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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

LPA-1930-2019 (O&M)

Date of Decision: 3rd December, 2020

Canara Bank through Satya Shivanand Kumar Sinha

...Appellant

Versus

Sonia and others

...Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Rakesh Gupta, Advocate for the Appellant.

Mr. Ashok Sharma Nabhwala, Advocate for the Respondent
No. 1.

AVNEESH JHINGAN, J.

1. This intra-court appeal is filed against a judgment dated 21st May, 2019 of the learned Single Judge allowing writ petition, CWP-25316-2016. The Appellant-Canara Bank ('Bank') was, by the impugned judgment, directed to consider the case of the Petitioner (Respondent No 1. in this appeal, hereinafter referred to as 'Petitioner') for regularization w.e.f. the date her juniors Mukesh Kumar and Manoj Kumar were regularized. The pecuniary benefits were to be given along with interest @ 6% per annum however, these were confined to 38 months prior to filing the writ petition.

2. The brief facts are that the Petitioner on 18th June, 2011 was appointed on daily wage basis, as a part-time House Keeper-cum-Peon ('HKP'). On 20th January, 2014, there was a Memorandum of Settlement (hereafter 'MoS') between the Bank and the Employees Union of Bank, for regularization of part-time employees engaged up to 30th April 2010, against the permanent vacancies and conversion of part-time employees on full time HKP. For filling up vacancies of HKP arising after 1st May 2010, the Employees Union of the Bank requested for relaxation of age and qualification for persons intermittently engaged on or after 1st May, 2010.

By the said MoS dated 30th August, 2014, relaxations were given for age and educational qualification for the persons engaged by the branches/offices of Bank on or after 1st May, 2010 who continued to be engaged till 28th January, 2014 and on date of settlement.

3. In the year 2015, the Petitioner came to know that the Bank has regularized some persons as per the MoS. A representation dated 15th April, 2016 was filed by the Petitioner raising a grievance that she has not been regularized whereas similarly situated employees were regularized. Thereafter, CWP-25316-2016 was filed, seeking directions to the Bank to regularize the Petitioner in view of the MoS dated 30th August, 2014 and to give other benefits from the date of regularization of similarly situated employees. The Bank filed a reply stating that as per the MoS, persons engaged against permanent vacancies were to be regularised and it was for such employees that relaxations for age and qualification were made. The Petitioner was not engaged against a permanent vacancy, whereas the employees regularized were engaged against permanent vacancies.

4. The learned Single Judge allowed the writ petition considering only a portion of the MoS, stating that relaxation in age and qualification is made available to person intermittently engaged for cleaning on or after 1st May, 2010. It was held that stand of the Bank that Petitioner was not engaged against a permanent vacancy was not tenable. Aggrieved, the Bank has preferred the present appeal.

5. The appeal is accompanied by an application for condonation of delay of 51 days in filing the present appeal. For the reasons mentioned therein, the application is allowed. With the consent of both the parties, the appeal is taken up for final hearing today itself.

6. Learned counsel for the Bank argues that the Petitioner sought regularization on the basis of the MoS dated 30th August, 2014. While allowing the writ petition, the terms of the MoS were not considered in their entirety or as a whole. It is contended that the Petitioner was not appointed against a permanent vacancy and only employees appointed

against the permanent vacancies were entitled to be regularized. The case of the Petitioner never fell within the ambit of the terms of settlement.

7. Learned counsel for the Petitioner, on the other hand, contends that the Petitioner was discriminated against and that similarly situated employees, who were junior to the Petitioner had been regularized whereas the Petitioner was not.

8. The above submissions have been considered. To begin with, the relevant portion of the MoS dated 30th August, 2014 is reproduced below:

“WHEREAS the bank and CBEU had entered into a memorandum of Settlement dated 24.01.2014 under Section 2 (p) read with Section 18 (1) of Industrial Disputes Act, 1947 and Rule 58 of Industrial Disputes (Central) Rules 1957 in the matter regularization of persons engaged in the permanent vacancies of part time employees (PTES) up to 30.04.2010 and conversion of permanent part time employees (PTES) as full time house keeper-cum-peon (HKP) and other allied issues, which was communicated vide HO Memo No. 11/2014 dated 28.0.2014, herein after called as "Memorandum of Settlement dated 24.01.2014".

WHEREAS the parties in the above settlement had also discussed the matter of "eligibility/filling up of vacancies of HKPS arisen after 01.05.2010."

WHEREAS CBEU has requested for extending relaxation in age and qualification for those persons who are intermittently engaged by the branches for cleaning work on or after 01.05.2010 and continued to be engaged as on 28.01.2014, while filling up of the vacancies of HKPs in terms of Memorandum of Settlement dated 24.01.2014.

AND WHEREAS parties have discussed the issue and after deliberation on the above, have arrived at consensus/settlement on the following terms and conditions

TERMS OF SETTLEMENT:

It is mutually agreed by the parties as under:

The parties have agreed that the following relaxation in the age and educational qualification will be made available to a person, if any, who is intermittently engaged by the branches/ offices for cleaning on or after

01.05.2010 and continued to be engaged as on 28.01.2014 and on the date of this settlement:

Effective date :		PROPOSED norms
As on date of initial engagement		(AFTER RELAXATION)
Qualification	Minimum	No Minimum
	Maximum	10 th Standard or Equivalent
Age	Minimum	18 YEARS
	Maximum	31 years (General) 34 years (OBC) 36 years (SC/ST) 41 years (PWD)

The parties agree that the candidate of such person/s if any, be considered to NLA the HKP vacancy directly, subject to fulfilling the above recruitment norms after relaxation as on the date of their first /initial date of engagement in such permanent vacancies. It is hereby agreed that the decision of the Bank about the sufficiency of the proof of such engagement shall be final.”

(emphasis supplied)

9. Before proceeding further, it would be appropriate to reproduce para-5 of the reply filed by the Bank in the writ petition.

“5. That the averments & allegations made in para no.7 of the petition are false & incorrect, hence denied. The respondent Bank conducted the regularization exercise in question strictly according to the policy & norms of the Bank in an impartial & independent manner. The petitioner was not engaged against the permanent vacancy. The persons who were regularized were those who engaged against permanent vacancy on or before 30.04.2010. Therefore, the petitioner's case is altogether different from the employees who were regularized and therefore, the petitioner is not entitled for regularization of service.”

(emphasis supplied)

10. From a perusal of the MoS annexed to the writ petition, it is apparent that only persons engaged against permanent vacancies were eligible for regularization. The condition was that the employee should have continued to be engaged as on 28th January, 2014 and on the date of the MoS. The regularization was subject to fulfilling of the relaxed norms on the date of initial engagement against a permanent vacancy.

11. The specific stand of the Bank was that the Petitioner was not engaged against a permanent vacancy and only persons engaged against permanent

vacancy were to be regularized. The said averment was not rebutted by the Petitioner. No replication was filed, nothing was produced to establish that she was appointed against a permanent vacancy.

12. In the considered view of this Court, the learned Single Judge appears to have erred in read the expression '*who is intermittently engaged by the branches/ offices for cleaning on or after 01.05.2010*', occurring in the MoS, in isolation. The said portion is part of the terms of the MoS which have to be read in entirety. The terms of settlement were only for regularizing persons engaged against permanent vacancies. The relaxations of age and educational qualification were for employees who were intermittently engaged on or after 1st May, 2010 against permanent vacancies. In other words, the MoS was not to regularize all the employees engaged on or after 1st May, 2010. Clearly, therefore, the Petitioner did not qualify for regularization.

13. As regards the plea of the Petitioner that two other employees junior to her, and similarly placed, were regularized, it is seen that this averment has been specifically denied by the Bank in its counter affidavit in the writ petition. The Petitioner failed to place any material on record to show to the contrary. Therefore, there is no merit in this contention either.

14. For the aforementioned reasons, the impugned judgment dated 21st May, 2019 of the learned Single Judge is set aside and the appeal is allowed. No costs.

15. Since the appeal has been decided on merits, the application for vacation of stay has been rendered infructuous and is disposed of as such.

[AVNEESH JHINGAN]
JUDGE

[S. MURALIDHAR]
JUDGE

3rd December, 2020

pankaj baweja

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes