
(2002) 05 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 18044 of 1998

J.D. Ramakrishna Rao

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
State Bank of India (Subsidiary Banks) Act, 1959 — Section 24, 50, 63
State Bank of Mysore (Officers) Service Regulations, 1979 — Regulation 14

Citation : (2002) ILR (Kar) 3388 : (2002) 5 KarLJ 580 : (2002) 3 KCCR 200
SN : (2002) 3 LLJ 346

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; Kasturi Associates for Respondents-1 to 3, Subha Ananthi, for Respondent-4 and C.B. Srinivasan, for Respondent-5, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—An officer of State Bank of Mysore questions the selection and appointment of 4th respondent to the post of Senior Management Grade Scale IV in the services of the Bank, inter alia on the ground that he is more meritorious than the 4th respondent and therefore, the Selection Committee was not justified in preferring the 4th respondent than to him.

2. Briefly stated the facts are.--Petitioner and the 4th respondent were selected as Middle Management Grade Scale II Officers in the services of respondent-Bank pursuant to an advertisement issued by the Central Recruitment Board. After such selection, petitioner was appointed and posted to work as Deputy Law Officer of the Bank at Hubli Zonal Office with its headquarters at Hubli. The 4th respondent was appointed as Deputy Law Officer and posted to work at the zonal office at Mysore. Both of them have reported for duty at the place of their postings on 31-12-1984. Petitioner asserts that he was treated as senior among the Law Officers selected in Scale II. This assertion has neither any significance

nor relevance for deciding the lis between the parties in this petition. After working for nearly five years in the zonal office at Hubli, petitioner was transferred and posted to work in Bangalore Zonal Office and it appears, petitioner took charge in the zonal office on 24-7-1989.

3. Some time in the year 1990, petitioner and the 4th respondent were again selected and promoted to the post of Middle Management Grade Scale III on the same day. It so transpires that petitioner was asked to continue to work as Law Officer in the Bangalore Zonal Office, however, the 4th respondent was transferred from Mysore and was posted to work in the head office against newly created post.

4. Some time in the year 1995, one vacancy in the cadre of Senior Management Grade Scale IV was created in the services of the Bank. The said post was selection post. Petitioner and the 4th respondent were the only two candidates eligible and qualified to have their cases considered for selection and appointment to the Scale IV post. The Selection Committee constituted for this purpose, after calling the petitioner and the 4th respondent for an interview on 27-11-1995, have preferred the 4th respondent for the selection post and accordingly, have recommended his case for appointment to the promotional post. The Managing Director of the Bank, based on the recommendations made by the Promotional Committee, has ordered for appointment of 4th respondent as Scale IV Officer with effect from 1-12-1995 and the same is communicated to the 4th respondent by staff Circular No. 905/1995-96, dated 11-12-1995.

5. The statutory appeal preferred by the petitioner, aggrieved by his non-selection and selection of the 4th respondent to the promotional post, is also rejected by the Appellate Authority and the same is informed to the petitioner by the Bank by their endorsement dated 1-8-1998.

6. The reliefs claimed are, to direct the respondents to consider his case for promotion to the post of Senior Management Grade Scale IV Officer in the services of the Bank with effect from the date on which the 4th respondent was promoted with all consequential service and monetary benefits. Secondly, to set aside the selection and appointment of the 4th respondent as Senior Management Grade Scale IV Officer in the services of the Bank and lastly, to declare that respondents 2 and 3 herein, are not required to take sanction of the State Bank of India for creation of the post of Senior Management Grade Scale IV (Law Officer) and that the decision of respondents 2 and 3 to approach the State Bank of India for creation of aforesaid post in the services of the Bank is without authority of law.

7. The principal contentions raised by learned Senior Counsel Sri K. Subba Rao, for petitioner in support of the reliefs sought in the petition are:

I. One of the members of the Selection Committee namely, the 5th respondent in the writ petition was favourably inclined towards the 4th respondent. Therefore, promotion of the 4th respondent is totally arbitrary, capricious, and wholly unjust.

II. The 4th respondent though less meritorious than the petitioner, has been selected in preference to the petitioner by the Selection Committee by manipulation of the marks.

III. The Selection Committee has not properly assessed the merit and suitability of the candidates for the promotional post and therefore, the selection and promotion of the 4th respondent is illegal.

IV. The 5th respondent has played a leading role in getting the 4th respondent selected by manipulating the selection process. Therefore, the whole selection process is vitiated and lastly,

V. The Executive Committee of the Bank was not justified in referring the matter regarding creation of one more post of Senior Management Grade Scale IV (Law Officer) to State Bank of India, because State Bank of India is not vested with any powers regarding the creation of posts in the subsidiary Banks.

8. The respondents have filed their detailed statement of objections denying each one of the allegations made by the petitioner in the writ petition and also resists the reliefs sought for by the petitioner. Even the 5th respondent, who was one of the members of the Selection Committee against whom certain uncharitable remarks are made by the petitioner has also filed an affidavit before this Court refuting the personal allegations made against him by the petitioner. Sri K. Kasturi, learned Senior Counsel for respondent-Bank ably justifies not only the selection process, but also the recommendation made by it for appointment of the 4th respondent to the promotional post. The learned Senior Counsel has also produced before me the records maintained by the Selection Committee.

9. Let me now answer the issues raised by the learned Senior Counsel for petitioner seriatim. The learned Senior Counsel would firstly contend that the promotion of the 4th respondent was done by manipulating of marks-sheet by the 5th respondent, since he was interested in his promotion to the next promotional post and therefore, the entire selection process is vitiated. In my opinion, this submission of the learned Senior Counsel has no merit whatsoever. The reason being, the Selection Committee which had been constituted by the respondent-Bank consisted of three senior officers of the Bank, namely, the Chief General Manager of the Bank, who was also the Chairman of the Committee, the General Manager (P and D) and Assistant General Manager (Law). These officers were well-versed with the requirements of the post to which promotion was required to be made. The employer has laid down norms for the Selection Committee, which is required to be followed during the selection process. In fact petitioner has no grievance insofar as constitution of Selection Committee for the purpose of the selection and recommendation of the eligible and suitable candidate for the selection post. Petitioner also does not find fault with the procedure followed by the Selection Committee while considering the case of the aspirants for the promotional post. The only grievance of the petitioner seems to be that the 5th respondent was patronising the 4th respondent during the

selection process. In my view, this allegation is made without any basis whatsoever and made purely on mere surmises and conjectures. A look at the composition of Selection Committee will place beyond any reasonable doubt that there was no scope for arbitrary exercise of selection or favouritism. It is also relevant to point out that though in the pleadings of favouritism was raised vaguely, nothing is established and the petitioner has not substantiated the same with any cogent evidence. Apart from his bald assertion, petitioner has not placed any material before this Court in support of his accusation that the 5th respondent was patronising the case and claim of the 4th respondent and was very much instrumental in depriving the petitioner to occupy the promotional post. The allegation made by the petitioner is not only denied by the 5th respondent by filing an appropriate affidavit before this Court but also by the respondent-Bank. The correctness or otherwise of these allegations cannot be decided by this Court in the absence of appropriate documentary evidence filed before this Court by the petitioner. Even otherwise, these disputed facts cannot be decided by this Court in a petition filed under Article 226 of the Constitution. In the absence of any mala fides pleaded and established and in the facts and circumstances of the case, the selection and appointment of the 4th respondent cannot by any means be termed as arbitrary, illegal or violative of Article 14 or 16 of the Constitution of India. Further, the allegation that the 5th respondent had manipulated the selection of the 4th respondent to the promotional post is not supported by any material and that allegation is purely conjectural and therefore, the selection of the 4th respondent to the promotional post is not clouded by any extraneous consideration as pleaded by the petitioner in the petition.

10. In the present case, the selection and appointment was to the post of Middle Management Grade Scale IV (Law Officer) in the services of the Bank. It is a selection post. Promotion to the post is governed by service regulations. Suitability and merit being the criteria, the Selection Committee is required to recommend the suitable officer for promotion whom they consider fit. The Selection Committee consisted of high ranking officials who were well-versed with the requirements of the post to which promotion require to be made. The employer has laid down the norms that require to be followed by the Selection Committee. The Committee having considered the case and claim of only two aspirants to the promotional post has found that the petitioner is unsuitable for promotion to the next promotional post. Petitioner in his pleadings, apart from contending that the 5th respondent was interested in the promotion of the 4th respondent, he has been unable to point out any lacuna, illegality or irregularity in the selection process. Therefore, no fault can be found in the selection process adopted by the selection post while selecting and recommending the case of the 4th respondent to the promotional post. That apart, this Court is not expected to assess the respective merit of the candidates for adjudicating their suitability for being promoted and the only right the employee officer has is a right for consideration of his case and the said right of consideration having not been

infringed in the present case, it is difficult to accede to the request made by the petitioner in the writ petition.

11. The Apex Court while dealing with somewhat identical situation in the case of Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, , was pleased to observe as under.--

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction".

12. In view of the settled legal principles, the primary issues canvassed by learned Senior Counsel Sri K. Subba Rao, requires to be answered in the negative and against the petitioner.

13. The other incidental issue that is canvassed by the learned Senior Counsel is that though a subsidiary Bank is bound to conform to the regulations made by State Bank of India, as far as creation of a post, recruitment and appointment is concerned, the same exclusively vests with the subsidiary Bank. Therefore, the Executive Committee of the Bank was not justified in referring the matter regarding creation of one more post of Senior Management Grade Scale IV (Law Officer) to the State Bank of India, because State Bank is not invested with any power regarding the creation of posts in subsidiary Banks. In aid of this submission, the learned Senior Counsel relies upon certain observations made by learned Single Judge of this Court in the case of Mallaraj Urs, B.C. v. State Bank of Mysore and Ors.1982(1) Kar. L.J.321.

14. The facts in this regard are that the Executive Committee of the Bank had made a request to the State Bank of India to accord permission for creation of an additional post of Senior Management Grade Scale IV (Law Officer) to cope up with the increase in the volume of work. That request has been turned round by State Bank of India and Bank has also advised that such approval cannot be given.

15. The State Bank of Mysore, second respondent herein in its statement of objections states that in regard to creation of posts especially in specialist cadres

in administrative offices, a group policy is adopted by convention and therefore, a request had been made to accord permission for creation of an additional post in the Administrative Office of the respondent-Bank.

16. The State Bank of India (Subsidiary Banks) Act, 1959, is enacted by the Parliament to provide for the formation of certain Government or Government associated Banks as subsidiaries of the State Bank of India and for the constitution, management and control of the subsidiary Banks so formed and for matters connected therewith or incidental thereto. The State Bank of Mysore is one such Bank constituted under the provisions of the Act. Section 24 of the Act provides for management of subsidiary Bank. In that it is stated that the general superintendence and conduct of the affairs and business of a subsidiary Bank shall vest in the Board of Directors of the Bank. Section 24 of the Act reads as under:

"Section 24.--(1) The State Bank may, from time to time give directions and instructions to a subsidiary Bank in regard to any of its affairs and business, and that Bank shall be bound to comply with the directions and instructions so given.

(2) Subject to any such directions and instructions, the general superintendence and conduct of the affairs and business of the subsidiary Bank shall, as from the appointed day, vest in a Board of Directors who may, with the assistance of the General Manager exercise all powers and do all such acts and things as may be exercised or done by that Bank.

(3) The Board of Directors of a subsidiary Bank shall in discharging its functions under this Act, act on business principles, regard being had to public interest".

17. Section 50 of the Act provides for staff of a subsidiary Bank. The said provision is as under:

"Section 50.--(1) A subsidiary Bank, may subject to such limitations and conditions as may be prescribed, appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions and on such terms and conditions as it may deem fit".

18. Section 63 of the Act authorises the State Bank to make regulations in respect of subsidiary Bank to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act with the previous approval of the Reserve Bank. The regulations may provide for the conditions and limitations subject to which the subsidiary Bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service.

19. The Central Board of Directors of the State Bank of India in exercise of the powers conferred by Section 63 of the Act, in consultation with the Board of Directors of State Bank of Mysore and with the previous approval of Reserve Bank of India has framed regulations known as State Bank of Mysore (Officers) Service Regulations, 1979. In that, Regulation 14 speaks of appointment and

Regulation 17 provides for promotions. Regulation 14(1) is relevant for the purpose of this case and therefore, the same is extracted and it reads as under:

"Regulation 14.--(1) All appointments in, and promotions to, the Officers Grades shall be made by the Competent Authority in accordance with the policy or guidelines, if any, laid down in this behalf by the Board or the Executive Committee in the light of the State Bank's guidelines".

20. The provisions of the Act, mainly Sections 24 and 50 of the Act was considered by a learned Single Judge of this Court in the case of *Mallaraj Urs*, *supra*. The contention canvassed before the Court in the said case was that unless regulations were made by the State Bank of India laying down the conditions and limitations subject to which the Bank may make appointments and promotions including the qualifications and conditions of eligibility for such appointment, the Bank which is a subsidiary of the State Bank had no authority to regulate the recruitment of its employee officers,

21. This Court while answering the aforesaid legal contention was pleased to observe:

"8. Having regard to the plain language of Sections 24(2), 50(1) and 63(1), (2) (m) of the Act, I do not find any substance in the first ground urged for the petitioners. Under Sub-section (2) of Section 24 of the Act, the entire management of subsidiary Bank is vested in the Board of Directors of the Bank. This power is only subject to such directions and instructions as may be issued by the State Bank of India in exercise of its powers under Sub-section (1) of Section 24 of the Act. Again under Sub-section (1) of Section 50, it is competent for the subsidiary Bank to appoint such number of officers and employees as it considers necessary or desirable and on such terms and conditions as it deems fit. This is also subject to such limitations and conditions as may be prescribed by regulations made by the State Bank of India u/s 63(2)(m) of the Act. Though a subsidiary Bank is bound to conform to the regulations made by the State Bank of India, until such regulations are made, it has full powers to regulate recruitment and conditions of service of persons appointed to its service. Admittedly there were no regulations framed by the State Bank of India. Consequently the entire field was uncovered and it was competent for the Bank to regulate recruitment to the posts of Assistant General Managers (See *Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char*, ").

22. In my view, no exception can be taken to the observations made by this Court in the aforesaid decision. In fact, I respectfully concur with the reasoning of the learned Judge on the construction of provisions of Sections 24 and 50 of the Act; but at the same time, it requires to be noticed that though the management of the subsidiary Bank is vested in the Board of Directors of the Bank, there are various provisions in the State Bank of India (Subsidiary Banks) Act, which make it clear that the principal Bank namely, State Bank of India, exercises effective control over the affairs and business of the Bank. In view of

these provisions, the conclusion is irresistible that the principal Bank exercises effective control over the affairs of the Board of the Bank including in the matter of appointments to different posts especially in specialist cadres in Administrative Offices of the Bank. The respondent-Bank keeping in view the aforesaid principles and also the group policy that the subsidiary Banks have adopted by convention, had sought for clearance from the principal Bank for creating specialist cadres in the Administrative Offices of the Bank. In my view, these are all matters pertaining to internal administration of subsidiary Banks and therefore, it is not expected of us to butt in and declare that respondents 2 and 3 are not required to take sanction from the principal Bank for creating specialist cadres in the Administrative Offices of the Bank, especially when such convention is a healthy convention adopted by the subsidiary Bank to retain healthy relationship with the principal Bank.

23. In the light of the above discussion, I make the following:

ORDER

I. Writ petition fails and accordingly, it is rejected. Rule discharged.

II. In the facts and circumstances of the case, parties are directed to bear their own costs.