
(1992) 11 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2717 of 1990

Govind Ram

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1992) 2 RLW 294 : (1992) 3 WLC 384 : (1992) 2 WLN 431

Hon'ble Judges : Rajendra Saxena, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Saxena, J.—By means of this writ petition, the petitioner has prayed that the respondent Bank be directed to treat him eligible to be promoted in the clerical cadre under terms contained in the promotion Policy Settlement dated 3.9.1987 entered into with the Federation of Indian Bank Employees Union and promote him in the clerical cadre from the date persons junior to him have been promoted.

2. Briefly, the admitted facts of this case are that the petitioner, who is a member of Scheduled Caste, entered in the service of the respondent-Bank as a Class IV employee on 31.5.1976 and was posted at its Jodhpur Branch. At the time of his initial appointment, he possessed a middle school certificate. However, he qualified the "prathama Examination" conducted by the Hindi Sahitya Sammelan, Allahabad on 26.7.1985. He, therefore, submitted his mark sheet to the respondent and accordingly entries in his service record were made and intimated to him vide letter dated 23.11.1987 (Anx. 1). It is not in dispute that in terms of the provisions of the promotion policy settlement dated 3.9.1987, the members of the sub-ordinate cadre staff were made eligible to be promoted to the clerical cadre. The respondent vide its circular letter dated 10.5.1988 (Anx. 2) intended effecting such promotions from subordinate cadre staff for the year 1988 to forty employees in the order of seniority in service out of employees,

who had passed the SSLC or its equivalent examination and who had completed four years of service as on 31.12.1987 and twenty employees in order of seniority out of employees, who had studied in a school upto SSLC or its equivalent and appeared and failed in such examination and had completed six years of service as on 31.12.1987 subject to their passing a test and 40 employees in order of seniority in service out of the employees who did not fall under the above two categories and who had completed eight years of service as on 31.12.1987 subject to their passing a test. The name of the petitioner appeared at S. No. 6 in general category No. 1, treating Prathama Examination as equivalent examination to that of SSLC. Thereafter on representation, his name was shown in Category No. 1 of the employees belonging to Scheduled Caste vide letter dated 31.5.1988 (Anx. 3). The respondent promoted certain employees of the sub-ordinate cadre staff to the clerical cadre in category No. 1, wherein petitioner's name did not find place. The petitioner, therefore, made a representation and the respondent vide its letter dated 8.2.1989 (Anx. 4) intimated that as per clarification issued by the Ministry of Human Resources Development, Govt. of India dated 24.10.1987 (Anx. R/2) and letter dated 24.1.1989 (Anx. R/1) issued by Ministry of Finance Department of Economic Affairs (Banking Division), Govt. of India, the Prathama Examination conducted by Hindi Sahitya Sammelan, Allahabad is not equivalent to SSLC and that same has been recognised only for Hindi subject and hence for the purpose of promotion his name was incorrectly included in the category of sub ordinate Staff, who have passed SSLC Examination and that now his name has been placed under the other than SSLC passed & failed category, as per promotion policy Settlement. The respondent, therefore, vide its letter dated 8.2.1989 (Anx. 4) intimated the petitioner that he will have to pass the promotion test and thereafter his case will be considered for promotion and the promotion will be given protecting his seniority. It is the case of the petitioner that number of sub-ordinate staff employees having similar qualification namely "Prathma" have been promoted by the respondent on numerous occasions, and therefore, there was no reason for denying him consideration for the promotion to the clerical staff. According to him he has been subjected to hostile discrimination, which is violative of Articles 14 & 16 of the Constitution of India.

3. The respondent in its counter has admitted that at the time of issuance of Circular dated 10.5.1988 (Anx. 2), the petitioner was placed and classified under the category of SSLC passed or equivalent thereof under a mistaken impression that the "Prathama Examination" conducted by the Hindi Sahitya Sammelan, Allahabad was treated as equivalent to SSLC. However, the recognised employees union during a discussion in June, 1988 pointed out the mistake that the "Prathama Examination" along with other Hindi Examinations were not equivalent to SSLC and that those examinations were only recognised equivalent to the Hindi standard of SSLC. Therefore, the matter was referred to the Government, whereupon the Ministry of Human Resources Development, Department, Government of India vide its letter dated 24.1.1989 (Anx. R/1)

clarified that the examination conducted by Hindi Sahitya Sammelan, Allahabad cannot be considered as equivalent to SSLC in all subjects. It was only then that the respondent Bank was constrained to delete the name of such employees, who had not passed the SSLC Examination including the petitioner from the list of eligible candidates. It was asserted on behalf of the respondent that the petitioner, therefore, can not claim any right of promotion to the clerical cadre as he lacks the basic qualification and that mere mention of petitioner's name at S.No. 6 in the list did not confer any right on him because in the said list also his qualification has been shown as "Prathama" and not as SSLC. It was asserted that earlier mistaken promotions of the employees do not give any right to the petitioner, that on that basis he cannot be considered as having passed SSLC Examination and that the respondent Bank was also contemplating suitable course of action in respect of those employees. The respondent further pleaded that persons, whose appointments, the petitioner now wants to challenge claiming himself to be senior to them were necessary parties in this writ petition and their non impleadment is fatal.

4. The petitioner in his rejoinder has alleged that respondent Bank has deliberately concealed the names of those persons, who passed he qualification "Prathama" and who have already been promoted in the clerical cadre in the year 1987. He has further alleged that in the list of eligible members of subordinate staffs enclosed with the Circular dated 21.9.1987 (Anx. 6), the name of the petitioner was not included. He also filed letter dated 20.1.1988 (Anx. 7) issued by the respondent along with the list of sub staff candidates, who were promoted to the clerical cadre in the SSLC passed category in the year 1987, wherein persons having passed "Prathama Examination" were promoted.

5. I have heard the learned Counsel for the parties and perused the relevant record.

6. Shri G.N. Mathur has specifically conceded that in view of the letter dated 27.10.1987 (Annex. R/2) issued by the Ministry of Human Resources Development Department and the letter dated 24.1.1989 (Annex. Rule/1) turned by Ministry of Finance Department, Government of India, "Prathama Examination" conducted by Hindi Sahitya Sammelan, Allahabad was recognised for Hindi subject only as equivalent to the Hindi standard of SSLC and that the same cannot be treated as equivalent to SSLC. However, his sole contention is that since persons having qualification of "Prathama Examination" have already been promoted by the respondent Bank in the clerical cadre in the year 1987, there exists no valid reason to exclude the name of the petitioner from the list of eligible candidates and in not considering his case for the said promotion. According to him a differential treatment has been given to the petitioner and he has been subjected to a hostile discrimination, which offends the mandatory provisions of Articles 14 & 16 of the Constitution of India.

7. On the other hand, the learned Counsel for the respondent Bank have emphatically asserted that since admittedly the petitioner has not passed the

SSLC Examination or its equivalent, he lacks minimum educational qualification necessary for considering his case in the category of the employees, who have passed the SSLC with four years of service for promotion to the clerical cadre. They have alleged that under a mistaken belief that the "Prathama Examination" was equivalent to SSLC, petitioner's name was included in the list appended with Annexure-2 for the year 1988, but that itself does not confer any right on him for promotion. They have maintained that after the clarification sought from the Ministry of Finance vide their letter dated 24.1.1989 (Annex.R/1) not a single employee having qualification of "Prathama Examination" has been considered and promoted to the clerical cadre and that suitable action is also being taken in respect of those employees, who have qualified the "Prathama Examination" and have been earlier promoted to the clerical cadre for the year 1987.

8. I have given my most anxious and careful consideration to the rival contentions. The solitary question to be determined in this writ petition is as to whether simply because in the year 1987, the respondent Bank had promoted members of sub staff having passed the "Prathama Examination" only to the clerical cadre despite the fact that their qualification was not equivalent to that of SSLC under a mistaken belief, does the petitioner has a right to be considered and promoted to the clerical cadre for the vacancies accrued during the year 1988 ? A perusal of letter dated 27.10.87 (Annex. R/2) issued by Ministry of Human Resources Development and the press note dated 18.2.1970 attached therewith firmly establishes that the "Prathama Examination" conducted by Hindi Sahitya Sammelan, Allahabad was recognised only for Hindi subject equivalent to SSLC and not for all subjects of the SSLC right from the year 1970. The Ministry of Finance vide its letter dated 24.1.1989 (Annex.R./1) has also clarified this position to the respondent Bank. Therefore, it is crystal clear that since they year 1970, "Prathama Examination" conducted by the Hindi Sahitya Sammelan, Allahabad is not equivalent to SSLC. As per provisions of the promotion Policy Settlement (dated 3.9.1987) entered between the Federation of Indian Banks and the Federation of Indian Ban Employees Union, only those employees of the sub-staff, who have passed the SSLC or equivalent examination and who have completed four years of service as on 31.12.1987 in order of seniority in service were entitled to be considered for promotion to the clerical cadre without passing the prescribed test. Therefore, apparently the petitioner does not possess the minimum educational qualification required for such promotion and as such he does not have any right for consideration and promotion to the clerical cadre, without passing the prescribed test.

9. The petitioner has not given the names and requisite details of any persons, who was junior to him and who has been considered and promoted to the clerical cadre on the basis of his educational qualification of "Prathama Examination" for the year 1988. He has neither challenged the promotion of such employees having Prathama Examination qualification and who were promoted in the clerical cadre for the year 1987 in this writ petition, nor has given the details of such persons nor has impleaded them as party. It also stands amply proved that the

respondent Bank after receiving the clarification from the Ministry of Finance vide its letter dated 24.1.1989 (Annex.R/1) has not recognised the "Prathama Examination" as equivalent to SSLC and has not considered and given promotion to any person, junior to the petitioner in the clerical cadre for the vacancies occurred during the year 1988 & thereafter with out the prescribed cost.

10. Shri G.N. Mathur has relied on Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another, . In that case a large number of Supervision Grade "A" had been promoted to the post of Chargeman Grade II on completion of two years satisfactory work in pursuance of a Circular dated 6.11.1962 issued by the Director General of Ordinance Factories. However, as per provisions of Indian Ordinance Factories (Re-curtiment and Condition of Service of Class III Personnel) Rules, 1956, such promotions could only be effected with the recommendation after screening by the promotion committee in respect of an employee having three years experience. Later on, the Circular issued by the Director General was superseded. Some supervisors in Grade "A", who were not automatically promoted as Chargeman II on completion of two years" service filed writ petition in the Allahabad High Court in the year 1972. The said writ petition was contested interalia on the ground that under the Rules of Promotion (cited supra) such promotion was not automatic and was subject to the recommendation made by the Departmental Promotion Committee at the factory level and then a Departmental Committee at the central level and then a after screening the service record of each of the supervisors "A", who fell within the range of eligibility having experience of three years. The learned SB of the High Court did not go into merits of the controversy and dismissed the writ petition on the ground of unexplained latches and also on the ground that a previous writ petition for similar relief had not been pressed. Thereafter, a Special Appeal before the D.B. of the learned High Court was preferred, who dismissed the said appeal on merits and held that such promotion was not automatic and that no right accrued to the appellants for such promotion on the basis of two years experience only. Against the said judgment a SLP to appeal was filed before the Supreme Court, which was allowed. The said Judgment of the Apex Court was reported in Virendra Kumar and Others Vs. Union of India (UOI), In that SLP appeal the Apex Court had held that a large number of persons had been promoted from Superior "A" grade to the post of Chargeman II, though they had only completed two years" service and that the Government, thereafter insisted that such persons could not be considered for promotion unless they had completed three years of service, there was no justification for having such differential treatment being given to the appellants. The Apex Court also held that if large number of other persons similarly situated had been promoted after completing two years of service, there was no reason why the appellant should not also be similarly promoted after completing the same period of service. Thereafter relying on the aforementioned judgment of Supreme Court number of writ petitions were filed by others such employees, which were referred to a larger Bench of the Supreme Court and decided on 28.3.89. That judgment has

been reported in *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, The Hon"ble Supreme Court has observed as under:

Where the supervisors in Grade A in ordinance factories were promoted to post of chargeman II on completion of two years" service on the basis of circular D/6.11.1992 before coming into force of order D/20.1.1966, which provided that promotions should be made in accordance with rules, Rule 8 of which contemplated that appointments by promotion were to be made on the basis of selection list prepared in the manner provided therein. The supervisors whose cases came up for consideration for promotion after coming in to force of order D/28.12.1965 and circular D/- 20.1.1966 could not complain that they were discriminated on the ground that they were not given benefit of circular D/-6.11.1962. Supervisors "A" who had been promoted before the coming into force of the order dated 28th Dec., 1965 and the circular D/-20th Jan., 1966 stood in a class separate from those whose promotions were to be made thereafter. The fact that some Supervisors "A" had been promoted before the coming into force of the order dt. 28th Dec., 1965 and the circular dt. 20th Jan., 1966 could not, therefore, constitute the basis for a plea that those Supervisors "A" whose cases came up for consideration for promotion thereafter and who were promoted in due course in accordance with the rules were discriminated against. They apparently did not fall in the same category.

11. Thus, it was held that the right of promotion had to be governed by the Rules. The Apex Court, therefore, dismissed those writ petitions. However, keeping in view the peculiar circumstances of that case, it was directed that the supervisors governed by the earlier decision of the Supreme Court were entitled to the same limited relief.

12. Hence, firstly the facts of the afore mentioned case are clearly distinguishable with the facts of the instant case, where the petitioner does not possess the basic minimum educational qualification namely SSLC or its equivalent requisited for promotion to the clerical cadre without passing a test. Secondly, for the year 1988 i.e. after the receipt of the clarification from the Ministry of Finance vide letter Annexure R/ 1, the respondent Bank has not considered and promoted any other such member of sub ordinate staff to the clerical cadre, who did not possess the aforesaid minimum qualification. Therefore, it is not at all a case of discrimination or differential treatment in respect of the persons similarly situated.

13. Shri G.N. Mathur has also relied on the decision of D.B. Civil Special Appeal No. 281/82 *Reeta Chadda v. State of Rajasthan* decided on Jan. 11, 1984. In that case six persons were initially appointed as Assistant Teachers Gr. III in the Education Department. They were subsequently transferred as LDCs in the State Insurance Department and were later on re transferred to their parent department, while many other such employees, who were Assistant Teachers Gr. III and appointed in the State Insurance Department were not transferred back. This Court, therefore, set aside the transfer orders of the appellants

retransferring them as Assistant Teachers. The facts of that case are, therefore, at poles apart and distinguishable with the facts of the case in hand.

14. In *Abdul Aziz v. State of Rajasthan* S.B. Civil Writ petition No. 3611/90 decided on 18.2.1992, the petitioner was appointed as Book lifter in the office of the Government Advocate, Rajasthan High Court, Jaipur. Three Class IV employees, who were also working in the same office and who were junior to the petitioner were promoted to the post of LDC. The case of the petitioner was repeatedly recommended for grant of equal treatment by the Government Advocate as well as the Controller Litigation to the Government. On the representation of the petitioner, the Controller, Litigation withdrew the orders of the promotion of all those three persons on the ground that they were not eligible for such promotion as they did not possess five year's experience, but the Law Secretary set aside the order of Controller Litigation and allowed them to continue on the permanent post of LDC consciously taking into account that they did not have 5 years experience on the date they were promoted. In such circumstances, this Court held that refusing to accord similar treatment to the petitioner in not promoting him as LDC amounted to breach of fundamental guarantee of equal treatment by the State under Articles 14 & 16 of the Constitution of India and it was directed the petitioner's case be considered for promotion to the post of LDC wef the date any person junior to him had been promoted. Therefore, it was not a case where the petitioner lacked the minimum educational qualification for promotion. On the other hand it was only a case where, the petitioner had not acquired the minimum experience in service. Therefore, this case also does not render substantial assistance to the petitioner.

15. Hence for the reasons mentioned above, the petitioner has no right to be considered and promoted to the clerical cadre because he does not possess the minimum educational qualification. The petitioner has also failed to establish that he has been subjected to a differential treatment in respect of the persons similarly situated, for the promotion from sub staff to the clerical cadre in terms of the provisions of the Promotion Policy Settlement dated 3.9.1987 for the vacancies occurred in the year 1988.

16. In the premise of the above discussion, I do not find any merit in this writ petition, which is hereby dismissed.