

(1996) 10 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10124 of 1995

K. Ramanjulu Kumar and Others

APPELLANT

Vs

District Co-operative Central Bank Limited and Others

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Citation : (1996) 4 ALT 670

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : M.V. Durga Prasad, for the Appellant; M.V. Panduranga Chary and G.P. for Co-operation for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—In this Writ Petition, the orders of the reversion passed on 6-5-1995 by the 1st Respondent are challenged.

2. The facts leading to the case are that the petitioners were appointed as Peons and Attenders under the 1st Respondent Bank. They had put in long experience of 12 years to 28 years in the said posts. However, some of them acquired typewriting qualifications and also underwent Co-operative Training Diploma. According to the petitioners, 14 vacancies in the long term cadre and 28 vacancies in the short term cadre arose and number of Peons working in the establishments are qualified for promotion to the said post as on 31-10-1991. In fact some of the petitioners were asked to function as Typists, Clerks for more than 5 years. As per the relevant Rules, promotion to the post of Clerk/Typist, the employee in the category of Peon has to put in a minimum of five years service and should have passed S.S.C. Similarly, a Peon with Intermediate qualification and Typewriting Certificate is eligible for promotion to the post of Typist. All the petitioners who became eligible for promotion were also given six months Co-operative Training. After completion of the Training, the 1st respondent found 13 persons to be eligible for promotion as Clerk and one person as Typist and they were posted at different places by orders dated

31-10-1994. But, however by orders dated 12-12-1994 they were reverted to the post of Peons on administrative grounds. The said reversion orders were challenged by the petitioners in Writ Petition No. 21990/94 and the same were quashed on 16-2-1995 directing the 1st Respondent to give notice to the petitioners and pass appropriate orders. In pursuance of the said direction, a show cause notice dated 25-3-1995 was issued to the petitioners in cyclostyled forms. To the said show cause notice, the petitioners submitted representations putting forth various objections. But, however, without considering the said objections, the 1st respondent passed a cyclostyled order dated 6-5-1995 confirming the reversion. The said reversion order is assailed before this Court.

3. It is contended by the petitioners" that there is no obligation cast on the 1st respondent to obtain approval of the Registrar of the Co-operative Societies in matters fixing of staff pattern, qualifications etc. as the Bank is independent entity by itself. It is also contended that the Circular issued by the Registrar is dated 12-9-1990 fixing the staff pattern, qualifications, are not applicable in case of promotions. It is also contended that the entire exercise is a mere formality and no effective, consideration was given to the representations submitted by the petitioners. It is also further contended that the ratio of 9:1 has been changed to 5:4:1 and therefore, the reasons given in the impugned order are wholly misconceived. The further contention of the petitioners is that the staff strength has to be fixed on the basis of the financial position of the Bank. As on 31-3-1993, the turn over of the Bank was around 55 Crores and it is increased manifold and as on 31-3-1995 the turn over is more than 86 crores and therefore the vacancies in all categories including category-IV and V should have been increased proportionately.

4. On behalf of Respondents No. 2 and 3, it is contended that the Writ Petition is not maintainable. Secondly, it is also contended that validity of Rule has been upheld by this Court in the decision reported in D.V.V. Satya Prasad and Others Vs. The Government of Andhra Pradesh and Others, . Since the 1st respondent issued reversion order, the petitioners cannot make any grievance against Respondent Nos. 2 and 3. It is stated that on 30-5-1994, the Registrar of Co-operative Societies fixed the staff strength consequent on the re- organisation of Bank and accordingly there was excess staff strength in all the cadres and in cadre V there is excess of 62 and in cadre VII and VIII, there is an excess strength of 47. In view of the excess strength, the Bank was permitted to continue the existing additional staff till alternative arrangements are made and the vacancies should not be filled in future and the staff strength is reduced to approved staff strength. The petitioners are given promotion in category-V in excess of staff strength and therefore they are liable to be reverted back.

5. The Bank also filed counter stating that the petitioners cannot be continued in the promoted post in as much as the promotions are not within the sanctioned strength as approved by the Commissioner. That the petitioners are not academically qualified and that the promotion orders are not in accordance with

the instructions issued by the Commissioner inasmuch as the ratio of 9:1 (Paid Secretaries and eligible in-service personnel) is not maintained. Therefore, the show cause notice was issued in pursuance of the orders of this Court in Writ Petition No. 21990/94 and after considering the representation and also after hearing them, the final orders were passed on 6-5-1995 and hence there is no illegality or irregularity in the order passed.

6. In the reply affidavit filed by the petitioners, it is stated that the petitioners are seeking promotion to Category-V post. Therefore, their academic qualifications fixed by the Commissioner are not applicable. Further, it is stated that by virtue of the Award in I.D. No. 13/67, dated 12-3-1970, the petitioners are entitled for promotion to the post of Category-V from the post of Attenders. Therefore, the question of their acquiring qualifications as directed by the Commissioner does not arise. Further, it is the case of the petitioners that they have acquired all the necessary qualifications. Some of them are Graduates. With regard to the ratio, it is submitted that the ratio 9:1 has been changed to 5:4:1 and this was not considered by the Registrar. It is also stated that the staff strength was fixed on the financial position of the Bank as on 31-3-1993, but there was a phenomenal increase as on 31-3-1995 and therefore the staff strength should have assessed as on the date of the promotion and not as on 31-3-1993. Therefore, the petitioners submit that there is a total non-application of mind by the 1st respondent Bank and hence the Writ Petition has to be allowed, quashing the impugned reversion order.

7. It is contended by the Respondents that the Writ Petition is not maintainable in the first instance and therefore the Writ Petition has to be dismissed. I am afraid, I cannot accept this contention inasmuch as on earlier occasion, when the reversion orders were passed, the petitioners approached this Court assailing the orders of reversion in W.P. No. 21990/94 and the same was allowed quashing the orders of reversion on 6-5-1995. No such objection was taken at that time. Therefore, when again final orders were passed after giving notice, such an objection could not be taken by the respondents in this Writ Petition. Secondly also such a contention cannot be raised inasmuch as the management of the Committee was vested with the District Collector, who is the Special Officer of the 1st respondent Bank. Therefore, when once the management and the supervision has been vested in the District Collector, the orders passed by him in the capacity of Special Officer-cum-District Collector can be assailed in the Writ Petition under Article 226 of the Constitution of India.

8. Coming to the merits of the case, the learned Counsel for the petitioners submit that promotion is a necessary aspiration of the employee who has put in of long years of service. Therefore, to deny the promotion is wholly illegal and arbitrary. Secondly also he submits that the petitioners are entitled for promotion by virtue of the Award of the Industrial Tribunal and hence the benefits of award cannot be denied or given a go-by when the promotions are to be effected in Category-V. He further contends that the staff strength was fixed by the

Commissioner of Co-operation on the basis of the financial position as on 31-3-1993. It is also contended by the learned Counsel that the ratio as presumed by the 1st respondent was absolutely misconceived. The ratio which was existing as 9:1 has now been changed by Commissioner himself as 5:4:1. Even the said ratio is not applicable when the employee is promoted to (sic. from) lower category to promotion post and ratio is applicable only to the direct recruitment.

9. I have given my anxious consideration to this aspect. It is not in dispute that the petitioners had put in long years of service as Peons and they acquired higher qualifications and also the Co-operative Training. The Supreme Court in *C.S.I.R. v. K.G.S. Bhatt* 1990 (1)LLJ 246 observed thus:

"It is often said and indeed, adroitly, an organisation, public or private, does not "hire a hand" but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See: Principles of Personnel Management by Flipo Edwin B, 4th Ed. P. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors. "(See: Personnel Management by Dr. Udai Pareek, P. 277). There cannot be any modern management much less any career planning, man-power development, management development, etc. which is not related to a system or promotions. (See: Management of Personnel in India Enterprises by Prof: N.N. Chatterjee, Chapter 12, P. 128). The appellant appears to have overlooked this requirement of management so far as respondent was concerned till NR & AS was introduced."

But the contention that is raised by the Respondent Bank is that they are having surplus staff and therefore the Bank has committed an error in promoting the petitioners to Category-V post. Admittedly, the staff position was fixed by the financial position as on 31-3-1993 and it is the contention of the learned Counsel that there is a manifold increase of 50% and in such event staff strength has got to be proportionately increased. Secondly, also the learned Counsel for the petitioners submit that the qualifications fixed by the Commissioner are not applicable in view of the provision in the Award of the Industrial Tribunal making a channel for promotion to the Category-V post from the cadre of Peons/ Attenders. From the perusal of the impugned orders passed by the 1st respondent, I find that these aspects have not been considered in a proper perspective. The award of the Industrial Tribunal, on the question of fitment has not been referred by the 1st respondent. The contention that the ratio of 9:1 between the Paid Secretaries and Eligible In-service candidates for the promotion

to the Category-V post, has been changed to 5:4:1 has also not been considered on the ground that the G.O. dated 28-9-1993 is still in force. As already observed by the Supreme Court in K.G.S. Bhatt's case (2nd cited supra), the employee has a right to be considered for promotion and the said right cannot be denied on mere technical grounds. The very purpose of providing promotion channel to the employees of the lowest rung of the ladder will be frustrated, their chances for promotion cannot be scuttled by imposing restrictions as to the educational qualifications, etc. when such a restriction was not made in the Award of the Industrial Tribunal. The principal contention is that the staff strength ought to have been assessed as on 31-3-1995, but the reversion was done basing on the staff strength as on 31-3-1993. The learned Counsel for the petitioners also contended that none of the relevant points urged by the petitioners were considered and order was passed mechanically on a cyclostyled forms. Cases of the petitioners has to be decided individually keeping in view the respective qualifications and other requirements. I am in agreement with the contention of the learned Counsel for the petitioners. When it is the case of the petitioners that some of them are Graduates and some of them have also acquired necessary qualifications, the cases of the petitioners ought to have been discussed individually and the cyclostyled format cannot be a substitute for fair and effective consideration.

10. Under these circumstances, I am convinced that the Respondents have not considered the representations of the petitioners in a proper perspective. Therefore, I am inclined to set aside the impugned orders and direct the 1st Respondent to consider afresh all the objections raised by the petitioners with reference to the Award of the Industrial Tribunal, financial position of the Bank as on 31-3-1995 and also the ratio fixed by the Commissioner between the Paid Secretaries and Eligible In-service candidates. It is needless to mention that the cases of the petitioners have to be considered on individual merits.

11. The Writ Petition is accordingly allowed and the impugned orders are quashed. The 1st respondent shall consider afresh the individual representations submitted by the petitioners and after taking into consideration the various contentions raised by them, the 1st respondent shall pass appropriate orders, within a period of three months from the date of receipt of copy of this order. It is submitted by the learned Counsel for the petitioners that only two petitioners are continuing in the promoted post and others were reverted. The position of respective petitioners as on date shall continue till the final orders are passed by the 1st Respondent.

No costs.