedi (Smt.) v. University of Rajasthan and others* [1993 Suppl. (3) S.C.C 168]. The reasoning in majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have allowed to appear for interview.” (emphasis supplied)

20. The order of the Allahabad High Court was in a petition filed by 18 Petitioners including Respondent No.1, and to which PNB was not a party. The facts concerning Respondent No.1 were obviously not brought to the notice of that High Court when it passed the orders dated 18th February and 4th March 2014. Therefore, Respondent No.1 cannot seek to avoid the

consequences of the failure on his part to clear the paper in the 5th semester as on 1st July 2013, by relying on the said orders of the Allahabad High Court.

21. Consequently, this Court has no hesitation in setting aside the impugned order dated 16th November 2018 of the learned Single Judge and dismissing the writ petition filed by Respondent No.1.

22. The appeals filed by the PNB and the IBPS are accordingly allowed. No costs. Pending applications are disposed of.

S. MURALIDHAR, J.

MANOJ KUMAR OHRI, J.

APRIL 29, 2019
tr