

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 15895 of 2021

Ramesh Prasad Das
Vs.
Punjab National Bank & Ors.

Mr. Sunil Kumar Gupta
Mr. Dipanjan Biswas
... For the petitioner

Mr. Pankaj Kumar Mukherjee
Mr. Sandip Kumar Das
... For the respondent Bank/PNB

Mr. Dipanjan Datta
... For the respondent no.5/IBPS

In terms of the order dated 29th November, 2021, Punjab National Bank (in short “PNB”), the respondent Bank, has provided the details in form of an instruction to its advocate. The said instruction is taken on record.

Case of the Petitioner:

The petitioner has retired from Indian Navy on 28th February, 2021. On the date of his retirement, the petitioner had served the Indian Navy for over 14 years. The petitioner also belongs to the Scheduled Caste (in short “SC”) community. The petitioner applied in the Common Recruitment Process for appointment of Clerks in various banks under the Ex-Servicemen Category. In the application form the petitioner had, however, mentioned to belong to “ST” i.e., Scheduled Tribe

instead of “SC” apart from being an Ex-Serviceman. The petitioner is born on 19th July, 1987 and, as such, as on 1st September, 2020, being the cut-off date, the petitioner was 33 years and 43 days old. As per the advertisement, the maximum age limit as on 1st September, 2020 for being considered for the recruitment process in respect of SC and ST was 33 years (28+5). In the category of Ex-Servicemen, the maximum permissible age is 3 years plus the actual period of service rendered in the Defence Force subject to a maximum age limit of 50 years. The petitioner being of over age was not entitled to participate in the recruitment process either as an SC or as an ST candidate. The petitioner, however, by virtue of rendering more than 14 years of service was entitled to an exemption of 17 years (14+3). The petitioner, therefor, had been considered in Ex-Servicemen Category as in his case the cut-off age with the relaxation would be 45 years (28+17) and it was less than the minimum age limit in Ex-Servicemen Category i.e., 50 years and not 33 years as in the case of SC and ST. The petitioner participated in the recruitment process and obtained 39.50 marks out of total 200 marks which on being calculated in 100 would come to 19.375. The petitioner on having received the qualifying marks was recommended for appointment in Punjab National Bank (in short “PNB”) and was directed to report at Punjab National Bank, Circle Office, South 24-

Parganas, on 1st July, 2021 with all his requisites including the caste certificate. The petitioner was unable to show that he belonged to the ST Category but showed his SC certificate. This fact was taken note of by PNB and was intimated to the recruiting authority. The petitioner says that the marks obtained by the petitioner also qualifies him to be considered under the Ex-Servicemen Category belonging to SC community for appointment but the respondent authorities have not taken note of such fact. The petitioner says that by mistake he had mentioned in the online application form to belong to ST Community instead of SC Community. The petitioner after receiving the admit card as also when he reported for appointment wanted to correct this mistake in his form but the same was also not allowed.

The petitioner has approached this Court on 27th September, 2021, inter alia, seeking a direction to allow him to correct his form indicating therein SC as category instead of ST and to be considered for appointment under Ex-Servicemen Category belonging to SC Community.

The petitioner has relied upon a Division Bench judgment of the Delhi High Court dated 23rd December, 2016 passed in W.P. (C) 11642 of 2016 and CM No.45868 of 2016 (Ajay Kumar Mishra v. Union of India & Ors.) to contend that the correction can be allowed to

consider him under Ex-Servicemen Category belonging to SC Community for the employment as he is not deriving any benefit.

Case of PNB:

On behalf of PNB, it is submitted that the total number of vacancies which include the sub-headings – (i) General (in short “GEN”), (ii) Scheduled Caste, (iii) Scheduled Tribe, (iv) Other Backward Classes (in short “OBC”) and (v) Economically Weaker Section (in short “EWC”) are 1193. Out of this total seat of 1193, there is a horizontal reservation for Physically Handicapped (in short “PH”), Ex-Servicemen (in short “EXS”) and Disabled Ex-Servicemen (in short “DIS-EXS”). Reservation for PH is 27, EXS is 142 and DIS-EXS is 1. In view of such horizontal reservation, 142 EXS will include candidates from all the categories, i.e., GEN, SC, ST, OBC and EWS. Thus, a person who has applied as an Ex-Serviceman and belongs to ST will be considered within 142 vacancies reserved for EXS and at the same time a maximum intake of 63 persons against the vacancies of ST is permissible. Similarly, Ex-Serviceman belonging to SC will be considered against the 142 vacancies as also against 257 vacancies under SC category in view of the horizontal reservation. The petitioner applied under ST category as an Ex-Serviceman so he was considered under the said category against 63 vacancies. The petitioner could not produce his ST Certificate and, as such, his candidature

was cancelled. In view of the option given by the petitioner in the online application form filled in by the petitioner, the petitioner was not considered under the category Ex-Servicemen belonging to SC category. The whole basis in the case of the petitioner, therefor, will change as he applied under the Ex-Servicemen Category on having mentioned ST instead of SC in his online application form.

It is further submitted that in the advertisement, it was specifically mentioned as follows:-

“Please note that no change of category will be permitted at any stage after registration of the online application and the result will be processed considering the category which has been indicated in the online application, subject to guidelines of the Government of India in this regard.”

Thus, the petitioner after having applied as Ex-Serviceman under ST Category cannot be permitted to change his category in the application form. The petitioner's candidature, therefor, has been rejected rightly.

In support of its contention, PNB has relied upon two judgments of the Hon'ble Supreme Court, one delivered on 3rd May, 2013 in Civil Appeal No.4282 of 2013 (Registrar General, Calcutta High Court v. Shrinivas Prasad Shah & Ors.) and the other judgment

delivered on 29th August, 2019 in Civil Appeal No.6696 of 2019 (Rajashan High Court, Jodhpur & Anr. v. Neetu Harsh & Anr.).

Case of Respondent No.5/IBPS:

On behalf of the respondent no.5, it is submitted that the said respondent will find immense difficulty if the writ petition is allowed as more and more candidates will approach the Court all over India with similar plea. If this Court is leaned to allow the petitioner's prayer, then the same should be without creating any precedence and should be restricted only to the petitioner. Respondent no.5 further says that the said respondent is not an authority under Article 12 of the Constitution of India and, as such, no application under Article 226 of the Constitution of India lies against the said respondent. The respondent no.5 adopts the rest part of the submission made on behalf of PNB.

Decisions:

After going through the instructions submitted by PNB, it appears that out of 257 vacancies under SC Category, 219 vacancies have been filled in. Similarly, under ST Category, out of 63 only 48 vacancies have been filled in. It also appears that out of 142 vacancies reserved for Ex-Servicemen under horizontal reservation, 134 vacancies have been filled till now. Out of total vacancies of 1193, only 1008 vacancies have

been filled in till now. It is, therefor, apparent that the total vacancies are unfilled. The vacancies under SC and ST Categories have also not been filled in. The horizontal reservation under Ex-Servicemen has also not been exhausted.

The petitioner, therefor, can be considered under the Ex-Servicemen Category as an SC candidate instead of ST candidate under Ex-Servicemen Category though he may have wrongly indicated in his application form as ST instead of SC if the marks obtained by the petitioner is higher than the last person taken under SC Category but belonging to the category of Ex-Servicemen. The petitioner will, therefor, derive no additional benefit as the examinations are already over and vacancies still exist even if the petitioner's candidature is considered only in the light of the marks already obtained by him treating him to be an "SC" candidate belonging to Ex-Servicemen Category instead of ST candidate belonging to the Ex-Servicemen Category.

The judgments cited by PNB are factually different. In Shrinivas Prasad Shah (supra), the respondent in that case as the candidate did not produce the certificate required to be produced from the competent authority though he had mentioned to belong to Gonda Community – Scheduled Tribe Community. The Hon'ble Supreme Court had set aside the order of

the High Court in view of the fact that a candidate against the advertisement, which fell for scrutiny in that case, was required to be produced a certificate in support of his/her claim from a competent authority as specified under the West Bengal Scheduled Caste and Scheduled Tribes (Identification) Act, 1994.

In the instant case, the petitioner has a SC Certificate. Whether the same is issued by the competent authority fulfilling the requirement of the advertisement will fall for consideration of the Bank who is to give appointment to the petitioner on petitioner's name being recommended upon having been declared successful. This scrutiny should not be done by the Court at this stage as there is no dispute raised as to the genuineness and authenticity of the petitioner's certificate under SC Category.

In *Neetu Harsh (supra)* the candidate after publication of the final result being unable to qualify had applied for being considered under Disabled Category, though she had appeared in the examination under General Category without relying upon the Disability Certificate. The Hon'ble Supreme Court in that perspective had rejected the petitioner's claim by setting aside the order of the High Court.

The judgment relied upon by the petitioner in *Ajay Kumar Mishra (supra)* is more applicable in the facts of the instant case as the petitioner will not be

deriving any benefit if he qualifies under Ex-Servicemen Category belonging to SC on the basis of the marks obtained when there are vacancies in the said particular category.

Assuming without admitting that no writ petition lies against respondent no.5, then also the writ petition is maintainable against other respondents. That apart and in any event the role of the respondent no.5 was limited to the extent of conducting the examination wherein the petitioner has been admittedly awarded the marks which requires to be considered by the appointing authority i.e., PNB in the instant case in the changed circumstances.

Conclusion:

In the facts and circumstances as aforesaid, PNB is directed to consider the petitioner's case as a candidate under Ex-Servicemen Category belonging to SC Category on the basis of the marks obtained by the petitioner in the examination if the petitioner's certificate under SC Category conforms the requirement of the advertisement.

It is made clear that no deviation from other eligibility criteria as in the advertisement should be allowed.

This order is also passed keeping in view, the unfilled vacancies and that no one belonging to the

same category to that of the petitioner having obtained higher marks than the petitioner will be effected by this order.

It is also made clear that this order is only in respect of the petitioner and shall not be construed as a precedent in respect of any other person who has appeared in the subject selection process.

The writ petition is allowed and disposed of accordingly without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)