
(2015) 12 RAJ CK 0017

In the Rajasthan High Court

Case No : Special Appeal (Writ) Nos. 488, 195, 217 and 853/2007

Baroda Rajasthan Gramin Bank

APPELLANT

Vs

Dhanraj Galana and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0017

Hon'ble Judges : Ajit Singh, Actg. C.J. and Arun Bhansali, J.

Bench : Division Bench

Advocate : Anil Bhandari, for the Appellant; Ritu Raj Singh for P.S. Bhati, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—These intra-court appeals have been filed by the appellant-Bank aggrieved against the order dated 15.12.2006 passed by the learned Single Judge, whereby the writ petitions filed by the respondents were allowed and the appellants were directed to reconvene the meeting of the Selection Committee to re-conduct the selection for making promotion by adopting the correct criteria of promotion i.e. Seniority-cum-merit in the light of law discussed and complete the exercise within a period of three months.

2. The respondents-petitioners were appointed and were working on the post of Officer - Junior Management Grade/Scale-I (JMG/S-I) since 1985. The Regional Rural Banks (Appointment & Promotion of Officers & Other Employees) Rules 1998 ("the Rules of 1998") were notified w.e.f. 29.7.1998. On 19.8.2002, the Bank issued a circular for the purpose of filling up vacancies in Middle Management Group/Scale-II (MMG/S-II) from JMG/S-I as Senior Manager/Area Manager, wherein 12 vacancies were to be filled up under the Rules of 1998.

3. Whereafter, another circular dated 5.10.2002 was issued indicating that the promotion shall be on the basis of written test and interview as per the Rules of 1998. Pursuant to the circular, the written test was held on 29.12.2002 and a list

dated 3.2.2003 was published of the successful candidates in the written test, wherein names of all the four respondents appeared. After result of written test was declared on 3.2.2003, another circular dated 19.2.2003, which has led to the present dispute, was issued wherein it was indicated that the Board of Directors of the Bank had in their meeting dated 18.2.2003 prescribed minimum cut-off marks after the written test, interview and performance appraisal report at 60 for general category and 55 for SC and ST candidates. Whereafter, the impugned promotion list dated 22.8.2003 indicating the list of officers promoted from JMG/S-I to MMG/S-II was issued, which list did not include the names of the respondents. The respondents made representation to the Managing Director, which representation was rejected by order dated 5.1.2004. Whereafter, they filed the writ petitions and on notices being issued, the same was contested by the appellants.

4. After hearing the parties, learned Single Judge relying on decision of this Court in *Rajan Gandhi and Others Vs. Aravali Kshetriya Gramin Bank and Others*, ; *Ashok Kumar Bohra and Others Vs. Hadoti Kshetriya Gramin Bank and Others*, and *Sharafat Ali Balvi v. The Marwar Gramin Bank & Ors.* D.B. Civil Special Appeal No. 709/1995 decided on 21.9.2004, which judgments had followed the principles laid down in *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, , passed the directions as noticed herein-before.

5. It is submitted by learned counsel for the appellant-Bank that the impugned judgment passed by the learned Single Judge cannot be sustained, inasmuch as, it is permissible even in a case governed by the seniority-cum-merit criteria to provide for cut-off marks and as cut-off marks of 60 for general candidates and 55 for candidates belonging to SC and ST were provided vide circular dated 19.2.2003 and the respondents failed to achieve the said cut-off, they cannot complain non-grant of promotion. The promotion exercise was undertaken by the appellant-Bank strictly in accordance with the Rules of 1998 read with Circular dated 19.2.2003, and therefore, the respondents had no cause to question the promotions made by the appellant-Bank and their writ petitions deserve to be dismissed. It was submitted that the legal position, stands crystallized by the judgment of Hon"ble Supreme Court in *Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others*, , which judgment has been followed recently in *Chairman, Rushikulya Gramya Bank Vs. Bisawamber Patro and Others*, and in fact, the present dispute is squarely covered by the judgment in the case of *Rushikulya Gramya Bank (supra)*.

6. Reliance was further placed on *Yogesh Yadav Vs. Union of India (UOI) and Others*, . It was prayed that the appeals be allowed and the judgment impugned be set-aside.

7. Vehemently opposing the submissions made by learned counsel for the appellant, learned counsel for the respondents submitted that the criteria of having minimum cut-off marks, was prescribed vide circular dated 19.2.2003, whereas the exercise for promotion had already started w.e.f. 19.8.2002 based

on the Rules of 1998, which did not prescribe for any such cut-off marks. Not only this, the cut-off marks were introduced after the result of written test held in terms of the Rules of 1998 was declared on 3.2.2003. It was submitted that the action of the appellant-Bank amounts to changing the Rules midstream and the same, therefore, cannot be sustained.

8. Further submissions were made that the criteria as prescribed under the Rules of 1998 did not envisage any overall cut-off and merely prescribed minimum marks in the written test, which were obtained by the respondents and once they had cleared the written test, based on their seniority they were entitled for promotion as per the criteria of seniority-cum-merit and the action of the respondents in promoting officers junior to the respondents cannot be sustained.

9. With reference to the judgment in the case of Rushikulya Gramya Bank (supra), it was submitted that in the said case the criteria was not changed midstream and therefore, the judgment has no application. It was submitted that the judgment passed by the learned Single Judge does not call for any interference.

10. Reliance was placed on K. Manjusree Vs. State of A.P. and Another, and Hemani Malhotra Vs. High Court of Delhi, .

11. We have considered the submissions made on either side and have perused the material available on record.

12. It is not in dispute that the exercise for promotion of officers, JMG/S-I to MMG/S-II was initiated by the circular dated 19.8.2002, which provided for filling up 12 vacancies under the Rules of 1998; the written test pursuant to the circular/Rules was held on 29.12.2002 and the result was declared on 3.2.2003, in which the respondents were declared successful i.e. they had obtained the minimum required marks. Whereafter, the circular dated 19.2.2003 was issued fixing the qualifying marks of 60 for general candidates and 55 for SC/ST candidates for the aggregate marks comprised of written test, performance appraisal report and interview; whereafter the names of all candidates who get 60 or above in the aggregate were included in the list for promotion strictly as per their seniority and were promoted in order of seniority irrespective of the marks obtained by them in the aggregate.

13. By way of example, it has been indicated by the appellant that highest marks of 78 were obtained by Abdul Kayum Khan, however, as he was below 12 senior persons, who had obtained 60 marks and above, was not promoted; it is also not in dispute that none of the respondents obtained 60 marks or above in aggregate.

14. So far as prescribing the minimum cut-off marks in aggregate in a case where the promotion criteria is seniority-cum-merit, is concerned, the Supreme Court in the case of Rajendra Kumar Srivastava (supra) after considering the judgment in the case of B.V. Sivaiah (supra) held as under:--

"10. Thus, it is clear that a process whereby eligible candidates possessing the

minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognized and accepted as complying with the principle of "seniority-cum-merit". What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit."

15. Further the issue as raised by the respondents in the writ petition, appears to be squarely covered by the judgment of the Supreme Court in the case of Rushikulya Gramya Bank (supra), wherein applying the judgment in the case of Rajendra Kumar Srivastava (supra), it was held as under:--

"4. The rules governing promotion from Junior Management Scale-I to Middle Management Scale-II, insofar as relevant for the present, are as under:--

"2 (a) to (c) x x x

(d) Whether promotion to be made on seniority basis or merit:

Promotion shall be made on the basis of seniority-cum-merit.

(A) Written test (60 marks)

The candidates shall be required to appear for written test comprising of two parts viz. Part (A) covering Banking Law and Practice of Banking and Part (B) covering Credit Policy, Credit Management including Priority Sector, Economics and Management.

60 marks allotted for written test shall be further divided as under:

5. In case of promotion from Clerk to Junior Management Class-I scale the division of marks is as under:--

70 marks allotted to written test are further divided as under:

A candidate in order to qualify must secure a minimum of 40 per cent marks each in English and Banking Law Practice.

6. The appellant - Bank, in addition to the requirement of 40% qualifying marks in the written test further fixed the qualifying mark of 60% for general candidates and 55% marks for SC/ST candidates on the aggregate marks comprising written test, performance appraisal reports and interview. The names of all candidates who got 60% or above in the aggregate were put in the list for promotion strictly as per their seniority. All candidates were promoted in order of

seniority, irrespective of anyone among them having got marks in excess of 60% in the aggregate.

7. The respondents in each of the appeals who were unsuccessful in getting promotions, challenged the select list of the promoted candidates by filing writ petitions before the Orissa High Court. The High Court heard W.P. (Civil) No. 14359 of 2004 [giving rise to civil appeal, arising from SLP (Civil) No. 19292 of 2008] as the leading case. It allowed the writ petition holding that prescription of the benchmark of 60% marks in the aggregate was in violation of the promotion policy and the rules governing the field. It, accordingly, allowed the writ petition and directed the appellant Bank to make fresh selection in accordance with the Rules. (The other writ petitions giving rise to the other appeals were disposed of following the judgment passed in Soumendra Nath Das v. Rushikulya Gramya Bank.)

8. In taking the view that the prescription of the minimum qualifying marks in the aggregate was in contravention of promotion based on seniority-cum-merit, the High Court relied upon the decisions of this Court in *State of Kerala v. N.M. Thomas*, *Bhagwandas Tiwari v. Dewas Shajapur Kshetriya Gramin Bank* and *B.V. Sivaiah v. K. Addanki Babu*.

9. In a more recent decision in *Rajendra Kumar Srivastava v. Samyut Kshetriya Gramin Bank* this Court revisited the issue of fixing a high percentage as the minimum qualifying marks for promotion on seniority-cum-merit basis. It examined all the three decisions (besides others) relied upon by the High Court, namely, *Bhagwandas Tiwari*, *B.V. Sivaiah* and *N.M. Thomas*.

10. In *Rajendra Kumar Srivastava*, the Court framed the following two questions for consideration: (SCC p. 340, para 8)

"8. On the contentions urged, the following two questions arise for our consideration:

(i) Whether minimum qualifying marks could be prescribed for assessment of past performance and interview, where the promotions are to be made on the principle of seniority-cum-merit?

(ii) Whether the first respondent Bank was justified in fixing a high percentage (78%) as the minimum qualifying marks (minimum merit) for promotion?"

11. Answering both the questions in the affirmative, the Court on an analysis of the earlier decisions observed and held that: (*Rajendra Kumar Srivastava* case, SCC pp. 341-42, paras 13-14)

"13. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of "seniority-cum-merit". What would offend the rule of

seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit. Re: Question (ii)

14. The next question is whether fixing of 78% as minimum qualifying marks (that is, as the minimum necessary merit) is unreasonable and arbitrary. The Rules in this case provide that the mode of selection is by interview and assessment of performance reports for the preceding three years as officer Scale I. The seniority list of officers in Scale I was published on 4-12-1996. Thereafter, the promotion process was held by earmarking 60 marks for assessment of performance reports (at the rate of 20 marks per year) and 40 marks were allotted for interview. The officers possessing the minimum qualifying marks of 78%, were then promoted on the basis of seniority. What should be the minimum necessary merit for promotion, is a matter that is decided by the management, having in mind the requirements of the post to which promotions are to be made. The employer has the discretion to fix different minimum merit, for different categories of posts, subject to the relevant rules. For example, for promotions at lower levels, it may fix lesser minimum qualifying marks and fix a comparatively higher minimum qualifying marks for higher posts."

The decision of the High Court, thus, appears to be clearly contrary to the view taken by this Court in *Rajendra Kumar Srivastava*.

12. The decision of the High Court is, accordingly, set aside. The writ petitions filed by the respondents before the Orissa High Court are dismissed. The select list prepared by the appellant Bank is affirmed. The appeals are allowed but with no order as to costs."

16. The submission made by learned counsel for the respondent regarding non-applicability of judgment in the case of *Rushikulya Gramya Bank* (supra), is apparently not sound. The Supreme Court in the said judgment as quoted herein-before had reversed the judgment of Orissa High Court in *Soumendra Nath Das Vs. Rushikulya Gramya Bank and Another*, . In the case of *Soumendra Nath Das* (supra), the Orissa High Court specifically noticed the following aspect:--

"6. A counter affidavit has been filed by O.P. Nos. 1 and 2, i.e., the Bank and its Chairman. The opposite parties in the aforesaid counter affidavit have taken a stand that in order to adopt elimination process, the procedure of bench mark was introduced. Fact remains that the Rules do not prescribe for such bench marking after the candidates come out successful in the written test."

(emphasis supplied)

17. From the above, it is clear that the bench-mark even in the case of Rushikulya Gramya Bank (supra) was also prescribed after the candidates came out successful in the written test and it cannot be said that the said aspect was not before the Supreme Court when the judgment in the case of Soumendra Nath Das (supra) was reversed by the Hon"ble Supreme Court.

18. So far as the judgments in the case of K. Manjusree (supra) and Himani Malhotra (supra) cited by learned counsel for the respondents are concerned, Hon"ble Supreme Court in the case of Yogesh Yadav (supra) after considering the above judgments, inter-alia posed the issue and held as under:--

"11. In the aforesaid back-drop, the question that falls for consideration is as to whether fixation of bench-mark would amount to change in the criteria of selection in the midstream when there was no such stipulation in that regard in the advertisement.

14. Instant is not a case where no minimum marks prescribed for via voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualifying for the interview. Entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since bench-mark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the "rules of the game". The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the bench-mark prescribed. Fixation of such a bench-mark is permissible in law. This is an altogether different situation not covered by Hemani Malhotra Vs. High Court of Delhi, .

17. It is stated at the cost of repetition that there is no change in the criteria of selection which remained of 80 marks for written test and 20 marks for interview without any subsequent introduction of minimum cut off marks in the interview. It is the short listing which is done by fixing the bench-mark, to recruit best candidates on rational and reasonable basis. That is clearly permissible under the law. (Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another,)."

19. From the law laid down by the Supreme Court as discussed herein-above, it

is apparent that prescribing minimum qualifying marks for assessment of past performance and interview where the promotions are to be made on the principle of seniority-cum-merit is permissible and further the action of the appellants in prescribing the bench-mark by circular dated 19.2.2003 cannot be said to be changing the selection criteria midway.

20. In view thereof, the action of the appellant in excluding the respondents from the list of successful candidates for promotion from JMG/S-I to MMG/S-II on account of their failure to obtain minimum prescribed aggregate marks cannot be said to be violative of the prescribed seniority-cum-merit criteria. The order of the learned Single Judge, therefore, cannot be sustained.

21. In view of above discussion, the appeals filed by the appellant-Bank are allowed. The impugned order dated 15.12.2006 passed by the learned Single Judge is set-aside. The writ petitions filed by the respondents are dismissed.

22. No order as to costs.