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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 749/2022 & CM APPL. 40737/2022**

RAMESH KUMAR & ORS.

..... Petitioners

Through: Mr. Anand Jha, Advocate
(M:9811186635,email:jhaanand_Pice
@rediffmail.com)

versus

MR ATUL KUMAR GOEL & ANR.

..... Respondents

Through: Mr. Rajat Arora, Mr. Niraj Kumar,
Mr. Sourabh Malla, Mr. Sneh
Vardhan, Mr. Ravi Ranjan Mishra,
Advocates (M:9810176964)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

28.02.2024

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1. The present petition has been filed alleging willful disobedience of the directions passed in judgment dated 28th January, 2022 passed in *W.P.(C) 1530/2022*.
2. By way of the aforesaid judgment, it had been directed to respondent no.1- Bank that the petitioners who are automatically eligible in terms of advertisement dated 26th December, 2021, shall be permitted to apply for the post of Part-Time-Sweeper on or before 10th February, 2022. It was further directed that respondent no.1 shall consider the case of age relaxation of the petitioners who were between the age of 29 to 45 in view of the special circumstances considering the long duration for which the said employees have worked with the bank.
3. Learned counsel for the petitioners submits that the petitioners had



been working as Part-Time-Sweepers for long with the respondent-Bank and despite them being engaged by the respondent-Bank for a long time, their services had not been regularized. Further, their grievance with respect to their regularization, is pending before the Central Government Industrial Tribunal since the year 2011 and 2021, in the industrial disputes raised by the petitioners.

4. It is submitted that despite clear directions by the court in the judgment dated 28th January, 2022, the case of the petitioners have not been considered. Therefore, the present contempt petition has come to be filed.

5. Per contra, learned counsel for respondent-Punjab National Bank submits that directions passed by the court have duly been complied with. Learned counsel submits that only five persons were eligible in terms of the employment notice dated 26th December, 2021 issued by the respondents. He submits that out of the five eligible candidates, only three had applied, out of which, two were selected. He further submits that the case of the other petitioners for age relaxation was duly considered. However, in view of the consistent policy of the respondent-bank, their case was not considered fit for granting any age relaxation. Thus, he submits that the directions passed by this Court have been complied with and that there is no contempt.

6. Responding to the aforesaid submissions, learned counsel appearing for the petitioners submits that out of five eligible candidates, all the five eligible candidates had applied with the respondent-bank. However, the applications of two of the candidates were not considered. This fact is, however, disputed by learned counsel for respondents.

7. This Court has heard learned counsel for the parties and has also perused the record.



8. At the outset, it would be fruitful to consider the directions passed by this Court in judgment dated 28th January, 2022 in W.P.(C) 1530/2022 wherein the following directions were passed:

“xxx xxx xxx

8. In the backdrop of the above factual position, accepting the said statement given on behalf of the bank, the following directions are issued:

1. Insofar as all the Petitioners are concerned, **the Bank shall scrupulously adhere to Section 33 of the Industrial Disputes Act, 1947.**

2. Insofar the Petitioners who are automatically eligible in terms of the advertisement are concerned, they shall be permitted to put in their applications on or before 10th February, 2022 in response to the advertisement dated 26th December, 2021.

3. Insofar as other Petitioners between the age of 29 to 45 are concerned, the bank shall consider age relaxation for them in the special circumstances considering the long duration for which the said employees are working with the Bank. The said consideration shall be done within a period of ten days and if the same is favourable to the employees, they shall also be permitted to file applications in response to the advertisement.

xxx xxx xxx”

(Emphasis Supplied)

9. Perusal of the aforesaid order, clearly shows that there were specific directions to the respondent-bank to ensure that the condition of service of the petitioners were not disturbed and that the respondent-bank shall adhere to provisions of Section 33 of the Industrial Disputes Act, 1947. Further, respondent-bank was also directed to consider the case of the petitioners, who were automatically eligible in terms of the Advertisement dated 26th December, 2021. Further, the third direction which had been issued to the respondent-bank was to consider the case of age relaxation of the



petitioners.

10. This Court notes the submission made by learned counsel for respondents that conditions of service of the respondents have not been changed in compliance of Section 33 of the Industrial Disputes Act, 1947.

11. This Court has perused the reply filed on behalf of the respondents, relevant portions of which are extracted as under:

“xxx xxx xxx

III. That the deponent states that the petition was filed by 44 persons/employees who were working as Part Time Sweepers (PTS) on leave gap arrangement with the Respondent Bank. That the present Contempt Petition has been filed in respect of 39 persons by the Petitioners. That the deponent states in terms of the orders dated 28.01.2022 the directions given in Para 8 of the said orders have been complied with.

(i) The bank is following the provisions of Section 33 of the Industrial Disputes Act and there has been no change in the service condition qua the petitioners.

(ii) That in terms of the direction no. 2 of the orders dated 28.01.2022, 5 petitioners namely Shri Harkesh Kumar son of Shri Kishan Lal, Shri Aakash Kumar son of Shri Anod Kumar, Ms. Preeti Mehraliya Daughter of Krishan Kumar, Ms. Rakhi wife of Shri Rajesh Kumar and Mr. Akash son of Shri Ajnash were eligible to apply in terms of the advertisement dated 26.12.2021 issued by the Respondent Bank. That out of the five names as mentioned above only three persons, namely, Shri Harkesh Kumar, Shri Akash Kumar and Ms. Preeti Mehraliya had applied for being considered as part time sweeper with the Respondent Bank. That other two eligible candidates namely Ms. Rakhi and Shri Akash did not submit their applications in terms of the advertisement and in terms of the extended time by the Hon'ble Court vide its order dated 28.01.2022. That out of the three applications which were received, two petitioners, namely, Shri Harkesh Kumar has qualified in the merit list dated 05.09.2022 under the general category, Shri Akash Kumar [another candidate] has also qualified under the SC category. The 3rd eligible candidate who had applied i.e. Ms. Preeti Mehraliya did not make it to the merit list as per bank's recruitment guidelines. That the deponent most



respectfully submits that the directions of the Hon'ble Court in the orders dated 28.01.2022 have thus been complied with and there is no contempt of the orders passed.

*(iii) That as regards, the Petitioners who were between ages of 29 to 45 years, the direction given was to consider the relaxation in age considering their long duration and if the consideration was favourable to the petitioners, those candidates would also be eligible to apply for the post of part time sweeper as advertised by the Bank. **That the deponent most respectfully submits that the respondent Bank had considered the grant of age relaxation and had found that as per Bank's approved recruitment policy in vogue, while recruiting part time sweepers, following relaxation of upper age limit are provided:***

SC/ST candidates by 05 years,

SC/ST Physically/Orthopedically Handicap candidates by 15 years

OBC candidates by 03 years,

OBC Physically/Orthopedically handicap candidates by 13 years,

Physically/Orthopedically handicap candidates by 10 years,

Ex-Servicemen candidates by 03 years in addition to the length of military service and for children/family members of those who died in the 1984 riots by 03 years.

The maximum age limit of all relaxations combined not to exceed 45 years unless it is so provided in Govt. Directives.

It is apparent that apart from abovementioned relaxations, no other relaxation is permitted in Bank's recruitment policy in vogue which is in consonance to the government guidelines in this regard. Therefore, neither guidelines of Bank nor that of Government allows any further deviations in age criteria.

In the aforesaid circumstances, no cogent ground was found for any further relaxation in the age criteria for the said petitioners. Moreover, the case with regard to their regularization/absorption is already pending adjudication before the Central Government Industrial Tribunal. It is, therefore, most respectfully submitted that since the directions of the Hon'ble Court have been complied with no Contempt as alleged has been made out.

xxx xxx xxx"

(Emphasis Supplied)



12. Perusal of the aforesaid clearly shows that the respondent-bank has duly considered the applications of the eligible candidates and had selected two candidates out of the three applications that were received from the petitioners.

13. Attention of this Court has also been drawn to the internal note of the bank dated 15th February, 2022, which has been placed on record as *Annexure R-1* with the reply of the respondents. Relevant portion of the same is extracted as under:

“xxx xxx xxx

- *In view of aforesaid peculiar facts & circumstances, after having considered to the orders dated 25.01.2022 & 28.01.2022 as passed by the Hon'ble Delhi High Court & list of Petitioners submitted by the Petitioner's advocate, our recommendations against the each of directions passed by the Hon'ble Court are as under:*

S.No.	Directions of Hon'ble Court	Our recommendations
1	<i>Insofar as all the Petitioners are concerned, the Bank shall scrupulously adhere to Section 33 of the Industrial Disputes Act 1947.</i>	<i>It has already been submitted by the Bank's advocate before the Hon'ble Delhi High Court that during the pendency of the industrial disputes, which has already been preferred by the Petitioners through Union PNBEU, their service conditions cannot be altered in view of Section 33 of the Industrial Disputes Act, 1947. He further submitted that the Bank does not intend to alter their service condition or take any steps for termination of the Petitioner without following the provisions of Section 33 of the Industrial Disputes Act, 1947. In view of aforesaid, no action is required to be taken by the management in this regard.</i>
2	<i>Insofar the Petitioners who are automatically eligible in terms</i>	<i>Since ongoing recruitment process was initiated by CO: North Delhi,</i>



	<i>of the advertisement are concerned they shall be permitted to put in their applications on or before 10th February, 2022 in response to the advertisement dated 26th December, 2021.</i>	<i>they are keeping records of the applications received in pursuance of advertisement dated 26.12.2021 for recruitment of 188 part time sweepers. We will abide by the directions of the Hon'ble High Court keeping in view cut off date i.e. 01.07.2021 for age & education qualification as mentioned in the said advertisement and applications of those Petitioners who have applied before 10.02.2022 will be considered along with other candidates.</i>
3	<i>Insofar as other Petitioners between the age of 29 to 45 are concerned, the bank shall consider age relaxation for them in the special circumstances considering the long duration for which the said employees are working with the Bank. The said consideration shall be done within a period of ten days and if the same is favourable to the employees, they shall also be permitted to file applications in response to the advertisement.</i>	<i>In this regard, as per Board of Director's approved recruitment policy in vogue, while recruiting part time sweepers, following relaxation of upper age limit are provided:</i> <i>SC/ST candidates by 05 years,</i> <i>SC/ST Physically/Orthopedically Handicap candidates by 15 years</i> <i>OBC candidates by 03 years,</i> <i>OBC Physically/Orthopedically handicap candidates by 13 years,</i> <i>Physically/Orthopedically handicap candidates by 10 years,</i> <i>Ex-servicemen candidates by 03 years in addition to the length of military service and for children/family members of those who died in the 1984 riots by 03 years.</i> <i>The maximum age limit of all relaxations combined not to exceed 45 years unless it is so provided In Govt. Directives.</i> <i>• It is apparent that apart from abovementioned relaxations, no</i>



		<i>other relaxation is permitted in Bank's recruitment policy in vogue which is in consonance to the government guidelines in this regard. We do not find any basis for allowing any further deviations in age criteria. It is also observed that any deviation in this regard shall open flood gates for litigation in the similarly situated other persons throughout the country.</i> <i>• Besides the extant guidelines, there is no evidence before the Bank to establish any continuity of the service of the said petitioners in the Bank. It is also pertinent to observe that in the past, recruitment processes have been conducted by the Bank and it is also matter of investigation as to whether these petitioners participated in said recruitment and as to the fate of their application in the said process. Even otherwise, it is held by the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Uma Devi that unless appointment is in pursuance to a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts, they cannot claim directions for regularisation, absorption or appointment as a matter of right.</i> <i>• In the aforesaid circumstances, we do not find any cogent ground for any further relaxations in the age criteria for the said petitioners.</i>
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xxx xxx xxx”



14. Reading of the aforesaid clearly shows that the respondent-bank has duly considered the case of the petitioners for the purposes of granting age relaxation to the said petitioners. However, in view of the extant guidelines of the bank, the case of the petitioners for any age relaxation has been rejected.

15. In view of the aforesaid, this Court is of the view that substantial compliance of the judgment dated 28th January, 2022 has been done by the respondent-bank and there is contempt committed by the respondent-bank.

16. However, it is directed that in case the petitioners are in any way aggrieved by the decision of respondent-bank with respect to non-grant of age relaxation to the petitioners, the petitioners are at liberty to seek their remedy in accordance with law.

17. In view of the aforesaid, the present petition is disposed of, along with pending application.

MINI PUSHKARNA, J

FEBRUARY 28, 2024

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