
(2006) 06 GAU CK 0094
In the Gauhati High Court
Case No : WA No. 518 of 2002

Brijlal Das

APPELLANT

Vs

Pragjyotish Gaonlia Bank and Others

RESPONDENT

Date of Decision : 29-06-2006

Acts Referred:

Citation : (2006) 3 GLT 77

Hon'ble Judges : B. Sudershan Reddy, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : D. Choudhury, A.K. Choudhury, P.T. Sashia and P. Das, for the Appellant; S. Dutta, M. Choudhury and S. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—The unsuccessful writ Petitioner No. 2 in the Civil Rule No. 1601 of 1998 filed Writ Appeal against the judgment and order of the learned Single Judge dated 17.7.2002 wherein the learned Single Judge held that the writ Petitioner No. 2, Brijlal Das was undergoing punishment in the year 1997 and hence the case of the writ Petitioner No. 2 was not considered in the year 1997 for promotion to the Officer Scale II and also that as the punishment had ceased in the year 2000 the Respondents are directed to consider his case for promotion as per Rules & Regulations. The writ Petitioner No. 1 had not filed the Writ Appeal as he had been promoted subsequently to the next higher post of the Officer Scale-II.

2. The present Appellant/writ Petitioner No. 2 and another i.e. writ Petitioner No. 1 filed the Writ Petition i.e. CR No. 1601 of 1998 basing on the fact that the Appellant/writ Petitioner No. 2 joined the Pragjyotish Gaonlia Bank, a Banking Company constituted under the provisions of the Regional Rural Banks Act, 1976 as Officer Scale-I on 1.2.1982. The next higher promotion from Officer Scale-I is Officer Scale-II. The Chairman of the Pragjyotish Gaonlia Bank issued an office circular dated 8.4.1986 regarding internal promotion of the officers of the bank. In para-3 of the office circular dated 8.4.1986, it is clearly mentioned that

reservation of posts for Scheduled Tribes/Scheduled Castes should be according to the State Government Rules. It is said that there were 18 (eighteen) vacancies in the posts of Officer Scale-II in the Pragjyotish Gaonlia Bank. For filling up those eighteen vacancies in the post of Officer scale-II the Chairman, Pragjyotish Gaonlia Bank issued office circular dated 31.5.1995 about the internal promotion from Officer Scale-I to Officer Scale-II stating interalia that the total number of candidates to be called for interview would be four times the number of vacancies and SC/ST officers who are senior enough in the zone of consideration for promotions so as to be within the number of vacancies for which the select list has to be drawn up would be included in the list provided they are not considered unfit for promotion. From bare perusal of the said office circular dated 31.5.1995 it is clear that the case of the officers belonging to SC & ST would be considered only when they are within the zone of consideration for promotion to the said eighteen vacancies in the Officer Scale-II.

3. The Bank also prepared final interse seniority list of officer Scale-I of the Pragjyotish Gaonlia Bank as on 31.3.1997 which had been circulated under a letter of the Chairman dated 31.3.1997. In that final inter-se seniority list name of the Appellant/writ Petitioner No. 2 appeared at sl. No. 39 whereas the name of Respondent Nos. 3 to 19 appeared at sl. Nos. 1, 3, 5, 7, 11, 13, 17, 18, 21, 24, 25, 26, 33, 36, 61, 62 and 63 respectively.

4. The interview for promotion to the said eighteen vacancies in the Officer Scale-II was held on 9.9.1997 at Guwahati and thereafter on 15.9.1997, Respondent No. 2, the Chairman. Pragjyotish Gaonlia Bank issued circular regarding the internal promotion of Respondent Nos. 3 to 19 to Officer Scale-II. Being aggrieved, the Appellant/writ Petitioner No. 2 and another filed CR No. 1601 of 1995 for quashing the promotion order dated 15.9. 1997 for promoting Respondent Nos. 3 to 19 to the post of Officer Scale-II and also for quashing the said office circular dated 31.5.1995 issued by the Chairman of the Pragjyotish Gaonlia Bank.

5. The Respondent Nos. 1 and 2, i.e. the Bank filed Affidavit-in-opposition stating that the cases of the Appellant/writ Petitioner No. 2 and the writ Petitioner No. 1 were not considered for promotion to Officer Scale-II on the ground that Appellant/writ Petitioner No. 2 was not within the zone of consideration for promotion to the said eighteen posts of Officer Scale-II and also the Appellant/writ Petitioner No. 2 was undergoing punishment at the time of holding DPC on 9.9.1997.

6. The main ground taken by the Appellant/writ Petitioner No. 2 for challenging the said order of the Chairman. Pragjyotish Gaonlia Bank dated 15.9.1997 for promoting Respondent Nos. 3 to 19 were that there should be reservation for the Scheduled Caste candidates according to the State Government Rules for reservation of vacancies for SC & ST candidates in the said eighteen vacancies in the post of Officer Scale-II and case of the Appellant/writ Petitioner No. 2 should have been considered by the said DPC held on 9.9.1997 for filling up eighteen

vacancies in the post of Officer Scale-II and also that the writ Petitioner No. 2 was not undergoing punishment at the time of holding DPC on 9.9.1997 in as much as the punishment imposed to the Petitioner No. 2 for stoppage of five years increment w.e.f. 1.9.1992 in the scale of pay under the order of Chairman, Pragjyotish Gaonlia Bank dated 15.5.1992 ended on March, 1997 and also that the Petitioner No. 2 whose seniority position admittedly appeared at sl. No. 39 in the final inter-se seniority list of the Officer Scale-I should be within the zone of consideration for promotion to eighteen vacancies in the Officer Scale-II as the number of officers within the zone of consideration should be 4 (four) times the number of vacancies according to the said circular for internal promotion dated 31.5.1995.

7. In the course of hearing of the present writ appeal the learned Counsel appearing for the Appellant/writ Petitioner No. 2 and also the Bank produced the order/letter of the Chairman, Pragjyotish Gaonlia Bank dated 10.1.2006 for promoting the Appellant/writ Petitioner No. 2 to Officer Scale-II w.e.f. 9.1.2006.

8. The learned Single Judge while passing the impugned judgment and order dated 17.7.2002 had erroneously held that at the time of holding the said DPC on 9.9.1997 the Appellant/writ Petitioner No. 2 was under going punishment imposed in the year, 1995 whereby five increments were stopped and punishment was to be ceased in the year, 2000. From the records and also from the case of the writ Petitioner No. 2 it is clear that the stoppage of five years increments w.e.f. 1992 in the scale of pay to the Petitioner No. 2 was imposed under the said order of the Chairman. Pragjyotish Gaonlia Bank dated 15.5.1992 and as such, the Petitioner No. 2 was not undergoing punishment at the time of holding DPC/Selection Committee on 9.9.1997 for promotion to the said eighteen vacancies in Officer Scale-II as the punishment ended in the month of March, 1997. The learned single Judge also in the impugned judgment and order dated 17.7.2002 did not make any decision regarding the reasons given by the Respondent/bank for not considering the case of the Appellant/writ Petitioner No. 2 by the said DPC/Selection Committee held on 9.9.1997 that Appellant/writ Petitioner No. 2 was not within the zone of consideration for the said eighteen vacancies in the Officer Scale-II.

9. The Respondent/bank under its circular regarding the internal promotion to the post of Officer scale-II dated 31.5.1995 clearly mentioned that the total number of candidates to be called for interview would be four times the number of vacancies, we are of the considered view that non consideration of the case of the Appellant/writ Petitioner No. 2 by the DPC held on 9.9.1997 for the said eighteen vacancies on the ground that the Appellant/writ Petitioner No. 2 was not within the zone of consideration is not wholly acceptable inasmuch as the Appellant/writ Petitioner No. 2 whose name appear at sl. No. 39 of the final interse seniority list of the Officer Scale-II would be very much within the zone of consideration for the simple reason that 72 (seventy two) Officer Scale-I were to be considered for the said eighteen vacancies in the post of Officer Scale-I. Over

and above there was no reservation for ST/SC candidates in the said 18 (eighteen) vacancies in the posts of Officer Scale-II. The Appellant/writ Petitioner no. 2 is a member of the Scheduled Castes.

10. For the reason discussed above, we are of the considered view that the impugned judgment and order dated 17.7.2002 is erroneous and factually incorrect. Accordingly, interference to the impugned judgment and order dated 17.7.2002 is called for and hereby set aside. Further, we are also of the considered view that the case of the Appellant/writ Petitioner No. 2 should have been considered by the said DPC held on 9.9.1997 for promotion to 18 (eighteen) vacancies in the posts of Officer Scale-II and by following the State Rules for reservation, the Respondent nos. 1 and 2 should have considered for reservation for ST/SC candidates in the said 18 (eighteen) vacancies. As the Appellant/writ Petitioner No. 2 had already been promoted to Officer Scale-II while pending the present writ appeal number the said letter/promotion order issued by the Chairman, Pragjyotish Gaonlia Bank dated 10.10.2006 w.e.f. 9.1.2006, we are of the considered view that there is no point of quashing the promotion order dated 15.9.1997 for promoting the Respondent Nos. 3 to 19 but the Respondent Nos. 1 and 2 i.e. the Bank shall issue necessary order for giving effect of promotion of the Appellant/writ Petitioner No. 2 to the Officer Scale II from the date his juniors in the grade of Officer Scale-I, i.e. Respondent Nos. 17, 18 and 19 were promoted to the Officer Scale-II under the impugned order dated 15.9.1997 w.e.f. 15.9.1997.

To the extent mentioned above, writ appeal is allowed. Parties are to bear their own costs.