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Court : Patna

Decided On : Jul-26-2001

Judge : Nagendra Rai and P.N. Yadav, JJ.

Appeal No. : L.P.A. No. 382 and 444/2001

Appellant : Hari Shankar Kumar and ors.State Bank of India and ors.

Respondent : State Bank of India and ors.Arun Kumar Verma and ors.

Advocate for Def. : Mukund Jee, Adv. for Respondent Bank, Rajendra Prasad, Adv. for Private Respondent, Binod Kumar Singh and Bipin Kumar Singh, Adv. in L.P.A. No. 444 for Respondents 1st set, Rajendra Prasad Singh and

Advocate for Pet/Ap. : Binod Kumar Singh and Bipin Kumar Singh, Adv. in L.P.A. 382/2001

Disposition : Appeal allowed

Judgement :

1. Both the appeals have been filed against the same order, dated April 3, 2001, passed by a learned single Judge and as such they have been heard together and are being disposed of by this common order. The learned single Judge, by the aforesaid order, has remitted the matter to the authorities to consider the matter afresh regarding the appointment of computer operators in the concerned branch of the State Bank of India.

2. The writ petitioner-respondents filed the writ application for quashing the order dated February 5, 2001, passed by the Deputy General Manager, State Bank of India, Local Head Office, Muzaffarpur (respondent No. 4 to the writ application) by which the appellants of L.P.A. No. 382 of 2001 were appointed to the posts of computer operators and to consider their cases for appointment to the posts of computer operators from the due date along with consequential benefits.

3. The admitted facts are that the writ petitioner-respondents and appellants of L.P.A. No. 382 of 2001 belong to the clerical cadre in the bank. The writ petitioner-respondents were appointed in the said cadre in 1982 whereas, the appellants of L.P.A. No. 382 of 2001, who were respondents in the writ application, were appointed in 1983. The Muzaffarpur Branch of the State Bank of India was computerised on January 17, 2000. The writ petitioner-respondents were posted on ad hoc basis on the posts of computer operators vide office order issued by the branch office on January 14, 2000 (Annexure 4 to the writ application). Prior to that, on April 12, 1999, a memorandum of settlement (Annexure A/1 to the counter-affidavit filed in the writ application) was arrived at between the State Bank of India and All India State Bank of India and Staff Federation on promotional avenues/career progression for workmen staff. The said memorandum of settlement contained a policy for making appointments to higher special allowance carrying positions in the clerical and subordinate cadres. It provided that from the April 1, 1999, the higher special allowance carrying positions within the cadre will be replaced by senior assistants and special assistants. Senior assistants will perform the duties of erstwhile higher positions of head assistants (both accounts and cash), tellers, computer operators and whenever exigencies so warrant, the original clerical/cashier duties also. All appointments to the aforesaid positions shall be made in terms of the memorandum of settlement. A list of all employees, with minimum qualification of Matriculation and 17 completed years (or more) of service in the cadre and not drawing any special allowance/drawing an allowance lower than Rs. 486 per month will be drawn up as on April 1 of each year and all of them will be appointed as senior assistants. On completion of 25 years of service in the clerical cadre as on April 1 of each year, the employees will be appointed as special assistants and the special assistants will be required to perform the duties prescribed for special assistants and workmen head cashiers in terms of the

settlement, dated March 15, 1993. They will also be required to perform the duties of senior assistants/computer operators. It further provides that the appointment of computer operators will henceforth be made on the basis of an aptitude test to be conducted for the clerical cadre employees, who possess a minimum qualification of Matriculation and who have completed a minimum service of 4 years in the cadre. The appointments will be made on the basis of seniority of the candidates qualifying in the aptitude test. They will be posted anywhere in the zone at the discretion of the bank. It further provides that all the existing computer operators, who have completed 17 years of service will be redesignated as senior assistants and their services will be inter-changeable and transferable. They will have to perform the duties of senior assistants wherever required, besides the duties of computer operators. It further provides that any eligible employee refusing to accept the appointment as senior assistant/special assistant for whatever reason, will not be considered for such appointment for a period of 3 years from April 1 of the relevant year. Similarly, employees refusing to accept appointment as computer operators will be debarred from such appointment for 3 years from the date of such refusal and will have to again qualify in the aptitude test to be eligible for the appointment. It also provides that in case any disagreement arises in respect of interpretation of any of the provisions of the settlement, the matter shall be decided at central office level in consultation with the federation.

4. It is an admitted position that the terms of the aforesaid settlement are binding on the parties. According to the terms of the settlement, after completion of 17 years of service, the clerical staff will be appointed as senior assistants and on completion of 25 years of service as special assistants and for appointment to the post of computer operators, an aptitude test has to be held for the clerical cadre employees. The posts are transferable and even the senior assistants and special assistants can be asked to discharge the function of the computer operators.

5. It appears that while the Muzaffarpur Branch of the State Bank of India, was computerised, a memorandum of understanding was reached between the Assistant General Manager (PER & HRD) Patna and the General Secretary SBISA Patna circle, a copy of which was appended as Annexure 6 to the writ application. The said memorandum contains provisions for appointment of PC

Operators at Branches. It provides, inter alia, that the computer operators working on ad hoc basis up to March 31, 2000 and fulfilling the criteria mentioned in the said memorandum will be offered confirmed appointment on centre seniority basis. The criteria laid down are quoted as follows:

'On positions of PC operators identified on or before March 31, 2000 and appointments made on purely ad hoc temporary basis and those who have been offered such appointments and also being paid special allowances for utilising their services for the purpose of data entry and storage/ retrieval etc. thereof, in such of those cases where permanent appointments have not so far been made and officiating arrangements as above, (sic) the concerned employees will be offered permanent appointment as PC operators on six months' probation etc. subject to their being found otherwise eligible on the basis of centre seniority, provided it does not violate the extant instructions. All such appointments made on centre seniority basis shall also be subject to 5 years Transfer Policy besides being subjected to the provisions of the Career Path.'

6. From a perusal of the said memorandum of understanding (Annexure 6 to the writ application), it appears that the same is subject to the provisions of the settlement arrived at between the employer and the employees as contained in Annexure A/1 to the counter-affidavit.

7. By the impugned order, the learned single Judge held that the memorandum of understanding, as contained in Annexure 6 to the writ application, reached at the local level, has to be followed and, accordingly, directed the authorities to consider the matter in the light of the aforesaid decision.

8. Learned counsel appearing for the appellants submitted that the provisions of the settlement arrived at between the Bank and the employees' federation, as contained in Annexure A/1, cannot be superseded or bypassed by the memorandum of understanding reached at the local level, which in law is not a settlement, on the other hand, that was only a local arrangement between the management and the employees. It was further submitted that the writ-petitioner respondents were appointed only on ad hoc basis as computer operators and they cannot claim the permanent posts for the simple reason that in terms of the

settlement arrived at between the employer and the employees as contained in Annexure A/1 to the counter-affidavit, appointment to the post of computer operator can be made only after holding an aptitude test. The memorandum of understanding arrived at the local level, as contained in Annexures 6 to the writ application, is contrary to the provisions contained in the settlement, as contained in Annexure A/1 to the counter-affidavit, and as such the same has to be ignored.

9. Learned counsel appearing for the writ-petitioner-respondents, on the other hand, contended that the writ-petitioner-respondents were asked to give their willingness and they gave their willingness and, thereafter, they continued on the posts of computer operators and the memorandum of understanding was arrived at vide Annexure 6 to the writ application, according to which their cases have to be considered for appointment to the posts of computer operators. It was also submitted that the appellants, who have been appointed as computer operators by the impugned order, dated February 5, 2001 (Annexure 1 to the writ application), have not passed the aptitude test in terms of the settlement (Annexure A/1 to the counter-affidavit) and as such their appointments also suffer from the same infirmity as that of the writ-petitioner-respondents.

10. In view of the admitted position that the appointment to the post of computer operator is to be made after holding an aptitude test as mentioned in the settlement (Annexure A/1 to the counter-affidavit) arrived at between the employer and employees, no person to the post of computer operator can be appointed by adopting any other method and the memorandum of understanding arrived at the local level (Annexure 6 to the writ application) cannot be given effect to by ignoring the settlement (Annexure A/1 to the counter-affidavit), which is of a binding nature.

11. In that view of the matter, the respondent-Bank cannot give effect to Annexure 6 to the writ application ignoring the terms of settlement as contained in Annexure A/1 to the counter-affidavit.

12. Admittedly, neither the writ-petitioner-respondents nor the appellants of L.P.A. No. 382 of 2001 have been appointed to the posts of computer operator after holding the aptitude test. It is also an admitted position that the aptitude test has been held but no final decision has been taken to appoint the computer operators.

In that view of the matter, neither of them have any claim to continue on the post of computer operator. They have also completed 17 years of service in clerical cadre and so they are eligible to be appointed as per the settlement (Annexure A/1 to the counter-affidavit) as senior assistant unless they refuse to accept the appointment as senior assistants and in case of refusal they shall not be considered for appointment on the said post for a period of three years from April 1 of the relevant year. It will be open for the respondent-bank to allow them to continue on the post of computer operators on ad hoc basis till the regular appointment is made and it can also take work of computer operators from the senior assistants and the special assistants in terms of the settlement as mentioned above. The impugned order, dated February 5, 2001, as contained in Annexure 1 to the writ application, which was challenged by the writ-petitioner-respondents is a temporary arrangement and that will not confer any right or benefit on the appellants and it will be open for the bank to modify the said order as and when the situation so arises in the light of the settlement, as contained in Annexure A/1 to the counter-affidavit.

13. The writ-petitioner-respondents cannot claim to be appointed on permanent basis as computer operators as ordered by the learned single Judge in case of their refusal to accept the higher post of senior assistants.

14. In the result, both the appeals are allowed and the order passed by the learned single Judge is set aside with the aforesaid observations.

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