

(2014) 02 CAL CK 0053

Calcutta High Court

Case No: Writ Petition No. 59 of 2014

Subhashish Bagchi

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision: Feb. 20, 2014**Citation:** (2014) 3 CHN 37 : (2015) LabIC 3222**Hon'ble Judges:** S. Banerjee, J**Bench:** Single Bench**Advocate:** Lakshmi Gupta, Soumya Majumdar, Saptangsu Bose and Somenath Bose,
Advocate for the Appellant; R.N. Bag, Advocate for the Respondent

Judgement

Sanjib Banerjee, J.

1. A short legal issue which appears to be covered by a Supreme Court judgment has arisen in this case. The petitioner, who is now the Manager (Finance) at the Haldia Dock Complex of the Kolkata Port Trust and officiating as the Financial Advisor and Chief Accounts Officer, contends that the amendment to the rules made for the post of Financial Advisor and Chief Accounts Officer after the vacancy in that post had arisen would not apply to the process of filling up the vacancy which had arisen but will only apply upon future vacancies arising for the post.

2. The facts are not much in dispute. The vacancy arose on March 1, 2012 and applications for the post were invited on March 9, 2013 and it appears that the Chairman of KoPT wrote to the Ministry for urgently filling up the post. No steps were thereafter taken apparently because of the change of the qualifications for the post that was mulled by the Ministry. The amendment to the Kolkata Port Trust Employees (Recruitment, Seniority and Promotion) Regulations, 2013 was introduced on October 15, 2013. The amended qualifications require a candidate to be a member of either the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India. The petitioner is not a member of either institute. The amended qualifications made such membership an essential criterion. As a consequence, the petitioner was no longer

eligible for promotion to the post and advertisements have been issued for direct recruitment. No steps have, however, been taken to recruit any candidate during the pendency of this petition.

3. It is submitted on behalf of the petitioner that though an employee may have no vested right to be promoted, yet upon a vacancy arising and the employer not evincing an interest to not immediately fill up the vacancy, the rules applicable to the post at the date of vacancy would govern the procedure for filling up thereof. At any rate, it is submitted that once applications are invited for filling up the post, the qualifications for the post as applicable at the date of the vacancy or at the date of applications being invited therefor would govern the post and a subsequent amendment to the qualifications would be irrelevant.

4. In support of such contention, a judgment of the Supreme Court reported at [Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others](#), is placed. Paragraphs 5 and 6 of the report leave no room for doubt that in case of promotion, the filling up of vacancies which arise prior to the amendment to the rules would be governed by the original rules and not by the amended rules. In similar vein, a Division Bench judgment of this Court reported at 2012 (3) Cal.L.J 482 has been placed for the enunciation of the same proposition at paragraphs 51 and 52 of the report. In a Full Bench judgment of this Court reported at [Tulsi Roy Vs. Sri Krishanu Roy and Others](#), , where the issue was of appointment, it was held, at paragraph 21 of the report, that the rules applicable upon applications being sought for the appointment would govern the procedure and not any subsequent amendment to the rules. An unreported judgment of the Kerala High Court rendered on June 30, 2008 in WA No. 636 of 2003 (R. Satish v. C. Prema Kumari) has also been cited which echoes the legal position as evident from the Supreme Court judgment.

5. The additional ground canvassed by the petitioner is that for the same post at the Jawaharlal Nehru Port Trust in Mumbai - though the description of the post is Chief Manager (Finance) but the scale of pay is the same - the rules have been amended with a caveat that the rules applicable as at the date of the vacancy arising would be applicable. The petitioner asserts that there cannot be different sets of rules for a similar post, particularly upon the rules emanating from the same source. Since the rules have been made by the Central Government, the petitioner says that the inclusion of the proviso to the amended rules for the same post in the JNPT case ought to have been extended to the KoPT post.

6. The Union of India is represented and it is submitted that no instructions have been issued.

7. On behalf of KoPT an attempt is made to justify why the amendment was made. No such justification is called for in the context of the present challenge. KoPT relies on a judgment reported at [State of Jammu & Kashmir Vs. Shiv Ram Sharma and Others](#), for

the proposition that an employee does not have any right to promotion and the qualifications may be changed for a promotional post. The judgment is inapposite in the present context. It is not the petitioner's case that the petitioner seeks to resist an amendment to the rules for a post for which the petitioner is not qualified or for a post wherein no vacancy has arisen. The petitioner's contention is that the right crystallises on the basis of the applicable rules as at the date of the vacancy having arisen; or, at any rate, as at the date when applications are sought for filling up the post.

8. In view of the Supreme Court dictum in the judgment cited first on behalf of the petitioner, there is no scope for any argument that upon a vacancy to a promotional post having arisen and upon the employer not actively evincing an interest to not fill up the vacancy, the rules as applicable to the post at the date of vacancy would govern the filling up thereof and any subsequent amendment to the rules would not be applicable thereto. Since the primary ground urged is found to be meritorious, the secondary ground of arbitrariness need not be addressed.

9. W.P. No. 59 of 2014 succeeds. All steps taken by the KoPT to fill up the post of Financial Advisor and Chief Accounts Officer on the basis of the amendment of October 15, 2013 are set aside and KoPT is directed to fill up the post on the basis of the qualifications relevant as at the date of the applications being invited for filling up the post on April 9, 2013 upon the vacancy having arisen on March 1, 2012.

10. There will be no order as to costs. Certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.