
(2002) 07 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 1151 (W) of 1999

Joyanta Chowdhury	Vs	APPELLANT
Uttar Banga Kshetriya Gramin Bank and Another		RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Citation : 106 CWN 993

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Biswanath Mitra and Bikas Pal, for the Appellant; Arunava Ghosh and Dwaipayan Sengupta, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—The writ petitioner is an Officer of Uttar Banga Kshetriya Gramin Bank (hereinafter referred to as the respondent bank). The promotional process of the said respondent bank has been impugned herein. By a notification dated June 22, 1998 the respondent Bank decided to fill up 14 vacancies by giving promotion from Scale -1 to Scale--II. Clause 3 of the said notice is quoted below:

Basis of selection:

Selection will be made on "Senioriry-cum-Merit" basis and candidates will be numerically evaluated on 100 points basis as under:

- i) Seniority : 50
- ii) Performance appraisal : 30
- iii) Interview : 20

The identical issue was decided by me in the case of Sagar Gramin Bank [W.P. No. 13951(W) of 1998 & Ors.] by my judgment and order dated June 14, 2002. Since the identical issue had been decided by me this matter would be covered by the said judgment. Hence, I granted liberty to both parties to have inspection

of my said judgment.

2. Mr. Arunava Ghosh, learned counsel for the respondent bank, submitted that the said judgment had not considered the Apex Court judgments reported in 1998 Vol. VII, Scale; 447 (Sher Singh & Ors. vs. Swindler Khanna & Ors.). Mr. Ghosh wanted to make detailed submission on the issue afresh. I therefore, granted him opportunity. The following decisions were cited Mr. Ghosh:

i) Sher Singh and Others Vs. Surinder Kumar and Others,

ii) 1998 Vol. VI, SCC, 720, (B. V. Sivaiah & Ors. vs. K. Addanki Babu & Ors.).

iii) 1998 Vol. I, CLT 391, (Rqjesh Nath & Ors.

vs. Kolaghat Thermal Power Station & Ors.).

iv) State of Mysore Vs. C.R. Sheshadri and Others,

v) Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, .

3. Relying on the aforesaid judgments Mr. Ghosh submitted that there was no illegality or irregularity perpetrated in the promotional process. Before deciding the said issue let me quote the relevant portion of my judgment in Sagar Gramin Bank (Supra).

Seniority-cum-merit as defined by the Apex Court, means that a particular mark is fixed which makes concerned candidate eligible for promotion and a list is accordingly prepared for the successful candidates who could cross such marking and then promotion is given on the basis of seniority irrespective of the marks obtained by the concerned candidates. Whereas "merit-cum-seniority" means that a particular group of employees on the basis of seniority are taken within the zone of consideration and as soon as they come within the zone of consideration the promotion is given in accordance with the merit i.e. according to the marks obtained by those persons. The preceeding paragraph is my understanding of the phrase "Seniority-cum-Merit" in the light of the various decisions of the Apex Court.

4. Following the Apex Court decision, in the case of Sagar Gramin Bank (Supra) I quashed the identical clause contained in the circular for promotion. Hence, there is no reason why I should deviate from my own stand. However, since Mr. Ghosh had cited few decisions of the Apex Court I intend to deal with the same.

(i) Sher Singh and Others Vs. Surinder Kumar and Others, : In this judgment the Apex Court upheld the order of the High Court which quashed the promotional process as it found that the bank had adopted the criteria of merit-cum-seniority instead of seniority-cum-merit as per the relevant rules. This judgment, in fact supports the view taken by me in the case of Sagar Gramin Bank (Supra).

(ii) 1998 Vol. SCC, 720 (B.V. Sivoiah & Ors. vs. K. Addanki Babu & Ors.): It appears on perusal of the judgment that the identical issue was gone into by the

Apex court in respect of the other gramin banks and it was held that the procedure was contrary to the principles of "seniority-cum-merit". This judgment also supports the view expressed by me in the case of Sagar Gramin Bank (Supra).

5. Since this three bench decision of the Apex Court in the case of B.V. Sivaiah & Ors. had laid down the proposition of law in this field I do not wish to deal with the earlier cases cited by Mr. Ghosh.

6. Following the three bench decision in the case of B.V. Sivaiah I do not have any reason to change my view which I had expressed in the case of Sagar Gramin Bank (Supra).

7. In the result, the writ petition succeeds. The entire promotional process, resulting from the circular dated June 22, 1998 is quashed and set aside. The private respondents are reverted back to their original post. The respondent nos. 1 to 4 would however not ask for refund of financial benefits availed by the private respondents during this period.

8. Respondent authority would immediately initiate a selection process strictly in accordance with the guideline suggested by the Apex Court and reiterated by me here in before for giving promotion in the post of MMG-II. Such promotional process must be completed within a period of three months from the date of communication of this order

9. This will, however, not preclude the bank to retain the promotees being the private respondents in their respective promoted posts if they so want. In such event the writ petitioners must be given appropriate pay protection respectively from the date of promotion of the private respondents and would be accommodated in MMG Scale-II as and when vacancy would arise with retrospective effect from 1998 when the private respondents were promoted.

10. Writ is disposed of without any order as to costs. Urgent xerox certified copy will be given to the parties, if applied for.