(2007) 03 PAT CK 0042

In the Patna High Court

Case No : CWJC No. 3249 of 2003

Gorakh Nath Singh and Others APPELLANT

Vs

Siwan Kshetriya Gramin Bank and Others RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Regional Rural Banks Act, 1976 — Section 29

Citation : (2007) 2 PLJR 834

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : N. Prasad, U.N. Singh and G.K. Singh, for the Appellant; P. Vedsan, A.K. Sinha for Respondent No. 5 and M/s. R. Narain, Anju Narain and S.K. Srivastava for Respondent Nos. 4 and 6, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—There are four petitioners in the present writ application and they have filed the present writ for quashing the selection list dated 30.1.2003 which is an order contained in annexure-1. The case of the petitioners are that they were initially appointed on 16.8.1982 under the respondents Bank as clerk-cum-cashier. Their services after completing the probation period were confirmed vide letter dated 6.6.1984. Subsequently the Bank published a seniority list in terms of the direction issued by NABARD. This seniority list was issued on 30.9.1999. The seniority list has been brought on record as annexure-4. In terms of the Seniority list petitioner no. 1, Gorakh Nath Singh figured at serial no. 4, Petitioner No. 2 Anup Kumar figured at serial no. 5, petitioner no. 3, Narendra Kumar Dwivedi figured at serial 9 and petitioner no. 4 Anil Kumar Srivastava is at serial no. 12. The petitioners submits that private respondent nos. 4 to 6 figured at serial nos. 6, 14 and 16. In other words most have figured below these petitioners. The petitioners contend that they have good service record and by virtue of their length as well as satisfactory service they were entitled for promotion to the next post as Officer Grade I.

2. The respondents Bank held an interview of all the employees who were working on the post of clerk-cum-cashier. Based on the said interview the order granting promotion came to be issued on 30.1.2003 which is impugned annexure-1.

3. The petitioners have challenged this notification on the ground that the Bank has violated its own promotion policy. In terms of the necessary rules promotions have to be granted on the basis of "Seniority-cum-Merit" and not "Merit-cum-Seniority". Therefore, while issuing the impugned order despite the petitioners being senior, their claim has been ignored since the Bank adopted the policy of "Merit-cum-Seniority" in the actual selection which was carried out by them. They state that the Bank intentionally kept a minimum qualifying marks in the interview and only when a person got the minimum qualifying marks in the interview that his appraisal report as well as seniority was taken into consideration. In other words the merit of the candidate was tested first in the interview and only when he proved his merit in the interview his seniority or performance appraisal which consisted of 75 marks was taken into consideration for granting final promotion.

4. This according to the petitioners was a anomalous situation because even though the petitioners were senior and had high marks in performance appraisal the same was no good or use in consideration for granting promotion. If they failed to satisfy the interview board to grant them minimum cut-off marks, they were out of the zone of consideration. This procedure adopted by the Bank according to them has turned the "Seniority-cum-merit" policy to one of the "Merit-cum-Seniority". Therefore, the selections made by the Bank in reality was in total breach of its own regulation in this regard.

5. The petitioners further contended that in terms of the decision taken by the Board of Directors the ratio of 1:3 was fixed for calling persons for selection on the posts available, but when it came down to actual selection process the Bank violated the decision of the Board of Directors dated 27.11.2002. The Bank called all the 21 persons on the ground that since all of them were appointed on the same date, therefore, they had equal merit and seniority and by not inviting all 21 persons the Bank would have violated Articles 14 and 16 of the Constitution of India.

6. Submissions have been made by the respondents Bank as well as the private respondents and they tried to justify the selection by stating that keeping of minimum qualifying marks in the interview was not an error nor was the decision of the Bank to invite all the candidates because they were appointed on the same date and joined the Bank on the same date. They all, therefore had to be given equal opportunity to compete for the four posts which were available for promotion relating to the year, 1998.

7. The Regional Rural Banks are creation of statute and the rules governing the service conditions are statutory rules which are issued by the Central

Government, Ministry of Finance while exercising power u/s 29 of the Regional Rural Bank Act, 1976. The Regional Rural Banks have been following the policy of granting promotion to its employees by following the rule of "Seniority-cum-Merit" but the Banks in practice always kept a minimum qualifying marks in the interview which an employee had to obtain to be eligible to come within the zone of consideration for further promotion. Disputes inter se between the employees have traveled to Hon''ble Supreme Court many a times and the Hon''ble Supreme Court has rendered decisions from time to time. It is relevant to take note one of the recent decisions passed by the apex court in the case of Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others, . The petitioners rely on this decision in support of their proposition that the Banks white granting promotion has breached its own policy by keeping a minimum qualifying marks in the interview. In this regard paragraph 22 of the judgment referred to above is relevant and therefore is quoted below:--

"22. Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But 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"..."

8. The Supreme Court further taking into consideration the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., has this to observe in paragraphs 23:--

"... As we have already noticed, in this case, the procedure is not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, postings at rural/difficult places and interview. The fact that the appellant had failed to secure the minimum marks in the interview, is not relevant as the entire procedure adopted by the Bank (of which interview is a part) is found to be vitiated and not in consonance with the principle of "seniority-cum-merit."

9. Issues of promotions based on "seniority-cum-merit" have come up for consideration before the Hon''ble Supreme Court in many a cases and in most of these cases including the latest one the Supreme Court had deprecated insistence of judging the basic merit first by keeping minimum qualifying marks in interview first before granting promotion, ignoring the seniority of the employee in question. In the present case also the petitioners have been denied their rightful claim for promotion not on the ground that they did not have seniority and merit in so far as their performance appraisal is concerned but because the Bank fixed a minimum qualifying marks in the interview to judge their merit first. The Bank had therefore lost sight of its own policy of ''seniority-cum-merit'' while granting promotions. There seems to be force in the argument

of the petitioners,

10. The petitioners have further relied on a decision reported in Sarabjit Singh Vs. Ex. Major B.D. Gupta and Others, , for the proposition that by extending or expanding the zone of consideration which was fixed by the Board of Directors in the ratio 1:3 the Bank had violated Articles 14 and 16 of the Constitution of India. They point out that the Hon''ble Supreme Court has held that the zone of consideration can never be expanded to bringing persons who were otherwise not eligible for consideration even though they may have the requisite merit etc. This Court surely does take notice of the fact that the Bank had invited 21 persons for interview for four posts when in terms of its own decision only 12 persons could have been called for interview. This contention of the petitioner also therefore seems to be correct and is in the teeth of the decision rendered in the case of Sarabjit Singh (supra).

11. This Court has been taken through the submission of the respondents Bank which is contained in the counter affidavit fled on their behalf. Paragraphs 5 and 6 of the counter affidavit does establish that the contention of the petitioner in the present case is not misplaced. The Bank accepts that 21 persons had been called for the interview since all of them had joined the Bank service on the same date and therefore, all were treated to be equal by them. The Bank also accepts the position that marks were fixed for interview and since the private respondents had obtained better marks in the interview than the petitioners, therefore, promotions were granted by the Bank to the private respondents ignoring the seniority or claim of the petitioners. Taking this to be the settled factual position, this Court has no hesitation in holding that the promotions granted by the Bank is in violation of its own policy of ''seniority-cum-merit'' by keeping the minimum qualifying marks in the interview. The Bank has committed a breach of its own rules and therefore, the decision taken in violation of the rules for promotion cannot be upheld. The opinion of this Court is further strengthened in this regard by a decision which has been rendered by the Hon''ble Supreme Court in the case of Hargovind Yadav (supra). If the policy of ''seniority-cum-merit'' continues to stay in matters of promotions to be given to the employee of these Regional Rural Banks, then the policy must be applied in its true spirit and form. The respondents cannot be allowed to say that even in matter of ''seniority-cum-merit'' they have to test the minimum merit and all those who failed to obtain the minimum merit in interview cannot be considered for promotion. The decision taken by the Bank to grant promotions to the private respondents by following the methodology in question is in gross violation of its own rules. If there is any doubt about it the same has been put to rest by Hon''ble Supreme Court in the judgment rendered by it in the case of Hargovind Yadav (supra).

12. This Court further is also of the opinion that the Bank has further violated the decision taken by the Board of Directors dated 27.11.2002 annexure-A to the counter affidavit of the Bank, by extending the zone of consideration. This action

of the Bank also falls foul of the law settled by the Hon''ble Supreme Court in the case of Sarabjit Singh (supra).

13. To sum up, the Court comes to a conclusion that the decision of granting promotion to the private respondents which is contained in impugned annexure-1 to the writ application is in violation of the rules and law and the same is fit to be set aside. The impugned annexure-1 dated 30.1.2003 is accordingly quashed and set aside. It will be open to the Bank to initiate a fresh process for grant of promotions keeping in mind the law as has been laid down in this regard by the Hon''ble Supreme Court. This writ application is accordingly allowed. There shall be no order as to cost.

