

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.35 Of 2008

Sri Gopinath Bhowmik,
son of Late Satyendra Chandra Bhowmik,
resident of Dhaleswar Road No.8/9,
P.S. East Agartala, District West Tripura.

..... Petitioner

- Vs -

1. UCO Bank,
A Government of India Undertaking,
represented by its Managing Director,
having its registered office at
10, Brobourn Road, Kolkata-1.

2. The Regional Manager,
UCO Bank, Regional Office,
M.D. Road, Silpukhuri, Guwahati-3.

3. The Manager,
UCO Bank, Agartala Main Branch,
Central Road, P.S. East Agartala,
District West Tripura.

.....Respondents

4. Sri Barendra Kumar Das,
Sub-Staff, UCO Bank,
(Notice to be served through the Manager,
UCO Bank, Agartala Branch)

5. Sri Tapas Deb,
Peon (Sub-staff), TRTC Branch,
UCO Bank, Agartala.

.....Pro. Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. D.K. Biswas, Advocate

For the respondents : Mr. Sekhar Dutta, Advocate

Date of hearing &
judgment & order : 31.03.2014

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.K. Biswas, learned counsel appearing for the petitioner as well as Mr. Sekhar Dutta, learned counsel appearing for the respondents-UCO Bank.

2. By means of this writ petition, the petitioner has sought for a direction ensuring the enforcement of the decree dated 20.05.2000, delivered in T.S.44/1998 by the Civil Judge (Sr. Division), West Tripura, Agartala.

3. There is no dispute that the said decree has reached its finality, which runs as follows :

“In view of my above findings over the seven issues the suit is partly decreed. As per decree the claim of the plaintiff to declare him as a regular bank-employee and bank wages is dismissed. But his claim for consideration and entitlement to be considered for appointment against the regular vacancy of the bank driver as and when the posts are available is allowed. As an eligible candidate his case may be considered by the Bank-authority for appointing him in the regular post, Gr-IV Sub-Staff cadre as and when post are available.”

4. It is not in dispute that (1) Sri Man Bahadur, (2) Sri Birendra Kumar Das (the respondent No.4) and (3) Si Syed Ali have been appointed in the post of the Bank Drivers. Another person, namely Tapas Deb, the respondent No.5 also has been appointed as Peon (sub-staff) in the UCO Bank.

5. Mr. D.K. Biswas, learned counsel appearing for the petitioner has contended that the respondents, by filing their additional counter-affidavit did not dispute the position of fact that at the time of consideration of selection and appointment of those persons as stated, the

case of the petitioner was not considered by the respondent No.1. According to Mr. Biswas, learned counsel, such action of the respondents is entirely illegal, arbitrary and against the postulates of Article 14 of the Constitution of India.

6. Mr. Sekhar Dutta, learned counsel appearing for the respondents has submitted that no vacancy of Bank Driver arose in the Tripura Zone of the UCO Bank and, as such, the petitioner's case was not considered. If there arises any vacancy in the Tripura Zone, the petitioner's case would duly be considered in terms of the decree in question. He has further submitted that no mandatory injunction has been issued for appointing the petitioner in the post of the Driver (sub-staff), Grade-IV. He urges for dismissal of the writ petition.

7. The petitioner, without taking recourse under Order XXI of the CPC, has approached this court under Article 226 of the Constitution of India on the basis of the undisputed facts as narrated. Since the relevant facts are not in dispute, this court is within its jurisdiction to exercise the discretionary power for ensuring the substantial ends of justice. Mr. Dutta, learned counsel appearing for the respondents did not dispute that the respondent No.5 has been appointed as the sub-staff at the TRTC Branch of the UCO Bank. But, he has clarified that position stating that the said person has not been appointed as the Driver (sub-staff). This aspect of the matter requires due consideration as well. What has been decreed is that the petitioner's appointment may be considered against the regular vacancy of the Bank Driver as and when the posts are available. It has been mandated that, as an eligible candidate the petitioner's case may be considered by the Bank-authority for appointing him in the regular post in

the Grade-IV of the cadre of the Sub-Staff as and when posts are available. So, the respondents have been injuncted to consider the petitioner for appointment against the post of the Bank Driver or to consider his appointment against any post borne in the Grade-IV of the cadre of the Sub-staff. Nowhere in the decree it has been mentioned provided that such consideration shall be restricted to the vacancies available in the Tripura Zone. Thus, the contention of Mr. Sekhar Dutta, learned counsel appearing for the Bank-respondents cannot be accepted. However, it is true that there is no injunction against the respondents to appoint the petitioner as the Driver or as the Grade-IV Sub-staff. The injunction is confined to the consideration for appointment.

8. It is no denying fact that while appointing the aforesaid persons as the Driver against the regular vacancies the petitioner's case was not considered, nor was the petitioner's case was considered when the respondent No.5 was appointed in the Grade-IV of the cadre of Sub-staff (Peon).

9. In view of above, the respondent No.1 is directed to consider the petitioner for appointment to the post of the Bank Driver against those vacancies which have been filled up by the persons whose names appear in para 14 of the additional counter-affidavit filed by the respondents, namely (1) Sri Man Bahadur, (2) Sri Birendra Kumar Das (respondent No.4) and (3) Si Syed Ali. If it is found that the petitioner is suitable for appointment to the post of the Driver, the petitioner has to be appointed as a Bank Driver from the date when the respondent No.4 was appointed as the Bank Driver. The petitioner's case also may be considered by the respondent No.1 against the vacancy of the Sub-staff (Peon) borned in the

Grade-IV from the date when the respondent No.5 was appointed. The appointments of the respondents No.4 and 5 shall be subject to the outcome of such consideration as stated. If it is found that the petitioner is suitable for either of the posts, the appointments of the respondents No. 4 and 5 may be in jeopardy. However, the respondent No.1 is granted liberty to consider the appointment of the petitioner in the post of the Driver or in the cadre of the Sub-staff by creating a supernumerary post, if they are so inclined to save the appointments of the respondents No. 4 and 5 and another person as mentioned. The entire exercise has to be completed within a period of 4(four) months from the date of placing the certified copy of this order to the respondents. It is made clear that the direction for consideration cannot be construed as direction for appointment. The Bank authority shall consider the suitability of the petitioner for purpose of appointment to the post of the Driver Sub-staff (Peon) in terms of the said decree dated 20.05.2000.

10. Accordingly, this petition stands allowed to the extent as indicated above. However, in the circumstances of the case, there shall be no order as to costs.

JUDGE

ROY