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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1833 OF 2013

Melinati Ramesh
The Manager, Stressed Accounts
and NPA Management Vertical,
Small Industries Development Bank
of India (SIDBI) having its office at
MSME Development Centre, C-11,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051 ...Petitioner.

V/s.

1. Sushil Muhnot
Chairman and Managing Director,
Small Industries Development Bank
of India (SIDBI), having office at
MSME Development Centre, C-11,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051 ...

2. Mr.T.R. Bajalia
Deputy Managing Director, Small
Industries Development Bank
of India (SIDBI), having office at
MSME Development Centre, C-11,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051 ...

3. Mr.Debashish Ghosh
Chief General Manager, Country Head,
Human Resources Vertical, Small
Industries Development Bank
of India (SIDBI), having office at
MSME Development Centre, C-11,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051 ...Respondents

Mr.Ramesh Ramamurthy along with Mr.Saikumar Ramamurthy for the Petitioner.

Mr.Sanjay Punalekar i/b PRS Legal for Respondent Nos.1 to 3.

CORAM : S.J. VAZIFDAR &
A.K. MENON, JJ.
DATE : 30TH JUNE, 2014.

JUDGMENT : [Per A.K. Menon, J.]

1. The petition is taken up for admission.
2. Rule. Rule made returnable forthwith.
3. By the present petition, the petitioner questions the legality and validity of the impugned letter dated 28th March, 2013 whereby the Respondent-bank, viz. the Small Industries Development Bank of India informed the petitioner of his ineligibility for the promotional post of the Assistant General Manager, Grade "C".
4. At all material times the Petitioner was working as a Manager with MSME Development Centre having joined the bank on 20.11.1990 as the Assistant Manager in Lucknow. From November 1996 to May 2002 he was the Assistant Manager, Grade "A" posted at Lucknow. From May 2002 to October 2006 he continued as the Assistant Manager, Grade "A" at Hyderabad. Thereafter, from

October 2006 to June 2009 as a Manager, Grade “B” and rendered the services at Vishakhapatnam. Finally, from June 2009 he was transferred to Mumbai as the Manager, Grade “B” where he continues to be so employed.

5. It is contended that the Respondents in the course of routine promotions conduct examinations/tests for promotion of the Manager Grade “B” personnel to the post of Assistant General Manager, Grade “C” for the Panel year 2013-14. The test was conducted on 13th April, 2013. The Petitioner contends that although some of his colleagues were called for the examination, he was not despite being eligible. The Petitioner received an e-mail informing him that he was ineligible. A brief communication dated 28th March, 2013 received by him is reproduced below :

“As you are aware, the Bank has initiated the promotional process of eligible officers in Manager Grade “B” for promotion as Asstt. General Manager, Grade “C” for the Panel Year 2013-14. In this regard, it is mentioned that Penalty of “reduction” in incremental scale of pay by four stages” with effect from July 26, 2011 has been imposed upon you vide letter HRDD No.1024/Staff 37(52A) dated July 26, 2011.

Therefore, in accordance with the existing Promotional Policy for Officers in the Bank, last modified vide HRV letter No.22841/Promotion Policy

dated March 22, 2013, you have not been found eligible to be called for the above promotional interview.”

6. The Petitioner and the concerned employees' association made a representation seeking reasons as to why the Petitioner was not granted an opportunity to appear for the examination/test conducted on or about 4th April, 2013.

7. The main contention of the Respondents is that a penalty of reduction in incremental scale of pay by four stages had been imposed upon the Petitioner with effect from 26th July, 2011 and accordingly, he was found to be ineligible. The petitioner replied clarifying that he was indeed eligible. He quoted section 14 (v) of the relevant policy circular, by virtue of which he contended that he was eligible. The said section 14(v) states as under :

“14.0 (i)
(ii)
(iii)
(iv)
(v) Demotion to a lower stage in a time scale : The officer will not be eligible for consideration for promotion till the rigor period is over i.e. till the pay is restored to the level before the punishment.”

8. It is the Petitioner's contention that he was a whistle-

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blower and he was illegally punished by the Respondents in order to safeguard a senior officer. No other order prevented the Petitioner from being entitled to appear for the test. According to the Petitioner, the only general clarification rendering him ineligible is that he should have completed minimum of five years service and in fact the Petitioner has completed six years service and he was since eligible.

9. Section 14(v) specifies that the officer will not be eligible for consideration for promotion till the rigor period is over i.e. till the pay is restored to the level before the punishment. In other words, since there was cut of four increment stages, till the Petitioner is restored to the pay scale before punishment, he would not be eligible for promotion. The Petitioner submits that at material time he was drawing a salary of Rs.30,000/- and due to punishment it was reduced to Rs.26,000/-. The Petitioner has since completed the period of rigor and is now once again drawing a salary of Rs.30,000/-. For this reason he submits that rigor period is over and/or deemed to be over and he is eligible to appear for the test.

10. On the other hand the bank in its affidavit in reply has contended that the petition is misconceived and based on erroneous understanding of the promotion policy. It is stated that the punishment awarded to the petitioner by way of reduction of increment upto four stages was a result of the order dated 26th July,

2011 and rigor period will be completed only on 26th July, 2015. That the petitioner has chosen to adopt reasons which are incorrect. It is revealed from the respondents' affidavit that the petitioner was earlier awarded punishment whereby his salary was brought down from Rs.32,000/- to Rs.26,000/- i.e. reduction of two increments.

These increments were restored to the petitioner in September 2011 and it is by reason of such restoration that the petitioner's basic salary level has reached Rs.30,000/- The restoration was a result of annual increments and since the two increments which were previously denied to him were restored. In September 2011 his salary was restored to Rs.30,000/-. The respondents, therefore, contend that the period of punishment i.e. rigor period still continues and there was no question of the petitioner being eligible to take part in the examination/test.

11. This petition came up for admission on 10th April, 2012 before the bench to which one of us (S.J. Vazifdar, J.) was a party. We have noted that the petitioner had then made a representation to the National Commission for Schedule Castes and Schedule Tribes and the court considered that there was a possibility of the respondents taking a different view regarding the order dated 26th July, 2011. In anticipation of the likelihood of the said commission making any positive recommendation preventing the petitioner from

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appearing for the examination scheduled to be held on 13th April, 2013, would not have been in the interest of the petitioner. Accordingly, we had directed that the petitioner be allowed to appear for the examination to be held on 13th April, 2013 with a caveat that the petitioner's result was to be placed in a sealed cover and shall be subject to further orders.

12. The impugned order dated 28th March, 2011 declaring the petitioner ineligible to appear for examination/test was based on the punishment imposed upon the petitioner pursuant to inquiry under Regulation 46 of SIDBI (Staff) Regulations, 2001. The Competent Authority passed the order on 25th July, 2011 and the same was communicated to the petitioner by the respondent's letter dated 26th July, 2011 the relevant portion whereof reads as under :-

“After having considered the entire material on record, the Competent Authority has passed an Order dated July 25, 2011, the operative portion of which is reproduced herein below :

Quote :

Looking at the gravity of the lapses proved to have been committed by Shri M. Ramesh during the instant Departmental Inquiry along with the other mitigating / aggravating factors. I impose the following punishment on Shri M. Ramesh, Manager, in terms of Regulations 46(1)(c) of the SIDBI (Staff) Regulations, 2001.

'Reduction in the incremental scale by four stages'.

The above penalty will be with cumulative effect.

However, his normal annual increments may continue to be provided / sanctioned as per norms, if otherwise due.

Unquote.

As a result of the said penalty, the pay scales of Shri M.Ramesh will be reduced from the present Rs.30,000/- to Rs.26,000/- with immediate effect. However, he will be eligible for normal increments as per norms, as and when they fall due.”

13. The punishment ordered is “Reduction in the incremental scale by four stages”. A punitive order must be strictly construed. As on date of the order the Respondents were aware that the petitioner was already suffering a reduction in salary by two stages by virtue of earlier order passed in or about 2010 and the punishment then given of reduction of two increments was restored in 2011 after completion of rigor period in that case. Had it been the intention of the Competent Authority of the Respondents to impose reduction in incremental scale by four stages in addition to the first punishment the impugned order dated 25th July, 2011 would have specifically said so.

As per Regulation 14(v) the rigor period got over when the pay was restored to the level before the punishment viz Rs.30,000/- as specifically stated in the order dated 26.7.2011. It is clear that upon the petitioner reaching the salary of Rs.30,000/- after the normal increments which were allowed he would be entitled to

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appear for the examination. The impugned order dated 25th July, 2011 does not contemplate an additional levy of punishment and extension of rigor period. In the circumstances upon the communication dated 26th July, 2011 being correctly construed the petitioner's contention must be accepted and he will be entitled to relief. The petitioner appeared for the examination on 13th April, 2013 after the passing of the interim order dated 10th April, 2013.

14. We direct the respondents to open the sealed cover and announce the petitioner's result. If the petitioner has succeeded in qualifying he will be entitled to all promotional benefits as per the respondent's policy. Rule is accordingly made absolute in the aforesaid terms. No order as to costs.

(A.K. MENON, J.)

(S.J. VAZIFDAR, J.)