

4 SCOB [2015] AD 16

APPELLATE DIVISION

PRESENT:

Ms. Justice Nazmun Ara Sultana
Mr. Justice Syed Mahmud Hossain
Mr. Justice Hasan Foez Siddique

CIVIL APPEAL NO.281 of 2010

(From the judgment and order dated 26.08.2009 passed by the High Court Division in Writ Petition No.3237 of 2008).

Jibon Bima Corporation and others :Appellants.

=Versus=.

Mohammad Abu Kawsar Jalil and others:Respondents.

For the Appellants. : Mr. Mahbubey Alam, Senior Advocate,
instructed by Mrs. Mahmuda Begum,
Advocate-on-Record.

For the Respondents. : Mr. Abdul Wadud Bhuiyan, Senior
Advocate, instructed by Mr. Md. Zahirul
Islam, Advocate-on-Record.

Date of Hearing : The 2nd September, 2015
Date of Judgment : The 2nd September, 2015

**Jibon Bima Corporation (Officers and Employees) Service Regulations, 1992:
Sub-regulations (1) and (2) of Regulation 12:**

If more than one employee is appointed at the same time, their seniority will be counted on the basis of merit list prepared by the selection committee and not from the date of their joining. ... (Para 17)

J U D G M E N T

Syed Mahmud Hossain, J:

1. This appeal, by leave, is directed against the judgment and order dated 26.08.2009 passed by the High Court Division in Writ Petition No.3237 of 2008 making the Rule absolute.

2. The facts, leading to the filing of this appeal, are précised below:

The respondents herein as the petitioners filed the writ petition before the High Court Division. Their case, in short, is that the respondents were recruited to a class-1 post of

Assistant Manager by way of written examination conducted by the Institute of Business Administration (IBA) and accordingly, the letters of appointment were issued on 05.09.1994.

3. At the time of appointment to the post of Assistant Manager, it was clearly mentioned in the letter of appointment that seniority would be counted from the date of their joining the post. The respondents had joined the post of Assistant Manager and were given seniority from the date of their joining. A gradation list was prepared for the first time regarding the position of the respondents, which was unquestionable for a long time. No one had ever raised any objection about the seniority among them, which reflects the inter-se seniority. After their appointment the Corporation had prepared a Master Register where the seniority of the respondents was clearly and correctly reflected. The Master Register of the Corporation is kept as a matter of record. Thereafter the respondents were promoted to the post of Deputy Managers following the original list prepared in 1994. After the expiry of more than 12 years of the preparation of the gradation list, no objection had ever been raised challenging the position of the respondents and no one claimed seniority over the respondents.

4. All of a sudden, the appellants, who were the respondents in the writ petition, circulated office order under Memo No.JIBIC/Ka:Pro/1164/2006 dated 29.05.2006 where the position of these respondents was adversely affected and they were shown junior to those who had admittedly been their junior. Challenging the office order dated 29.05.2006, the respondents as the petitioners filed the writ petition and obtained Rule Nisi.

5. Appellant No.3 as respondent No.3 contested the Rule by filing affidavit-in-opposition controverting all the material statements made in the writ petition. His case, in short, is that the gradation/seniority list was corrected as per sub-regulation (2) of Regulation 12 of the Jibon Bima Corporation (Officers and Employees) Service Regulations,1992 (in short, the Regulations).

6. The learned Judges of the High Court Division upon hearing the parties by the judgment and order dated 26.08.2009 made the Rule absolute and directed the appellants to follow this judgment at the time of next promotion of the respondents.

7. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the writ-respondents as the leave petitioners moved this Division by filing Civil Petition for Leave to Appeal No.2234 of 2009, in which, leave was granted on 09.05.2010, resulting in Civil Appeal No.281 of 2010.

8. Mr. Mahbubey Alam, learned Senior Advocate, appearing on behalf of the appellants, submits that the High Court Division fell into an error in passing the impugned judgment by only considering the provision of Regulation 12(1) of Regulations without at all taking into consideration Regulation 12(2) which controls Sub-Regulation (1) of Regulation 12 and as such, the impugned judgment delivered by the High Court Division should be set aside.

9. Mr. Abdul Wadud Bhuiyan, learned Senior Advocate, appearing on behalf of the respondents, on the other hand, supports the impugned judgment. He also submits that the respondents have been enjoying seniority for more than 12 years and as such, they have acquired vested right which cannot be taken away by a stroke of pen and as such, the impugned judgment delivered by the High Court Division is justified.

10. We have considered the submissions of the learned Senior Advocates of both the sides, perused the impugned judgment and the materials on record.

11. Before entering into the merit of the appeal, we would like to quote the grounds, for which, leave was granted. The grounds are quoted below:

“The learned Judges of the High Court Division fell into an error of law in passing the impugned judgment by only considering the provision as contained in Regulation 12(1) of the Jibon Bima Corporation (Officers and Employees) Service Regulation, 1992 without at all taking into consideration Regulation 12(2) which controls sub-regulation (1) of Regulation 12 and as such, the impugned judgment should be set aside.

Non-consideration of Annexure-5 to the affidavit-in-opposition by the High Court Division led it to arrive at an erroneous decision inasmuch as the high powered committee correctly interpreted Regulation 12(1) and 12(2) of the Jibon Bima Corporation (Officers and Employees) Service Regulations, 1992 and the interpretation given by the Corporation deserves to be honoured unless it is perverse or contrary to law.

The observation of the High Court Division that “on the other side the statement by the respondents is not supported by the law” is the product of non-reading and non-consideration of the materials on record and also due to non-application of their minds to facts and circumstances of the case, more so when the contentions of the writ-respondents-petitioners hereof were not controverted and denied by the writ-petitioners-respondents hereof by filing any affidavit-in-reply to the affidavit-in-opposition.”

12. Respondent Nos.1-11 were recruited to a class-1 post of Assistant Manager by way of written examination conducted by the Institute of Business Administration (IBA) and accordingly, the letters of appointment were issued on 05.09.1994. It appears from the record that the respondents had joined the post of Assistant Managers and were given seniority from the date of their joining. The respondent stated that after their appointment, the Corporation had prepared a master register where seniority of these respondents was mentioned correctly. These respondents were promoted to the post of Deputy Managers following the original list prepared in 1984. These respondents also stated that the Corporation published seniority/gradation list in 1994 manifesting the position regarding inter-se seniority where these respondents were shown in proper places as per the existing Rules and Regulations.

13. These respondents contended that after being promoted to the post of Deputy Manager, the Board approved confirmation of these respondents. All of a sudden, the appellants, who were the respondents in the writ petition circulated office order under Memo No.JIBIC/Ka:Pro/1164/2006 dated 29.05.2006 where the position of these respondents was adversely affected and they were shown junior to those who had been admittedly their junior.

14. Now it is to be resolved whether the office order dated 29.05.2006 fixing inter-se seniority of the respondents and others was issued in accordance with law. In order to resolve the issue it is necessary to quote sub-regulations (1) and (2) of Regulation 12, which are quoted as under:

“12z Sfua;-(1) এই প্রতিধানের অন্যান্য বিধানাবলী সাপেক্ষে কোন পদে কোন কর্মচারীর জ্যেষ্ঠতা সেই পদে তাহার যোগদানের তারিখ হইতে গণনা করা হইবে।

(2) একই সময়ে একাধিক কর্মচারী নিয়োগপ্রাপ্ত হইলে, নিয়োগকারী কর্তৃপক্ষ সংশ্লিষ্ট h;R;C LjW LaL fHLa  d; তালিকা ভিত্তিক সুপারিশ অনুসারে উক্ত কর্মচারীদের পারস্পরিক জ্যেষ্ঠতা স্থির করিবে।”

15. Sub-regulation (1) provides that the seniority of any officer or employee would be counted from the date of their joining the post subject to others provisions of the Regulations. Sub-regulation (2) provides that if at a time several employees are appointed, the appointing authority shall fix the date of their seniority according to the merit list prepared by the selection committee.

16. The High Court Division came to a finding that on perusal of sub-regulation (1) of Regulation 12 of the Service Regulations it did not find any basis of the contention that the authority had got the right to make any rearrangement in the gradation list at any time. Having gone through the judgment, we find that the High Court Division did not at all take any notice of sub-regulation (2) of Regulation 12.

17. Having considered the sub-regulations (1) and (2) of Regulation 12, in general, and sub-regulation (2) thereof in particular, we find that in fact, sub-regulation (2) controls sub-regulation (1) of Regulation 12. If more than one employee is appointed at the same time, their seniority will be counted on the basis of merit list prepared by the selection committee and not from the date of their joining. A different interpretation of sub-regulations (1) and (2) other than the interpretation made above will make sub-regulation (2) meaningless. Therefore, the authority corrected the mistake by restoring the spirit of the letters of sub-regulation (2) of Regulation 12 by issuing the office order under memo dated 29.05.2006.

18. In the light of the findings made before, we find substance in this appeal. Accordingly, the appeal is allowed without any order as to costs and the impugned judgment delivered by the High Court Division is set aside.