

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No. 4853 of 2011

Sri Saumen Basu

Vs

Union of India & Ors.

For the Petitioner : Mr. Sattwik Bhattacharyya,
Mr. Aashutosh Bhattacharya,
Mr. Titas Niyogi,
Mr. Aritra Roy.

For the Respondent No. 2 to 4 : Mr. Debasish Saha,
Ms. S. Pal,
Mr. A.R. Sanyal.

Hearing concluded on : 22.08.2024

Judgment on : 20.09.2024

Shampa Dutt (Paul), J.:

1. The Writ Petition has been preferred by stating that after the petitioner being selected for the post of Assistant in the respondent bank in terms of his personal interview held on 28.04.2010, the petitioner had also applied before the District Primary School Council, Burdwan and accordingly since petitioner performed well as an Ex-serviceman candidate, the petitioner has been given an appointment letter by the said Council vide its Memo No. 2401/APPTT dated 23rd April, 2010 and the petitioner joined Kasemnagar F.P. School, Mongalkot, Burdwan on 25.06.2010 as an Assistant Teacher.
2. It is further stated by the petitioner that the letters of appointment in respect of the said post under the said advertisement No. CRPD/CR/2009-10/04 of the respondent bank had been issued to other selected Ex-servicemen, but the petitioner's appointment was kept in abeyance without assigning any reason whatsoever, though the petitioner fulfilled all the criteria and there is no impediment in the eye of law to appoint the petitioner after receiving such declaration. The petitioner was then constrained to submit a representation before the A.G.M. (Administration), respondent no. 4 on 06.01.2011.
3. The petitioner states that by an office memorandum of the respondent No.1 being OM No. 36034/6190-Estt.(SCT) dated 02.04.1992, he was informed that those Ex-servicemen candidates who have already secured employment, getting benefit as an Ex-serviceman, will not be

eligible for the further benefit of reservation for Ex-servicemen in Central Government jobs. The petitioner has also submitted the documents relating to his present employment in a Primary School as an Assistant Teacher before the respondent no. 4 along with other papers submitted in terms of the offer letter dated 2nd December, 2010, considering the factual aspect and legal provisions that the Primary School Teacher in a Non-Government School does not come under the purview of an employment under the Central Government/State Government etc.

4. It is further stated that other Ex-servicemen having held the post of a primary teacher have also been given appointment in respect of the said post in the said advertisement, considering the sole aspect that an employment as primary teacher in Government sponsored and aided Primary School does not come under the purview of an employment in Government/Public Sector Undertaking or Central Government, as the West Bengal Board of Primary Education is neither the Government nor Public Sector Undertakings but a Body Corporate with perpetual succession and a common seal under the provision of Section 3 of West Bengal Primary Education Act, 1973.
5. Ignoring a legal notice issued through the petitioner's lawyer, the Respondent Bank by an impugned Memo being No. AO/HR/52/2916 dated 21.02.2011 cancelled the offer of appointment of the petitioner, upon rejecting the representation of the Petitioner dated 6th January,

2011 on the sole ground that the appointment of petitioner as Primary Teacher is an employment under Central Govt./Government/Public Sector Undertaking secured, after availing the benefits of reservation for Ex-Servicemen.

6. It is further stated by the petitioner that he made several applications before the authorities concerned for giving appointment to the petitioner as there is no impediment in the eye of law in the aforesaid Government orders, it has been construed that *“Ex-Servicemen candidates who have already secured employment under the Central Government in Group C and D will be permitted the benefit of age relaxation and Ex-Servicemen who had once joined a Government job on the civil side after availing of the benefits given to him as an Ex-Servicemen for his re-employment, his Ex-serviceman status for the purpose of the re-employment in job ceases”*. The petitioner states that his service as a primary teacher does not come under the purview of a Government job on the civil side, but till date the petitioner’s prayer has not been considered.
7. It is further the case of the petitioner that though the petitioner wanted to mention his appointment as primary teacher in the said declaration but the concerned detailing officer of respondent bank while accepting and/or handing over such declaration form of bank insisted the petitioner not to incorporate the same in the captioned declaration form. On the other hand as asked by the said officer to fill-

up the said printed form, the petitioner could not bring the said fact of his such appointment as primary teacher in the said affidavit. As such the allegation of false affidavit and declaration for such employment, as raised in the impugned letter of the respondent no.4 dated 21st February, 2011 is not only nonest in the eye of law but also bereft in reasoning and untrue and thus liable to be set aside.

8. Hence the writ petition praying for the following reliefs :-

- a) *A writ in the nature of mandamus commanding the respondents to set aside and quash the impugned memo dated 21st February, 2011.*
- b) *A writ in the nature of mandamus commanding the respondents bank concerned to give appointment in favour of the petitioner and further commanding them to act in accordance with law in terms of the representation and the legal notice of the petitioner and other related reliefs.*

9. From the materials on record, the following is relevant :-

- i) The advertisement No. CRPD/CR/2009-10/04 for the Recruitment in State Bank of India under **“Definition”** laid down the following conditions:-

“6. Definitions :

Ex serviceman- XX

Disabled Ex-serviceman - XX

Dependents of servicemen killed in action- XX

Note: 1) Candidates still serving in defence and desirous of applying under Ex-servicemen category should submit a certificate from the competent authority to the effect that they would be released/retired on or before 31.08.2010.

2) Ex-servicemen candidates who have already secured employment under the Central Government in Group C & D will be permitted the benefit of age relaxation as prescribed for Ex-servicemen for securing another employment in a higher grade or cadre in Group C & D under the Central Government. However, such candidates will not be eligible for the benefits of reservation for Ex-servicemen.

3) The Territorial Army Personnel will however be treated as Ex-servicemen w.e.f. 15.11.1986.

4) An Ex-serviceman who has once joined a Government job on the civil side after availing of the benefits given to him as an Ex-serviceman for his re-employment, his Ex-serviceman status for the purpose of re-employment in job ceases.”

- 10.** Admittedly, the Writ Petitioner obtained and joined his job as an ‘Assistant Teacher’ in a Primary School under the West Bengal Board of Primary School Education **availing of the benefits/reservation of his Ex-Serviceman status.**

11. Clause 9 of the letter of selection dated 2nd December, 2010 issued by the Bank is as follows :-

“9. Candidates selected under Ex-Servicemen category will have to satisfy the Bank they are fulfilling all the criteria for considering them as Ex-Servicemen. Only thereafter Appointment Letter will be issued.”

12. An affidavit dated 24.12.10 was submitted by the petitioner to the Bank stating an oath as follows :-

*“..... a. That I am aware that the ex-servicemen candidates who have already secured employment in Government/Public Sector undertakings after availing benefit of reservation of ex-servicemen, will not be eligible for the benefit of reservation for ex-servicemen **once again.***

*b. That I am also aware that when an ex-servicemen who has once joined a Government/Public Sector undertaking job on the civil side, after availing benefits given to him as an ex-servicemen, his ex-servicemen status for the purpose of **re-employment in job ceases.***

c. That I have not secured any employment in any Government /Public Sector undertaking either before or after the date of interview held in respect of the recruitment of clerk in State Bank of India (2009-10) and that I am eligible to the

reservation/quota for ex-servicemen in the recruitment being done by State Bank of India.

d. That I am aware that the State Bank of India is offering employment based on this affidavit/declaration and in case this affidavit/declaration is found to be false or any of the statements made in this affidavit/declaration are found to be untrue the State Bank of India is entitled to cancel the appointment and terminate my services without any notice.....”

13. The memorandum dated 12th February, 1999, being no.25-SE(B)/IM-102/98 of the Government of West Bengal, School Education Department, Budget Branch, clearly shows that **the appointment of the writ petitioner was under the Government of West Bengal.**
14. In Para 7 of the writ petition, the petitioner has admitted that he had not made the said declaration in his said affidavit.
15. Thus, the appointment of the petitioner has been rightly cancelled by the Respondent bank being in violation of clause 6 note (4) of the advertisement and as such **the writ petition** having no merit **stands dismissed.**
16. All connected applications, if any, stand disposed of.
17. There will be no order as to costs.
18. Interim order, if any, stands vacated.

- 19.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)