

PETITIONER:
SYNDICATE BANK AND ORS.

Vs.

RESPONDENT:
SHANKAR PAUL AND ORS.

DATE OF JUDGMENT: 01/08/1997

BENCH:
S. C. AGRAWAL, G. T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

Leave granted.

Heard learned counsel for both the sides.

The Deputy General Manager in charge of Calcutta Zone of the appellant bank wrote to the Sub-Regional Employment Exchange, North Calcutta, sometime in July, 1986, to send a list of candidates for selection and empanelment for the post of attenders for some of its branches in Calcutta. The empanelled candidates were to be appointed in the temporary vacancies which were likely to arise on account of absence of casual leave taken by the regular attenders. The nine respondents, whose names were sponsored by the employment exchange, were selected and included in the panel of eligible candidates. By its letter dated 6/7.2.1987, the Bank informed the respondents that their names were included in the panel and they could be considered for appointment as and when temporary vacancies arose. They were also informed that the validity of the panel was one year from 7.2.1987. During that year, the respondent were given appointments from time to time as 'Badli' attenders. Towards the end of 1987, when they came to know that a fresh panel was likely to be prepared by the Bank, they represented to the Bank not to cancel the said panel and thereafter filed a writ petition in the Calcutta High Court seeking a writ of mandamus directing the Bank to absorb them as attenders on permanent basis. It was dismissed by a learned single Judge of that Court as he was of the view that the panel being valid upto 6.2.1988 only the writ petitioners had no right to claim appointment on its basis after that date and the petition had thus become infructuous.

The respondents challenged that order by filing appeal No. 973 of 1988. The Division Bench of the High Court did not find any merit in the appeal and dismissed it on 30.3.1933, with a direction to the Bank to consider their cases for empanelment and consequent appointment, if there were vacancies and they were found eligible and within age limit.

On 19.4.1993, the respondents moved the High Court with a request to modify its order with respect to the age limit,

in view of the circular dated 2.2.1991 issued by the Calcutta Zonal Office, whereby applications were invited from those attenders, who had worked on temporary basis for 90 days or more on or after 1.1.1982, for future vacancies (temporary/permanent), if they were not more than 26 years of age as on the date of the first temporary appointment. In view of this circular the High Court thought it proper to recall its previous order and rehear the appeal. It was disposed of on 21.12.1993 by passing the following order:-

"Accordingly considering the facts and circumstances of the case, we dispose of the appeal by directing the bank that while making the fresh panel the case of the appellants should be taken into consideration first. They should be placed in the panel and while doing that, the question of age bar will not disqualify them, and that their case may be sympathetically considered for employment and/or appointment. We also make it clear that this order passed by us will not affect the terms and conditions of any existing employees or their future chance of promotion, if there was any ratio reserved for promotional quota for any of the existing staffs. While making the panel suitable priority should be given for empanelment and consequential appointment into the post taking into consideration of their past services over the new hands. Steps should be taken to make empanelment as soon as the vacancy arises."

It was contended by Mr. Deepankar Gupta, learned counsel for the Bank that as the High Court had thought it fit to recall its order and re-hear the appeal on the basis of the circular dated 2.2.1991, it was neither proper nor just to dispose of the appeal by giving directions which are inconsistent with the said circular. He also submitted that as the life of the panel, on the basis of which the respondents had claimed the right to be absorbed permanently, had come to an end on 6.2.1988, the High Court ought to have dismissed the appeal. We find considerable substance in both these contentions.

Till 1982, the branches of the appellant Bank in Calcutta region were recruiting persons locally to work as temporary attenders in leave vacancies. In view of the revised procedure prescribed by the Government of India in respect of such temporary appointments, the Calcutta regional office of the appellant Bank issued a circular to all of its branches on 14.8.1982, instructing all the branches under it to discontinue the old practice from 1.6.1982 and appoint only empanelled candidates. The regional office was to prepare a panel of eligible candidates, after calling names from the local/district employment exchange, and split it up branch-wise. Following that new procedure yearly panels were prepared thereafter. Names of the respondents were for the first time included in the panel prepared for the period 7.2.1987 to 6.2.1988. By its letter dated 7.2.1987 the Bank had informed the respondents that the panel was valid for one year only and

that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the service of the bank. Considering the object with which the panel was prepared and the fact that it was an yearly panel expiring on 6.2.1988, we are of the opinion that the respondents did not get any right, because of inclusion of their names in the said panel, for permanent absorption in the service of the Bank. Whatever conditional right they had came to an end with the expiry of the panel. The claim of the respondents, as contained in the writ petition was thus misconceived and therefore the learned single Judge and the Division Bench, when it first decided the appeal, were right in dismissing the writ petition and the appeal respectively.

We will now refer to circular dated 2.2.1991 and consider whether the High Court was justified in giving the impugned direction on its basis. In September, 1988, the Government of India formed a committee of the representatives of banks to consider and suggest solution for the problem of industrial disputes being raised by temporary employees in the banking industry for seeing permanent absorption in the banks under the provisions of Chapter 5A of the Industrial Disputes Act. The committee suggested a particular approach to be adopted to solve that problem. That Approach Paper was circulated to the public sector banks by the Government of India along with its letter dated 16.8.1990. The 'Approach Paper' inter alia, suggested that:-

"Banks will provide one time opportunity to all the temporary employees by taking 1.1.82 as cut off date i.e. all those who were engaged as temporary employees by the bank on or after 1.1.82 may be considered for re-employment in terms of Scheme being discussed hereunder and herein above."

xxx xxxx xxxx

"Only those temporary employees who had put in minimum temporary service of 90 or more days after the cut off date, i.e., 1.1.82 will only be eligible for considering under the scheme."

xxxx xxxx xxxx

"All banks with immediate effect will stop temporary employment both in clerical as well as in subordinate cadre."

Therefore, in compliance with the said direction, the Calcutta Zonal Office of the appellant Bank issued a notice on 2.2.1991, which is described by the parties and the High Court as circular dated 2.2.1991, declaring its intention to prepare a panel/list of eligible persons for absorption in future vacancies and inviting applications for that purpose. The relevant part of the notice reads:-

"The Bank propose to draw up a panel/list of persons who have worked on temporary basis at any of its branches/offices in West Bengal, Bihar, Orissa, Assam and Meghalaya as clerk/typist/steno or peon/attender, for 90 days or more on or after 1.1.1982, for future vacancies (Temporary/permanent) if they are found suitable and subject

to the following conditions:-

(1) Those seeking post of attender/peon should have passed VII standard of Karnataka or equivalent, be not less than 18 years and not more than 26 years as on the date of 1st temporary appointment.

(2)

(3)

(4)

Those who satisfy the above conditions should send their applications to the Dy. General Manager, Syndicate Bank, Zonal Office (Personnel Section), 27, Shakespeare Sarani, Calcutta 700017 in the following format within 15 days of this advertisement....."

Condition number one regarding age bar being more favourable than the direction given by the High Court by its order dated 30.3.1993, the respondent applied to the High Court to modify its order by deleting the age bar limit mentioned therein. That application was opposed by the appellant on the ground that in view of the policy decision to consider all those who had worked as attenders for 90 days or more on or after 1.1.1982, the entire order should be vacated because as a result of the direction given by the Court the respondents would get a more favorable treatment than the other empanelled candidates. In view of these rival submissions the High Court thought it fit to reconsider its earlier order. It, therefore, recalled its order dated 30.3.1993 and fixed the appeal for re-hearing. Thereafter it disposed of the appeal by passing the order which we have quoted above.

The directions given by the High Court to consider the respondents first and that too sympathetically for employment/appointment and give them priority while doing so are clearly inconsistent with the policy/scheme contained in the Approach Paper. The scheme contemplates preparation of two panels - one consisting of category (i) candidates, i.e., those who have worked for more than 240 days and the other of those falling in category (ii), i.e., those who have worked for 90 days and above but less than 240 days. Category (i) candidates are to be absorbed first. Persons included in the panel of category (ii) candidates are to be absorbed thereafter. This aspect appears to have been overlooked by the High Court. It has failed to notice that the directions given by it would adversely affect the rights of those persons who had worked for more than 240 days as attenders and are thus entitled to be absorbed first. Even if the order passed by the High Court is construed as referring to the panel of category (ii) candidates, the directions have to be regarded as inconsistent with the provision made in the scheme as regards fixation of seniority. Under the scheme those candidates who had enrolled themselves earlier with the employment exchange are entitled to be considered senior to those enrolled later.

Realising this infirmity in the order passed by the High Court Mr. Sankar Ghosh, learned senior counsel for the respondents, submitted that the direction given by the High Court will not have that effect as even according to the scheme those whose names were sponsored by the employment exchange are to be considered first for preparation of the

two panels. He also submitted that amongst the candidates sponsored by the employment exchange seniority has to be reckoned with reference to the date of registration with employment exchange. In support of this submission he drew our attention to Government of India's letter dated 16.8.1990 which refers to the Approach Paper prepared in consultation with the Ministry of Labour in the matter of recruitment as well as temporary employment and the letter dated 14.12.1992 written by the General Manager of the appellant to the Government of India for according concurrence to the course of action which was proposed to be taken by the Bank. He pointedly drew our attention to the following proposal contained in the letter dated 14.12.1992:-

"d) In respect of candidates sponsored by Employment Exchange seniority will be reckoned with reference to the date of registration with Employment Exchange. In respect of candidates not sponsored by Employment Exchange, seniority will be reckoned from the date of their first appointment in the bank."

He thereafter drew our attention to letter dated 9.2.1987 written by the appellant to the employment exchange at Calcutta whereby it informed the employment officer as to whose names were included in the panel. The said letter mentions the employment exchange number against the name of each of those candidates. From the said numbers it can be inferred, as contended by Mr. Sankar Ghosh, that probably most of the respondents were registered with the employment exchange prior to 1982. We cannot accept the submission of Mr. Sankar Ghosh as no such plea was raised before the High Court and it would also be improper to draw such an inference. We also find that the appellant has already prepared a fresh panel of category (ii) candidates. If the grievance of the respondents is that it has not been prepared according to the scheme it is open to them to challenge it. A grievance was also made by Mr. Sankar Ghosh that the appellant has not operated the panel as it should. If that is so, it being a fresh cause of action, it is open to the respondents to challenge that action in an appropriate forum.

We accordingly allow this appeal and set aside the judgment and order dated 21.12.1993 passed by the Calcutta High Court in appeal No. 973 of 1988. The order passed by the learned single Judge on 8.8.1988 is restored. In view of the fact and circumstances of the case there shall be no order as to costs.