



W.P.No.8861 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.8861 of 2017
and
W.M.P. No.9731 of 2017

S.Arunachalam

.. Petitioner

VS

1.Indian Bank rep. By its
Chairman and Managing Director,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai – 14.

2.The General Manager (HRD & HRM),
Indian Bank,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai – 14.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned order issued by the 2nd respondent dated 16.09.2016 and quash the same and consequently direct the respondents to promote the petitioner to clerical cadre from the date he came out successful in the written test with due seniority and all arrears of monetary benefits within a time frame.



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W.P.No.8861 of 2017

For Petitioner : Mr.K.M.Ramesh,
Senior Counsel
for Mr.S.Apunu

For Respondents : Ms.Rita Chandrasekar
for M/s.Aiyar and Dolia

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking records of the impugned order issued by the second respondent, the General Manager (HRD & HRM), Indian Bank, Corporate Office / Head Office, Chennai dated 16.09.2016 and quash the same and direct the respondents to promote the petitioner to Clerical grade from the date he was successful in the written test with due seniority and also pay necessary monetary benefits.

2. The petitioner herein had been originally appointed after being sponsored by employment exchange to the first respondent bank / Indian Bank as temporary Peon in the year 1983. He was then absorbed as sub-staff on 25.01.1993. He was transferred to Devarshola Branch and was working in that particular branch on the date of filing of writ petition. He was due for superannuation in April, 2018, which would effectively mean that as on date he had retired from service.



W.P.No.8861 of 2017

WEB COPY

3. In the meanwhile, there was a settlement under Section 18(1) of the Industrial Disputes, Act, 1947, entered into between the Federation of the Indian Bank Employees' Union and the Management wherein various covenants were agreed between the Union and the Management relating to promotion of staff. One such agreement was with respect to pendency of disciplinary proceedings or court cases against an employee. It was covenanted by both Union and the Management that pending disciplinary proceedings or court cases, at the time when the employee became eligible for promotion, would be considered in the manner which they had set out, namely, that if the employee is otherwise eligible, it would be kept in a sealed cover by the Management and would be opened on conclusion of either the disciplinary proceedings or the court case.

4. It is the contention of the learned Senior Counsel on behalf of the petitioner that the petitioner became eligible to be promoted as Clerk in the year 2011. But unfortunately, he had a very interesting career, wherein, the Central Bureau of Investigation had an occasion to register a FIR, among others, also against the petitioner, who was arrayed as A6 in a case involving, according to the prosecution therein, lending of loans to bogus persons. Let me



W.P.No.8861 of 2017

not enter into the details thereof, particularly because the said criminal case is still pending before the jurisdictional court / Special Court for CBI cases.

5. Be that as it may, since the petitioner had not been promoted on the date when he expected promotion, the Union took it up as an issue and approached the Industrial Tribunal by filing I.D.No.73 of 2014. A reference was raised before the Industrial Tribunal and the same was as follows:-

"Whether the action of the Management of Indian Bank, Chennai regarding denial of promotion to Sri S.Arunachalam, Sub-Staff of the Respondent Bank as per the promotion policy settlement dated 26.02.2010 is justifiable or not? If not to what relief the workman is entitled to?"

6. The Industrial Tribunal was also handicapped since there was a criminal case pending against the petitioner herein, and therefore they stuck a middle path and directed the respondent / Management to review the case of the petitioner by opening the sealed cover. The respondents promptly opened the sealed cover and stated that the petitioner was not eligible for promotion, necessitating filing of the present writ petition.



W.P.No.8861 of 2017

WEB COPY

7. It is contended by learned Senior Counsel on behalf of the petitioner that the terms of the settlement were quite clear that the respondents should also consider the promotional aspects of those who were facing disciplinary proceedings or court cases and that merely because such disciplinary proceedings or court cases were pending, promotional aspect should not be denied or negated. It is therefore contended that the prospect of that particular employee who was so facing either disciplinary proceedings or the court cases should be kept in a sealed cover and on conclusion of the disciplinary proceedings / court cases, the sealed cover should be opened and the contents thereof should be revealed to employee.

8. In the instant case, the petitioner could have waited and should have concentrated in ensuring that he gets an order advantageous to him in the the criminal case. However, even before that, the Union had apparently taken it up as an issue before the Industrial Tribunal. Let me also reduce the operative portion of the order of the Tribunal which was the answer to the reference stated above and which was as follows:-

"The Respondent is directed to conduct a review of the case regarding promotion to the



WEB COPY



W.P.No.8861 of 2017

concerned employee and take a decision and pass an order based on the result of the review, within a month of publication of the award."

9. The impugned order is dated 16.09.2016 wherein the order of review as directed by the Tribunal was revealed to the petitioner herein. After entering into a detailed discussion of all the aspects and after also reducing the terms of the settlement under Section 18(1) of the Industrial Disputes Act, 1947, particularly with respect to the disqualification clauses, it had been finally stated that the criminal case has been regularly listed and has been conducted in earnest. It had been stated that there was no likelihood of the case coming to any conclusion in the near future. That was quite a prophetic statement and it still holds good in the year 2023 as it was stated in the year 2016. Finally, the following order was passed:-

"Order

On having reviewed the case of promotion of Sri.S.Arunachalam, SR.No.40871, Substaff, Devarshola Branch, in terms of Paragraph-3 of the Disqualification Clause of the Promotion Policy Settlement dated 26.02.2010 as directed in Award dated 11.05.2016 in ID.No.73/2015 before the CGIT-cum-Labour Court, Chennai, in the light of the observations as made herein above, I do not find any reason to promote him at present.



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W.P.No.8861 of 2017

Ordered accordingly on this the 16th day of September, 2016 at Chennai.

Sd/-

General Manager (HRD & HRM)”

10. A careful reading of the said order reveals that on that particular date / 16.09.2016, which the signatory to the order had termed as 'at present', it was found that there was no reason to promote the petitioner herein. But that is a fluctuating situation. That was also well worded since on that particular date, the criminal case had not come to any conclusion. The petitioner should await the outcome of the trial process of the criminal case. Thereafter, depending on the said outcome, a direction is given permitting him to give a further representation to the respondents herein. At any rate, the order impugned is qualified stating 'at present'. Any change in circumstances should also play upon mind of the respondents to examine whether there could be a change in that particular decision taken on 16.09.2016. If the petitioner is otherwise eligible and the only impediment was the criminal case, and if the criminal case ends advantageous of the petitioner herein, then certainly he could take recourse to that particular order pronounced by the criminal court and seek and urge the respondents to review the decision taken, which is now impugned in the writ petition.



W.P.No.8861 of 2017

11. I am also confident that the respondents would apply their mind, which naturally they have to, since they have lodged the complaint on the basis of which the criminal case is now in progress. Naturally, they will also be interested in the outcome of the criminal case and the resultant effect on the accused therein, who are their employees, after all. A decision may be taken depending on the outcome of the said criminal case by the respondents. Giving that liberty to the petitioner herein, the writ petition stands disposed of. No costs. Connected miscellaneous petition is closed.

12. Since the petitioner had attained the age of superannuation on 30.04.2018 and if at all the respondents are to consider him for promotion depending on the outcome of the criminal case, he could only be granted notional benefit, but I am confident that necessary benefits / pension would enure to the petitioner herein.

29.08.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm



W.P.No.8861 of 2017

To

WEB COPY

- 1.The Chairman and Managing Director,
Indian Bank,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai – 14.
- 2.The General Manager (HRD & HRM),
Indian Bank,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
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W.P.No.8861 of 2017

C.V.KARTHIKEYAN,J.

ssm

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