
(2001) 11 SC CK 0058

In the Supreme Court Of India

Case No : Civil Appeal 7784 of 2001 and Special Leave Petition (Civil) 6003 of 2001

Dena Bank

APPELLANT

Vs

Kartik Das Bandopadhyay and Others

RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 18(1), 2

Citation : (2002) 92 FLR 181 : (2001) 10 JT 140 : (2002) 1 LLJ 235

Hon'ble Judges : K. G. Balakrishnan, J;B. N. Kirpal, J;Arijit Pasayat, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. Special leave granted.

2. In the instant case a settlement had been arrived at between the bank and the union under the provisions of Section 2(p) of the Industrial Disputes Act, 1947 read with Section 18(1) of the Industrial Disputes Act and Rule 58 of the Industrial Disputes (Central) Rules. One of the terms of the settlement related to the selection modality. Two channels of promotion were indicated in terms of settlement - one was seniority-cum-merit and the other was only merit. The manner in which each of the channels were to be worked out was indicated. In the case of seniority- cum-merit channel, marks were to be awarded for seniority, educational qualification and written test. No minimum qualifying marks for written test was provided. With regard to selection under the merit channel, the only criterion which was. relevant was the educational qualification and the written test, the minimum qualifying marks for written test being 50 per cent.

3. The respondent took part in the selection process for promotion to the post of junior management cadre, Scale-I under the first channel, namely, seniority-cum-merit. He was not successful and thereafter he filed a writ petition in the High

Court. There was no challenge raised in the writ petition either to the terms of the settlement or to the applicability of the said terms. The perusal of the writ petition shows that the main contention raised by the respondent was that he had done well in the test and his papers should be re-evaluated and if this is ordered then the Court would find that he should have been selected.

4. The single Judge while referring to a decision of this Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., held that the method of seniority-cum-merit as contained in the settlement was contrary to the aforesaid decision of this Court and a direction was issued to the appellant to appoint respondent no. 1 in the higher grade.

5. In appeal, the Division Bench came to the conclusion that the single Judge could not have issued a direction which it did but curiously enough the Division Bench directed that the cases of all the eligible candidates who have been unsuccessful in the examination held by the appellant may be considered in terms of the law laid down in Sivaiah's case. This direction was issued despite the fact that no other unsuccessful candidate had approached the Court nor was there such a prayer in the writ petition.

6. There is one important difference between the present case and Sivaiah's case. Here there is a binding settlement under the provisions of the industrial Disputes Act between the bank and its employees. There is no challenge in the writ petition to the said settlement nor is it stated that the settlement is not binding on the writ petitioner. The respondent took part in the selection process and it is only when he was unsuccessful that he raised a grievance and that too only to the extent that he ought to have been given more marks in the written test than that he had obtained.

7. We need not go into the question whether the terms of the settlement are valid or not but as long as the said settlement is not challenged and the bank has acted in accordance with the said settlement, then no relief could have been granted to the respondent. The question of the Court re-examining the papers in order to ascertain whether correct marks had been given cannot arise and therefore, the writ petition of the respondent could not have been allowed. The decision of this Court in Sivaiah's case was not applicable and therefore, this appeal is allowed, decision of the High Court is set aside and the result of which would be that the writ petition filed by the respondent would stand dismissed.