
(2014) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1196 of 2014

A.P. Grameena Vikas Bank

APPELLANT

Vs

E. Satyanarayana Goud

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Citation : (2014) 08 AP CK 0028

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, Advocate for the Appellant; Vedula Srinivas, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The 1st respondent in W.P. No. 4497 of 2005 filed this writ appeal, challenging the order, dated 17.02.2014, rendered therein by the learned Single Judge.

2. For the sake of convenience, the parties herein are referred to as arrayed in the writ petition.

3. The petitioners joined the service of the 1st respondent - Bank, which is constituted under the Regional Rural Banks Act, 1976, as Clerks-cum-Cashiers. The promotion from that post is to Officers Scale-I. To govern the procedure to be followed in this behalf, the Government of India published Rules, through notification, dated 27.07.1998. According to these Rules, the appointment to the Officers Scale-I shall be on Seniority-cum-Merit basis and the merit is to be decided on the basis of written test to be held for 70 marks, interview to be conducted for 20 marks, and performance appraisal, for 10 marks. The written test is divided into two equal parts, namely, the Banking Law Practice and Procedure for 35 marks and English for 35 marks. The Rules further require that such of the candidates, who have acquired minimum marks, shall be arranged in order of seniority and the zone of selection shall be double the number of vacancies.

4. A notification proposing to conduct written test was issued on 29.10.2004 against 12 posts, comprising of nine unreserved, two reserved for S.C. and one for S.T. The written test was conducted on 11.12.2004 and the names of the petitioners were arranged at Serial Nos. 1 and 7 in the list. Though only nine vacancies were available under the unreserved category, the 1st respondent prepared a list of 20 candidates for that category. In the ultimate selections that took place, the petitioners were excluded and in their place, respondents 9 and 10, who figured at Serial Nos. 12 and 20 in the list of eligible candidates, were selected. The petitioners challenged the selections by raising two grounds, namely, that the 1st respondent did not select them on a wrong premise that they did not secure the Benchmark prescribed by the Selection Committee and that the list for consideration was prepared by adding two candidates more than what was needed under the Rules.

5. The 1st respondent filed a detailed counter affidavit opposing the writ petition. According to them, the notification, dated 29.10.2004, was issued not only reiterating the procedure for conducting the written test, interview and the performance appraisal, but also stipulating that the Selection Committee would fix a Benchmark and it is only those candidates, who secure the marks up to such level, that would be selected. It was urged that the Selection Committee fixed the Benchmark for general candidates at 70 marks, and for SCs. and STs., at 52 and since the petitioners did not get the marks above Benchmark, they were not selected. The inclusion of two more names in the list against nine vacancies was said to be on account of some misunderstanding about the exact number of vacancies.

6. Learned Single Judge upheld the contention of the 1st respondent, as regards the fixation of the Benchmark, but on finding that there was no justification for including two more candidates in the list of candidates for consideration for appointment, has set aside the entire selections and directed that fresh exercise be undertaken in this behalf, from the stage of interview. The 1st respondent filed this writ appeal feeling aggrieved by the judgment of the learned Single Judge in so far it has set aside the selections and directed remission of the selection process from the stage of interview. Even while supporting the judgment of the learned Single Judge to the extent it supported them, the petitioners have attacked the view taken by the learned Single Judge upholding the fixation of Benchmark.

7. Heard Ms. V. Umadevi, learned counsel for the appellant, and Sri Vedula Srinivas, learned counsel for the respondents.

8. It has already been mentioned that the promotions to the post of Officers Scale-I are governed by the Rules prescribed by the Central Government. The relevant Rules read:

9. While the body of the Rules deals with general aspects, First Schedule prescribes the detailed procedure. The appointment to the post of Officers Scale-

I through direct recruitment is dealt with under Clause 3 (A) and promotion is dealt with under Clause 3(B). They read:

10. Incorporating these very provisions, the 1st respondent issued notification. 40% minimum stipulation under the Rules for written test in each of the sections, comes to 14 marks in each. The 1st petitioner secured 29.75 marks in the written test, duly crossing the minimum for each section. In the performance appraisal, he secured 7.44 marks and in the interview, he was awarded eight marks. The 2nd petitioner secured 35 marks in the written test and in the performance appraisal, he secured 8.05 marks. In the interview, he was awarded seven marks.

11. As required under the Rules, the 1st respondent was required to prepare a list of 18 candidates for the interview, since there were only nine vacancies in the unreserved category. However, 20 candidates were included, without indicating any valid reason. The petitioners 1 and 2 were not selected on the ground that their performance did not cross the Benchmark fixed by the Selection Committee. For this purpose reliance is placed upon a Clause in Circular, dated 29.10.2004. It reads:

"Final Selection: The final selection of candidates will be made out of those who get the minimum qualifying marks (bench mark) as fixed by the Selection Committee on the basis of seniority-cum-benefit."

12. Herein itself, it is necessary to mention that in the list of 20 candidates, there are several candidates, who secured marks far less than the petitioners in the written test. However, that was balanced by awarding 20 out of 20 marks in some cases and very high marks in other cases, even while awarding 7 and 8 marks in the interview to the petitioners. It needs to be noted that the candidate at Serial No. 1, whose inclusion itself was improper, was awarded 20 marks and thereby he was pushed up.

13. The stipulation of Benchmark by the Selection Committee was not done before the commencement of selection process. It was done at the time of interview. For understanding of the Bank about the purport of the Clause, the same is extracted hereinabove.

14. Once the Rules prescribed by the 1st respondent are meticulous as to the process of selection, there was no basis for it to add anything to them through circulars. Assuming that the Clause stipulating the Benchmark is only a mechanism to effectively work out the procedure prescribed in the Rules, it needs to be noted that the Clause is only to the effect that the Selection Committee shall take into account, the minimum marks that are stipulated in the written test and the minimum marks, if any, stipulated for interview and performance appraisal and then fix the Benchmark. For example, if the minimum marks prescribed under the Rules for the written test are 35, for the interview 12 and those for performance appraisal 6, the Benchmark can be treated as 53. If no minimum marks are stipulated for interview and the performance appraisal,

as in the instant case, the minimum marks prescribed for the written test would constitute the Benchmark. Beyond that the Selection Committee cannot be conceded the power to fix marks at its discretion and then meddle with the entire process.

15. It is fairly well established that in the promotions to be effected on Seniority-cum-Merit basis, the merit is appraised in accordance with the stipulated parameters, only to decide the basis or minimum eligibility of the candidate and once a candidate crosses the minimum parameters, he acquires a right to be considered for promotion. Thereafter, seniority will govern the rest of the process. Even where the Benchmark is stipulated, it must govern the very preparation of the list. In other words, only such of the persons, who have crossed the Benchmark, must be included in the list. Once a person is included in the list, his seniority would play the role in the selection.

16. Reliance is placed by the learned counsel for the appellant upon the judgment of the Supreme Court in *Chairman, Rushikulya Gramya Bank Vs. Bisawamber Patro and Others*, . That was a case in which the Benchmark, being 60%, was already announced by the appointing authority and the list was accordingly prepared. The contention advanced on behalf of the candidates, who were not selected, was that the Benchmark cannot be stipulated at, all. By making reference to the judgment of the Supreme Court in *Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others*, . Further, there is nothing from those two judgments to indicate that the Selection Committee has the power to fix the Benchmark according to its wishes ignoring the Rules prescribed by the Central Government.

17. In an attempt to sustain the Circular, dated 29.10.2004, in which the concept of Benchmark was mentioned, learned counsel for the respondents relied upon the judgment of the Supreme Court in *Sarva U.P. Gramin Bank and Others Vs. Manoj Kumar Chak*, . On a close reading of the entire judgment, it emerges that apart from not supporting the contention of the appellant, it renders the process followed by them untenable. In that case also, the promotions were governed by the relevant Rules, which prescribed written test, stipulated minimum marks and the like. However, a circular was issued to the effect that if a candidate has been inflicted with censure or punishment of a particular category, he cannot be considered for promotion, despite his seniority and satisfactory performance appraisal and success in the written test. When the same is challenged by the aggrieved candidate, the High Court expressed the view as under:

"1. Where a person is eligible to be considered for promotion, his exclusion, on the ground that he has suffered minor or major penalties, cannot be a ground to exclude him from consideration. The competent authority, as held in *Union of India Vs. K.V. Jankiraman, etc. etc.*, and *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, , can lay down minimum standards required and also prescribe mode of assessment of merit of the employees eligible to be considered for promotion. The assessment can be made by assigning marks on

the basis of appraisal of performance on the service record and interview. The competent authority may also prescribe minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit. The employee, however, cannot be excluded and denied his right to be considered by the Selection Committee for promotion.

2. The persons, who have been awarded censure entry or other minor punishments, thus cannot be excluded from the zone of consideration for promotion. The question of assessment on merit is to be made by the Selection Committee at the time of selection and not before that by eliminating the person who is within the zone of consideration.

3. We are further of the opinion that the circulars issued by the Bank cannot override the statutory Rules nor can supplement it to the extent that the person, who are otherwise eligible to be considered for promotion, will be rendered ineligible and will not be given a chance to be considered for promotion."

18. The judgment of the High Court was challenged before the Supreme Court, and the appeal was dismissed. During the course of discussion, Their Lordships took the view that the appointing authority can "supplement" the prescribed Rules, but cannot "supplant" them. From the result in the Civil Appeal, it is clear that the view taken by the High Court was upheld. In the instant case, the additional factor is that the circular was issued and implemented in such a way that it nullifies not only the entire selection process, but also the seniority of the candidates.

19. The very fact that the candidate at Serial No. 1, i.e., the 1st petitioner, was excluded from promotion and candidate at Serial No. 20, whose inclusion in the list was contrary to the prescribed Rules, discloses the gross arbitrary procedure adopted by the Selection Committee as well as the appointing authority. From the arguments of the learned counsel for the appellant, it is evident that the Selection Committee felt itself free to fix a Benchmark of its discretion and then topsy-turvy the selection process, as well as the seniority. It is just understandable as to how a person, who was included in the list and figured high in the seniority, can be denied the selection through an arbitrary, capricious procedure, designed and adopted by the Selection Committee, not only to suppress meritorious candidates, but also confer benefit on ineligible persons. We deprecate the action of the 1st respondent and its officers, in taking recourse to such an obnoxious exercise.

20. To an outsider, it may just appear to be a case of promoting one and denying another. However, the effect upon the morale of the Officers is phenomenal. While those who can manage the members of the Selection Committee, get circulars issued to enable them to be pushed up, would walk away with benefits, other meritorious officers, who rendered unblemished services, would be made to languish, as a curse therefor.

21. We, therefore, allow the appeal and set aside the procedure adopted by the

Selection Committee. Since the entire matter is before us, we hold that petitioners 1 and 2 shall stand selected and selection of respondents 9 and 10, who figured at Serial No. 12 and 20, is set aside. It is brought to our notice that the petitioners were also promoted to the post of Officers Scale-I. Now it would be only a matter of arrangement of the incumbents in the seniority list. They shall be deemed to have been promoted in the year 2002 itself. The 1st respondent shall not be entitled to affect any recovery from the respondents 9 and 10. They shall be entitled to be promoted as per the seniority, as and when their turn comes.

22. The miscellaneous petitions filed in this appeal shall stand disposed of.