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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21.02.2019

Pronounced on: 29.03.2019

+ W.P.(C) 2143/2018 & CM APPLN. 8876/2018

BANK OF BARODA

..... Petitioner

Through Ms.Praveena Gautam, Adv. with
Mr.Jitesh P. Gupta, Mr.Pawan Shukla
& Mr.Raja Ram, Advs.

versus

SUSMITA SAHA

..... Respondent

Through Mr.Shashank Khurana, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, petitioner/Bank of Baroda seeks direction thereby setting aside order dated 24.10.2017 passed in case no. 7776/1024/2017 by the learned Chief Commissioner for person with Disabilities, Delhi.

2. The case of the petitioner is that the petitioner issued an advertisement for the year 2014-2015 (13th Batch) for candidates seeking admission to one year Post Graduate Diploma in Banking and Finance (PGDBF), through Baroda Manipal School of Banking (BMSB), and subsequently,

appointment in the Bank's Service as Probationary Officer in JMG/S-I cadre on successful completion of the said diploma and after fulfilment other eligibility criteria. The aforesaid appointment was subject to completion of course within one year from the date of admission (nine months classroom training and three months internship) after regular period of twelve months and by clearing all the back-papers, if any, within a maximum period of three months or one additional attempt. Accordingly, the respondent applied online for the aforesaid diploma course under the physically handicapped category and was declared successful by the petitioner bank. The respondent accepted the offer of admission on the terms and conditions containing therein. However, the respondent failed to complete her diploma course within the stipulated time i.e. in normal course a candidate is required to complete by October, 2015. In order to clear backlog papers, the candidates should have cleared all the papers latest by January, 2016. The respondent completed her course much beyond the permissible three months time that too after several attempts in September, 2016. Since the respondent could not complete her course, therefore, she was not eligible to be appointed as Probationary Officer with the petitioner. The respondent made representation to the Board of Directors and the same was rejected. At last

the respondent filed a complaint under Section 75(1) of the Right of Persons with Disabilities Act, 2016 before the Chief Commissioner for Persons with Disabilities. The petitioner bank vide its reply dated 10/13.07.2017 stated that the respondent is not fulfilling the eligibility criteria for the appointment as Probationary Officer under the prescribed rules and regulations. But she was trying to gain sympathy by raising the same issue again and again by making representations before the various authorities. However, vide order dated 24.10.2017, the Chief Commissioner for Persons with Disabilities despite possession of aforesaid facts allowed the complaint and directed the petitioner bank to provide the employment to the respondent.

3. Learned counsel appearing on behalf of the petitioner submitted that learned Chief Commissioner failed to appreciate that though the respondent completed the diploma course, however, she could not complete the same within stipulated time making herself ineligible for appointment. If the norms prescribed are relaxed for accommodating the respondent in the petitioner's bank, the same will not only deprive the other deserving candidates in the handicapped category but will also open the door for all those candidates who were disqualified in past due to non completion of the diploma course within the stipulated time. The respondent who got the

admission to the 13th batch of said diploma course for the year 2014-15 was required to complete the said tri-semester PGDBF within nine months with a further grace period of maximum three months or one additional attempt whichever is earlier to clear all the backlog to enable her to be eligible for appointment.

4. Learned counsel further submitted that learned Chief Commissioner failed to appreciate that mere admission to the diploma course in BMSB does not give right to a candidate for selection/appointment as Probationary Officer in the petitioner's bank. The same is subject to certain terms and conditions. However, learned Chief Commissioner failed to appreciate that the advertisement dated 12.07.2014 inviting applications for admission clearly stipulates the following conditions:

“FINAL PLACEMENT IN BANK OF BARODA

2.7.1 After successful completion of their course and fulfilling other terms and conditions, as may be specified in the offer letter, all the students will be awarded the POST GRADUATE DIPLOMA IN BANKING AND FINANCE, from Manipal University as a convocation ceremony where they shall also be handed over the final appointment letters from the Bank”

5. Learned counsel further submitted that the petitioner was never given offer of appointment in terms of aforesaid clause 2.7.1. The respondent was only offered admission for the diploma and her offer of appointment with

the petitioner's bank was subject to successful completion of said diploma, which she admittedly failed to complete within the stipulated time frame. It is further submitted that the respondent did not place the correct facts before the learned Chief Commissioner that the diploma course in question was for a period of one year and not for 24 months as alleged by her. Her offer letter for admission to the course bearing no. BCC/HRM/106/B-45/9073-362 dated 16.10.2014 specifically mentioned the duration of the diploma course as one year i.e. tri-semester of three months each and three months of internship. Therefore, the allegation of the respondent that the said course was of 24 months and unilaterally with vested interest reduced the same to one year is completely incorrect. The relevant clause 19 of the said offer letter for admission reads as under:

“19. Successful completion of the course- Successful completion of the course will have to be in terms of fulfilling all the academic requirements, passing of papers and attainment of credits, etc. as stipulated by the Manipal University and no exemptions, whatsoever, will be permissible in any case. Kindly note that all papers of all the 3 trimesters need to be necessarily passed within the duration of 1 year only. If you are unable to pass all the subjects/credits as stipulated above i.e. within the course duration of 1 year, all the back papers will have to be cleared within a maximum of further 3 months or 1 additional attempt whichever is earlier to be eligible for appointment in Bank's service. In all other cases, the offer of appointment in Bank of Baroda shall stand

withdrawn automatically. Any additional expenses required to be incurred in appearing for repeat attempts will have to be borne by you only.”

6. It is further submitted that the petitioner's bank being a public sector is bound by certain set of rules and regulations in collaboration with the Manipal University Learning Pvt. Ltd., and duly governed by the policies of the government. However, by implementing the recommendation passed by learned Chief Commissioner would result in not only the violation of rules and regulations depriving other eligible candidates. Moreover, learned Chief Commissioner has no power to direct the petitioner to give employment to the respondent. It is further submitted that once a candidate appear in the process and could not get success, the said candidate cannot challenge the selection process thereafter.

7. To strengthen aforesaid arguments, learned counsel for the petitioner has relied upon the case of ***Bharat Sanchar Nigam Limited and another vs. G. Sarvothaman: (2013) 10 SCC 489*** whereby the Hon'ble Supreme Court has held that the Chief Commissioner has no power under Section 59 of the 1995 Act to direct any authority to include the person with disability in the list of identified posts and then to order preparation of reservation register for physically handicapped persons and to consider the claim of the

complainant for promotion under the reserved vacancies for the various grades. The Chief Commissioner can only examine whether the persons with disabilities have been deprived of any “rights” for which the Commissioner has to first examine whether the complainant has any “rights” under the laws. The commissioner cannot confer or create any right for the same.

8. He has further relied upon the case of ***Bedanga Talukdar vs Saifudaullah Khan and others: (2011) 12 SCC 85*** whereby the Hon’ble Supreme Court has held that the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Any violation thereto would violate the mandate of Articles 14 and 16 of the Constitution of India.

9. He has also relied upon case of ***Union of India & Ors. vs. S. Vinodh Kumar & Ors.: (2007) 8 SCC 100*** whereby the Hon’ble Supreme Court has held that the candidates who take part in the selection process fully knowing the procedure laid down therein are not entitled to question the same.

10. Learned counsel also relied upon the case of ***Md. Shah Afzal and Ors. vs. Medical Council of India and Ors.*** decided by of this court on 06.07.2010 in W.P.(C) 1352/2008 and 6759/2008 & 8750/2009 wherein

held that once the Chief Commissioner takes a view on a particular complaint and then takes up the matter with an appropriate authority, if such view is permissible in law, then the appropriate authority would be obliged to redress and remove the grievance of the complainant. In case the concerned authority does not take any action whatsoever, it would then be open to the aggrieved person to approach the High Court under Article 26 for an appropriate writ, direction or order, if he makes out a case of deprivation of a right or non-implementation of laws, rules etc.

11. Learned counsel for the petitioner further submitted that in the facts and circumstances of the case and legal proposition, the impugned order dated 24.10.2017 deserves to be set aside by allowing the present petition.

12. On the other hand, learned counsel for the respondent submits that the petitioner has deliberately not filed email dated 09.08.2016 from Baroda Manipal School of Banking to the respondent wherein the 15 months requirement was waived by stating as under:

“Please note that this will be the final chance for you to clear the subject and the course, as per university rules.”

13. Thus, the petitioner has intentionally and deliberately not filed this email and has obtained interim relief from this court. The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as ‘*the Act*’) replaced the

earlier Act of 1995 to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The said convention lays down the following principles for empowerment of persons with disabilities:-

- “(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;*
- (b) Non-discrimination;*
- (c) Full and effective participation and inclusion in society;*
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- (e) Equality of opportunity;*
- (f) Accessibility;*
- (g) Equality between men and women;*
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;”*

14. It is further submitted that India is a signatory to the said Convention and on 01.10.2007, the Convention was ratified by it. From the above, it is apparent that the same were enacted to bring an end to discrimination against physically disabled persons. Positive measures have been indicated in the said enactment so as to provide education to physically disabled children/persons not only in normal schools but also in specialized institutions. There is also a requirement that physically disabled persons

should be given special consideration in the matter of employment so that they are not left out of the social mainstream and are also made to contribute to the social and economic development of the nation. In terms of the said Act, it is the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities as also to create a barrier free environment for such persons. The special provisions should be made for the integration of persons with disability into the social mainstream. It is pertinent to refer Section 3 of the Act provides as under:

“3. Equality and Non-Discrimination

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate government shall take steps to utilize the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.”

15. Further, for the effective implementation of the Act and in order to safeguard the rights of the Persons with Disabilities, Section 75 of the Act provides for the functions of the Chief Commissioner and the same are as under:

“75 (1) The Chief Commissioner shall –

(a) Identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;

(b) Inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(c) Review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) Review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) Study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

(f) Undertake and promote research in the field of the rights of persons with disabilities;

(g) Promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(h) Monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(i) Monitor utilization of funds disbursed by the Central Government for the benefit of persons with disabilities; and

(j) Perform such other functions as the Central government may assign. (2) The chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act.”

16. In addition to above, Section 76 of the Act provides that whenever, the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) of Section 75, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendation. However, where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Chief Commissioner within a period of three months, and shall also inform the aggrieved person.

17. Learned counsel for the respondent further submitted that the respondent is a female handicapped with 50% locomotor disability. The respondent had cleared the online examination for the Post Graduate Diploma Course in Banking and Finance conducted by the petitioner's bank

in collaboration with Baroda Manipal School of Banking. The respondent was selected as a Probationary Officer JMGS-1 scale after having cleared the online test on 14.08.2014 as well as Group Discussion and Interview held on 09.09.2014 from among 6 lakh candidates. The respondent was selected under the 50% Physically Handicapped quota. It is further submitted that on the instance of the petitioner, the respondent was forced to take an Education Loan of ₹4,33,642/- from the petitioner bank and the petitioner assured the respondent that once she signs the documents, she will get the job after the training course in BMSB. Accordingly, the loan which was advanced to the respondent was to be paid to the above school. Out of twenty subjects, the respondent had cleared all the exams/papers within 12 months/15 months except few papers. The petitioner bank and aforesaid school permitted the respondent to appear in the examination and complete the same even beyond the aforesaid period vide email dated 09.08.2016 thereby waiving the condition of 12 months/15 months wherein it was stated as follows:

“The test in Term II subject where you have a backlog, will be held on Friday, September 9, 2016 at 10.00 a.m. The notification issued by the University in this regard is attached.

Please note that this will be the final chance for you to clear the subject and Course, as per University

Rules....”

(emphasis added)

18. Learned counsel further submitted that the petitioner has most importantly failed to file the email dated 09.08.2016 from the Baroda Manipal School of Banking to the respondent wherein the 15 months requirement was waived by the petitioner. The petitioner has further failed to file mark-sheet, merit list as well as CGPA list of September, 2016. It is further submitted that the respondent was seriously ill from 15.12.2015 to 25.12.2015 as she was suffering from acute lower respiratory tract infection with respiratory distress since 15.12.2015 and had informed the authorities about her illness and had requested them to change the date of examination from 2015 to January, 2016 but the said request was declined.

19. I have heard learned counsel for the parties and perused the material on record.

20. The Act was enacted to prevent any discrimination against the physically disabled persons as well as to ensure that special considerations are given to physically disabled persons in the matter of employment so that they are not left out of the social mainstream and are also made to contribute to the social and economic development of the nation. However, in the present case, the petitioner failed to offer any facility to the physically

handicapped persons in respect of the time line for completion of the course. However, right after admission, the petitioner had expectation that a person with disability to compete with general category candidates, however, the same is contrary to the intent and purpose of the Act. Because of the actions of the Petitioner, the respondent has been left as unemployed and the Bank is demanding the loan amount to be returned with an extra amount of ₹1,52,500/- as interest.

21. The time period of 15 months was never informed to the respondent at the time of applying the same. No warning or intimation was provided regarding Clause-19. (15 months requirement). Even the advertisement and the notification issued by the Bank of Baroda did not mention about the 15 months period. Rather, BMSB itself waived the condition vide its email dated 09.08.2016 referred above. If the respondent was intimated at that point of time, she would have the option to leave the course instead of paying additional tuition fee every semester. As per the said email, the respondent was given a final opportunity to complete the course. Therefore, the respondent had a legitimate expectation that in case she cleared the exams, she would be given the job. Accordingly, respondent cleared the exams and completed the course.

22. In case of ***Central Inland Water Transport Corporation Limited and Another vs. Brojo Nath Ganguly & Anothers: (1986) 3 SCC 156*** whereby the Hon'ble Supreme Court observed as under:

“Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that

contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction.”

23. In case of ***Kunal Singh vs. Union of India and Another: (2003) 4***

SCC 524, the Hon’ble Supreme Court has observed as under:

“In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.”

24. In case of ***National Federation of the Blind Vs Union of India &***

Ors: 156 DLT 446 (DB) passed by this court, has held that:

“The Disabilities Act was enacted for protection of the rights of the disabled in various spheres like education, training, employment and to remove any discrimination against them in the sharing of development benefits vis-a-vis non-disabled persons. In the light of the legislative aim it is necessary to give purposive interpretation of Section 33 with a view to achieve the legislative intendment of attaining equalization of opportunities for persons with disabilities.”

25. In the case of *Punjab Communications Ltd. vs. Union of India and Ors: (1999) 4 SCC 727*, the Hon'ble Supreme Court has observed as under :

“27. The basic principles in this branch relating to “legitimate expectation” were enunciated by Lord Diplock in Council of Civil Service Unions vs. Minister of the Civil Service at pp. 408-409). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either

(i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment;

or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.”

26. At the time of giving admission letter, the students, who have no bargaining power, are made to sign documents/admission forms which are nothing but standard form of contracts containing unreasonable and unfair terms and conditions adverse to the interest of the students. The freedom of contract must be founded on equality of bargaining power between contracting parties. The respondent had no choice or rather meaningful

choice but to give her consent and sign on the dotted line in the prescribed form or standard form and to accept the rules, howsoever, unfair, unreasonable and unconscionable the terms and conditions may be.

27. The respondent is academically meritorious. She has passed all exams despite her disability. She also passed Group Discussion and Interview securing 83 marks which is nearer to General Candidates' cut off marks of 89, Schedule Castes cut off was 72 and Physically Handicapped candidate's cut off was 69. Thus, it shows that not only did the respondent secure minimum level of academic qualification but also has adequate merit.

28. It is pertinent to mention here that even though the petitioner and the banking school had already decided that the respondent was not to be given employment, but they still allowed her to continue and continued to take money for the 2nd and 3rd semester. The respondent had paid a fee of ₹4,22,614/- to the school after taking a loan from the petitioner and now she has to repay the loan but she has no other means of source of income. Moreover, the petitioner had forcibly and intentionally kept all her certificates in their custody due to which respondent could not apply anywhere for the last three years and her age has crossed over 33 years.

29. It is also pertinent to mention here that in advertisement in the

newspapers it was not mentioned in how many months to complete the course. Moreover, the respondent has specifically completed the course, irrespective of completing in marginal longer time. No extra time was given in the exam which is clear violation of rules and statutory rights of persons with disabilities Act, 2016.

30. A Chief Commissioner under the Act functions as a quasi-judicial authority and has ample powers to decide the issues entrusted to it. The orders passed by the Chief Commissioner are not to be ignored and must be given serious and due consideration and weightage. It has to be kept in mind that the Act is a beneficial legislation and, therefore, the provisions should be interpreted and construed in a manner which advances the benefits given under the said legislation. Consequently, the powers and functions of the Commissioner would have to be given the widest amplitude possible within the four corners of the provisions of the said Act itself. The Chief Commissioner is certainly required to and is empowered to look into any transgression of the rights of persons with disabilities as also to examine the issue of non-implementation of laws etc., which are for the welfare and protection of rights of persons with disabilities.

31. The respondent is a female handicapped with 50% locomotor

disability. She had cleared the online examination for the Post Graduate Diploma Course in Banking and Finance conducted by the petitioner's bank in collaboration with Baroda Manipal School of Banking. She was selected as a Probationary Officer JMGS-1 scale after having cleared the online test on 14.08.2014 as well as Group Discussion and Interview held on 09.09.2014 from among 6 lakh candidates. She was selected under the 50% Physically Handicapped quota. She is academically meritorious. She has passed all exams despite her disability. She also passed Group Discussion and Interview securing 83 marks which is nearer to General Candidates' cut off marks of 89, Schedule Castes cut off was 72 and Physically Handicapped candidate's cut off was 69, despite that she is not given appointment on the flimsy ground.

32. In view of above discussion and the settled legal position of law, there is no merit in the present petition.

33. The writ petition is, accordingly, dismissed with no order as to costs.

34. Consequently, the petitioner is directed to comply order dated 24.10.2017 passed by the learned Chief Commissioner for Persons with Disabilities, Delhi within four weeks with all consequential benefits.

CM APPLN. 8876/2018

In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

**(SURESH KUMAR KAIT)
JUDGE**

**MARCH 29, 2019
@mit/ab**

