

(1982) 04 CAL CK 0029

Calcutta High Court

Case No: None

A.K. Saha and Others

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision: April 22, 1982

Acts Referred:

- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 - Section 19
- Constitution of India, 1950 - Article 12, 13, 134A, 14, 16

Citation: 86 CWN 823 : (1982) 2 LLJ 177

Hon'ble Judges: Manoj Kumar Mukherjee, J; M.M. Dutt, J

Bench: Division Bench

Judgement

Manoj Kumar Mukherjee, J.

This Rule, issued on an application under Article 226 of the Constitution of India, has been referred to the Division Bench for disposal under Chapter II, Rule 1 of the Appellate Side Rules, as it appeared to the learned Judge that it involved substantial question of law relating to the interpretation of the Constitution.

2. The petitioners in the Rule are the children of either existing or retired employees of Central Bank of India (hereinafter referred to as the Bank,), which is a Banking Company acquired under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as the Act). On May 6, 1968 the erstwhile management of the Bank issued a circular introducing a recruitment policy in respect of appointment of clerks and other subordinate staff; and prescribed the age and educational qualifications for such appointments. In the case of the children of the employees of the Bank who had put in 15 years of completed service," those qualifications were relaxed and certain percentage of posts was reserved. By virtue of Section 19(3) of the Act, the above recruitment policy continued to remain in force. On or about December 11, 1974 the Zonal Manager (Eastern) of the Bank issued a circular to all offices in Calcutta Metropolitan

area calling for applications from the children of the employees of the Bank to fill up 25% vacancies in clerical cadre in terms of the said recruitment policy. The petitioners claiming to be entitled to the concessions afforded under the abovementioned circular, applied for the posts and sat for the written test. On their success. In the written tests and the interviews that followed they were empanelled along with others in June-July, 1975 for prospective appointments in offices in Calcutta region of the Bank as and when vacancies arose.

3. While they were waiting for their appointment the Assistant General Manager of the Bank, the respondent No. 3 herein, issued a circular on April 10, 1976 to all offices of the Bank advising that the children of the employees would not have any claim to reservation of vacancies or to any concessions in the general norms and qualifications for recruitment to any cadre in the Bank ; and such candidates would be treated on par with any other candidate, as any preference shown to candidates on the ground that they were children of the employees of the Bank would be violative of Article 16 of the Constitution of India. It was also specifically stated in the circular that those sons/daughters of employees who might have been included in the waiting list of successful candidates only as a result of concessions shown to them would be excluded from the list and would not be eligible for appointment. This was followed by another circular dated October 18, 1976 issued by the Assistant General Manager to all Zonal Divisional Office of the Bank seeking certain information pursuant to the earlier circular. Thereafter the Bank published an advertisement in the daily newspaper (The Statesman) dated July 3, 1977 inviting applications for appointment to the posts of clerks and other subordinate staff and held a recruitment test on October 16, 1977 without providing reservation for and any concession to the children of the employees of the Bank.

4. According to the petitioners the circulars dated April 10, 1976 and October 19, 1976 (hereinafter referred to as the impugned circular) and the proposed recruitment in terms of the advertisement dated July 3, 1977 and the written test held pursuant thereto without exhausting the waiting list in which the petitioners were empanelled was in contravention of Articles 14 and 16 of the Constitution of India By filing the writ application they prayed for a writ in the nature of mandamus commanding the respondents to cancel and/or withdraw the impugned circulars and not to give effect or to act in any manner pursuant to the said circulars or the written test held on : October 16, 1977 and for other consequential reliefs.

5. In their affidavit-in-opposition the Bank, while admitting all the facts stated by the petitioners, has contended inter alia that after the Bank was acquired under the provisions of the Act it became "State" within the meaning of Article 12 of the Constitution and became obligated to conform to the provisions of the Constitution of India, particularly those contained in Part III of the Constitution. As the reservations made for and concessions allowed to the children of the employees were violative of Art 16 of the Constitution of India, it issued the impugned circulars.

6. It has not been disputed by the petitioners that after nationalisation the Bank became "State" under Article 12 of the Constitution and thus amenable to the different provisions of Part III of the Constitution. Under Article 16(2) appearing in Part III no citizen can be discriminated against by the State, among other grounds, on the ground of descent and the principal contention of the Bank is that the reservation of vacancies for the children of the employees and concessions given to them for filling in those vacancies were solely on the ground of descent and as such it was obligatory on the part of Bank to withdraw the impugned circulars.

7. Mr. Gupta, the learned Additional Advocate General appearing on behalf of the petitioners, fairly conceded that if the reservation made for and concessions given to the children were only on the ground that they were the children of the employees such reservation and concessions would certainly be hit by Article 16(2), but contended that those were not based only on the ground of descent but also on other grounds and as such permissible. In support of his contention he relied upon a Division Bench Judgment of this Court in the case of *Anjaly Roy v. State of West Bengal*, reported in AIR 1952 Cal. page 325 and the decision of Supreme Court in the case of [Kumari Chitra Ghosh and Another Vs. Union of India \(UOI\) and Others](#), wherein emphasis was laid on the word only. In the former judgment it was held that a discrimination on one or more of the grounds mentioned in the Article and also on other grounds was not impermissible. Mr. Gupta argued that the reservation for the children was made by the Bank in respect of those employees who had served more than 15 years or who had retired, to provide security to those employees in their old age and it could not, therefore, be said that such reservation was only on the ground of descent. We are unable to accept the above contention of Mr. Gupta. That any such reason weighed "with the Bank while issuing the circular of 1974 has nowhere been pleaded by the petitioners and we shall not be justified in entertaining such a plea at this stage. The submission made by Mr. Gupta is undoubtedly based on fact and its entertainment would deprive the Bank of any opportunity to adequately respond to the same. Then again, if the circular of 1974 dealt with the conditions of service of the employees of the Bank there might have been some support for the view that in such circular special facilities and concessions may be given to some employees who formed a special class but here the sole object of the circular was to give concession to the children of the employees and not directly to the employees and the concession was being given solely on the ground of descent, which is clearly violative of Article 16.

8. Another ancillary submission of Mr. Gupta on this point was that the reservation and the concession given to the children of the employees of the Bank being limited to the extent of 25% and not to all the posts it could not be said that there was any unreasonable discrimination. In our considered view the percentage of reservation is of no consequence inasmuch as persons other than the children of the employees of the Bank are disentitled to apply for or be appointed to the seats reserved for the children, however minimal those reserved seats may be; and even if such a person is

better qualified he would be rejected and that post would be filled up by a child of the employee and that too through substantial concessions in respect of age, qualifications and rigidity of the written tests.

9. Mr. Gupta next contended that it was not open to the Bank to challenge the recruitment policy reserving 25% of posts in favour of the children of the employees of the Bank and to unilaterally withdraw the same having regard to the fact that the Bank itself formulated the policy and u/s 19(3) of the Act the policy had the Statutory force and was binding upon the Bank. According to Mr. Gupta the Bank was estopped from challenging the said policy and the circulars issued pursuant thereto, more particularly when the petitioners had applied for the tests and were empanelled for prospective appointment. This contention of Mr. Gupta might have been favourably considered if the Bank had not been nationalised under the Act and did not become "State" within the meaning of Article 12 of the Constitution. Under Article 13 of the Constitution the "State" cannot make any law which takes away or abridges the rights conferred by Part III and any law made in contravention thereof shall to the extent of the contravention, be void. It has already been found that the recruitment policy and the circular issued by the Bank making reservation for and allowing concessions to the children of the employees of the Bank are violative of Article 16(2) of the Constitution and as such this Court which issues writ for enforcement of fundamental rights cannot issue a writ in favour of the petitioners, merely because the Bank had formulated a recruitment policy and issued a circular pursuant thereto reserving 25% of the posts for the children of the employees and therefore was precluded from challenging its own action. Another reason for which the above contention of Mr. Gupta cannot be entertained far less accepted, is that there cannot be any estoppel against statute, in this case to Constitution of India.

10. In view of the above discussion, it must therefore be held that the Bank was fully justified in issuing the two impugned circular for withdrawing the reservation made and concessions given in respect of the petitioners and they are not entitled to the concessions and the preferences in the matter of recruitment. They were however certainly entitled to be considered for appointment in the general pool for being selected on merits and not on the basis of concessions that were given to them. It however, appears from the affidavit-in-opposition filed by the Bank that none of the petitioners fulfilled the requirements for General category candidates and the statement so made on behalf of the Bank has not been controverted by the petitioners in their reply. No direction, therefore is necessary to be given for consideration of the cases of the petitioners for appointment in the general category candidates. In the result, the application fails and the Rule is discharged. There will be no order as to costs.

11. The learned advocate appearing on behalf of the petitioner prays for a certificate for appeal to the Supreme Court under Article 134A of the Constitution. We do not think that the case involves such substantial question of law of general importance

requiring the same to be decided by the Supreme Court. In the circumstances the oral prayer for certificate is disallowed.