

(1993) 04 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ. Petition No. 40573 of 996

Dwarika Rai

APPELLANT

Vs

Chairman Sanyukta Kshetriya Gramin Bank

RESPONDENT

Date of Decision : 10-04-1993

Acts Referred:

Citation : (1993) 04 AHC CK 0063

Hon'ble Judges : R.R.K.Trivedi, J and R.K.Mahajan, J

Final Decision : Allowed

Judgement

R.K. Mahajan, J.—This writ petition involves the following questions for determination by this Court:

"Whether the petitioner who was selected by the Selection Committee against the vacancies available in the year 1987 and the recommendation of the Selection Committee was forwarded to the Director of Board which was not finalised can be clubbed with the candidates who had no right to compete in the year 1987 and that too for the vacancies which occurred after the year 1987.

"Whether the delay on the part of authorities in not taking decision on the recommendation of the Selection Committee would disentitle the petitioner even to claim seniority according to the guidelines issued for 13 vacancies in the year 1987

2. By means of this petition, the petitioner has sought following reliefs:

"Issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 4121996 issued by the Chairman, Sanyuta Kshetriya Gramin Bank (Annexure 7).

Issue a writ, order or direction in the nature of mandamus commanding upon the respondent not to apply the guidelines on the 13 vacancies for which the interview were taken in the year 1987 and further to declare the result of the 1987 examination itself."

3. In short the petitioner's case is, that he was appointed as Agricultural Field Officer on 311997 and was working as Branch Manager of Sanyukta Kshetriya Gramin Bank, Ranipur Branch, Mau at the time of filing of the writ petition; that the posts of Accountant Agricultural Field Officer and the Branch Manager were merged into a single category on 2941980 and the said category was called as "Officers of the Bank" after taking due approval of competent authorities; that as a result of said merger on 30th December, 1984, the National Bank for Agriculture and Rural Development issued certain guidelines with regard to creation of supervisor" posts of General Managers, Senior Managers and Area Managers; that there after on 7th April, 1986 the National Bank for Agriculture and Rural Development issued certain more guide lines pertaining to the procedure and agency for promotion. According to the said guidelines the Bank which have more than 100 Branches created seven posts of Senior Managers at the head office and six posts of Area Managers in the field.

4. It appears that in pursuance of said guidelines biodata of petitioner and other eligible candidates was called for filling up of 13 vacancies and the interview was held by the Selection Committee/Interview Board on 7th June, 1987 but the result of the same was not declared. It appears that so many writ petitions were filed in the matter. First of all mention would be made of the writ petition filed by one Rajendra Bahadur Singh on the ground that he has put in 7 years service in the Bank in question and two years in some other Bank but his two years service rendered in the other Bank was being not considered. On 1861987 by an interim order it was directed that the selection made on the basis of the interview dated 761987 shall be subject to the final disposal of the writ petition. Since the result was not being declared despite meeting of the Board having been held on 19687 petitioner filed writ petition alongwith which three other petitions were tagged. The petitions were disposed of by the following order:

"This writ petition has been filed to quash the circular No. 266 dated 431987 Annexure 1 to the petition and for a mandamus not to give effect to the selection held on 761987.

We have heard the learned Counsel for the parties and find no merit in this petition. The dispute is regarding the selection for the post of Area Manager/Senior Manager in the Sanyukta Kshetriya Gramin Bank, Azamgarh As regards the impugned circular, we find no legal infirmity in the same. The said circular only mentions the qualification and eligibility for the selection and some other conditions as existing at that time. There is no illegality in the same. As regards the second prayer, we are of the opinion that it is premature. If and when any appointments are made pursuant to the selection it will be open to the petitioners to challenge the same, if they are aggrieved.

The petition is dismissed as premature since as yet no appointments have been made on the post of Area Manager/Senior Manager. When any such appointment is made, it is at that stage petitioners may come up to this Court. Interim orders if any, is vacated.

Date 1841996.

Sd.M.Katju.

Sd.B.S..Chauhan."

5, The writ petition of the petitioner was also disposed of finally on the ground that since writ petition No. 12870 of 1987 has already been decided and the respondents have been directed now to proceed in accordance with law, expeditiously as the matter has been pending since 1987, hence with these directions this petition is finally disposed of.

6. In nut shell the total outcome of the litigation referred above was that the guidelines were held to be valid and the respondents were directed to proceed expeditiously with the declaration of the result. However, it maybe pointed out that the Bank moved an application on 2051988 for proceeding as per the fresh guidelines but the Court did not agree to that proposal and ultimately stayed the fresh guidelines by an order dated 2051988. The plea taken by the petitioner is that there are some vested interests in the Bank which deliberately delayed declaration of the result despite several representations made repeatedly. The petitioner was compelled to send last representation on 7th October1987 (Annexure 5) and since the decision was not being taken he was forced to file writ petition for declaration of result of 13 vacancies for which he was also under consideration. This petition was disposed of on admission stage on 22111996 with a direction to the respondents to decide petitioners representation with in a month. But the respondents are applying subsequent guidelines of 1988 even in the case or present petitioner hence this petition.

7. The case of the respondents per para 6 of the counter affidavit of Chairman is that since the writ petitions were pending and on that count ten years elapsed and in the meantime instead of 13 posts identified in the year 1986, now total vacancies are 64 due to categorisation of branches on the basis of business as prescribed by NABARD/GO. It is not denied that the petitioner has been promoted now. The petitioner participated in the fresh promotion process and appeared in the interview on 16121996 and was promoted and elevated to the Scale II (Middle Management Garde/Scale II) w.e.f. 20121996.

8. Having heard learned Counsel for parties, this petition is being disposed of finally with the consent of parties in accordance with the Rules of the Court.

9. Sri U.N. Sharma, learned Counsel for the petitioner submitted that there is no fault of the petitioner if the selection process has not been completed with in a reasonable time and therefore, the guidelines issued in the year 1988 cannot be applied in the case of petitioner who was already interviewed in the year 1987. He further submitted that the petitioner must be considered for promotion against the vacancies which were existing since 1987 otherwise his seniority would be affected.

10. Sri Vineet Satan, learned Counsel for the respondents submitted that mere

inclusion of the name in the select list does not confer any right of appointment. In support of his submission he placed reliance on *N. Mohanan v. State of Kerala and others*, AIR 1997 SC 1896. He further submitted that on account of pendency of the writ petitions the Board could not finalise the selection of 1987.

11. After carefully considering the submissions of learned Counsel for the parties we are of the opinion that the right of consideration for promotion enshrined under Article 16 read with Article 14 of the

Constitution of India is available against the vacancies occurred during the recruitment year and due to delay in selection process the vacancies can be clubbed together for one year or two years to select reasonable number of candidates falling under zone of consideration and the selection process cannot be delayed for unreasonable period and the vacancies of so many years cannot be clubbed together. In the instant case the selection process initially started for 13 vacancies and for those vacancies eligible candidates were interviewed, therefore, it does not lie in the mouth of the respondents to say that they were awaiting the result of the writ petitions particularly when there was no stay order passed by the Court staying the selection process. The respondents are instrumentality of the State and they will have to behave in a reasonable and fair manner. The reasonableness is the inherent feature and sinequanon of Article 14 of the Constitution. The reasonableness, in the action as well as procedure of the State or its instrumentality is the basic feature of Article 14 which enshrines equality before law as well as equal protection before law. Neither equals can be treated as unequals nor the unequals can be treated as equals. The concept of equality is antithetic to arbitrariness and unreasonableness and its violation is negation of the rule of law and Preamble of the Constitution. (This principle is discussed in *E.P. Royappa's case* (1974) 2 SCR 348, *Maneka Gandhi's case* (1978) 2 SCR 621 and *Airport case* (1979) 3 SCR 1014). Many others who were neither interviewed in year 1987 nor were eligible for interview in the year 1987 (whereas the petitioner was eligible and was interviewed in 1987) cannot be treated at par with the petitioner. Many of them were yet to acquire eligibility in 1987 in respect of 13 posts. After 8 to 10 years they could not be considered for the same on the basis of the fact that said vacancies were clubbed with the vacancies which became available later on. The attitude of indifferenceness and procrastination for delaying the matter and nondeclaration of the result for such a long time smacks of unreasonableness and renders the action arbitrary and makes it liable to be struck down.

12. The equality of opportunity in matters of public employment is guaranteed under Article 16 of the Constitution of India. Clause (1) of Article 16 clearly envisages that there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State. Therefore, equal opportunity has to be given in the matter of appointment by promotion. Equal opportunity does not mean that the selection process is not finalised within the reasonable time. The true import of Articles 14 and 16 of the Constitution

does not leave it on the sweet will of the authorities to delay the declaration of the result as long as it suits to them. Under the constitutional scheme of Articles 14 and 16 the results have to be declared within the reasonable time, which has obviously not been done in the instant case.

13. We are also of the view that mere participation of the petitioner in the subsequent interview would not disentitle him from his legal rights accrued in the previous interview under the facts and circumstances of the present case. The petitioner has been quite alive to his legal rights by means of making representations.....(8) after representations and filing writ petition after writ petition. We are also of the considered view that the ratio laid down in Mohanan's case (supra) is not applicable to the facts of the instant case as in the instant case we do not find any valid or sound reason or justification for the inordinate delay caused in declaration of the result of the selection held in the year 1987 for 13 vacancies. Sri Sharma, learned Counsel for the petitioner very fairly conceded that the petitioner wants only seniority.

14. In the instant case it is not disputed that the petitioner was eligible and was interviewed for promotion in the year 1987 in accordance with the guidelines prevalent at that time. It is also not disputed that even in accordance with the subsequent guidelines of 1988 the source of recruitment was hundred percent by promotion on the basis of seniority/merit. The legal position is also well settled that the selection be made according to the Rules prevalent at the time of occurrence of the vacancy and commencement of the selection process. Therefore, in the considered opinion of this Court the result of the selection held in the year 1987 must be declared and the petitioner must be given his due seniority in accordance with the same.

15. In view of the discussions made above we arrive at the conclusion that the writ petition deserves to be allowed. In the result the writ petition succeeds and is allowed. The respondents are directed to declare the result of the selection held in the year 1987 for 13 vacancies without any further delay as unreasonable delay has already been caused and the petitioner shall be given his due seniority in accordance with the same. The impugned order shall stand modified to that extent. There shall be no order as to costs.