

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3044 OF 2020
(@ SLP (CIVIL) NO.35469/2017)

STATE BANK OF INDIA & ORS.

PETITIONER(S)

VERSUS

PRAVEEN KUMAR

RESPONDENT(S)

O R D E R

Leave granted.

An advertisement was issued on 23.07.2009 inviting applications for appointment to the posts of Clerk in the State Bank of India. The Respondent was successful in the written examination conducted in November, 2009. He was called for interview and he attended. He was not selected for appointment as Clerk. The Respondent made enquiries and learnt that he secured 131 marks in the written examination but could not be appointed as he failed to secure the cut-off marks in interview. It has come to his knowledge that another candidate belonging to the Other Backward Classes (OBC) category was appointed though he secured only 121 marks in the written examination. It is relevant to note that the Respondent belongs to the OBC category.

The Respondent filed a Writ Petition in the High

Court of Judicature at Patna seeking a direction to the Appellants to appoint him as a Clerk. The contention of the Respondent before the High Court was that neither the advertisement nor the booklet issued by the Bank prescribing the guidelines for selection contained a stipulation that there would be a cut-off mark for the interview. It was alleged by the Respondent in the Writ Petition that a decision to fix qualifying marks was taken in the midst of the selection process which is impermissible.

By a judgment dated 30.03.2015, a learned Single Judge of the High Court accepted the submissions made on behalf of the Respondent and held that cut-off marks for interview could not have been introduced in the midst of the selection process. The Writ Petition was allowed and a direction was given to the Appellants to consider the case of the Respondent for appointment to the post of a Clerk against any vacancy advertised in the year 2009 within a period of three months.

The said judgment of the learned Single Judge was affirmed by a Division Bench and the appeal filed by the Bank was dismissed. Taking note of the interim order dated 28.02.2011 passed in CWJC No.3249 of 2011 by which the Appellants were directed to keep one post reserved for the Respondent, the Division Bench directed the Appellants to appoint the Respondent against the reserved post within a period of two months from the date of receipt of the

judgment.

Mr. Vishawanathan, learned Senior Counsel appearing for the Appellants submitted that the judgment in Manjusree's case has been referred to a Larger Bench in *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.* reported in 2013 (4) SCC 540. As the judgments of the of the High Court are on the basis of Manjusree's case, he argued that this matter has to be taken up after the decision of the Larger Bench regarding the prescription of qualifying marks for interview after the commencement of the selection process.

He contended that the Manjusree's case (supra) was referred to a Larger Bench on the ground that *State of Haryana v. Subash Chander Marwaha*, (1974) 3 SCC 220 was not noticed in Manjusree's case. He argued that the facts in this case are similar to the facts in *State of Haryana v. Subhash Chander Marwaha* (supra). Therefore, according to Mr. Vishwanathan, the Respondent is not entitled to contend that till the Larger Bench decides the reference, the judgment in Manjusree's case should be followed.

Ms. Niranjana Singh, learned counsel for the Respondent submitted that the notification was issued in the year 2009. The Respondent is a meritorious candidate belonging to the OBC and has been unemployed in spite of his succeeding in the High Court. In accordance with the existing law, the Bank could not have introduced the minimum qualifying marks for the interview without which

the Respondent could have been appointed on the basis of his merit. She urged that this matter does not brook any further delay.

It is no doubt true that the judgments of the High Court relied upon Manjusree's case which has been referred to a Larger Bench. In the normal course, we would have tagged this matter along with the other pending cases which have been referred to a Larger Bench or adjourned this matter till the reference is decided. However, in the peculiar facts and circumstances of this case, we are of the opinion that the Respondent is entitled to be appointed as a Clerk in the Appellant-Bank. The Respondent has secured 131 marks in the written examination out of 235 marks and would have been appointed as a Clerk if the minimum qualifying marks were not introduced for the interview. It is not disputed that another person belonging to the OBC category who secured only 121 marks has been appointed. The Respondent has succeeded before the learned Single Judge and the Division Bench of the High Court. More than a decade has passed after the respondent participated in the selection and he is unemployed during this period. Therefore, we direct the Appellants to appoint the Respondent as a Clerk within eight weeks from today. The Respondent shall be treated to have been appointed from the date of the order of appointment and he shall not be entitled for any benefits prior to that date. As this Appeal is disposed of in view

of the peculiar facts, this case shall not be treated as a precedent.

The appeal is disposed of accordingly.

Pending application(s), if any, shall stand disposed of.

.....J.
(L.NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

.....J.
(S.RAVINDRA BHAT)

NEW DELHI;
1st September, 2020.

