

(2004) 09 MAD CK 0129

In the Madras High Court

Case No : Writ Appeal No's. 1222 and 1223 of 1998

K. Packrisamy and C. Nedumaran

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 30-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 09 MAD CK 0129

Hon'ble Judges : Prabha Sridevan, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : M. Ganesan, for the Appellant; D. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—Both the writ appellants are aggrieved by the incorrect application of the promotion policy by the respondent, which resulted in their promotional chances being jeopardized.

2. Pending writ appeal, the appellant in Writ Appeal No. 1222 of 1998 had opted to retire under the Voluntary Retirement Scheme and therefore, this writ appeal is dismissed as having become infructuous.

3. As regards the appellant in Writ Appeal No. 1223 of 1998, he was subsequently promoted in the year 2000, but he is aggrieved by his non-promotion in the year 1992. The focus of the submissions made on behalf of the appellant in this writ appeal is with regard to the promotions made by the respondent contrary to the policy.

4. The prayer in the writ petition was for quashing of the selection list dated 12.8.1992. This list consisted of 349 names of officers belonging to various zones who have been empanelled for promotion to Middle Management Grade/Scale-II under the Normal Track Channel and also the names of 349 persons who have been empanelled for promotion under the Fast Track Channel. These officers have been promoted 12 years ago. They are not parties to the writ petition. To

quash the selection list without hearing them would result in injustice. On this score alone, the appeal deserves to be dismissed. But we will deal with the merits also.

5. The promotion of the officers working in the respondent Bank is governed by the promotion policy. The promotion policy of the respondent is modified from time to time. In the year 1986, in accordance with the revised guidelines, the promotion policy introduced rural service as an eligibility qualification. Clause 2.2(a) reads as follows :-

"2.2 (a) From Junior Management Grade/Scale I to Middle Management Grade Scale II.

7 years of satisfactory service in Junior Management Grade/Scale I provided that the Officer has put in minimum of 2 years service as an Officer in Rural Branch. As regards Specialist Officer, he should take the requisite Rural Branch experience as and when he switches over to the main stream of Banking.

Note : The proviso to the above rules will become operative in respect of promotions to be made with effect from 1st June, 1988."

The question as to when exactly the minimum period of two years of service in Rural Branch would become an eligibility qualification, came up for consideration in Writ Appeal No. 667 of 1988 decided on 9.9.1988. Paragraph 9, where the Division Bench considered the question of eligibility/ineligibility of those persons who had given letters refusing to render rural service reads thus:

"It was thought that the modified promotion policy is to be ushered in by 1.6.1988, such of those persons who have not rendered rural service should not be deprived out their promotion for no fault of them, and to give them an opportunity to become eligible in respect of vacancies which may arise after 1.6.1988, they were called upon to state as to whether they would render rural service or not. But this was not a communication to deprive those who have not rendered rural service from securing promotion in respect of notified vacancies which occur before 1.6.1988. They cannot be deprived of such an opportunity as per the policy in force until 31.5.1988. Therefore, in spite of the letters received from persons who have refused to render rural service, they have been considered for promotion for vacancies which had arisen prior to 1.6.1988. Those letters will be enforceable if any of them is to get promoted after 1.6.1988."

In the year 1991, the promotion policy was again revised and it was decided that there will be a two channeled system - one called the Normal Track and the other Fast Track - Clause 1.3 deals with eligibility. Clause 1.3(a), reads as follows :-

"1.3 ELIGIBILITY

(a) Promotion from JMGS I to JMGS II - Normal Track and Fast Track

7 years of satisfactory service in JMGS I with two years Rural Branch Service as an Officer."

Clause 1.5 is also relevant.

"1.5 RURAL/SEMI-URBAN BRANCH SERVICE

In respect of promotions to Scale II and III, Officers who could not complete the requisite two/three years Rural and Semi-urban Branch Service will be considered for promotion subject to the condition that if promoted they will be immediately posted in a Rural/Semi-urban branch for the requisite period and under no circumstances they will be allowed to shift to other areas before completing requisite tenure of Rural/Semi-urban branch posting. Such Officers shall individually furnish an undertaking to this effect at the time of commencement of the promotion process failing which they will be ineligible to participate in the Promotion Process. Officers who do not complete the requisite two/three years Rural/Semi-urban branch service as per the undertaking will automatically stand reverted."

6. The grievance of the appellant is that when he has completed more than two years in rural service, his claim for promotion ought to have been considered over and above those persons who had not served in a rural branch at all, but who were included in the merit list on the basis of Clause 1.5 of the guidelines. According to the appellant, by placing reliance on Clause 1.5, the respondent has virtually nullified the rural service requirement. The appellant also contends that the six persons mentioned in the affidavit filed in support of the writ petition have never served in a rural branch either before or after their promotions, but have been happily promoted at every stage. The case of the appellant is that Clause 1.5 will come to the aid of only those persons who had not completed two years of rural service, but were in the process of completing the said period of two years when the promotion policy came into effect, or to those persons who could not complete the said period because they were not either asked to go to a rural branch, or for some other reason beyond their control; and that the said clause shall not be applied to those persons who deliberately and by their own volition, refused to serve in a rural branch.

7. Learned counsel relied on the following paragraph in the judgment of the Supreme Court in State Bank of India etc., Vs. Kashinath Kher and others, etc., :

"Therefore, an exercise requires to be done by the appellant to identify this grouping and consider all those candidates who have otherwise become eligible but did not get opportunity, for no fault of theirs", to secure the service qualification but should be denied to those who volunteered not to go for line assignment or rural or semi-urban service as the case may be, and then to consider according to the criteria prescribed under the rules or the circulates issued from time to time."

Learned counsel for the appellant stresses on the above paragraph and insists that those who opted not to go for rural branch service should be denied promotion. Learned Counsel further submitted that the respondent had allotted 30% marks for interview, which is contrary to the ruling of the Supreme Court.

According to the appellant, the merit list deserved to be set aside.

8. Learned counsel for the respondent Bank would submit that the issue in the present appeal had been raised several times before and the disappointed officers have met with failure. Learned counsel referred to the order passed by D. Murugesan, J. in Writ Petition No. 15515 of 1994 filed by the Union Bank Officers" Congress, dismissing the said writ petition on 13.6.2001. The learned counsel would also submit that so long as Sub-clause 1.5 is there, the employees cannot be denied the opportunity to make good their lack of rural branch service. The learned counsel for the respondent would submit that no one has been promoted without obtaining from them an undertaking that after their promotion, they would serve two years in a rural branch. Learned counsel for the appellant further submitted that the appellant was considered for promotion, but failed to secure the necessary marks. According to the learned counsel, the complaint that more marks were allotted to the interview than what was permissible cannot be accepted. In cases of promotions unlike departmental exams, the performance of the officers are all matters that are relevant and therefore, there is no illegality in the Bank apportioning 30% for interview. It was further submitted that if the merit list is set aside without hearing the parties who will be affected, it would result in injustice. It was submitted that the appeal has to be dismissed.

9. The relevant clauses of the promotion policy have already been extracted. The promotion policy also shows that certain officers have been exempted from rural/semi-urban branch service. Categories of such officers are listed in Clause 1.6. Without hearing the officers who have been promoted, it is not possible to decide whether they have served two years in a rural branch after their promotion, whether they are officers who could not complete two years of such service for reasons beyond their control, whether they did not opt to go and serve in a rural branch or whether they are exempt from service under Clause 1.6. This exercise must be undertaken to identify persons who are not entitled to be promoted as alleged by the appellant. It will not be possible to set aside the entire promotion list as a whole. That would result in greater injustice than the injustice that the appellant complains of.

10. Much stress was laid on the sentence in the judgment of the Division Bench in Writ Appeal No. 667 of 1988, where it is stated that the letters of refusal given by persons will be enforceable against them if any of them seeks to be promoted after 1.6.1988. It must be remembered that when that writ appeal was decided, the 1991 policy had not come into force. This policy came into force on 18.10.1991 when, for the first time, Clause 1.5 was introduced, which allowed those officers who could not complete the requisite service of two/three years in rural/semi urban branch to be considered for promotion subject to the condition that if promoted, they will be immediately posted in a rural/semi-urban branch for the requisite period. Clause 1.5 made it clear that such officers will individually furnish an undertaking to this effect and if they did not complete the

requisite period of service as per the undertaking, they would be reverted. Therefore, when this benefit was given for the first time in the year 1991, all officers who stood in the line of promotion were entitled to take advantage of it. The observation in the above judgment cannot be used to adversely affect the officers who have been promoted in 1991.

11. The learned counsel for the respondent Bank explained the background against which this modification was brought to the earlier promotion policy. It appears that the Bank had insisted upon this rural service requirement as a policy decision in order to ensure that every officer serves in rural areas. But in reality, what happened was that it was not possible to accommodate all the officers in rural banks since there were lack of positions in some zones or there were no banks serving the rural areas in some zones. This resulted in blocking the promotion prospects of several officers simply on the ground that they had not served in rural branches. Therefore, Clause 1.5 was introduced so that at least after promotion, the officers would serve in rural branches. In these circumstances, the benefit of Clause 1.5 cannot be denied to the officers who want to take advantage of it, complying with the conditions therein. The accusation levelled by the learned counsel for the appellant that the six persons who have been mentioned in the writ petition have never served in a rural branch till date must be ignored since those six persons have not been made parties and cannot state their defence. The clause clearly states that the promotees will be reverted if they did not complete the two years/three years of service in rural/semi-urban branches. There is no reason to believe that this condition would have been breached.

12. The appellant was not selected because he did not obtain the required marks. The attack made by the petitioner that a higher percentage of marks was allotted for interview must be rejected on the ground that when assessment has to be made with regard to the suitability of a person for being posted to a higher post, the Committee which interviews the person necessarily will have to consider the suitability of that person from various angles, and the allotment of 30% for interview is not arbitrary or high and in any event, there is no fundamental right to promotion. The appellant only has the right to be considered for promotion. Further, the appellant knew the percentage of marks that were allotted for interview. Clause 1.8 of the promotion policy clearly shows the weightage given for the promotional parameters and therefore, this was known to the appellant before he took part in the written test or the interview. He took part in the promotion process knowing this fully well, and after he has been rejected, he cannot attack the percentage allotted for interview on the ground that it is arbitrary.

13. In the decision of the Supreme Court referred to by the learned counsel for the appellant reported in State Bank of India etc., Vs. Kashinath Kher and others, etc.,, , the State Bank of India relaxed the conditions for promotion to the post of Middle Management Grade Scale II Officers which required minimum two years"

service in "Line Assignment" and three years" rural/semi-urban branch service as a one-time measure. The question was whether the action taken by the Bank in making officers who have not completed the required service of Line Assignment and rural/semi-urban branch service is violative of Article 14 of the Constitution of India. The Supreme Court held in that case that the fortuitous circumstances of some officers completing the criteria and scaling a march over officers who are otherwise eligible would be unjust and unfair to those officers who did not have the opportunity to serve and complete the qualifying service. While holding that service conditions being essential conditions cannot be relaxed, the Supreme Court observed that what the Bank had actually done was to give an opportunity to officers who are otherwise eligible, to complete the required service conditions. The Supreme Court held that the procedure adopted by the Bank was just, fair and reasonable. In this judgment, the Supreme Court directed the Bank to prepare two lists - List (A) consisting the names of persons who had satisfied the eligibility criterion; and List (B) consisting the names of officers who could not complete the two years" service. The Bank was directed to identify the officers who have voluntarily opted not to serve in Line Assignment or rural/semi-urban branch service and eliminating them from List (B) by putting them in List (C).

14. The State Bank of India had brought about the relaxation as a one-time measure. In this case, the respondent Union Bank of India has adopted it in its promotional policy. The words, "could not complete" must be construed as construed by the Supreme Court, since we are bound by the decision of the Supreme Court. However, that will not apply to any officer who may have refused to serve in a rural or semi-urban branch before 1991, i.e., before the date on which the promotion policy came into force. It is hoped that the respondent shall construe the words in Clause 1.5 in the manner that the Supreme Court has construed the same phrase in the State Bank's, cited supra, with regard to officers who have refused to serve in a rural branch after 1991.

15. For the above reasons, the writ appeal is dismissed. No costs.