

(2001) 04 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2935/88

All India State Bank Group SC/ST Employees' Welfare
Federation and Others

APPELLANT

Vs

The State Bank of India and Another

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2001) ILR (MP) 1665 : (2001) 5 MPHT 610 : (2001) 3 MPLJ 561

Hon'ble Judges : S.K. Kulshrestha, J

Bench : Single Bench

Advocate : K.N. Fakhruddin, for the Appellant; V.S. Shroti, for the Respondent

Judgement

S.K. Kulshrestha, J.

By this petition, the petitioners have called in question the selection made by the respondents for promotion from the Award Cadre to the supervisory Cadre Junior Management Grade Scale I and they seek a mandamus for quashing the selection of the candidates from general category and for holding examination afresh.

Petitioner No. 1 represents the interest of the Schedule Caste and Schedule Tribes employees of the State Bank of India. Petitioners No. 2,3,4 and 6 belong to Schedule Caste while petitioners No. 5,7 and 8 to Schedule Tribes and were eligible for promotion to the officers' scale J.M.G.-I. According to the petitioners, under the Government of India scheme for reservation of vacancies for S.C. and S.T. employees, 15% vacancies are reserved for S.C. and 7-1/2% for S.T. Besides the above policy, provision for relaxation of 5% marks in the written examination and 10% marks in interview has been made and in this behalf, the petitioners have filed circular dated 3-4-1984 as Annexure-1 and Brochure of the Govt. of India as Annexure-2. The respondent Bank has also formulated a scheme for reservation for S.C. and S.T employees of the Bank in the matter of promotion, of which a copy has been placed on record as Annexure-3. Rule 3 of

the policy provides for promotion from Award Cadre to Supervisory Cadre. Rule 3.1 lays down that the procedure in vogue would be followed for promotion of clerks/ cashiers to the level of Officers Grade II excepting for the modifications/ relaxations in the case of S.C./S.T. employees laid down therein. These relaxations are contained in Clauses 3.2, 3.3 and 3.4 of the Scheme. As per Clause 3.2, where adequate number of employees with normal length of service is not available, service norms in the case of S.C./S.T. Clerks and Cashiers will be relaxed by two years where the eligibility norms provide for service of eight years and above and by one year where it is less than eight years. Clause 3.3 provides for holding of a common written test for all the candidates and for grant of relaxation to the extent of 5% of the required qualifying marks in the case of S.C./S.T. candidates. Clause 3.4 provides that the interviews of S.C./S.T. employees who qualify in the written test will be held in separate sittings in order to avoid a comparison of their standards with the general candidates and the S.C./S.T. employees will be granted a relaxation to the extent of 10% of the required marks in the interview.

The case put forward by the petitioners is that the respondent Bank had made a statement in an earlier writ petition M.P. No. 1726/99 that out of 200 vacancies required to be filled, 147 were meant for S.C./S.T. and with the backlog added to the above admitted position of vacancies for S.C./S.T. employees, there were 192 vacancies for the reserved category to be filled up. According to the petitioners, out of 200 vacancies intended to be filled, the respondents ought to have filled at least 100 posts through S.C./S.T. candidates as in the written examination, out of 445 candidates belonging to the said category, 103 had passed the examination but still only 58 of them were declared selected and 142 vacancies were filled up through candidates from general category in gross violation of the reservation policy. The petitioners have, therefore, challenged the appointment of the general category candidates on the 42 posts meant for reserved category candidates and prayed for quashing of the selection with direction for initiating the process afresh.

Respondents have filed a return in which it has been pointed out that although selection and appointment of general candidates has been challenged by the petitioners, the candidates have not been impleaded as parties and, therefore, the writ petition deserves to be dismissed. It has been pointed out that promotions are governed by the promotion policy of which a copy has been submitted as Annexure R-1. According to the policy, after preparation of the list of eligible candidates, a written test is held and the candidates who qualify, are called for interview. For fixing the zone of eligible candidates, the policy envisages fixing of a cut off date. Respondents have also pointed out that as per the promotion policy of 1976, as amended in the year 1979, three times the number of the posts were required to be called for the test but; this criteria was relaxed to enlarge the zone to Include the persons who had been confirmed before 30-6-1981. The shifting of the cut off date enlarged the number of candidates to a disproportionate limit and raised the ratio tp 1:14 and, therefore,

decision was taken to push back the cut off date to 30-3-1981 in the case of general category candidates and 31-12-1981 for S.C./S.T. candidates vide circular Annexure R-3. Even then, the, ratio remained as high as 1:8. The respondents have submitted that 200 vacancies were required, to be filled in the promotional cadre of J.M.G.-I Scale, with the result, as per the percentage of, posts reserved for S.C. and S.T. candidates, 45 vacancies fell to their share but since on account of backlog in the category of S.C./S.T. there already existed 192 vacancies, keeping the restriction of the maximum of 50% to be filled in one recruitment, 100 vacancies were made available to the reserved quota and the remaining 100 for general category. 162 candidates from general category and 103 from reserved category who had qualified in the written test were called for interview.

Respondents have also submitted that for passing the written examination, minimum marks required were 40% but for the general category the cut-off point was fixed at 60% while for the reserved category at, 41% only. Since only 60 candidates could qualify from the S.C./S.T category, the remaining posts were de-reserved and filled, from put of the eligible candidates from general category. All the 40 vacancies which thus remained unfilled in the category of S.C./S.T were carried forward to the next year. It is put forth by the respondents that since in the recruitment in question, the number of candidates selected exceeded the minimum number of candidates as per the reservation of 15% and 7-1/2% for S.C./S.T. candidates, the respondents did not err in dereserving the remaining vacancies for being filled up through candidates belonging to general category and carrying forward an equal number to the next year for the reserved category.

The petitioners in the additional submissions have referred to the document dated 4-8-1988 marked as Annexure AA to point out that the petitioner No. 2 Prakash Chand Mahawar had appeared at written test on 27-3-1988 as a candidate belonging to Schedule Caste, but on verification it was learnt that through clerical inadvertance, he was shown in the general category and not given relaxation of 10%, as required under the rules, in the interview. This position has been clarified by the respondents in written submissions dated 10-11-2000 in which it has been contended that he was granted 10% marks in the interview but still since his aggregate was only 126.50 marks as against 129.5 marks secured by the last person selected, he was not selected.

Insofar as recruitment of candidates belonging to the general category and that of the reserved category in equal ratio and carrying forward of the vacancies is concerned, learned counsel for the respondents has submitted that the matter is no longer res integra in view of the judgment of the Supreme Court in State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others, . In the said case, the policy laying down the limit of maximum reservation in any year as 50% of the vacancies/promotion and carrying forward of vacancy has already been approved as clear from the

following observations:

"11. Ms. Jaising, learned counsel for the employees contends that from 1978 onwards and until a further relaxation of service norms was provided for under the circular of 28-7-1983, various unfilled vacancies reserved for Scheduled Caste/Scheduled Tribe employees lapsed after the expiry of three years. She contends that these vacancies should not be allowed to lapse. These lapsed vacancies should be filled in retrospectively on the basis of subsequent relaxation granted by the circular of 28-7-1983. It is also contended on behalf of the employees that the direction in the circular, that in any given year, not more than 50% of the vacancies should be available for being filled in by Scheduled Caste/Scheduled Tribe candidates, is violative of Article 16. Both these contentions, namely, about the carrying forward of reserved vacancies for a period of three years at the end of which they lapse, and the provision that in any given year not more than 50% of the available vacancies should be reserved, have been negatived by this Court in the case of Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, . In that case a similar provision for carrying forward of reserved vacancies for Scheduled Castes and Scheduled Tribes for a period of three years was upheld by this Court. This Court also upheld the instructions issued by the Railway Board in that case to the effect that in any given year not more than 50% of the promotional posts should be made available to the reserved category of Scheduled Caste and Scheduled Tribe candidates ; holding that the carry forward rule should not result in any given year in the selection or appointment of Scheduled Caste and Scheduled Tribe candidates in excess of 50% (p. 242). In the light of this judgment, the scheme formulated by the State Bank of India under the two circulars of 3rd of April, 1978 and 28th of July, 1983, thus cannot be faulted."

The contention of the learned counsel for the petitioners, however, is that since for passing the written examination only 40% marks were necessary to qualify for interview, in view of the relaxation of 5% available to the candidates belonging to Scheduled Caste and Scheduled Tribe, all the candidates who had secured 35% or more marks ought to have been called for interview. The contention of the learned counsel for the respondents is that relaxation of 5% in the qualifying marks as provided in Rule 3.3 is to be seen vis-a-vis the cut off line in the case of candidates belonging to the general category and since for candidates belonging to the general category, cut off point was at 60%, the cut off point at 41% in the case of candidates from reserved category itself made relaxation far more than the 5% to which they were entitled under the rules. Learned counsel has submitted that merely on account of inclusion in the list of candidates who have passed the examination by securing qualifying marks, a candidate does not acquire an indefeasible right and a cut off point can be prescribed for short listing candidates for interview without in any manner curtailing the relaxation available to the reserved category candidates. Reference has been made to the decision of the supreme Court in Shankarsan Dash Vs.

Union of India, .

Since the question mooted for consideration is founded on the provision made in Rule 3.3 and 3.4 of the scheme of reservation for S.C./S.T employees in the Bank in the matter of promotions, it is necessary to first refer to the said rules which read as follows :

"3.3. A common written test will be held for all the candidates (i.e. SC/ST and general and in the case of SC/ST employees, relaxations will be granted to the extent of 5% of the required qualifying marks.

4 The interviews of SC/ST employees who qualify in the written test will be held in separate sittings in order to avoid a comparison of their standards with the general candidates and the SC/ST employees will be granted a relaxation to the extent of 10% of the required qualifying marks in the interviews."

From Rule 3.3 it is clear that a relaxation to the extent of 5% in the qualifying marks is required to be extended in the case of S.C./S.T employees in the common written test. In reply to paragraph 9 of the present petition, the respondents have stated that minimum qualifying marks were 40% for general category candidates and 35% For reserved quota candidates. It is not clear from the return as to what impelled the respondents to introduce the criteria of cut off point in the case of general category candidates at 60% and S.C./S.T. candidates at 41%. It has not been shown that the number of candidates who had qualified at the written examination was so alarmingly high as to have necessitated considering of a cut off line to curtail the number. In Clause 3.4, it is clearly laid down that the interview of SC/ST employees who qualify in the written test should be held in separate sittings in order to, avoid a comparison of their standards with the general candidates and the SC/ST employees will be granted a relaxation to the extent of 10% of the required qualifying marks in the interview. This clearly conveys that all persons who obtain qualifying marks as per Clause 3.3 are required to be called for interview and it is only on the basis of the aggregate of marks that their merit can be seen for appointment against the vacancies intended to be filled. The submission of the respondent is that 103 candidates, who; had qualified as per the cut off point fixed by respondents, had been called for interview, but only 60 could be selected from amongst the candidates of reserved category. This shows that as per the cut off line drawn by the respondents, sufficient number of candidates was not available to fill up the vacancies in their category and, therefore, there was no rational basis having nexus. With the intended recruitment for providing a cut off point in the case of SC/ST category employees. The rule envisages relaxation of the required qualifying marks, which were, admittedly, 40% and the cut off line which was drawn by the respondents was at 41%. Therefore, the respondents clearly acted, contrary to the provision, made for reserved category and defeated the purpose of the rule permitting relaxation in the case of reserve category candidates. I am, therefore, of the considered view that in providing for a cut off point, even where the number of candidates who had qualified at the written examination

was not high, the respondents' decision was quite arbitrary and capricious and it clearly acted to the prejudice and detriment of the candidates who had obtained the qualifying marks in the written test. Since the selection was to be made on the basis of the aggregate of the marks obtained in the written test and interview, both, the candidates who on the basis of their better performance in the interview could have been successful, stood deprived of their chances of promotion and the grievance of the petitioner No. 1 is, therefore, well-founded.

Insofar as the case of petitioners No. 2 to 8 is concerned, it is not disputed that all of them had been called for interview and since the aggregate of marks secured by them was less than the last person selected, they were not selected. Petitioner Prakash Chand Mahawar, in whose case it is alleged that he was wrongly treated as a candidate belonging to general category, had also received lesser marks than the last candidate selected despite 10% relaxation having been granted in accordance with Clause 3.4 in interview. In the written submission, it has been pointed out that he had received 41.50 marks in the written test and 75 + 10 in interview, 10 denoting 10% extra marks in accordance with Clause 3.4, and his aggregate of 126.50 marks was less than the marks secured by the last person selected i.e. 129.5 marks. The letter Annexure AA appears to have been written in some confusion as from the result of the petitioners, disclosed by the respondents, it is fully established that he had been treated as a candidate belonging to reserved category and had been granted due relaxation as per Rules 3.3 and 3.4. Petitioners 2 and 8 are, therefore, not entitled to any relief.

This takes the matter to the last limb of the argument of the learned counsel for the respondents that the selected candidates from the general category as against the 40 vacancies deserved have not been made parties to the petition and, therefore, the petition deserves to be dismissed. Learned counsel has referred to the decision of the Supreme Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, to contend that the High Court should not hear and dispose of a petition under Art. 226 without the persons who would be vitally affected by its judgment being before it or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents. It has also been submitted that this objection was raised by the respondents at the first opportunity and even thereafter, since no steps were taken by the petitioners to implead the selected candidates, the petition should be dismissed. It is true that if the decision vitally affects such selected persons and they have not been joined despite objection, relief cannot be granted but in the present case, even as per the pleadings of the respondents, after de-reserving 40 vacancies and filling them through candidates from general category, the same number was carried forward. It is, therefore, not a case where the reserved vacancies stand occupied by general category candidates and fresh selection or consideration of the candidates who were entitled to be considered but left out on account of cut off point, would have the effect of their removal from the posts. The candidates who ought to have been

called for interview and were not called because of the cut off point can be considered without affecting the interests of the candidates from general category already selected against the 40 vacancies of SC/ST de-reserved by respondents as the same number was carried forward, if the vacancies in the quota of SC/ST candidates still exist. At the most, such candidates would not be entitled to promotion if otherwise found suitable if the vacancies in their quota have already been filled up.

In the result, this petition partly succeeds. While the petitioners are not entitled to any direction for quashing the appointments already made, it is directed that the respondents shall also consider the cases of candidates belonging to SC/ST who had in the said written test obtained the qualifying marks of 35% and hold separate interviews in this behalf and if found eligible on the basis of aggregate of their marks, to promote them against the vacancies if such vacancies are still available in their quota. Such of them as have already been promoted subsequently shall be considered only for the purpose of counting their seniority on the basis of their entitlement referable to the said test and interview. There shall be no order as to costs.