

Court No. - 22 A.F.R

Case :- SERVICE SINGLE No. - 21633 of 2019

Petitioner :- Sachin Kumar Verma

Respondent :- Bank Of Baroda Throu.General Manager (Hrm)
And Ors.

Counsel for Petitioner :- Ajay "Madhavan"

Counsel for Respondent :- Lalit Shukla

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner and Sr Lalit Shukla, learned counsel for the respondents.

2. The present writ petition has been preferred for quashing the orders dated 30.03.2019 passed by Opposite Party No.3; dated 26.07.2018 passed by Opposite Party No.1 and order dated 19.06.2018 passed by Opposite Party No.2, rejecting the candidature of the petitioner for appointment as Probationary Officer.

3. The learned counsel for the petitioner has submitted that vide letter dated 2.5.2017 an appointment has been given to the petitioner on the post of Probationary Officer after successfully completing the Diploma Course in Banking & Finance followed by essential training program & Internship at Deva Branch of Bank of Baroda. Petitioner was given time to join by 17.05.2017. After the issuance of the appointment letter and prior to joining, an F.I.R. was lodged on 9.5.2017, in which the petitioner was falsely implicated. He was enlarged on bail on 27.05.2017. On being enlarged on bail, petitioner immediately informed the respondent-Bank on 31.05.2017 about the false implication of the petitioner in the criminal case and lodging of an F.I.R. The Bank has informed the petitioner that the Competent Authority had taken a decision that his candidature may be kept in abeyance till his acquittal, not exceeding more than one year, failing which the

candidature of the petitioner would stand cancelled.

4. The petitioner made his earnest effort for expeditious disposal of the criminal case by approaching the High Court. But time that it takes in court proceedings is beyond the control of the petitioner. When one year was to expire, the petitioner made a representation on 7.5.2018 and 19.06.2018 for extension of time for a few months but the petitioner received no reply.

5. The petitioner was acquitted in the criminal case vide order / judgement dated 23.01.2019. The petitioner immediately made a representation dated 28.01.2019 alongwith copy of the judgement passed in the criminal case before the Authority for his joining. But the Competent Authority has rejected the representation of the petitioner by order dated 30.03.2019 solely on the ground that the petitioner has not submitted the order of acquittal within the stipulated time i.e. by 20.07.2018, and then the Bank could not grant unlimited time to the petitioner.

6. On the other hand, learned counsel for the respondent-Bank has submitted that the petitioner has been acquitted after the time granted by the Bank for joining and the Bank cannot wait for unlimited period. It is further submitted that the petitioner cannot be permitted to join for the reason that his acquittal is not an honourable acquittal.

7. After hearing learned counsel for the respective parties, the case that emerges is that the appointment letter was issued on 2.5.2017 and thereafter the petitioner was implicated in a criminal case on 9.5.2017. The Bank had granted one year time for joining with a condition that the petitioner comes with an order of acquittal. The petitioner has not left any stone unturned for early

adjudication of the case, even by approaching the High Court but the legal process takes its own time, which is beyond the control of the petitioner. The petitioner also requested for extension of time by making representation, but the petitioner received no response thereof. The petitioner was acquitted vide judgment / order dated 23.01.2019 i.e. about 5 months later beyond 20.07.2018, the time provided by the respondent-Bank. The contention of the counsel for the respondent - Bank is that the petitioner was not acquitted honourably, but acquitted by giving benefit of doubt this is however refuted by the counsel for the petitioner. However, this is not the reason given by the Bank. The only reason assigned in the impugned order is that the petitioner had given his joining after the time granted by the Bank and the Bank cannot wait for unlimited time.

8. The Supreme Court in the case of ***Avtar Singh v. Union of India & Ors***, reported in **(2016) 8 SCC page 471** has discussed and decided almost all the eventualities pertaining to disclosure, non-disclosure; disclosure of pendency; conviction or acquittal in criminal case against the candidate and its effect on employment etc. and ultimately it has been held that the discretion lies with the employer to take a decision in the matter to give or retain the person or not.

9. On inquiring that under which provision, the one year period was granted to the petitioner keeping his appointment in abeyance. Both the counsels have submitted that there is no such hard and fast rule for the same. It is the discretion of the Bank. If the Bank has exercised its discretion in favour of the petitioner by granting one year time, then the things which are beyond the control of the petitioner i.e. to get the matter adjudicated within time granted by the Bank for rejecting the candidature of the petitioner does not appear to

be reasonable and appropriate.

10. In the present circumstances of the case, it should have been proper for the Bank to consider in totality of facts and circumstances whether grant of further time for 5 months beyond 1 year would amount waiting for indefinite period of time or not.

11. The conduct of the petitioner cannot be ignored. He had himself voluntarily brought this fact to the notice of Bank about false case against him a few days before he was required to join on the post of Probationary Officer. He also approached the High Court. Taking all these facts into consideration, the Bank should have exercised its discretion in a more reasonable manner to allow him to join the post instead of depriving him of the employment on the basis of some delay in decision of the case which was beyond his control.

12. It is true in similar circumstances an employer is to take its decision. It is solely its discretion. Once it is decided to exercise its discretion, it must be reasonably exercised in the background of circumstances of the case which may differ from case to case. It is not meant to be said that any indefinite and unreasonably long time may always be granted. The fact cannot escape notice that the Bank has not shown any development in 5 months which could cause hurdle in the way of the Bank to permit him to join on the post.

13. It is to be noted that the petitioner was found fit for the appointment after completion of his training which the petitioner had undergone as prescribed by the Bank. The petitioner was actually appointed on the post of Probationary Officer but unfortunately before the date of joining a false case was registered against the petitioner and the petitioner had very honestly and voluntarily disclosed this fact to the Authorities.

The Bank did not decide to deny the employment to the petitioner on the ground of pendency of criminal case. It all related to the question of time allowable to join.

14. In view of the discussion held above, it is found that the Bank did not consider the question of grant further time to the petitioner to join in a reasonable manner rather arbitrarily in the facts and circumstances of the case. The impugned orders dated 30.03.2019 passed by Respondent No.3, impugned order dated 26.07.2018 passed by Respondent No.1 and impugned order dated 19.06.2018 passed by Respondent No.3 are quashed.

15. The respondent-Bank is directed to permit the petitioner to join in pursuance of letter of appointment dated 2.5.2017 on the post of Probationary Officer within a period of six weeks from the date of downloaded copy of the order from the website of the High Court is served.

16. The writ petition is allowed.

Order Date :- 14.10.2020

S. Kumar