

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.40079 OF 2018

Between:

Rekha Neypally

... **Petitioner**

And

Union Bank of India & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.P.No.40079 OF 2018

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Between:

Rekha Neypally

... Petitioner

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< Gist:

> Head Note:

! Counsel for the Petitioner: Sri V.Hari Haran

^ Counsel for Respondents: Sri G.V.S.Ganesh for R1 to R3

Dy.Solicitor General of India for R4.

? Cases Referred:

(1) 2022 SCC Online SC 232

HON'BLE MRS. JUSTICE SUREPALLI NANDA**WRIT PETITION No.40079 OF 2018****ORDER:**

Heard the learned Senior Designate counsel Sri V.Hari Haran, appearing on behalf of the petitioner and the learned counsel Sri G.V.S.Ganesh, appearing on behalf of the respondent Nos.1 to 3, and the learned Deputy Solicitor General appearing on behalf of the 4th respondent.

2. The petitioner approached the court seeking prayer as under:

".....to issue Writ, Order or Direction more in the nature of Writ of Mandamus declaring the action of the Respondent Bank in according relaxations for eligibility in the promotion process from the cadre of SMGV IV to SMGS V for the years between 2019-2020 initiated pursuant to staff circular dated 17.12.2018, 2017-2018, 2016-2017, 2015-2016, 2013-2014 vide Staff Circular No. 6506 dated 19-12-2016, No. 6511 dated 23-12-2016, Staff circular no: 6314 dated 11.02.2016 Staff Circular No. 6360 dated 10-05-2016, vide Staff circular no: 5966 dated 25-04-2013, 5969 dated 02.05.2013, No.5794 and 5796 dated 09-05-2013, and for the respective years as being arbitrary and contrary to the provisions of Article 14 of Constitution of

India and contrary to the guidelines of the Fourth Respondent and consequently direct the Respondent Bank to accord promotion to the Petitioner in accordance with the Promotion Policy of the Bank and pass such other consequential reliefs....."

3. PERUSED THE RECORD:

A) Counter affidavit filed on behalf of the respondent Nos.1 to 3, in particular, paragraph Nos.2, 3, 6, 8, 10, 11 and 13, read as under:

2) I am advised to submit that the Writ Petition is liable to be dismissed at the threshold itself without even entering into the merits of the case at all inasmuch as admittedly: -

(1) The Writ Petitioner herself states in Para-7 has filed a Suit being O.S. No. 404 of 2018 on the file of the IX Additional Chief Judge, City Civil Courts, at Hyderabad, which is pending consideration and Annexure-P.14 at Pages 152 onwards seeks, inter-alia, the following relief/Prayer at Page-177:-

"(c) Consequently, direct the First Defendant to promote the Plaintiff to the cadre of Scale V Officer with effect from the year 2014 along with all consequential benefits, monetary benefits and subsequent promotion posts as per the Promotion Policy of the First Defendant and Union Bank of India (Officers) Service Regulations, 1979 by setting aside the said Orders of punishment."

(ii) In fact, narration of facts in the Pleint also very clearly point to the very same grievances that she has against the Respondent Bank and the relief sought in the main Writ Petition reads as follows: -

"...Writ of Mandamus declaring the action of the Respondent Bank in according relaxations for eligibility in the promotion process from the cadre of SMGV IV to SMGS V for the years between 2019-2020 initiated pursuant to staff circular dated 17.12.2018, 2017-2018, 2016-2017, 2015-2016, 2013-2014 vide Staff Circular No. 6506 dated 19-12-2016, No. 6511 dated 23- 12-2016, Staff Circular No: 6314 dated 11/02/2016 Staff Circular No. 6360 dated 10/05/2016, vide Staff Circular No. 5966 dated 25/04/2013, 5969 dated 02/05/2013, No. 5794 and 5796 dated 09/05/2013, and for the respective years as being arbitrary and contrary to the provisions of Article 14 of the Constitution of India and contrary to the guidelines of the Fourth Respondent and consequently direct the Respondent Bank to accord promotion to the Petitioner in accordance with the Promotion Policy of the Bank....."

3) It is thus self evident that the Writ Petitioner is seeking parallel remedies, one before the Civil Court and the other before this Hon'ble Court under Article 226 of the Constitution of India.

6) I am fortified by a Division Bench ruling of the AP High Court in the case of **Procter and Gamble India Ltd Vs. Union of India reported in 1994 (69) ELT 442** and

particularly at Paragraphs 22 to 33 completely discuss the case-law obtaining on such a point of law, rejecting the Writ Petition, particularly holding that a party cannot be permitted to prosecute parallel proceedings and a Writ Jurisdiction being a discretionary jurisdiction under Article 226 of the Constitution of India cannot be permitted to be invoked by the Petitioner. In that case also, the Division Bench refrained from entering into the merits of the case except for capturing the background facts and the admission by the Petitioner of having availed the alternative remedy before approaching the High Court under Article 226 of the Constitution of India.

8) Secondly, it is admitted in Para-7 of the Writ Petitioner Affidavit that the Writ Petitioner is questioning in Paras 9, 10, 11, 12, 13 up to 15 that she has, having been very highly qualified person as averred by her in Para-3, cannot be permitted to feign ignorance of the law and apparently **all her claims being made presently in the Writ Petition are hopelessly barred by limitation and latches disentitling her to invoke the extra ordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.**

10) Furthermore, the Writ Petitioner having availed of all the opportunities i.e., having participated in all those promotion processes in question / interviews having failed to secure the required marks, etc., which she has chosen to cleverly maneuver rather suppress in the Writ Petition, cannot be permitted to avail the extraordinary jurisdiction

under Article 226 of the Constitution of India and the Writ Petition is liable to be dismissed at the threshold itself without even entering into the merits of the case.

11) We are further fortified by several Judgments of the Supreme Court, but suffice to point out **that in the case of Sadasiva Swamy Vs. State of Tamilnadu reported in (1975) 1 SCC 152 unequivocally held that any person aggrieved by an Order of promoting a Junior over his head should approach the Court at least within 6 months or at the most a year of such promotion, cannot be permitted to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India and the relevant Paragraph-2 of the said Judgment reads thus:-**

"2.A person aggrieved by an order of promoting a Junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters....."

13) Furthermore, I am advised to submit that **the Writ Petition is liable to be dismissed at the threshold for yet another reason, particularly having already participated in the Promotion Process at every stage and we are further strengthened by a Judgment of the Supreme Court in the case of Nagubai Ammal & Others Vs. B. Shama Rao & Others reported in AIR 1956 SC 593** and the relevant observations made by the Court read thus: -

".....a party cannot, after taking advantage under an Order, be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it."

In view of the above, I am advised to reiterate and once again submit that the entire Writ Petition is wholly misconceived and devoid of any merits and as such the same is liable to be dismissed in limini with exemplary costs.

4. **The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, is as under:**

a) The Petitioner had joined the services of the 1st Respondent Bank on 01.09.1986 as Cashier Cum Clerk and the petitioner thereafter has acquired degree M.A. (Economics), M.A. (English Litt.), M.B.A (Banking and Finance) and is Certified Associate of Indian Institute of Bankers.

b) Subsequently, the petitioner had been transferred to different branches in Telangana and was promoted to Office Cadre and was granted scale I on 28.04.1995, Scale II on 15.05.2002, Scale III on 30.04.2007 and Scale IV on 01.06.2011.

c) Thereafter, the Petitioner had made a complaint to the Sexual Harassment Committee of the 1st Respondent Bank, that one Mr.K.Charmana, Deputy General Manager at Hyderabad Regional office, had made vulgar remarks and gestures indicating sexual advances and favours. However, no action had been taken in this regard by the 1st respondent. Aggrieved by the same, the petitioner filed O.S.No.404 of 2018 on the file of IX Additional Chief Judge, City Civil Court at Hyderabad, and the same is pending.

d) Subsequently, the Petitioner had discovered that the Respondent Bank had violated the promotion policy and rules

with regards to the promotion process from years 2013-2014 till 2017-2018 by according relaxations in each year of promotions, so as to ensure that the Petitioner is left out of the process and the same is deliberate and intentional.

e) Thereafter, the Petitioner had immediately issued representations dated 17.09.2018, 25.09.2018, 27.09.2018 and 09.10.2018 to 1st and 4th Respondent explaining the violations in the promotion process, however, there has been no response.

f) While things stood thus, the Respondent Bank issued a Staff Circular No. 5969 dated 02.05.2013 to effect promotions from the cadre of Scale IV to Scale V and the cutoff date for eligibility was fixed at 01.04.2013. Despite the Petitioner having satisfied all the requirement in the said staff circular, the Respondent Bank had sought to confer various relaxations in respect of the promotion process and the same had landed a huge blow to the Petitioner. Moreover, the relaxations conferred by the respondent Bank aimed to allow ineligible candidates and to benefit certain class of persons only and thus the same is arbitrary.

g) Pursuant to Staff Circular No. 5969 dated 02.05.2013, the candidates ought to have been promoted to SMGS IV on or before 01.07.2011 and should have Appraisal Ratings of average 75% marks (2009-10, 2010-11, 2011-12) with a minimum of 60% of marks in the preceding 5 years (2007-08, 2008-09, 2009-10, 2010-11, 2011-2012). But, the candidates who were selected pursuant to promotion process of 2013-2014 do not have the appraisals for all 5 years and the same is contrary to the promotion process.

h) Moreover, the Respondent Bank had altered the seniority list whereby the persons junior to the Petitioner were put up high in the list and the same is untenable, arbitrary and illegal.

i) Pursuant to the promotion process 2013-2014 the petitioner was called for interview, even though the petitioner had satisfied all the criterion set for the interview, the petitioner was not selected in the interview process. The Petitioner was not allowed to participate in the promotion process of 2014-15, on the specific ground that, a penalty of reduction of 2 (Two) increments for 1 (one) year is imposed. The same is being contested by the Petitioner and the same is not final. The Respondent Bank had called for application for the

promotion process for the year 2015-2016 vide Staff Circular No: 6314 dated 11.02.2016 and the cutoff date for eligibility was 01.04.2015. The Petitioner owing to violations of Respondent Bank was ousted of the Promotion process. The action of Respondent Bank in seeking accorded relaxations of minimum eligibility is beyond the jurisdiction of the Respondent Bank and violative of the guidelines issued by the Ministry of Finance.

j) The Respondent Bank conducted the promotion process in the year 2016-2017 from the cadre of SMGS IV to SMGS V and by year 2016-2017, the petitioner had already completed 30 years in Respondent Bank and 5 Years in the Cadre of SMGS IV and in the year 2016, revised promotion policy was introduced which resulted in defeating the very purpose of guidelines issued by the 4th Respondent.

k) The Petitioner owing to the relaxations accorded by the Respondent Bank, was left out of the process which is contrary to the promotion policy & guidelines of the Respondent Bank and the same is without following the due procedure of law.

l) Subsequently, the Respondent Bank issued circular vide staff circular no.6506, dated 19.12.2016 for the promotion process, for the year 2017-2018 to fill up 41 identified vacancies

and it sought to summarily amend and accord relaxation to the eligible criteria for the candidates of promotion process and one such relaxation is with regard to the minimum experience criteria of 3 years as being SMGS-IV and the minimum length of service in the bank, the eligibility criteria was fixed as 12 years.

m) Moreover, the Respondent Bank even accorded relaxations in the minimum marks mandatory in the Written Examination conducted for the next level of selection, without obtaining the Board approval or issuing a circular in this regard and the request about the minimum vide RTI were not furnished by Respondent Bank and the marks were not informed to the candidates even though it was mandated to be informed to the candidates.

n) As per the result on 01.04.2017, the Respondent Bank vide Staff Circular No. 6595 selected candidates who did not have minimum length of service of 12 years as on 01.04.2017 and even then, the candidates were accorded promotion contrary to the Promotion Policy and contrary to the staff circular dated 19.12.2016 and the Respondent Bank had curiously selected candidates with 9 years of experience ignoring the candidates like the petitioner.

o) It is the case of the petitioner that if the selection of the ineligible candidates so selected is set aside, then the petitioner would be entitled to promotion in the cadre of SMGS V and owing to the violation in the Promotion Process, the petitioner had lost 5 years of service and requests for retrospective benefit in promotion from year 2013. Hence this Writ Petition is filed.

DISCUSSION AND CONCLUSION:

5. The main grievance of the petitioner as put forth and explained by the petitioner in the affidavit filed in support of the present writ petition, in particular, at para Nos. 5 to 29, is that the 3rd respondent bank accorded relaxations for eligibility in the promotion process from the cadre of SMGV IV to SMGS V for the years between 2019-2020 initiated pursuant to staff circular dated 17.12.2018, 2017-2018, 2016-2017, 2015-2016, 2013-2014 vide Staff Circular No: 6506 dated 19.12.2016, No: 6511 dated 23.12.2016, Staff Circular No: 6314 dated 11.02.2016, Staff Circular no: 6360 dated 10.05.2016, vide Staff circular No: 5966 dated 25.04.2013, 5969 dated 02.05.2013, No. 5794 and 5796 dated 09.05.2013 and for the respective years contrary to Article 14 of the Constitution of India and contrary to the guidelines of the

4th respondent and in the said process the petitioner who is otherwise eligible had been shunted out of the promotion process, though the petitioner is eligible and qualified as per the existing promotion policy and the petitioner seeks retrospective promotion w.e.f., 2013 onwards.

It is further specifically pleaded by the petitioner that the persons junior to the petitioner had been accorded promotion and had been promoted contrary to the rule of seniority and the petitioner had been victimized and since the petitioner pointed out the violations and arbitrariness of the 1st respondent which is within the jurisdiction of this Court, the petitioner had been victimized and denied promotion in accordance to the promotion policy of the bank.

6. Learned counsel appearing on behalf of the respondents, mainly puts forth the following submissions and contends that the petitioner is not entitled for the relief as prayed for in the present writ petition on the following grounds:

- (i) Petitioner filed suit O.S.No.404 of 2018 on the file of IX Additional Chief Judge, City Civil Court at

Hyderabad, which is pending consideration and the prayer "C" prayed for by the petitioner thereunder is identical to the consequential prayer sought for in the present writ petition. (Procter and Gamble India Ltd. Vs. Union of India, reported 1994 (69) ELT 442.

(ii) There is delay on the part of the petitioner in filing a writ petition in the year November 2018 referring to promotions made for the years 2013-2014, 2015-2016, 2016-2017 and 2017-2018, and further the petitioner contended that the respondent bank accorded relaxation for eligibility in the promotion process from the cadre of SMGV IV to SMGS V is hit by delay. (2013 (12) SCC 179)

(iii) The petitioner having participated in the promotion process at every stage cannot say that the promotion process is invalid and seek to set aside the same. (AIR 1956 Supreme Court 593)

7. In so far as the contention of the learned counsel appearing on behalf of the respondents, this Court opines that in view of altogether different pleadings in the present writ petition and suit O.S.No.404 of 2018 the present writ petition is maintainable and is not liable to be dismissed.

In so far as the second plea of delay is concerned, this Court opines that since the specific case of the

petitioner is that promotions had been made contrary to the circular guidelines effecting petitioner's fundamental rights this Court opines that the plea of delay is unsustainable.

The Apex Court in the judgment reported in 2022 SCC Online SC 232 in Sunil Kumar Rai & Others Vs. State of Bihar & Others dt. 21.02.2022 in particular at Para Nos. 7, 8, 10, 11, observed as under :

7) Article 32 of the Constitution provides for a Fundamental Right to approach the Supreme Court for enforcement of the Fundamental Rights. The founding fathers contemplated that the very right to approach this Court when there is a violation of Fundamental Rights, should be declared as beyond the reach of Parliament and, therefore, it is as a part of judicial review that the right under Article 32 has been put in place and invoked from time to time. That in a given case, the Court may refuse to entertain a petition under Article 32 of the Constitution is solely a part of self-restraint which is exercised by the Court having regard to various considerations which are germane to the interest of justice as also the appropriateness of the Court to interfere in a particular case. The right under Article 32 of the Constitution remains a Fundamental Right and it is always open to a person complaining of violation of Fundamental Rights to approach this Court. This is, no doubt, subject to the power of the Court to relegate the party to other proceedings.

8) At the heart of the Constitution lies certain principles which have, in fact, been recognised as part of the basic structure. Article 14 of the Constitution proclaims right to equality. The right against unfair State action is part of Article 14. Unequals being treated equally is tabooed under Article 14 of the Constitution. A person entitled to be treated as a member of Scheduled Tribe under Article 342, cannot be treated on par with a person who is brought in by an incompetent Body, viz., the State in the manner done. Article 21 of the Constitution again is the fountain head of many rights which are part of the grand mandate which has been from time to time unravelled by this Court giving rise to the theory of unenumerated rights under the Constitution. While liberty is a dynamic concept capable of encompassing within it a variety of Rights, the irreducible minimum and at the very core of liberty, is freedom from unjustifiable custody.

10) We may take up the first preliminary objection by the State, namely, that the petitioners have approached this Court with considerable delay. The impugned Notification is issued in August, 2016. A person cannot be said to be aggrieved merely upon the issuance of an instrument or of a law by itself. In fact, the Court may refuse to examine the legality or the validity of a law or order on the basis that he may have no locus standi or that he is not an aggrieved person. No doubt, the Courts have recognized challenge to even a legislation at the hands of a public interest litigant. However, we may only indicate, ordinarily,

the Court may insist on a cause of action and therefore, a person must be an aggrieved party to maintain a challenge. We must not be oblivious to the fact that based on the Notification, it appears that FIRs came to be lodged by persons claiming to be members of the Scheduled Tribe community and seeking to invoke the 1989 Act. The FIRs lodged in the year 2020 occasioned the petitioners to approach Courts seeking protection under Section 438 of the Cr.P.C. Two of the petitioners have not secured such protection. Petitioner No. 1, it appears was not arrested. But even assuming for a moment, that the petitioners have come with some delay, we find reassurance from the opinion of this Court in the judgment reported in **Assam Sanmilita Mahasangha v. Union of India (2015) 3 SCC 1**, wherein this Court has inter alia held as follows:—

32. “.....Further, in *Olga Tellis v. Bombay Municipal Corpn.*, **it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner.**”

11) **Therefore, we do not think we should be detained by the objection. We would think that delay by itself cannot be used as a weapon to Veto an action under Article 32 when violation of Fundamental Rights is clearly at stake.**

Since the petitioner specifically is complaining of violation of fundamental rights, the present writ petition is maintainable, as per the observations of the Apex Court referred to and extracted above.

8. The petitioner in the present writ petition has not prayed for any relief seeking setting aside the promotions made earlier. Petitioner only sought a declaration declaring the action of the Respondent bank in according relaxations for eligibility in the promotion process from the cadre of SMGV IV to SMGS V for the years between 2019-2020 initiated pursuant to staff circular dated 17.12.2018, 2017-2018, 2016-2017, 2015-2016, 2013-2014 vide Staff Circular No: 6506 dated 19.12.2016, No: 6511 dated 23.12.2016, Staff Circular No: 6314 dated 11.02.2016, Staff Circular No: 6360 dated 10.05.2016, vide Staff circular No: 5966 dated 25.04.2013, 5969 dated 02.05.2013, No. 5794 and 5796 dated 09.05.2013, and for the respective years as being arbitrary and contrary to the provisions of Article 14 of Constitution of India and contrary to the guidelines of the Fourth Respondent and consequently direct the Respondent Bank to accord

promotion to the Petitioner in accordance with the Promotion Policy of the Bank.

9. In so far as the first limb of the prayer sought for by the petitioner is concerned, on perusal of the record it is evident that the petitioner did not plead malafides in particular against any particular person in the present writ petition nor made particular promoted individuals who had been accorded relaxations for eligibility in the promotion process, party to the present writ petition by impleading the concerned individuals as respondents to the present writ petition, the plea that the respondent bank accorded relaxation for eligibility in the promotion process cannot be decided in the present writ petition without issuing notice and without hearing all those likely to be effected, in adjudicating the said plea, because any such verdict/decision would have a direct bearing and effect on the concerned individuals and furthermore, this Court opines that the petitioner having participated in all those promotion processes in question/interviews and having failed to secure the required marks cannot turn back and approach the Courts putting forward stale claims

challenging the said promotions on frivolous pleas and try to unsettle settled matters.

10. In so far as the second limb of the prayer sought for by the petitioner is concerned pertaining to respondent bank according promotion to the petitioner in accordance to the promotion policy of the bank is concerned, this Court opines that it is the 3rd respondent bank which has to consider the case of the petitioner in accordance to the promotion policy of the bank and take a decision in the matter within a reasonable period.

11. Taking into consideration the aforesaid facts and circumstances of the case and duly considering the averments made in counter affidavit filed by respondent Nos. 1 to 3 (referred to and extracted above), the 3rd respondent bank is directed to consider the case of the petitioner to accord promotion to the petitioner, in accordance to the promotion policy of the bank as per the guidelines of the 4th respondent, in accordance to law, within a period of four (04) weeks, from the date of receipt of a copy of the order, duly taking into consideration the specific averments made by the

petitioner in support of the affidavit filed by the petitioner in particular at para Nos. 5 to 32, and pass appropriate orders in accordance to law, in conformity with principles of natural justice and communicate the decision to the petitioner.

12. Accordingly, the writ petition is disposed of. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Date: 03.06.2024

Note: L.R.Copy to be marked
(B/o) *Yvkr/ktm*

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No.40079 OF 2018
(L.R.Copy to be marked)

Date: 03.06.2024.

Yvkr/ktm