

(2016) 06 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3209 of 2002.

Kapura Ram - Petitioner @HASH Jalore Central Co-operative Bank Limited, Jalore and Another

Date of Decision : 02-06-2016

Acts Referred:

Rajasthan Co-operative Societies Rules, 1966 — Rule 41

Citation : (2016) 4 RLW 2777 : (2016) 4 WLC 573

Hon'ble Judges : Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : M.S. Singhvi, Senior Advocate assisted by Hemant Dutt, Advocate, for the Petitioner; Arpit Bhoot, Advocate, for the Respondent/Bank; None present, for the Respondent No. 2 in spite of service

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J. - The petitioner herein is seeking a direction to set aside the Order dated 4.2.2002 (Annx. 9) as well as Order dated 24.7.1985 (Annx. 5) and the Order dated 24.7.1985 (Annx. 6) so far as it relates to the respondent No. 2, vide which the representation of the petitioner was rejected and he was reverted back to be post of Clerk-cum-Cashier while 7 other persons were promoted to the post of Officer Grade D(i) by D.P.C. respectively, with a further prayer to promote him on the post of Officer Grade D(i) on regular basis w.e.f. 24.7.1985 with all consequential benefits.

2. As per the facts detailed in the petition, the petitioner was appointed as Clerk in the respondent-Bank on 21.1.1981. In the seniority list dated 13.10.1983, the name of the petitioner appeared at Serial No. 20 and the respondent No. 2- Jagdish Kumar Jeengar at Serial No. 22. The petitioner was promoted on 8.4.1985 as Officer Grade D(i) (Branch Manager) on ad-hoc basis but was soon reverted back to the post of Clerk-cum-Cashier on 24.7.1985 and simultaneously, by an order of even date, 7 other persons were promoted to the post of Officer Grade D(i) by D.P.C. The petitioner challenged the order of reversion by filing S.B. Civil Writ Petition No. 1529/1985. The said writ petition was disposed of with

a direction to the petitioner to file a representation and the respondent-Bank was, accordingly, ordered to decide the same within a stipulated period. However, the said representation was rejected on 4.2.2002, which is impugned herein as Annexure-9. Being aggrieved, the petitioner made a representation to the Administrator-cum-Collector, Jalore, who further directed the Managing Director of the respondent-Bank to decide the representation of the petitioner afresh in accordance with law but the respondent-Bank did not comply with the directions of the Collector forcing the petitioner to approach this Court through the present writ petition.

3. The grievance of the petitioner is, therefore, twofold, firstly, as per the rules applicable to the petitioner, 60% of the posts of Officer Grade D(i) is required to be filled by Clerk cadre, out of which 50% is by seniority-cum-merit and another 50% is by merit. 02 posts were to be reserved for S.C. category against vacancy at 1st and 7th of the roster point. Therefore, first post was required to be filled by seniority-cum-merit and the second post was to be filled by merit. The respondents, however, filled up only 1 post and that too on merit basis ignoring the seniority. Secondly, the said promotion of the respondent No. 2 is not only against the rules but arbitrary and unjust as the petitioner is both senior and meritorious vis-a-vis respondent No. 2.

4. Reply has been filed by the respondent-Bank. As per the reply, only 7 posts fell to the Share of promotion quota, out of which 01 was allotted to the Schedule Caste, 01 to the Scheduled Tribe and 05 to the general category. Since there was only 01 post available against the reserved quota of the Scheduled Caste, it was to be filled in on the basis of merit and the Departmental Promotion Committee after considering the merit of both the candidates i.e. petitioner and the respondent No. 2, found the respondent No. 2 as mere meritorious than the petitioner and accordingly, he was promoted on the said post. It was, however, not denied that there was nothing adverse against the petitioner.

5. Learned counsel for the parties were heard.

6. In exercise of the powers under Rule 41 of the Rajasthan Cooperative Societies Rules, 1966, the Registrar, Cooperative Societies issued a notification dated 2.4.1980 providing procedure for selection and promotion of officers of the respondent-Bank. As per the amendment dated 10.8.1984 in the rules for the post of Officer Grade D(i) to be filled by clerical cadre, was as under:-

"For D(i) grade

60% by promotion (of which 50% by seniority cum merit & 50% by merit only from the cadre clerks & 40% by direct recruitment."

7. It is evident from the above that 60% of the post of Officer Grade D(i) was to be filled by promotion, out of which 50% was by seniority-cum-merit and another 50% by merit alone. The facts have not been disputed by the respondent-Bank. The only reason for ignoring the petitioner as stated in the

reply is that since there was only 01 post reserved for S.C. candidate, the same had to be filled by merit. No reason as to why the same was not filled by seniority-cum-merit, at the first instance, is forthcoming. The respondent-Bank is totally silent qua this fact even while deciding the representation of the petitioner. It is apparent from the Order dated 4.2.2002 (Annx. 9) rejecting the representation of the petitioner that the same was rejected without any valid ground and without application of mind.

8. The petitioner has no adverse record. There was no reason as to why the solitary post should not have been filled by seniority-cum-merit instead of merit alone. The amendment dated 10.8.1984 also suggests 50% by seniority-cum-merit and 50% by merit. The selection by "merit" follows the "seniority-cum-merit". In the present case, the solitary post should have been, in any case, filled by seniority-cum-merit and only in case of a second post was available, the same should have been filled on the basis of merit alone. Such an interpretation is only fair and just and reduces the chances of manipulation.

9. It is well settled proposition that even in cases, where the promotion is by selection alone, the seniority should be kept in mind especially when there is nothing adverse against such person. The observations of the Division Bench of the Hon'ble Mysore High Court in the case of N. Srinath, M.A. Somashekar, Assistant Director Industries v. The State of Mysore and others reported in 1972 SLR 449 that even, while giving promotion on merit basis the preference should be given to seniority being relevant read as under:-

"Whether the promotion be on seniority-cum-merit basis or by selection, it is impossible to promote a junior without considering the case of a senior. In case of the first type of promotions, it is obvious that a senior must be considered first and that when he is found unfit, the case of the next junior, may be considered, in the second category of promotions, the promoting authority must consider a sufficient number of persons in the lower cadre of a number which, a relation to promotional vacancies to be filled, is reasonably sufficient, at the top of the lower cadre for consideration. They should take the number from persons at the top, because both according to well known notions of merit in Government service and according to the express provisions of Rule 4 of the Mysore Civil Services (General Recruitment) Rules, seniority is an element in the assessment of merit and even in cases where promotion is by selection, due regard must be had for seniority also."

10. This Court cannot lose sight of the communication dated 5.2.1991 of the Managing Director of the respondent-Bank sent to the Registrar, Cooperative Societies, Rajasthan, Jaipur. As per the said letter, the submission of the petitioner that as per the roster system, 07 posts, on which the promotions have been made by the respondent-Bank, 1st and the 7th posts were reserved for S.C. category and the selection committee has filled only 1 post by S.C. category candidate and the 7th post reserved for S.C. category was not filled by the S.C. category candidate, was held to be correct. In reply to Para 17 of the petition,

the respondent-Bank has not denied the said fact but refused to accept the recommendation by simply stating that the said letter has no binding effect. Even, if this Court does not go into the controversy as to whether 1 or 2 posts were required to be filled by S.C. category candidates, there is no way to ignore the fact that in case, only 1 post was required to be filled by S.C. category, the same should have been filled on the basis of criteria of seniority-cum-merit. The respondent No. 2, although, made a party, has chosen not to contest the petition. No one is present on behalf of the respondent No. 2 in spite of service. Meanwhile, the petitioner is due to retire from service on 31.10.2016. Therefore, in these circumstances, this Court does not deem it proper to displace the respondent No. 2 at this stage. However, this Court is of the view that promotion was wrongly denied to the petitioner. The petitioner had the first right to be promoted on the said post on the basis of seniority-cum-merit to be followed by merit alone in case of a second post.

11. Accordingly, the writ petition is allowed as under:-

1. The order rejecting the representation of the petitioner dated 4.2.2002 (Annex. 9) is set aside.
2. The petitioner shall be granted notional promotion on the post of Officer Grade D(i) from the date when respondent No. 2 was promoted on the said post with all consequential benefits towards pay fixation and retrial benefits etc. However, the arrears of pay arising out of the pay fixation for the said period from the date petitioner is deemed to be promoted till retirement shall not be paid.