
(2015) 06 CAL CK 0063
In the Calcutta High Court
Case No : Writ Petition No. 19558 (W) of 2010

Debabrata Maity

APPELLANT

Vs

Bangiya Gramin Vikash Bank and Others

RESPONDENT

Date of Decision : 17-06-2015

Acts Referred:

Citation : (2015) 3 ESC 1259

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Piush Chaturvedi, Asit Baran Ghosh, Bhagbat Chaudhury and K.K. Mitra, for the Appellant; Dipak Kumar Paul, Advocates for the Respondent

Final Decision : Allowed

Judgement

I.P. Mukerji, J—Five Regional Rural Banks in West Bengal amalgamated on 21st February, 2007. They were Mallabhum Gramin Bank, Murshidabad Gramin Bank, Gour Gramin Bank, Nadia Gramin Bank and Sagar Gramin Bank. A new Regional Rural Bank, Bangiya Gramin Vikash Bank, the first respondent was established. Its head office is in Berhampur in Murshidabad District. The writ petitioner was working as an officer in the Junior Management Grade, Scale-I in Mallabhum Gramin Bank, prior to its amalgamation on 21st February, 2007. On 14th September, 2002 this bank made a notification with regard to promotion of officers from Junior Management Grade (JMG) Scale-I to the post of Middle Manager Scale-II post (MMG). According to this notification, on 23rd August, 2002 the Board of Directors of this bank resolved that 62 vacancies in the Middle Manager Grade-II would be filled up by promotion of eligible officers from JMG Scale-I. One eligibility criterion in that notification is of great relevance. It is para - 1(b)(ii) which stipulated eight years of service as an officer in the scale-I cadre as the minimum eligibility criterion for consideration for promotion to the said post.

2. The basis of evaluation of candidates is also of great importance. It shows the exact weightage that was given to the factors that were considered for

promotion. This would appear paragraph 1(e) as follows:

(e) Modus Operandi for selection

The allocation of marks for Promotion will be as under.

(i) Seniority - 50 marks

(ii) Performance - 30 marks

(iii) Interview - 20 marks

3. The appraisal of performance would be in respect of three immediately preceding years. 10 marks were allocated for each year. If the performance of the candidate was outstanding he would be awarded 10 marks, if it was very good he would be given 8 marks, 6 marks and 4 marks for good and satisfactory performance respectively.

4. The seniority marks would be calculated at the rate of 5 marks per year after 8 years of service upto a maximum marks of 50.

5. By a corrigendum dated 5th April, 2003 an essential condition in the notification dated 14th September, 2002 was sought to be changed by Mallabhum Gramin Bank. By this corrigendum after the very first year of service a candidate would earn 5 marks per year on account of seniority upto a maximum of 50 marks. On 9th April, 2003 the said bank announced that the selection process for filling up of the above 62 number of vacancies arising upto 31st March, 1998 bank was commenced. The writ petitioner was asked to present himself for interview on 23rd April, 2003 at about 2.30 p.m.

6. Promotion was granted on 23rd May, 2003. The name of the petitioner did not figure in the list. Ultimately with effect from 5th August, 2005 the petitioner was promoted from Scale-I to Scale-II as communicated to him by the letter dated 15th January, 2010 of the writ petitioner bank.

7. If the case of the petitioner has to be put in brief, he was entitled to the same promotion on 23rd May, 2003. Not granting promotion to him from this date was wrongful on the part of the bank. He has lost the benefit of promotion from 23rd May, 2003 to 5th August, 2005 when his juniors superseded him with additional benefits. He has retired after 31st March, 2015. He wants the benefit arising out of the promotion made on 23rd May, 2003 to be granted to him with retrospective effect from the said date.

8. On 10th June, 2010, a writ application WP 8614 (W) of 2003 was moved by the writ petitioner on the self-same cause of action. By his order dated 10th June, 2010 Mr. Justice Debasish Kar Gupta directed the bank to consider the case of the petitioner in accordance with law within a period of eight weeks from the date of communication of the order.

By a decision of the bank dated 12th August, 2010 the petitioner's case was dismissed.

9. Hence, the present writ.

10. Mr. Chaturvedi, learned advocate on behalf of the petitioner made some pointed submissions. He said that the vacancy as stated by the bank was to have arisen on 31st March, 1998. Therefore, the terms and conditions prevailing on that day would govern any selection process that was undertaken.

11. The notification for filling up 62 vacancies was published on 14th September, 2002 with the conditions that after completion of eight years of service, for every year of service for the next ten years, an officer would be allotted 5 marks on account of seniority. On 5th April, 2003 this condition was changed. By the changed condition an officer with one year's service would earn 5 marks and continue to earn 5 marks for every completed year of service for ten years. Therefore, according to the original condition an officer rendering less than eight years' service would have no rating in terms of seniority. A maximum of fifty marks would only be earned after eighteen years of service. The petitioner had such service record. According to the changed rules this could be earned after ten years of service by the officers junior to the petitioner who earlier had no chance of matching the petitioner's marks on account of seniority. Therefore, these altered rules increased the number of persons who would be in the zone of consideration, causing serious prejudice to the writ petitioner.

12. According to learned Counsel for the bank the petitioner was called for an interview through a letter dated 9th April, 2003. In that letter the changed criterion by the circular dated 5th April, 2003 was notified to the petitioner. With full knowledge of the changed conditions he took part in the interview. Having participated in the selection process, the petitioner could not turn around and challenge the process itself, it was submitted on behalf of the bank citing Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, AIR 2008 SC 5 : (2007) 11 SCALE 257 : (2007) 8 SCC 100 : (2007) 2 SCC(L&S) 792 : (2007) 11 SCR 41 : (2008) 1 SLJ 407 : (2007) AIRSCW 5989 : (2007) 6 Supreme 410 . The bank also contended that the appointment and promotion of regional rural banks were governed, by the RRB (appointment and promotion of officers and employees) Rules, 1988 which were adopted by the bank. Learned counsel strongly relied on a circular of the National Bank for Agriculture and Rural Development dated 10th February, 1988 to the following effect.

"it may however be clarified that the guideline contained in the above circular cannot be interpreted to mean that promotions would be automatic without any screening whatsoever. The management of the RRBs are not precluded from making objective assessment of the Officers/Employees potential for considering their suitability for promotion."

13. The petitioner according to the stand taken by the bank could not obtain 50% marks awarded for performance appraisal [30 marks] and interview [20 marks] as stipulated in the conditions is the said notification dated 14th September, 2002. Hence, according to the rules the petitioner could not be

granted promotion.

14. I might state that at this point of time that the records of this selection process have become irretrievable according to the admission of the bank and cannot be produced.

15. The bank cited the 2005 promotion from scale-I to scale-II officers. 87 eligible candidates were promoted out of 348 eligible candidates (25%) only. When the rate of promotion was so low the petitioner could not invite this Court to treat him as selected in the 2003 selection process. Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, AIR 2008 SC 5 : (2007) 11 SCALE 257 : (2007) 8 SCC 100 : (2007) 2 SCC(L&S) 792 : (2007) 11 SCR 41 : (2008) 1 SLJ 407 : (2007) AIRSCW 5989 : (2007) 6 Supreme 410 , was also cited to urge that a selecting authority has the power to fix cutoff marks. Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others, AIR 2010 SC 699 : (2009) 14 JT 252 : (2009) 14 SCALE 67 : (2010) 1 SCC 335 : (2010) 1 SCC(L&S) 1086 : (2009) 15 SCR 936 : (2010) 1 SLJ 242 : (2010) 1 UJ 195 : (2010) AIRSCW 341 : (2009) 7 Supreme 383 , was also cited by learned counsel for the respondent arguing that a minimum qualifying mark could be set before considering a candidate's case for promotion on seniority basis. This kind of stipulation was valid according to the said decision, it was submitted.

16. Now I come to my findings.

17. It is most important, first of all, to determine the date when the terms and conditions governing a selection process become operative. This is so because it is almost an admitted position that once the terms and conditions have been set or the rules governing the selection process notified, those conditions cannot ordinarily be changed. According to P. Mahendran and others Vs. State of Karnataka and others, AIR 1990 SC 405 : (1990) 60 FLR 103 : (1990) 1 SCC 411 : (1989) 2 SCR 385 Supp , cited by Mr. Chaturvedi learned Advocate for the petitioner, a right is created in favour of a candidate by the terms and conditions of the advertisement notifying a recruitment process and by the existing recruitment rules, if any. A valid statutory amendment making change thereto may expressly make it retrospective. The dictum of the Supreme Court expressed in paragraph-11 of the report is as follows:

"It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any Rule unless the amending Rule is retrospective in nature. In the instance case the Commission had acted in accordance with the then existing rules and there is no dispute that the appellants were eligible for

appointment, their selection was not in violation of the Recruitment Rules. The Tribunal in our opinion was in error in setting aside the select list prepared by the Commission."

18. A Snehansu Jas Vs. State of West Bengal and Others, (2001) 3 CALLT 155 : (2001) 3 CHN 313 , opined.

"***** The selection process is deemed to have commenced if the posts have been advertised and candidates have been called for interview and meanwhile if the Rules are amended then that selection process should be allowed to continue without being affected by the amendment of the Rules unless the Acts or Rules have been amended with a retrospective effect."

19. In Uttar Banga Kshetriya Gramin Bank and Others Vs. Jayanta Choudhury and Others, (2007) 2 CALLT 620 , a Division Bench judgment of our Court dealt with more or less similar facts as have arisen in this case. That case also considered selection in a Regional Rural Bank and a subsequent change in the conditions of selection.

20. In Tulsi Roy Vs. Sri Krishanu Roy and Others, (2011) 2 CALLT 575 : (2011) 2 CHN 1021 : (2011) 130 FLR 1021 , also cited Mr. Chaturvedi a Special Bench of this Court remarked that:

"***** the process of selection should be completed in accordance with the rules which stood effective at the time of initiating the process of selection; otherwise, fresh selection should commence in accordance with the new rules after complying with the formalities prescribed in the new rules."

What is "seniority-cum-merit" is discussed in three Supreme Court judgments State of Kerala and Another Vs. N.M. Thomas and Others, AIR 1976 SC 490 : (1976) LabIC 395 : (1976) 1 LLJ 376 : (1976) 2 SCC 310 : (1976) 1 SCR 906 , B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., (1998) 5 AD 533 : AIR 1998 SC 2565 : (1998) 5 JT 96 : (1998) LabIC 2749 : (1999) 1 LLJ 754 : (1998) 4 SCALE 182 : (1998) 6 SCC 720 : (1998) SCC(L&S) 1656 : (1998) 3 SCR 782 : (1999) 1 SLJ 257 : (1998) AIRSCW 2577 : (1998) 6 Supreme 1 and Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, AIR 2000 SC 2513 : (2000) 8 JT 276 : (2000) 5 SCALE 327 : (2000) 6 SCC 698 : (2000) SCC(L&S) 797 : (2000) 1 SCR 722 Supp : (2000) 2 UJ 1254 : (2000) AIRSCW 2692 : (2000) 5 Supreme 281 , also referred to by Mr. Chaturvedi.

21. In the first decision of the Supreme Court seniority-cum-merit is described as follows:

"The principle of equality is applicable to employment at all stages and in all respects namely, initial recruitment promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration. The senior though the less meritorious shall have priority. This will not violate Articles 14,

16(1) and 16(2). A rule which provides that given the necessary requisite merit, a number of the backward class shall get priority to ensure adequate representation will not similarly violate Article 14 or Articles 16(1) & (2). The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it."

22. In the second decision seniority-cum-merit is described as follows:

18. We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

23. Again, in the third decision the Supreme Court said:

"Wherever fitness is stipulated as the basis of selection, it is regarded a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respect. "Seniority-cum-Merit" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of Seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to All India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them."

24. First of all, the submission, that the changed conditions were in the knowledge of the writ petitioner, does not appeal to me at all. According to P. Mahendran and others Vs. State of Karnataka and others, AIR 1990 SC 405 : (1990) 60 FLR 103 : (1990) 1 SCC 411 : (1989) 2 SCR 385 Supp , 1021 , Snehansu Jas Vs. State of West Bengal and Others, (2001) 3 CALLT 155 : (2001) 3 CHN 313 , Uttar Banga Kshetriya Gramin Bank and Others Vs. Jayanta Choudhury and Others, (2007) 2 CALLT 620 and Tulsi Roy Vs. Sri Krishanu Roy and Others, (2011) 2 CALLT 575 : (2011) 2 CHN 1021 : (2011) 130 FLR 1021 , the terms and conditions governing the recruitment are those at the date of notification of the selection process.

25. The subject selection process in question was notified on 14th September, 2002. The selection process was not undertaken for almost one year. Then on 5th April, 2003 the conditions for recruitment were changed.

26. Now, according to these decisions the changed condition did not bind the writ petitioner at all, as it caused him great prejudice. By virtue of the length of the petitioner's service of more than 18 years, he was assured of full marks on account of seniority, under the original conditions. Now, by virtue of these changed conditions Scale-I officers who had completed 10 years of service were made at par with him. By those alterations the number of persons in the zone of consideration was increased.

27. Although in the above original notification selection was to be on seniority-cum-merit basis the consideration of merit became much more important than seniority in the selection process by the changed conditions. This is so because Scale-I officers over 10 years of service had full marks on account of seniority. The base of eligible candidates, on seniority consideration was appreciably broadened. Obviously, the tilt was then in favour of merit to fill up the limited vacancies.

28. The stand of the bank that the petitioner was disqualified because he did not obtain 50% marks in the combined evaluation of performance and interview does not seem to me to be a good argument. According to the above authorities, a seniority-cum-merit selection process makes a broad eligibility criterion on minimum merit and thereafter promotion is on seniority basis. That even after obtaining 50 out of 100 on account of seniority, the petitioner was disqualified, is very unfortunate. If one accepts the stand of the bank then the petitioner had to obtain a minimum of 50% in performance appraisal and interview. Thus, the petitioner would have to get a minimum 75 marks out of 100. Candidates similarly situated as the petitioner would have to get the same percentage of marks. Say if the petitioner got 23 marks in performance appraisal and interview, he would get an aggregate of 73 marks out of 100 and yet stand disqualified whereas his junior with 30 out of 50 in the above evaluation and 15 on account of seniority, would be eligible for consideration. That would certainly produce a most unjust result. The selection process had deviated from the original seniority-cum-merit consideration to merit-sum-seniority consideration, in my opinion.

29. Furthermore, a condition that a candidate should obtain 50% in performance, assessment and interview means that the decision to promote is left at the discretion of the bank. Performance records are maintained by them. Interview is taken by one of its officers. If the bank did not want a candidate to be promoted, it could easily adjudge his performance records and his performance in interview to be poor, so as to deny him promotion.

30. It gives room for arbitrariness, unfairness and discrimination towards particular employee/employees. It also goes against the seniority-cum-merit policy.

31. The decisions of the Supreme Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., (1998) 5 AD 533 : AIR 1998 SC 2565 : (1998) 5 JT 96 : (1998) LabIC 2749 : (1999) 1 LLJ 754 : (1998) 4 SCALE 182 : (1998) 6

SCC 720 : (1998) SCC(L&S) 1656 : (1998) 3 SCR 782 : (1999) 1 SLJ 257 : (1998) AIRSCW 2577 : (1998) 6 Supreme 1 and Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, AIR 2000 SC 2513 : (2000) 8 JT 276 : (2000) 5 SCALE 327 : (2000) 6 SCC 698 : (2000) SCC(L&S) 797 : (2000) 1 SCR 722 Supp : (2000) 2 UJ 1254 : (2000) AIRSCW 2692 : (2000) 5 Supreme 281 and the Division Bench of our Court in Uttar Banga Kshetriya Gramin Bank and Others Vs. Jayanta Choudhury and Others, (2007) 2 CALLT 620 , tell us that were a minimum eligibility criterion regarding seniority has to be fulfilled, and the eligibility for consideration on merits is the main factor, the selection process can be called one based on merit-cum-seniority. It was exactly this that happened to the subject selection process after publication of the corrigendum of 5th April, 2003. Therefore, there was a material change in the terms and conditions of recruitment for me after initiation of the recruitment process.

32. Now, a final submission of Mr. Paul, learned advocate for the bank has to be dealt with.

33. In my opinion, the petitioner is not challenging the decision or policy to promote JMG Scale-I officers to MMG Scale-II post. He is challenging the effects of changing the terms and conditions of selection by the bank after initiation of the selection process. Therefore, his participation in the process does not operate as an estoppel. Hence the decision Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, AIR 2008 SC 5 : (2007) 11 SCALE 257 : (2007) 8 SCC 100 : (2007) 2 SCC(L&S) 792 : (2007) 11 SCR 41 : (2008) 1 SLJ 407 : (2007) AIRSCW 5989 : (2007) 6 Supreme 410 , has no application.

34. In those circumstances, it is quite plain that the writ petitioner has been treated unfairly and unjustly. This writ application has to succeed. The decision dated 12th August, 2010 is set aside. Since the records of the recruitment process are not available, this Court cannot direct reconsideration. This Court declares the petitioner to have been eligible for promotion from JMG scale-I post to MMG scale-II post, in the selection process notified on 14th September, 2002 and undertaken from 9th April, 2003. Since the petitioner has retired a notional effect has to be given to this promotion. His pay/salary and other applicable allowances have to be computed and fixed on the date when promotion under the above process was effected on 23rd May, 2003 and thereafter notionally revised from time to time till his date of retirement, on 31st March, 2015. His future retrial benefits have to be computed and paid accordingly. The arrear differential salary, allowances and monetary benefits have to be released to the petitioner by the respondent bank within three months from date.

35. This writ application is allowed. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.