

(2011) 05 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (C) No's. 13115 and 12802 of 2009

Krishna Chandra Behera

APPELLANT

Vs

Chairman, Neelachal Gramya Bank and others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Regional Rural Banks (Appointment and Promotion of Officers and Other Employees)
Rules, 1988 — Rule 14, 5, 6
Regional Rural Banks Act, 1976 — Section 29

Citation : (2011) 131 FLR 124

Hon'ble Judges : S.K. Mishra, J;L. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Mishra, J.—The petitioner in W.P.(C) No. 13115 of 2009 prays for issuing mandamus to opposite party No. 1-bank for giving promotion to him and other eligible employees of the opposite party-bank and to quash the advertisement issued by the opposite party-bank for filling up Officers Scale-1 post by direct recruitment. Since the prayer in W.P. (C) No. 12802 of 2009 is same, both the writ petitions are heard together.

2. The petitioner was initially appointed as a Clerk, but later on his designation was changed to Clerk-cum-cashier of the Puri Gramya Bank. The said bank was merged with Dhenkanal Gramya Bank and the present opposite party No. 1-Neelachal Gramya Bank was formed. It is the case of the petitioner that employees having ten years of service in the grade are eligible to sit in the written test to qualify for being called to appear at the viva voce test for appointment to the post of Scale-1 Officer. Last time in the year 2005 a written test was held and 82 persons were called to the viva voce test since the vacancy was identified to be 41. Thereafter, a writ petition was filed and because of an interim order passed by this Court, though 41 posts were made available for promotion from amongst the Clerk-cum-cashiers working under Puri Gramya

Bank, the same could not be filled up.

3. The petitioner further pleads that the matter was placed in the Board Meeting held on 4.9.2006 vide Additional Agenda No. 29(E) wherein it was categorically mentioned that the decision of identification of the posts meant for Officer Scale-1 in the promotional quota and it was resolved that for promoting 125 clerical members to the Officers Scale grade subject to the condition that the promotion process for 41 officers post in Scale-1, for which written test has already been conducted, should be completed first. Promotion process for the remaining 84 vacancies should commence soon after publication of the result for 41 posts. Thereafter it is submitted that without completing the promotion of 41 posts and also taking steps for filling up 84 promotional posts by way of promotion, the opposite party-Bank has issued notification for recruitment of 21 Scale-1 officers (Group-A) as per Annexure-8. Therefore, the petitioner prays that the advertisement be quashed and the petitioner should be given promotion.

4. Opposite Party No. 1 has filed the counter-affidavit, inter alia, alleging that the petitioner had appeared in the examination of 2005 and It was not selected in the written examination and was not called for the interview. It is further submitted that the advertisement/notification of direct recruitment to the post of Scale-1 cadre has been done in accordance with the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 framed by the Central Government in exercise of its power conferred u/s 29 of the Regional Rural Banks Act, 1976. It is further submitted that the process of direct recruitment is an independent one and it has nothing to do with the petitioner as he is concerned with promotion in the promotion quota and the ratio of direct recruitment vis-a-vis promotion is 50:50 and the petitioner should be considered as and when the promotion quota is filled up and there is no cause of action for him to challenge the direct recruitment which is being done by way of open advertisement.

5. In course of hearing, learned Counsel for the petitioners, in both the cases, submitted that since the petitioners are working for a considerable length of period, if no promotion is given to them, they shall be frustrated and instead of considering their promotions, if direct recruitment is carried on, then it will result in further stagnation of the careers of the petitioners as the direct recruits shall become senior to them. Learned Counsel for the petitioners in both the writ petitions, therefore, pray that these writ petitions may be allowed.

6. Learned Counsel appearing for opposite party No. 1-Bank, on the other hand, submitted that such a direction cannot be issued against the opposite party-Bank.

7. It is not disputed that the Neelachal Gramya Bank Officers' and Employees' Service Regulation, 2007 lays down the Rules regarding the condition of Service, Seniority, Promotion, etc. Rule 14 of the Regulation provides that all promotions shall be made at the discretion of the Bank and no officer or employee shall claim as a matter of right to be promoted to any post or cadre. Provided that

promotions of officers or employees in the Bank shall be made in accordance with the rules framed by the Central Government in terms of section 29 of the Regional Rural Banks Act, 1976. The Central Government in exercise of its power conferred u/s 29 of the Regional Rural Banks Act has brought out the Notification bearing Statutory Order No. 642 dated 29th July, 1998, which provides for the rules of promotion etc. Rule 6 provides for filling up of vacancies. It lays down that all vacancies, determined under Rule 5 by the Board, shall be filled up by promotion or direct recruitment in accordance with the provisions contained in these rules and Third Schedule to the rules. The Third schedule at Clause-3 provides for Scale-1 Officer, which is classified as Group-A. It provides that the source of appointment shall be 50% by direct recruitment through Banking Service Recruitment Board and 50% by promotion. Sub-clause (d) provides that promotion shall be made on the basis of seniority-cum-merit.

8. Thus, it is clear that opposite, party No. 1 -Bank can fill up the promotional post of Scale-1 officer by direct recruitment and by promotion in the ratio of 50:50. It is further seen that the rules provide that the direct recruitment should be through Banking Service Recruitment Board, but in this case the advertisement has been brought out by the Bank itself, which on the face of it, is illegal. Since the petitioner has not claimed the relief on this ground and opposite party No. 1 has no opportunity of answering this factual aspect of the case, we are not inclined to quash Annexure-8, i.e. the advertisement for direct recruitment," but we are of the opinion that the opposite party-Bank should reconsider its decision as to whether the direct recruitment should be conducted by the Banking Service Recruitment Board or by the Bank itself. We further direct that within a period of one month the opposite party-Bank shall identify the total number of vacancies to be filled up in the cadre of Scale-1 Officer and clearly mention 50% thereof, shall be filled up by direct recruitment and 50% by promotion. Thereafter the opposite party-Bank shall publish such Notification in the Website calling for any objections thereto. Any objection received within seven days of such publication shall be enquired into by a team of expert and appropriate decision be taken within seven days. Their decision on that matter shall be final. Thereafter the process of selection through promotion and by way of direct recruitment shall be taken up. The exercise regarding promotion of clerk-cum-cashier to the post of Scale-1 Officer shall be completed within three months thereafter.

With these observations, both the writ petitions are disposed of.

L. Mohapatra, J.

I agree.