

**(2001) 01 JH CK 0026**

**In the Jharkhand High Court**

**Case No :** Letters Patent Appeal No's. 208 and 209 of 1991 (R)

Kshetriya Gramin Bank and Another

APPELLANT

Vs

D.P. Singh @ Dinanath Prasad Singh and Others <BR> Lalu  
Oraon and Others Vs Ranchi Kshetriya Gramin Bank and  
Others

RESPONDENT

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**Date of Decision :** 03-01-2001

**Acts Referred:**

**Citation :** (2001) LIC 3315 : (2002) LLJ 1 765 : (2001) 1 JLJR(Jhar) 118

**Hon'ble Judges :** Vinod Kumar Gupta, C.J;A.K. Prasad, J

**Bench :** Division Bench

**Advocate :** Anil Kr. Sinha, P.K. Prasad, T. Sen, P. Kumar and P.K. Pd. Prabhash  
Kr, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

1. This common order shall dispose of both the Letters Patent Appeals being LPA Nos. 208 and 209 of 1991 (R).

2. Both these Letters Patent Appeals arise out of the judgment dated 4.11.1999 passed in CWJC No. 927 of 1991 (R) whereby the learned Single Judge while allowing the writ application filed by the writ petitioners and setting aside the impugned order of promotion as contained in Annexure-4 to the writ application issued a writ of mandamus commanding and directing the respondent Bank to consider afresh the matter relating to the promotion of all eligible candidates keeping in view the direction contained in the aforesaid judgment of the learned Single Judge. When the judgment of the learned Single Judge was challenged in appeal, the Division Bench hearing the appeals was confronted with a situation where it had two conflicting views of the Division Benches relating to the interpretation and scope of the guidelines and Rules with regard to the recruitment based on the principles of seniority-cum-merit; whereas, one view was that the seniority-cum-merit made it permissible for the competent authority to prescribe and allocate different marks for different aspects including seniority,

performance, educational qualifications etc, the other view was that where promotion was based on seniority- cum-merit, it was not permissible for the competent authority to allocate different marks for the aforesaid aspects and that merit being equal, seniority would have over-riding consideration. The Division Bench accordingly referred the aforesaid for consideration by Full Bench, which accordingly considered all these aspects vide judgment dated 4.11.1999 and held that where promotion was on seniority-cum-merit basis, greater emphasis has to be given to the seniority and that in all matters relating to promotion, on the basis of seniority-cum-merit, even though minimum necessary merit has to be determined, seniors even though less meritorious would have priority and a comparative assessment of the merit thus is not required to be made. In the facts of this particular case, commenting upon para 7(c) of the second schedule of the Regional Rural Banks (Appointment and Promotion of Officers and other employees) Rules, 1988, the Full Bench in para 26 of the judgment (supra) took a clear view that the clauses (a) and (c) of para 7 were clearly re-concilable and by harmoniously interpreting these two clauses, one providing and prescribing the sources of recruitment and the other the mode of selection, requirement of appointment by promotion on the basis of seniority-cum-merit it can be achieved by enabling the competent authority to allocate requisite marks for each year for assessment of performance in the past three years and also to allocate marks for the interview; such allocation of marks for interview be kept at the bare minimum " only to arrive at the level of qualifying merit and once that is done, and all the eligible candidates are found to be possessed of such qualifying merit, seniors have to be given preference. This has been elaborately discussed in para 26 of the judgment.

3. Law laid down by the Full Bench, therefore, clearly approves, in a manner of speaking, the judgments of the learned Single Judge by holding that the promotion of respondents No. 3 to 8 in the writ petition based on the impugned orders of promotion was bad in law. The Full Bench has, in our opinion, clearly disapproved of such promotion. Therefore, we have no hesitation whatsoever, following the aforesaid ratio laid down by the Full Bench, in dismissing these appeals by upholding the judgment of the learned Single Judge in toto.

4. Mr. Sinha, learned counsel appearing for the respondents No. 3 to 8, however, has drawn our attention to a judgment of the Supreme Court in the case of A.C. Thalwal Vs. High Court of Himachal Pradesh and Others, has urged that in view of the observations and directions contained in paragraph 19 of the aforesaid judgment, we should not disturb the promotion already granted to respondents No. 3 to 8, at least, till such time as the respondent-Bank completes the process of promotion on a fresh consideration on the basis of the direction as issued by the learned Single Judge in the judgment under appeal before us. We do feel that respondents No. 3 to 8 having been promoted almost nine years back, do deserve some lenient and sympathetic consideration at our hands. We accordingly, by upholding the judgment of the learned Single Judge, but with modification to the extent indicated herein below, and by passing specific

directions as herein below contained :

(1) The respondent-Bank shall consider the cases of all eligible candidates for promotion to higher posts of Area Manager/Senior Manager in accordance with the observations of the learned Single Judge as contained in the judgment under appeal, and as supplemented by the Full Bench judgment (supra). While considering the cases for promotion of all the eligible candidates, it shall be open to the respondent-Bank to fix marks for assessment of performance of all the candidates in the preceding three years when such promotions were considered originally, which clearly means that three preceding years to be taken into consideration would be the years preceding the date of original consideration which was the subject-matter of the writ application, being CWJC No. 927 of 91 (R). It shall also be open to the Bank to allocate marks at the minimum level for the interview / viva voce. The purpose of the allocating marks for the performance for the preceding three years and for interviews shall be to determine the minimum qualifying standard in the interest of administration. Once it is done, seniority shall have precedence over everything else.

(2) The entire exercise shall be completed within a period of three months from today and orders granting promotions shall be issued and given effect to and implemented in all respects during this period of three months.

(3) Till the respondent-Bank issues the orders of promotions based on the aforesaid directions, respondents No. 3 to 8 shall continue to hold the posts presently held by them. In order others, they will not be disturbed from these posts. If, however, on such re-consideration, as directed above, respondents No. 3 to 8 in the writ petition are also promoted, their promotion shall be reckoned prospectively and they shall not be given the benefit of past service rendered in the higher posts while determining their inter se seniority with other promotees. If, however, respondents No. 3 to 8 in the writ petition, or any of them, fail to get promotion, immediately on the issuance of the promotion order they shall be reverted to the posts as originally held by them before the issuance of the impugned order of promotion, which were set aside by the learned Single Judge in the judgment under appeal.

Appeal dismissed. No order as to costs.

4. Appeals dismissed.