



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) .No.3183 of 2018

and

W.M.P. (MD) .Nos.3340 and 3341 of 2018

M.Ganapathy Kani

... Petitioner

vs.

1.The Assistant General Manager,
Indian Overseas Bank,
HRMD - Sub - Staff Selection,
Central Office,
763, Anna Salai,
Chennai 600 002.

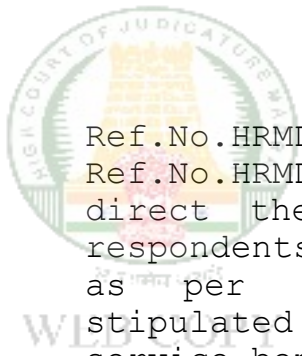
2.The Lead District Manager,
Indian Overseas Bank,
Lead Bank Office,
Cutchery Road,
Virudhunagar 626 001.

3.The Chief Manager,
Indian Overseas Bank,
Personnel Administrative Department,
Regional Office,
Anna Nagar,
Madurai 625 020.

4.The Chief Manager,
Indian Overseas Bank,
Personnel Administrative Department,
Regional Office,
Chidambaram Nagar,
Tuticorin 628 001.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings issued by the first respondent /Assistant General Manager of Indian Overseas Bank, in his letter dated 30.08.2017 with



Ref.No.HRMD-SUBS/48/2017-18 and also letter dated 11.12.2017 in Ref.No.HRMD/CLK/95/2017-18 and quash the same and consequently direct the first respondent to regularise his service as the respondents have regularised similarly placed employees in Phase-1 as per Ref.No.EST/71/2010-11, dated 23.03.2011, within the stipulated time as fixed by this Court along with all monetary and service benefits.

For Petitioner : Mr.C.Masilamani
For Respondents : Mr.N.Dilip Kumar
Standing counsel

O R D E R

The petitioner had joined the services of the Indian Overseas Bank, Virudhunagar on 28.02.2001. On 05.05.2017, he had sought absorption in regular service. The second respondent has forwarded his application to the Chief Manager for necessary action. While this is so, and when the petitioner reiterated his request for absorption, the Bank abruptly asked him to desist from attending to duty without having passed an order of termination or even issuing a notice in this regard.

2. He approached this Court by filing writ petition in W.P. (MD).No.10555 of 2017, seeking consideration of his representation dated 05.05.2017, in response to which, the impugned order has been passed on 30.08.2107, rejecting his request.

3. The reasons set out for such rejection is that the petitioner was overqualified for the post of Messenger, since the required qualification was a pass in VIII Standard or equivalent, but the petitioner had passed XII, which disqualified him in that regard. He made a further representation on 29.11.2017, which has come to be rejected vide the second impugned order dated 11.12.2017, reiterating the earlier rejection.

4. The petitioner challenges both the orders of rejection stating that he was not informed about the service conditions at the time of his recruitment in February 2001. That apart, he relies on Circular bearing Ref.No.EST/7/2010-11 dealing with Temporary Messengers / Sweepers, whereunder Regional Officers were asked to furnish the names of Temporary Messengers / Sweepers, who were appointed in approved permanent vacancies and who had completed 240 days in a calendar year for their absorption as a one-time measure.

5. Though the educational qualification specifically required only a pass in VIII standard or equivalent and nothing superior to that, he would submit that the higher qualification should not be held to prejudice him. That apart, and since he has admittedly put in services of 3634 days amounting to 240 days or more in one calendar year, he urges that his eligibility cannot be called into



question.

6. The decisions relied on by the petitioner in this regard are:

(i) *Mohd. Riazul Usman Gani v. District and Sessions Judge, Nagpur* (2000 (2) SCC 606).

(ii) *R.Lakshmi vs. Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and another* ((2012) 6 MLJ 480).

(iii) *Jatindra Mohan Saha v. Assistant Director (Nursing) Directorate of Health Services and others* (AIR 1963 Calcutta 638).

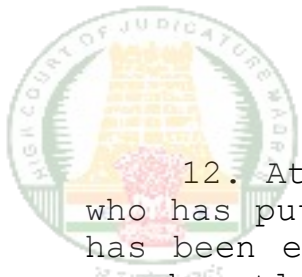
7. The respondent Bank submit that the qualifying norms for messenger are very specific so as to exclude any candidate who has studied beyond the VIII Standard. This being the policy of the Bank and such policy having been expressly accepted by the petitioner even at the time of his recruitment, cannot be bypassed, while considering his request for absorption.

8. Circular in EST/7/2010-11 was a one-time measure that was issued to address the difficulties caused by the haphazard and uncontrolled appointment of Messenger / Sweepers and Drivers without sanction. Many such appointments are unsanctioned as in the case of the present petitioner.

9. Thus, the Circular, while placing an embargo upon making further ad hoc appointments, had, as a gesture of goodwill decided to absorb those candidates, who had completed 240 days and who had acquired a pass in the VIII Standard. They point out that the educational qualification does not merely require a pass in VIII Standard, but specifically excludes those who have passed 10+2 examination or equivalent.

10. Thus, the specific requirement and eligibility is restricted only to those candidates who had passed the VIII standard and who have not studied beyond the XI Standard, successfully. This specific policy can neither be re-written by the Court nor interfered with by the Court, they say. The petitioner has been re-engaged in the capacity of Driver to the Lead District Manager, pursuant to interim protection obtained by him. This is the status as on date.

11. The respondents also rely upon two circulars issued by the Bank in F.No.7/4/9/2012-IR dated 26.10.2012 and IRD/184/29/2015-16 dated 29.01.2016 as well as the two judgments of the Hon'ble Supreme Court in *Zahoor Ahmad Rather and Others vs. Sheikh Imtiyaz Ahmad and Others* in ((2019) 2 SCC 404) and *Chief Manager, Punjab National Bank and another v. Anit Kumar Das* in ((2020) SCC Online SC 897). In all, they would submit that the impugned order is perfectly tenable and warrants no interference.



12. At first blush, it rankles that the services of an employee who has put in 3634 days at the time of filing of writ petition and has been employed with the Bank even thereafter, can be terminated so abruptly and unilaterally. However, public sector banks have long been plagued by the difficulty of ad hoc appointments of drivers and messengers effected by executives of Public Sector Banks.

13. The Banks for their part, have been distancing themselves from such employment holding that there is no employer-employee relationship between themselves and such employees. Regular guidelines are also being issued by the Ministry of Finance in this regard. Circular dated 23.03.2011 was envisaged as a one-time measure for regularization of such ad hoc employments

14. Though this circular does not specifically refer to drivers and only addresses causal appointments and appointments of messengers and sweepers on temporary basis, neither of the learned counsel before me would dispute the applicability of this Circular to the present case.

15. In fact, the petitioner has himself made an application seeking benefit under the aforesaid Circular and referring to a settlement entered into, between the Bank and the employees on 17.02.2011, in terms of which the Circular had been issued. He is thus, bound by both the terms of settlement as well as the norms set out under the Circular that read as follows:-

"Norms for Messengers appointment:

Educational qualification: Pass in VIII Standard or its equivalent but the candidate should not have passed X Plus Two examination or its equivalent. (No relaxation in education qualification for SC/ST/Ex-S/PH candidates).

Age Limit: Age limit - Minimum 18 years maximum 26 years. However, this upper age limit has been relaxed in respect of SC/ST - 5 years, OBC - 3 years Ex-servicemen - 3 years."

16. The norm is very specific and imposes a specific condition, couched in negative terms, to the effect that the candidate in question should not have passed the XII standard examination. This condition stands in the way of the petitioner's request.

17. That apart, the Supreme Court in the case of *Zahoor Ahmad Rather* (supra), considering the scope of judicial interference while examining the eligibility or otherwise of a candidate to a particular post, holds that the exercise of creation of job opportunities and conditions applicable thereto, fall entirely within the domain of the employer. The latter is expected to take into account all relevant angles and perspectives including the social and economic.



18. This exercise is an incident of administration and falls within the domain of policy and administrative decision making. The Bench considered the case of aspirants to posts in the Power Development Department. The candidates did not possess an ITI qualification and hence their request for appointment was rejected.

19. They hence approached the High Court of Jammu and Kashmir and succeeded before the learned single Judge, who held that it was not open to the Jammu and Kashmir State Service Election Board to exclude the appellants after the selection process had commenced and they had been subjected to various procedures thereunder.

20. The learned single Judge was also persuaded to accept their prayer, in view of the fact that the selection criteria had been changed after initiation of the selection process. The Division Bench reverses the order holding that the rejection of their candidature was justified in view of the eligibility conditions prescribed.

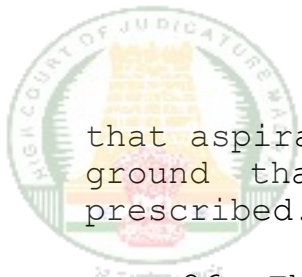
21. In further appeal, the candidates relied upon a note to the eligibility criterion ie., Note -12, which stated that a matric with ITI was the 'bare minimum requirement of job'. The candidates thus argued that the diploma held by them constituted a higher qualification when compared with the ITI and this did not disentitle them.

22. In the course of the extensive discussion that followed, the Bench refers to an earlier decision in the case of *Jyoti K.K. vs. Kerala Public Service Commission* (2010 (15) SCC 596) arising from the Kerala High Court. In that case, the Rule 10(a)(ii) of the Kerala State and Subordinate Services Rules, 1958, came up for consideration.

23. The Rule approved the qualifications recognized by Executive or Standing Orders of the Government as equivalent to a qualifications specified for a post in the Special Rules, and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for that post were also stated to be sufficient.

24. In that case, there was no exclusion of candidates, who possessed a higher qualification. The decision in *Jyoti K.K.* came up for consideration in a subsequent decision in *State of Punjab vs. Anita* (2015 (2) SCC 170), which dealt with the eligibility of candidates for JBT/ETT qualified teachers.

25. The prescribed qualification for JBT/ETT included matric with a two years course in JBT Training and knowledge of Punjabi and Hindi at Matriculation Standard or equivalent. The candidature of



that aspirant was rejected which came to be challenged by her on the ground that she possessed qualifications superior to what was prescribed.

26. The reliance on the case of *Jyoti K.K.* was rejected, since the eligibility criteria in *Anita's* case were not equivalent and there was no inclusion of or reference to superior qualifications in that case. Thus, the Bench held that while the perusal of Rule 10(a) (ii) of the Kerala Rules presuppose the acquisition of lower qualification, if the candidates possessed the higher qualification, a similar provision was unavailable in the relevant Rules as applicable in *Anita's* case.

27. In fine, the Bench in *Zahoor Ahmad Rather*, rejected the argument advanced on behalf of those candidates that the stipulation in Note-12 to the effect that ITI was 'a bare minimum requirement' cannot be extended to assume that it would include a superior qualification as well.

28. At para 28 and 29, the Bench states as follows:

"28. *Ms Wadia* sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the description of candidates who had secured an ITI certification before seeking a lateral entry to a diploma course. Plainly, when an ITI with matric is required, a person who does not hold that qualification is not eligible.

29. The submission based on Note 12, urged by *Ms Wadia*, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the



words "as may be decided by the Board" in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise."

29. The emphasis laid, is on the language in which the criteria is couched and the overarching right of the employer to determine the employment criteria. In the case of *Chief Manager, Punjab National Bank and another v. Anit Kumar Das* in ((2020) SCC Online SC 897) a Bench comprising three Judges of the Hon'ble Supreme Court considered the case of an applicant for the post of peon in the Punjab National Bank.

30. The eligibility criteria therein was that the candidate should hold a pass in the XII Standard or equivalent with basic reading/writing knowledge of English. A negative covenant was also placed, to the effect that the candidate should not be a graduate as on 01.01.2016. Anit Kumar Das was a graduate at the time of his application, citing which his candidature was cancelled.

31. This came to be challenged by him in a writ petition that was allowed on the ground that the appointment should not be cancelled simply because he possessed a higher qualification. The Bank appealed against this conclusion and the Division Bench dismissed the appeal against which the Bank filed an SLP.

32. The proposition that eligibility criteria / educational qualifications of prospective employees are matters to be decided only by the concerned employer was reiterated. Such decisions concern issues of policy in which Courts are normally loathe to intervene. The ratio decidendi is in paragraph 21 extracted below:

"21.Thus, as held by this court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot be arbitrarily or fancifully in prescribing qualifications for posts. In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in



directing the appellant Bank to allow the respondent - original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria / educational qualification mentioned in the advertisement."

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33. The judgment in the case of *Mohd. Riazul Usman Gani* has been specifically referred to by the Bench in the case of *Anit Kumar Das* as that was the basis upon which the learned single Judge had accepted the case of that petitioner. Clearly the rationale thereof has not found favour with the larger Bench.

34. In the light of the march of the law as discussed in the paragraphs above, the challenge to the impugned orders fails and this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

ORDER MADE IN

W.P. (MD)No.3183 of 2018

03.02.2022

sb(CO)

TR(14.02.2022) 8P 1C