

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 16682 of 2014

Basanta Das Bairagya

-Vs-

The Regional Manager, Hooghly Region, UBI & Ors.

For the Petitioner	: Mr. Sudipta Dasgupta Mr. Sitirtha Nayek Ms. Suryatapa Das
For the Respondents	: Mr. R. N. Majumder, Mr. S. M. Obaidullah, Mr. R. Choudhury, Mr. S Chakraborty
Heard on	: 07.03.2025, 20.05.2025, 10.09.2025
Judgment on	: 30.01.2026
Uploaded on	: 02.02.2026

Ananya Bandyopadhyay, J.:-

1. The petitioner served the Union Bank of India, Bhadreswar Branch, 12 GT Road, Bhadreswar, Hooghly – 712124 as a Canteen Boy, since 06.07.1980 at a modicum of Rs.60/- per month diligently performing his duties. Apart from canteen work, he was repeatedly entrusted with the functions ordinarily perform by subordinate staff to collect income tax challan, transmitting official forms and stamps from the regional office, handling branch documentation and even performing sweeping duties as a 'Badli' Sweeper in the absence of designated staff.

2. Certificates issued by successive Branch Managers, bare testimony to his good conduct, moral character and dedicated service. The petitioner expressed his despair and helplessness through a communication dated 30.12.1991 to the Assistant General Manager, Personal Department Head Office, United Bank of India to sympathetically consider an additional amount to be paid to him for the extra work done by him. The Personal Department of the Bank as aforesaid issued a circular being No.PD/DIR/29/OM-362/2003 dated 27.10.2003 for appointment of Canteen Boy as subordinate employees of the Bank as one-time measure and as per conditions eligibility criteria, qualification, the petitioner applied for such post of subordinate employees having complied with the requisite formalities in accordance with the circular. The petitioner was denied of an interview. The Branch Manager of the aforesaid Bank did not consider his communications dated 01.08.2002 and 21.08.2002.
3. Disciplinary and Industrial Relation Division, Head Office of United Bank of India issued a circular being No.PD/DIR/29/OM-362/2003 dated 27.10.2003 and again on 29.10.2003 wherein the authority invited application for appointment of sub-ordinate employees from the eligible Canteen Laborers of the Bank as one-time measure.
4. The writ petitioner applied accordingly complying all formalities and forwarded the same to the concerned authority, i.e. the Chief Manager [PA-AS), United Bank of India, Personnel Department, Head Office, Kolkata. However, the application was returned to the Branch under reference No.HGLRO/ADMN/APP/448/04 dated 09.01.2004 requiring/asking further clarification on the applicant which was provided

by the Branch Manager vide Ref. No.2537/2004 dated 16.02.2004 to the Regional Manager, United Bank of India, Hooghly Region, Serampore.

5. In spite of complying all formalities and having all requisite eligibilities, the petitioner was not called for interview notwithstanding at stretch and uninterrupted service since 06.07.1980.
6. Lastly the petitioner addressed a Demand Justice dated 03.06.2013 to the Branch manager, United Bank of India, Bhadreswar Branch, Hooghly Region, Hooghly accounting details from inception till June 03.2013 but the same was not replied.
7. The petitioner further endeavoured as per circular No.PA(as)Recruit/6/OM-0481/11-12 dated 15.11.2011 published by the respondents-authorities and approached to Branch Manager but this time the Branch Manager who refused to forward the same and asked the petitioner to leave the branch and his service as canteen boy was terminated the petitioner was not allowed to enter the Branch.
8. The petitioner submitted notwithstanding fulfillment of eligibility and complying all formalities required as per circulars issued by the respondents-authorities, the petitioner was deprived of appointment as subordinate staff of the Bank. The recruitment authority did not bother to reject or issue a call letter for interview for the post applied.
9. Despite the long and uninterrupted service and fulfilling every eligibility condition prescribed in successive circulars issued by the Bank for absorption of canteen boys as subordinate staff – whether under 1992 circular, 2003 one-time absorption circular, or the 2011 recruitment notification – the petitioner's applications were never processed with

transparency. His representations were forwarded, returned, sought to be clarified and again left in administrative limbo. Though similarly situated canteen boys in other branches were absorbed into the subordinate cadre, the petitioner's claim alone was consistently ignored without justification.

10. The petitioner asserted the persistent non-consideration was not a matter of mere oversight but a pattern of arbitrary, whimsical and discriminatory conduct which had denied him equality and dignity guaranteed under Article 14, 16, 19(1)(g) and 21 of the Constitution of India. For more than 22 years, he had pursued his claim without laches only to be confronted with silence, inaction or outright refusal even when he applied afresh in 2012 pursuant to the 2011 Circular, the Branch Manager not only refused to forward his application but prevented his entry into the branch effectively depriving him of his last opportunity. The petitioner, therefore, contended the Bank's failure to consider him, despite his proven experience eligibility and decades of service had been a clear violation of service jurisprudence, administrative fairness and constitutional equality.
11. The Learned Advocate representing the petitioner submitted the petitioner's desperate attempt to obtain the post of a subordinate staff after serving the Bank as a canteen boy, as fairness and dignity endorsed by the certificates of his caliber being issued by the superior from time to time, had been deliberately ignored and neglected to debar him from an enhancement in his professional career to his utmost frustration unilaterally and biasedly.
12. It was further argued that the petitioner's case reflected not merely administrative inefficiency but deliberate exclusion while the other

canteen boys functioning in similar category in other branches were absorbed, the petitioner was repeatedly denied his legitimate expectation arbitrarily, whimsically and capriciously. The applications of the petitioner were rejected without assigning any reasons or granting any opportunity of hearing.

13. It was further submitted that the petitioner's uninterrupted effort since the year 1992 to secure absorption demonstrated diligence not delay. Long passage of time cannot extinguish his right when the delay is entirely attributable to the Bank's own inaction. The petitioner was never guilty of laches and had been a victim of institutional apathy. His repeated representations including the one dated 03.06.2013 seeking justice were ignored with silence.

14. The Learned Advocate representing the petitioner further highlighted the respondent authorities to have acted with an alarming disregard for judicial directions. Even when a Co-ordinate Bench in 2016 directed the Bank to produce records relating to the petitioner's eligibility, the said Bank deliberately withheld the documents later claiming through an affidavit affirmed on 05.01.2024 that the records were "not traceable". The conduct on behalf of the Bank according to the Learned Advocate representing the petitioner had been of extreme carelessness and exhibiting *mala fides* suggesting an entrenched attempt to deny the petitioner his rightful absorption.

15. It was further urged there could be no principle whereby employee should be made to suffer for the long denial or omission on the part of the administrative authority. The petitioner aged beyond 60 years

transgressing the age of regular appointment should not be denied relief merely because the authorities failed to act when they were required to.

16. It was further contended that this Court under Article 226 possessed the power to mould relief based on subsequent events established where injustice had persisted for decades. Accordingly, the Learned Advocate representing the petitioner claimed the petitioner fulfilling all eligibility conditions since 1992 being protected by circulars constitutional guarantees and judicial directions was entitled to recognition of his rightful claim to be absorbed as subordinate staff with all consequential benefits from dates the circulars mandated.

17. The Learned Advocate representing the respondents submitted that the relief sought by the petitioner was fundamentally unsustainable both in fact and law. The submissions of the Learned Advocate representing respondents are categorized as follows:-

i. Appointment not by the Bank but by the employees committee:-

It was urged that the petitioner's engagement dated 06.07.1980 emanated not from the United Bank of India (now Punjab National Bank) but from the United Bank of India Employees' Association, a distinct entity with no statutory or contractual nexus in the matter of recruitment. The appointment letter itself demonstrated that the petitioner never entered the service of a Bank, hence, no vestige right by absorption or regularization could flow from an appointment that the Bank never made.

ii. No statutory obligation to run canteens or absorption of canteen boys:- Reference was placed on the authoritative precedence of the

Hon'ble Supreme Court in *State Bank of India and Others Vs. State Bank of India Canteen Employees' Union*, (2005) 5 SCC 531 wherein it was held that the employees of a canteen run by independent canteen committees are not employees of the Bank. It was further submitted by the Learned Advocate representing the respondents that the Bank had no statutory, contractual or an award based obligation to run canteens or absorb any person working therein. The Bank neither supervised nor controlled the functioning of the canteens; subsidy or oversight of utilization thereof could not metamorphose an autonomous canteen worker into a bank employee.

- iii. The 1992 and 2003 circulars were one-time exceptions:- It was further emphasized that the 1972 circular, issued by the erstwhile United Bank of India allowed eligible canteen boys through structured recruitment process, involving advertisements, tests and interview. The petitioner did apply, but was not considered. The circular itself stipulated finality of the Bank's decision in accepting or declining appointment. No perpetual right survived. Similarly, a circular issued in 2003 and 2011 were also exceptional schemes intended only to absorb eligible candidates in a phased manner against existing vacancies and only till exhaustion of such eligible candidates. The benefit was not intended to become an evergreen conduit to claim regular service.

- iv. Canteen Committee's independent status:- The Canteen Committee was an autonomous entity comprising bank staff themselves and was responsible for recruitment, conditions of service and payment of wages to the canteen boys. Consequently, the petitioner's claim to be treated as Bank staff described as legally misconceived.
- v. Ban of recruitment and merger of the Bank:- The Learned Advocate submitted R.B.I.'s letter dated 17.03.1999 imposed a ban on recruitment further eroding any possibility of petitioner's absorption. Moreover, when the merger of United Bank of India into Punjab National Bank w.e.f. 01.03.2020, no scheme exists under the successor institution for appointment or absorption of canteen boys as support staff.
- vi. The petitioner not suitable and having crossed age of sixty:- It was pointed out that the petitioner had presently crossed the age of sixty years rendering any claim of fresh consideration wholly infructuous.
- vii. The Learned Advocate for the respondent submitted service jurisprudence, beyond its disciplined boundaries could not be stretched to resurrect claims that have naturally extinguished with time and age.
- viii. The Learned Advocate representing the respondents further argued the petitioner's reliance upon the rent control and eviction wholly alien to the factual and legal matrix of the present dispute. Such precedents cannot be transplanted into a domain governed

by service rules and constitutional limitations. The allegations of *mala fide* and/or arbitrariness had been formally rejected stating absence of entitlement could not be construed as presence of malice.

- ix. The respondent Bank acted strictly within the confines of law and the petitioner cannot by invoking equitable sympathy circumvent statutory requirements. Moreover, the inability to produce certain decades of old documents was attributable to certain administrative owing to efflux of time, not to any deliberate attempt to suppress material which cannot otherwise create substantive right which did not exist.

18. The circumspection of the pleadings, the documents placed, the chequered history of the engagement and the competing submissions relate to reassess certain principles which forbid the creation of legal right which never existed and which demand the sympathy, however compelling, must yield and conform to the provisions of law.

19. The factual foundation of the petitioner's entry into service was indubitably through an employees' association, constituted by canteen committee and autonomous entity in the functioning and not connected to the statutory recruitment framework of the Bank. The petitioner's claim of absorption into the subordinate cadre does initially lacked the foundational employer-employee relationship which had been the *sine qua non* one for invoking Article 14 and 16 of the Constitution of India in matters of public employment.

20. The argument that prolonged service as a canteen boy ripens into a legitimate expectation or crystallized absorption cannot be accepted. Legitimate expectation cannot override statutory recruitment schemes nor compel the State to create posts or alter the structure of public employment.
21. The Supreme Court pronounced in *State Bank of India Canteen Employees' Union* (supra) leaves no ambiguity. Workers engaged by canteen committees do not become employees of the Bank by any process of inference or equity.
22. Equally untenable, the plea of *mala fide*, the petitioners grievance stem from the absence of legal entitlement, not from the administrative hostility. Failure to produce decades old records though regrettable, cannot create substantive right *ex-nihilo*. The petitioner having crossed the age of superannuation, legally disadvantages his claim. Even if right had survived, which, however, did not fructify, rendered the claim to be infructuous by efflux of time. Courts cannot breathe life into a claim that has extinguished by its own terms. Judicial power cannot compel resurrection of a career that statutorily stands concluded. The petitioner's right never accrued to be vested in nature and cannot be sustained in perpetuity.
23. The slackness and negligence on the part of the respondent-Bank is deprecating and is disapproved. The schemes in question did intend to absorb the Canteen Boys as sub-ordinate staff, though they could not have been termed as bank employees prior to such absorption in accordance to the schemes for lack of employer-employee relationship.

24. The respondent-Bank nonetheless had secured the right to mandate final decision of acceptance or refusal of a candidature, however, did not exercise appropriate measure to inform the petitioner of its reasons for non-consideration of candidature. Invitation of an application under the scheme did not crystallize into a vested right, but the petitioner's application should have been assessed in an impartial manner at par with similar canteen boys. Administrative lapses however in strict terms cannot be equated with *mala fides* or hostility.
25. The schemes in question to have expired its period of validity and effectively cannot be wreaked up at the stage when the petitioner has crossed the age of 60 years. Administrative indecisiveness, reckless inaction and remissness on the part of the respondent-Bank disentitled the petitioner to be absorbed in the public post.
26. The respondent-Bank should have informed the petitioner the reason of its refusal of candidature under the schemes though it accepted the service of the petitioner on numerous occasions as a 'Badli' sweeper etc.
27. In this situation, the petitioner's long service though earnest and humble, cannot by fiat be transferred into public post. A court of equity does not convert sympathy into constitutional rights in favour of the petitioner; its compassion must remain tethered to legality. The writ court cannot regularize outside of the statutory framework violating Articles 14 and 16 of the Constitution of India unsettling the discipline of the public recruitment.
28. In view of the above discussions, the instant writ petition being WPA 16682 of 2014 stands dismissed.

29. There is no order as to costs.

30. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)