
(2014) 01 JH CK 0039
In the Jharkhand High Court
Case No : Writ Petition (S) No. 265 of 2005

Ghanshyam Pathak

APPELLANT

Vs

Santhal Parganas Gramin Bank and Others

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Regional Rural Banks Act, 1976 — Section 17 29

Citation : (2014) 12 AJR 789 : (2014) 2 JLJR 37

Hon'ble Judges : R. Banumathi, C.J; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Sohail Anwar, Satish Kumar Ughal, Tapas Kabiraj and Prabhash Kumar, for the Appellant; Sheela Prasad, Advocate in W.P. (S) No. 1957/2005, Rajesh Kumar, Amrita Sarkar and Deepak Kumar Bharti, Advocates for the Bank and Mr. Nipun Bakshi, Advocate for the Private Respondent, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. Initially the petitioners in the present batch of writ petitions, had challenged the individual office orders whereunder the private respondents were promoted to the next higher grade i.e. JMGS-I and MMGS-II, in their respective individual cases alleging supersession as they were seniors to the private respondents in the seniority list in their respective Parent/Feeder Cadre.

2. However, during the pendency of the writ petitions, since the vires of the provisions of the Promotion Rules were challenged, the matter was referred to the Division Bench by the learned Single Judge. Thereafter, the matter was admitted for hearing. However, when the writ petitions were being taken up for hearing, learned counsel for the petitioners have chosen not to press their challenge to the vires of the Promotion Rules. They have confined their prayer to the challenge to the respective officer orders issued in individual cases whereunder the private respondents have been granted promotion in the next higher grade/scale ahead of them by relying upon the same Rules contained in

notification dated 29th July, 1998 issued under the provisions of Section 29 of the Regional Rural Banks Act, 1976 read with Section 17 thereof.

3. The writ petitioners in the writ application i.e. W.P. (S) No. 2198 of 2005 are aggrieved with their non-promotion to O.J.M.S. Scale-I from the post of Clerk which they were holding. The petitioners in the other writ petition i.e. W.P. (S) No. 265 of 2005, W.P. (S) No. 1957 of 2005, W.P. (S) No. 3760 of 2005 and W.P. (S) No. 7267 of 2005 are aggrieved with their non-promotion to M.M.G.S.-II Scale from the post of J.M.G.S.-I, alleging their supersession by the private respondents.

4. The common grievance of the writ petitioners is that the Respondent-Bank has illegally and arbitrarily denied them promotion to the next higher scale in violation of the principle of seniority-cum-merit as provided under the Rules framed by notification dated 29th July, 1998 and applicable to the employees of the Bank. These petitioners' claim to have qualified on the touch stone of merit in a selection process based upon their performance in written test, interview and performance appraisal report, for which separate marks have been awarded totaling 100 marks. It is the common case of all these writ petitioners that in the final list prepared after the selection process the names of these individual petitioners figured in the list. It is contended that though these writ petitioners have succeeded in the selection exercise and are amongst the list of candidates, who have qualified but the respective private respondents in individual writ petitions, who were junior to them in the seniority list of their Parent Cadre as prepared by the Bank have been granted promotion ahead of them and thereby superseded them which is in the teeth of the relevant Rules which prescribe the mode of promotion on the basis of principle of seniority cum merit.

5. The relevant factual details relating to the individual petitioners vis-?-vis private respondents in each of these writ petitions as are necessary for appreciating the issues involved in the present writ applications which require adjudication are being furnished in the following paragraphs:

6. The sole petitioner in W.P. (S) No. 265 of 2005 is aggrieved by the office order dated 18th October, 2004, whereby the private respondent Nos. 5 to 14 have been promoted from J.M.G.S.-I to M.M.G.S.-II alleging that he has been superseded in the matter of promotion, though he is senior to the private respondent in the seniority list published by the Respondent-Bank on 25th August, 2003 (Annexure-4) to the writ application, where his name figured at serial No. 60. It is contended on behalf of the petitioner that the name of the private respondents in the same seniority list appears at serial No. 68, 72, 75, 78, 79, 89, 109, 111, 118 and 121 respectively. The petitioner claims to have been qualified in the written test conducted by IBPS held on 18th July, 2004 for promotion to the post of M.M.G.S.-II. Thereafter, he was also called for interview along with private respondents. Against the total number of 23 vacancies 23 candidates have been promoted to M.M.G.S.-II under the impugned office order dated 18th October, 2004, whereunder the respondent Nos. 5 to 15, who happen

to be juniors to him have also been promoted in teeth of the provisions of the promotion Rules on the basis of seniority-cum-merit rule. However, the petitioner has thereafter been promoted to the M.M.G.S.-II in the month of September, 2006 after he appeared in the examination held in the year 2006.

7. The sole petitioner in W.P. (S) No. 7267 of 2005 is aggrieved by the office order No. 51/2005-06 dated 21st September, 2005, issued by the Respondent Bank, whereunder the respondent Nos. 6 to 10 have been promoted from J.M.G.S.-I to M.M.G.S.-II with effect from the same date i.e. on 21st September, 2005 superseding the petitioner though he is senior to the private respondents. As per the seniority list of officers published on 13th June, 2005 (Annexure-2), the name of the petitioner figures at serial No. 113, while the name of the private respondent Nos. 6 to 10 appears at serial Nos. 123, 128, 132, 134 and 138 respectively. The petitioner is said to have faced the written test held in the month of July, 2005 for consideration of promotion from J.M.G.S.-I to M.M.G.S.-II. In the list of qualified candidates published after the written test on 14th September, 2005, the name of the petitioner figures at serial No. 28, whereas the name of respondent No. 6 to 10 figures at serial No. 32, 35, 36, 38 and 40 respectively. The Respondent-Bank has however granted the promotion to the private respondents in the teeth of seniority-cum-merit rule by the impugned office order dated 21st September, 2005 in which 20 such candidates were promoted to the post of M.M.G.S.-II in the respondent Bank. The petitioner has subsequently been granted promotion to the post of M.M.G.S.-II in the year 2013.

8. The sole petitioner in W.P. (S) No. 1957 of 2005 is aggrieved by the impugned office order dated 18th October, 2004 issued under the signature of General Manager, Santhal Parganas Gramin Bank, Head Office, Dumka, whereunder the respondent Nos. 5 to 11 have been promoted from J.M.G.S.-I to M.M.G.S.-II with effect from the same date by superseding his claim though he is senior to the private respondents in the seniority list published by the Respondent-Bank. According to the petitioner, he was appointed as a Field Assistant in the Respondent-Bank on 24th June, 1980 and was promoted to the post of J.M.G.S.-I with effect from 1st February, 1985. It has been stated on the part of the petitioner that revised rules have been laid down vide notification dated 29th July, 1998 for the purposes of promotion of the employees of the Regional Rural Banks. The seniority list of officers prepared by the Bank was issued on 31st March, 2003. The name of the petitioner stands at serial No. 76 while the name of the respondent Nos. 5 to 11 stands at serial Nos. 78, 79, 89, 109, 111, 118 and 121 respectively. However, though the petitioner's name appeared in the list of qualified candidates after facing the selection exercise undertaken by respondent Bank for such promotion at serial No. 37 amongst 58 candidates, the private respondent Nos. 5 to 11 who are undisputedly juniors to him have been promoted by superseding his claim which is illegal and arbitrary and resulted in humiliation to the petitioner. The aforesaid exercise is in the teeth of the seniority-cum-merit Rule prescribed for considering promotion under the Respondent-Bank under the notification dated 29th July, 1998 to the post of

MMGS-II. It is contended on behalf of the petitioners that the petitioner came in the zone for promotion to the next higher grade as he had completed 8 years of service in Scale-I. The selection process provided for written exam consisting of 60 marks and 20 marks each for interview and performance appraisal. The qualifying marks for calling for interview was fixed at 40% out of the total marks allotted for written exam i.e. 60 marks. The petitioner also faced the interview but has subsequently been denied the said promotion and he has been superseded by private respondents in the matter of promotion to the next higher scale.

9. The three petitioners in W.P. (S) No. 2198 of 2005 have challenged the office order dated 24th March, 2005 issued under the signature of the Chairman, Palamau Kshetriya Gramin Bank, Head Office, Daltonganj, whereunder the private respondents have been promoted from the post of Clerk to the post of Officer Junior Management Scale-I in supersession of the claim of the petitioners, who claim to be the seniors to them in the seniority list prepared by the Respondent Bank for the post of clerk. It is the contention of the petitioners that they faced the selection process comprising of written exam and interview for consideration of their cases for promotion from the post of Clerk to O.M.G.S.- I held on 23rd January 2005. Out of 10 qualified candidates, who were eligible for interview for promotion to the post of O.J.M.S.-I., the name of the petitioners figures at serial Nos. 2, 3 and 5. However, by the impugned office order dated 24th March, 2005, the respondent No. 4 whose name figures at serial No. 4 in the list of qualified candidates and who was junior to petitioner Nos. 1 and 2 has been selected for promotion. The respondent No. 5 whose name figures at serial No. 8, the respondent No. 6 whose name figures at serial No. 9 and respondent No. 7 whose name figures at serial No. 10 have also been promoted while the petitioner Nos. 1 and 2 were senior to respondent No. 4, the petitioner No. 3 was senior to respondent Nos. 5, 6 and 7 in the seniority list prepared by the respondent Bank. It is submitted that the petitioner No. 3 has been granted promotion in the month of May, 2012 while petitioner Nos. 1 and 2 have been granted promotion in the month of September, 2012. The petitioner therefore contended that though their names appear in the list of 10 shortlisted candidates after selection exercise conducted under the promotion Rules, the private respondents who were juniors to them have been promoted in violation of principles of seniority-cum-merit rule.

10. The five writ petitioners in W.P. (S) No. 3760 of 2005 are aggrieved by the office order dated 21st April, 2005, issued under the signature of the Chairman, Palamau Kshetriya Gramin Bank, whereunder the respondent Nos. 4 to 26 have been promoted from J.M.G.S.-I to M.M.G.S.-II with effect from 21st April, 2005, as the petitioners allege to have been superseded by these private respondents in teeth of the relevant promotion Rules. The petitioner No. 1 died during the pendency of the writ petition. As per the seniority list contained at Annexure-2, seniority position of the petitioners vis-?-vis the private respondents are as follows:

All these petitioners claim to have faced the written test examination conducted by IBPS for promotion from the post of J.M.G.S.-I to M.M.G.S.-II conducted on 23rd January, 2005. According to these petitioners, in the list of qualified candidates the name of the individual five petitioners figures at serial Nos. 19, 38, 41, 42 and 50 respectively. As contended by the petitioners" the name of the respondent Nos. 4 to 26 appears at serial Nos. 26, 29, 30, 32, 33, 34, 36, 37, 40, 41, 42, 54, 57, 61,66, 67, 69, 70, 72, 73, 75, 84 and 85 respectively. After the written test in the list of qualified candidates the respective position of the respondent Nos. 4 to 26 are at serial Nos. 21, 24, 25, 27, 28, 29, 31, 32, 35, 36, 37, 40, 43, 47, 51, 52, 54, 55, 57, 58, 60, 65 and 66 respectively.

11. It is contended on behalf of the petitioners that in the impugned office order dated 21st April, 2005, amongst the 35 candidates who have been promoted from the post of J.M.G.S.-I to M.M.G.S.-II, the name of the private respondents i.e. respondent Nos. 4 to 26 also figured though the respective respondents are juniors to the respective petitioners as per the common seniority list of J.M.G.S.-I Cadre published by the Respondents-Bank. The petitioner Nos. 2 and 4 have been subsequently promoted in the year 2013 to the post of M.M.G.S.-II Scale while the petitioner Nos. 3 and 5 have been promoted in the year 2011-12 respectively.

12. The matter relating to appointment and promotion of Officers and other Employees under the Regional Rural Banks Act are guided by the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 notified under notification dated 29th July, 1998 issued by the Banking Division, Department of Economics Affairs, Ministry of Finance, Government of India.

13. In the present batch of writ petitions, the petitioners in W.P. (S) No. 2198 of 2005 were aggrieved with their supersession in the matter of promotion from the post of clerk to the post of O.J.M.S.-I by the private respondents. The rest of the writ petitioners in the other connected cases are aggrieved by their supersession in the matter promotion from the post of J.M.G.S.-I to M.M.G.S.-II. It is the common case of all these writ petitioners that Promotion Rules of 1998 specifically provided that promotion to the post of Scale-I Officer and Scale-II officers is to be made on the basis of seniority-cum-merit.

14. It is their case that the principle of seniority-cum-merit rule are now well defined and settled by the judgments rendered by Hon"ble Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., in the case of Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, and also in one of the judgments rendered by Kolkata High Court in the case of Samsul Haque & Ors. v. Nadia Gramin Bank & others in F.M.A 111 of 2008 rendered on 16th May, 2008 (Paras 5, 11, 15, 18, 21, 22). It is contended on behalf of the petitioners" that the appeal preferred by the Respondents-Bank against the judgment rendered by Kolkata High Court has also been dismissed vide judgment dated 24th September, 2010 passed in SLP (Civil) No. 19768 of 2008 and analogous cases. The Hon"ble Supreme Court has held that if regulations 2(f)

and 2(j) are understood to mean as to judge the "suitability" of the candidate for the promotional post and not their "inter se-merit", there would be no conflict between those two provisions and the provision contained in regulation 2(d), and all the three provisions would operate harmoniously.

15. It is submitted on behalf of the writ petitioners that these petitioners after having faced the selection process and coming into the zone of consideration by reckoning the minimum eligibility under the criteria prescribed have faced the selection process comprising of written test, interview and performance appraisal report totaling 100 marks. It is their contention that appointment to the Scale-II officers shall be 100% by promotion which require that an officer should be holding the Scale-I post for 8 years on regular basis in the Regional Rural Bank and having been confirmed in the feeder grade post. The minimum eligibility in terms of number of years of service for promotion shall be reckoned as on the 1st April of the year in which the vacancy is expected to arise. Under the selection process for promotion to the Scale-II officers out of 100 total marks allotted 60 marks have been earmarked for written test, while 20 marks each have been earmarked for interview and performance appraisal report as per the clause 2(g) contained in the third Schedule of the said Rules. Only those candidates who have secured minimum of 40 marks in each part of the written test shall be called for interview and there shall be no minimum qualifying marks for interview. The performance appraisal reports for preceding five years shall be considered for the purpose of awarding marks for promotion.

16. In respect of promotion to the Scale-I officer, 50% of the appointment is to be made by direct recruitment through Banking Law Practice and 50% by promotion. Clause 3(d) provides that promotion would be made on the basis of seniority-cum-merit. The eligibility criteria for promotion prescribes that employees fulfilling the eligibility criteria as prescribed under Clause 3(b) shall be required to face the selection exercise comprising of written test, interview and performance appraisal report. Out of total 100 marks allotted for such selection exercise, 70 marks have been allotted for written test, while 20 and 10 marks have been provided for interview and performance appraisal report respectively. List of only those candidates who have secured minimum of 40 marks in each of English, Banking law, Practice and Procedure shall be prepared in the order of seniority to the extent of 200% of the vacancies for promotion for the purpose of calling for interview. There shall be no minimum qualifying marks for interview. Performance appraisal report for the preceding 3 years of the concerned employees shall be considered.

The petitioners relying upon the aforesaid rules have contended that once these individual petitioners have qualified in the selection process and have been shown in the list of qualified candidates after facing the written test, the private respondents in each individual cases who were junior to them in the seniority list of the feeder cadre could not have been promoted ahead of them in breach of the seniority-cum-merit rule. It is contended on behalf of the petitioners that

under the criterion of "seniority-cum-merit", given the necessary minimum merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority in the matter of promotion and comparative assessment of merit cannot be made the basis for denial of such promotion. The competent authority has laid down the minimum standard for assessing the minimum necessary merit that is required and also prescribed the mode of assessment of merit of the employee, who is eligible for consideration for promotion. Such assessment can be done undisputedly by assigning marks for written test, interview and performance appraisal. Once the person qualifies by obtaining the minimum marks prescribed he would be entitled for promotion on the basis of seniority-cum-merit rule. It is therefore reiterated that the Bank after having laid down the aforesaid criteria cannot deny promotion to the individual petitioners only on the basis of marks secured by the candidates in the selection exercise seeking promotion to the higher post. It is submitted that any other interpretation of the relevant Rules would be inconsistent with the principles of seniority-cum-merit. The benefit of promotion to such persons like the petitioners, who though being the seniors in the feeder cadre and have obtained the minimum qualifying marks in the selection exercise cannot be denied in such arbitrary and illegal manner. The aforesaid principles having been derogated from cannot stand the test of judicial review in the wake of the settled legal position laid down by the judgments relied upon by the writ petitioners. The impugned order therefore granting promotion to the private respondents in the individual writ petitions deserve to be quashed. The Respondent-Bank should be directed to grant promotion to the petitioners" next higher scale based upon the selection exercise conducted in the individual cases in the respective years keeping into regard their position in the seniority list prepared by the respondent Bank.

17. The Respondent-Banks, in their turn, have taken a common stand on the legal issues raised by the writ petitioners. It is contended by the learned counsel for the Respondent-Bank that these petitioners after having consciously faced the selection exercise conducted under the Promotions Rule and having been declared unsuccessful cannot be allowed to challenge the procedure adopted for promotion. They have relied upon the judgments rendered in the cases of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, ; Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Vinod Kumar Mishra and Others Vs. The Samastipur Kshetriya Gramin Bank and Others,

18. According to the Respondent-Bank, the entire exercise for promotion has been conducted as per the Promotions Rules notified on 29th July, 1998 and the guidelines prescribed under the said circulars. There is no arbitrariness and unfairness in the selection process. It is contended that the selection process neither being arbitrary nor suffering from any unfairness cannot be interfered by this Court in exercise of writ jurisdiction as has been held in the case of Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, It is also submitted by the Respondent-Banks that the exercise for

promotion has been conducted on the basis of a written and viva voce test for selecting a suitable person. The action of the Respondent-Bank in considering their performance in the written test, interview and performance appraisal therefore cannot be questioned. Reference has been made to the judgments rendered in the case of National Airport Authority Vs. Nilu Sharma and Others,

19. Learned counsel for the Respondents-Bank has also sought to distinguish the judgment in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., relied upon by the petitioners by referring to paras 36 and 37 of the judgment. It is submitted that in a case where minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the minimum standard have been selected for promotion after considering their seniority, in order to bring them into the zone of consideration, it cannot be alleged that the same has not been done in accordance with the principle of seniority-cum-merit. It has been further submitted that in individual cases of some of these writ petitioners, it has been found that they had faced punishments in course of departmental proceeding in their career which have been taken into account in their performance appraisal. Learned counsel for the respondents has however not disputed that there were no departmental proceedings in the case of petitioners in W.P. (S) No. 2198 of 2005. However, in the case of petitioner in W.P. (S) No. 1957 of 2005, he has been punished by reduction of one stage of pay scale in a departmental proceeding. Similarly, the petitioner in W.P. (S) No. 265 of 2005 had also been placed under suspension and also given a warning. He had also been charge-sheeted on more than one occasion. It is contended that the performance of the petitioner in W.P. (S) No 7267 of 2005 was found not satisfactory.

Learned counsel for the Respondents-Bank submits that the petitioners though had earlier sought to challenge the vires of the Promotion Rules, have however forsaken their challenge and have relied upon the same Rules, which clearly prescribes the manner and mode of selection. It is submitted that Rule 2(j) which provides for selection process in the case of promotion to the post of Scale-II officers clearly lays down that the selection shall be made on the basis of performance in the written test, interview and performance appraisal for which separate marks have been allotted. The respondents have followed the said detailed procedure while undertaking the selection process and considered the claim of the petitioners" on the basis of their seniority in the matter of coming into zone of consideration for such selection exercise. However, the petitioners now cannot complain that the seniority-cum-merit rule has been given a go-bye.

20. Learned counsel for the Respondent-Bank has therefore submitted that the claim of the writ petitioners" is wholly untenable in law and therefore the writ petition is wholly without merit which deserve to be dismissed.

21. Learned counsel for the private respondent No. 6 in W.P. (S) No. 3760 of 2005 submits that in the relevant Promotion Rules 1998 for promotion to the post of Scale-I officer, the relevant criteria of seniority-cum-merit have been

considered upto a particular stage. However, there is a clear departure so far as the Rules for promotion to Scale-I officer is concerned, where in the matter of preparation of the list of selected candidates after the written test, it has been laid down that the list of selected candidates shall be prepared in order of seniority to the extent of 200% of vacancy for promotion for the purpose of calling for interview. However, in the matter of preparation of select list for Scale-II officer after the written test a list of only those candidates who secured minimum 40% marks in each part is required to be prepared and only such candidates shall be called for interview. In such circumstances, at the time of preparation of select list when candidates have been called to the extent of 200% of the vacancies, the persons like the petitioners who have been denied promotion on the basis of performance in the selection process cannot claim that they are entitled for promotion on the basis of seniority-cum-merit. Learned counsel for the private respondent submits that these private respondents have duly faced the selection process and have been granted promotion in the year 2005 itself. At this stage, even if the petitioners' submission is accepted, the promotion already granted to the private respondents should not be quashed and they should not be made to suffer for no fault of their. It is submitted that the court may mould the relief in such a manner to the petitioners' without disturbing the promotion granted 8 years back to the private respondents.

22. We have heard learned counsel for the parties and gone through the relevant materials on record including the 1998 Rules. The issues raised in the present batch of the writ petitions revolves around the question:--(a) whether Regional Rural Banks (Appointment and Promotion of Officers and other employees) Rules, 1998 provide for promotion to the post of Scale-I officer and Scale II officer on the basis of seniority-cum-merit principle or not?, (b) whether the petitioners herein are entitled for such promotion with effect from the dates of the impugned officer order when their juniors have been granted promotion.

23. Though the petitioners had earlier challenged the said Rules, but during the course of hearing before this Court the petitioners have chosen not to press their challenge to the vires of the Rules of 1998, instead they have relied upon the same Rules for consideration of their cases for promotion to the next higher scale. The rules of 1998 have been framed in exercise of powers conferred u/s 29 of the Regional Rural Banks Act, 1976 read with Section 17 thereof and are in supersession of the earlier Rules of 1988. The category of post of officers and other employees in each regional rural bank has been classified as: (a) Group-A, (b) Group-B, (c) Group-C. Vacancies. Each category of post are to be filled as per the guidelines issued by the Central Government from time to time. It prescribes that all vacancies determined under Rule 5 by the Board shall be filled by promotion or by direct recruitment in accordance with provisions of these Rules of 1998 and the third Schedule. The first schedule framed under Rule 3 provides for category of posts in each Regional Rural Bank. Scale-I, II, and III officers have been classified under Group-A category while Clerk-cum-cashier has been classified as Group-B category. The 2nd Schedule provides for the name of the

Regional Rural Banks. All the Respondents-Banks are the Regional Rural Bank functioning within the state of Jharkhand under which the present writ petitioners are employed. Under the 3rd Schedule framed under Rule 6, provision has been made for appointment to different categories of officers and other employees to Group-"A", "B" and "C" posts whether by direct recruitment or by promotion in the manner indicated therein. For the purposes of determination of the issues raised herein the relevant Rules which relate to promotion to the post of Scale-I officer and Scale-II officer are necessary to be examined. For better appreciation Rules 2 and 3 which lay down the provision for promotion to Scale-I officers and Scale-I officer respectively are being quoted hereunder:

24. As is evident from perusal of Rules 2(d) and 3(d) respectively, the promotion shall be made on the basis of seniority-cum-merit. Rule 2(e) and 3(e) provides for the condition of eligibility for being considered for promotion. It is not in dispute that the present petitioners and the private respondents fulfilled the eligibility criteria for coming into the zone for consideration for promotion. Rules 2(f) and 3(f) respectively provide for mode of selection based upon written test, interview and assessment of performance appraisal reports. Rule 2(j) and 3(j) provides for selection process for promotion, whereunder a total number of 100 marks have been allotted in respect of promotion. In respect of Scale-II officer, the written test consist of 60% marks and interview and performance appraisal reports consist of 20 marks each. A list of only those candidates, who secure a minimum of 40% marks in each part of written test shall be prepared and such candidates shall be called for interview. There shall be no minimum qualifying marks for the interview. In respect of promotion to Scale-I officer, the written test consists of 70 marks, the interview and performance appraisal reports consist of 20 and 10 marks respectively. Rule 3(J)(A) provides that a list of those candidates who have secured a minimum of 40 marks in each subject English, Banking Law, Practice and Procedure shall be prepared, The bank thereafter, shall prepare the list of selected candidates in the order of seniority, to the extent of 200% of the vacancies for promotion for the purpose of calling for interview. No minimum qualifying marks have been allotted for interview.

25. In the facts of the present case it is not in dispute that all these writ petitioners had obtained the minimum qualifying marks and had been included in the select list from which candidates were called for interview. No further minimum qualifying marks were laid down for interview. The law relating to promotion to be granted on the basis of seniority-cum-merit rule has been settled by Hon''ble Apex Court in various decisions. When promotion is to be made by selection on the basis of seniority-cum-merit i.e. seniority subject to the fitness of the candidates to discharge the duties of the post from amongst any person eligible for promotion is the principle to be followed.

26. The aforesaid principle was also under consideration in the case of the employees and officers of the Bank under the Regional Rural Bank (Appointment and Promotion and Officers and other Employees) Rules 1988. The Hon''ble

Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., has held as follows:

17: On behalf of the promoted officers, it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service, seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion, what is required to be considered is the inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to such rights flowing from seniority. It cannot, therefore be said that in the matter of promotion on the basis of seniority-cum-merit, seniority has no role where the employee eligible for promotion were appointed on the same date and have the same length of service.

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.

27. In yet another decision in the case of Harigovind Yadav v. Rewa Sidhi Gramin Bank, this Court reiterated the principles explained in B.V. Sivaiah case. The paragraphs 21 to 23 contain the opinion of the Hon'ble Apex Court.

28. In the said judgment, the Hon'ble Court once again reiterated his principle laid down in the case of B.V. Sivaiah by the Apex Court on the question of the seniority-cum-merit principle. In the case of Haryana State Warehousing Corporation Vs. Jagat Ram and Another, the same principle were also considered by the Hon'ble Supreme Court in paras 13, 14, 16 and 17, which are worthy to be quoted hereunder:

13: The law relating to promotions to be granted on the basis of seniority-cum-merit has been settled by this Court in various decisions, including the case of State of Mysore v. Syed Mahmood, wherein it was observed that when promotion is to be made by selection on the basis of seniority-cum-merit i.e. seniority

subject to the fitness of the candidates to discharge the duties of the post from amongst any persons eligible for promotion, the State Government had erred in promoting juniors ranking below the candidates in order of seniority and that such promotions were irregular. On course, the question posed in these special leave petitions gives rise to another question regarding the latter part of Regulation 8(2) of the 1994 Regulations which indicates that seniority alone would not confer any right to be promoted. In that regard, this Court held in the abovementioned case that where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

14: That principle has been followed ever since and was reiterated by a three-Judge Bench of this Court in *B.V. Sivaiah v. K. Addanki Babu*, wherein the criterion for promotion on the basis of seniority-cum-merit feel for consideration with regard to the same-day appointees. It was held that seniority-cum-merit in the matter of promotion contemplates that given the minimum necessary merit requisite for efficiency of administration, a senior candidate, even though less meritorious, would have priority and a comparative assessment of merit is not required to be made.

16: In yet another decision in *Harigovind Yadav v. Rewa Sidhi Gramin Bank*, this Court reiterated the principles explained in *B.V. Sivaih* case holding that (*Harigovind Yadav* case, SCC p. 157, para 22)

22. ...where the procedure adopted does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the rule of "seniority-cum-merit".

17: In applying the principle of granting promotion on the basis of seniority-cum-merit, what is important is that the inter se seniority of all candidates who are eligible for consideration for promotion should be identified on the basis of length of service or on the basis of the seniority list as prepared, inasmuch as, it is such seniority which gives a candidate a right to be considered for promotion on the basis of seniority-cum-merit.

29. The Rule of 1998 have also been under consideration before learned Division bench of the Kolkata High Court in the case of *Samsul Haque & Ors. v. Nadia Gramin Bank and others* in F.M.A.-111 of 2008 and has been relied upon by the petitioners which concerns promotion from the post of Scale-1 officer to the post of Scale-II officer. The writ petitioners" therein had come with a grievance that the selection for promotion had virtually been made on the basis of merit-cum-seniority in violation of the specific rule prescribed for promotion on the basis of seniority-cum-merit. After having lost before learned Single Judge, in appeal, the learned Division Bench after due consideration of the relevant Clauses, especially under clause (2) of 3rd Schedule framed under Rule 6 of the Promotion Rule

1998 proceeded to decide the principle question raised in the appeal i.e., whether the respondent Bank by following the prescribed procedure for selecting candidates for promotion to the post of Scale-II officer really followed the principle of seniority-cum-merit specially provided in the promotion rule. The learned Division Bench after considering the judgments rendered by Hon''ble Supreme Court in the case of B.V. Sivaiah v. K. Addanki Babu (Supra) and also in other cases held that the principles laid down in the case of B.V. Sivaiah and also Harigovind Yadav (Supra), while considering the Rules of 1998 by Apex Court, were very much applicable in the facts of the present case, which were also governed by the Rules of 1998. They specifically provide that selection for promotion should be made strictly on the basis of seniority-cum-merit. In the said case, an argument was raised by the respondent Bank that there is an apparent inconsistency between Clause 2(d) of the third schedule and Clauses 2(f) & (j) on the other hand and it was submitted that there is an inconsistency in the principles of granting promotion in the aforesaid Rules on the basis of seniority-cum-merit. The learned Division bench after discussing the provisions of the relevant Clauses of the Rule gave a harmonious construction of the Rules by observing that the marks awarded in the interview and performance appraisal reports should be considered only for assessing the suitability of the candidates and not to adjudge comparative marks of the candidates upon giving a go-bye to the principles of promotion on the basis of seniority-cum-merit. The Respondents-Bank were directed to reconsider the case of the appellant for promotion to the post of Scale-II officer strictly on the basis of seniority-cum-merit under the 1998 Rules.

The Respondents-Bank, however, chose to challenge the said judgment before Hon''ble Supreme Court in SLP (Civil) Appeal No. 19768 of 2008 along with another analogous case. By the judgment dated 24th September, 2010, the said SLP were however dismissed finding no merit. The Hon''ble Supreme Court however made a significant observation in respect of the arguments raised by the Respondents-Bank in relation to their contention of an inconsistency between the relevant provision of Clause 2(f) and 2(j) and those contained in 2(d) of the 3rd Schedule. The same are being quoted hereunder:

We are satisfied that if regulations 2(f) and 2(j) are understood as means to judge the "suitability" of the candidates for promotional post and not their inter se "merits", there would be no conflict between those two provisions and the provision contained in regulation 2(d), and then all the three provisions would operate harmoniously.

30. The provisions of the Rule of 1998, especially Clause 2(d), (j) and (f) as also Clause 3(d), (j) and (f) are under consideration in the present cases. The judgment rendered by learned Division Bench of the Kolkata High Court and affirmed by Hon''ble Supreme Court with significant observation quoted hereinabove clear any iota of doubt as to the real import of the principle of seniority-cum-merit as enshrined in 1998 Rule i.e. Clause 2 and Clause 3

respectively read with other relevant provisions of the said Clauses i.e. 2(f) and 2(g) as also 3(f) and 3(g). As has been clearly held in the judgments rendered by Hon''ble Supreme Court, in applying the principle of granting promotion on the basis of seniority-cum-merit, what is important is that the inter-se seniority of all candidates who are eligible for consideration for promotion should be identified on the basis of length of service or on the basis of seniority list as prepared, inasmuch as, it is such seniority, which gives a candidate a right to be considered for promotion on the basis of seniority-cum-merit. Given the minimum necessary merit requisite for efficiency of administration, a senior candidate, even though meritorious, would have priority and a comparative assessment of merit is not required to be made. Therefore when promotion is to be made by selection on the basis of seniority-cum-merit, what is required to be considered is the seniority of the candidate subject to the fitness of the candidate to discharge the duties of the post from amongst any persons eligible for such promotion. As has been clearly held by Hon''ble Supreme Court in the judgment rendered in the case of Samsul Haque v. Nadia Gramin Bank and others, the relevant provisions of the regulation i.e. 2(d), 2(f) and 2(j) can be understood to mean to judge the "suitability" of the candidates for the promotional post and not their "inter se-merit". Given such an interpretation all the three provisions of Rule 2(d), 2(f) and 2(j) would operate harmoniously and there would be no conflict with between those two provisions and the provisions contained in regulation 2(d).

31. In such circumstances, the principles of seniority-cum-merit has to be followed by the Respondents-Bank in the matter of grant of promotion to such persons who have qualified in the selection process undertaken in terms of Rule/ Clause 2 and 3 for promotion to Scale-II and Scale-I Officers respectively. The contention of the Respondents-Bank that the petitioners having participated and failed are not entitled to assail the selection process by which they have been denied promotion is wholly untenable in view of the fact that the Respondents-Banks have failed to carry out the exercise of promotion strictly in accordance with the principle of seniority-cum-merit which render the impugned action arbitrary, illegal and liable to be interfered in the exercise of powers of judicial review by this Court. The writ petitioners" are fully entitled to challenge the impugned orders by which they have been superseded in the matter for grant of promotion to the next higher scale in spite of fact that they are seniors to the private respondents and have also qualified in the selection process.

32. The contention of the private respondents that provisions of Clause 3, especially Clause 3(j) makes a departure from the Rule of seniority-cum-merit is also worthy of being rejected in view of the categorical pronouncement made by Hon''ble Supreme Court as referred to hereinabove reiterating the principles of seniority-cum-merit and also reading the relevant provisions of the Promotions Rules framed under 1998 Rules in a harmonious manner to mean that the same are intending to judge the "suitability" of the candidates for the promotional post and not their "inter-se merits". Any provision under Clause 3(j) therefore have to

be harmoniously constructed so as to avoid any inconsistency so that the principle prescribed for promotion on the basis of seniority-cum-merit is not at all defeated. As is abundantly clear from reading of the relevant Rules framed for promotion under the 3rd schedule of 1998 rules, the promotional exercise is to be conducted on the basis of seniority- cum-merit principle. It is also evident that the matter relating to promotion of the officers and employees of the Bank are wholly and fully guided by the Rules of 1998 based upon the selection exercise which comprises marks allotted for written test, interview and performance appraisal report.

33. In the case of writ petitioner in W.P. (S) No. 2198 of 2005, it is not in dispute that there were no departmental proceeding pending against the said petitioners. In the case of the writ petitioners in W.P. (S) No. 1957 of 2005, though it has been stated by the respondents that a punishment of reduction of one stage in pay scale was awarded to the said petitioners, but the said punishment related to a proceeding in the year 1992 while the performance appraisal has to be conducted for the last 5 years only as per Clause 2(c). The exercise for promotion was conducted in the instant case in the year 2004. Therefore, the punishment of reduction in pay scale cannot be made the basis to defeat the claim of the said petitioner. The stand of the Respondents-Bank in each of the writ petitions is that the writ petitioners could not score sufficient marks in aggregate including written test, performance appraisal reports and interview to find place in the merit list which could entitle them to promotion to the next higher scale. This however is clearly in teeth of the seniority-cum-merit principle. No other Rules have been shown by the respondents to justify the supersession of the writ petitioners. It is the respondents' own case that though the writ petitioners were awarded a punishment of reduction of one stage of pay scale on the basis of a proceeding initiated vide Memo No. 12/1992-93 dated 4th March, 1993, but the petitioner was not debarred from being considered for the purpose of promotion or becoming eligible to appear in the written test on account of his being in the list of 92 candidates called in order of seniority. Therefore, the submission made by learned counsel for the Respondents-Bank to justify the supersession of the petitioners on the basis of a punishment awarded in a proceeding initiated in 1992-93, does not appear to be proper. The said petitioner was allowed to participate in the selection process having come in the zone of consideration. The only ground for non-promotion as made out by the Bank is his failure to obtain marks in aggregate, so as to come in the merit list after the written test, interview and the performance appraisal report.

34. In the other writ petition i.e. W.P. (S) No. 265 of 2005 and W.P. (S) No. 7267 of 2005, similar argument has been advanced by the Respondents-Bank during the course of submission that the respective petitioners have been charge-sheeted earlier and their performance was not found satisfactory. However, it is apparent from the averments made by the Respondent-Bank that in spite of the petitioners' service record being not free from any adverse report they were not debarred rather were considered for promotion and were found eligible to appear

in the selection process. The only ground to justify denial of their promotion is the failure of the petitioner to score sufficient marks in aggregate i.e. written test, performance appraisal report for preceding 5 years and interview in order to find place in the merit list consisting of the successful candidates. As already observed that there are no rules apart from the Rules of 1998 which have been brought on record to justify the denial of promotion of such officers/employees who had qualified in the selection process and are seniors to the other candidates in terms of inter-se seniority for being considered for promotion. It is the respondents' own case that the entire exercise for promotion has been done in strict compliance of the Government of India guidelines and instructions and conducted in terms of the Rules of 1998. In such circumstances, when the provisions relating to the Promotions Rules itself stipulate considering of their appraisal performance under specific marks i.e. 20 and 10 out of total 100 marks in the respective cases of promotion to Class- II officers and Class-I officer, the respondents cannot possibly justify the supersession of the concerned persons who have qualified in the written test and at the same time, were senior to other qualified candidates in the same selection process. Some of the writ petitioners as stated on their part have subsequently been promoted to the next higher scale in the subsequent exercise. In any case under the impugned office orders, by which the private respondents have been granted promotion in the next higher scale, the private respondents cannot be attributed any fault for their promotion upon misconceived understanding of the relevant rules of promotion by the respondent Bank.

35. In such circumstances, having arrived at a conscious finding that the exercise of promotion to the next higher scale have not been carried out in accordance with the principle of seniority-cum-merit laid down under 3rd schedule of the Rules of 1998 by the Respondent Banks and the respective petitioners" in each of the individual writ petitions being inter-se senior to the other promoted respective candidates, and also having undisputedly qualified in the selection process, deserve to be granted promotion from the due dates on which the persons junior to them have been granted promotion by the impugned orders in the individual writ petitions. We therefore direct that the individual writ petitioners be granted the benefits of the next higher scale from the date on which their juniors have been granted promotion in the respective Scale-II category in writ petitions i.e. W.P. (S) No. 1957 of 2005 and other writ petitions i.e. W.P. (S) No. 265 of 2005; W.P. (S) No. 3760 of 2005 and W.P. (S) No. 7267 of 2005 and Scale- 1 category in writ petition i.e. W.P. (S) No. 2198 of 2005. Accordingly, the writ petitions are accordingly allowed in the aforesaid term. However, there shall be no order as to costs.