
(2002) 06 KAR CK 0024

In the Karnataka High Court

Case No : Writ Appeal No's. 2227 and 4483 to 4490 of 1999

K.T. Manjunathaiah and Others

APPELLANT

Vs

D.V. Chidananda Murthy and Others

RESPONDENT

Date of Decision : 10-06-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) ILR (Kar) 4144 : (2002) 6 KarLJ 408 : (2002) 4 KCCR 260 SN

Hon'ble Judges : Kumar Rajarathnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : P.S. Rajagopal, for the Appellant; P.D. Vishwanath, for Respondent 1 and 6, S.G. Bhat, for Respondent 7, 8, 12, 14 and 15, K. Hanumantharayappa, for Respondent 10 and Satish, for Respondent 13, for the Respondent

Final Decision : Allowed

Judgement

1. Writ petitions are taken up with the consent of the parties. The petitioners and the respondents in the writ petitions were all Junior Management Scale-I Officers in the first respondent-Bank. The next avenue of promotion was Scale-II Officers. An interview was conducted and in the interview different marks were prescribed for various performances and ultimately the respondents in the writ petitions were promoted by an order dated 21-10-1995 at Annexure-A.

2. Petitioners in the writ petitions who were also in Scale-I category were aggrieved by the promotion of the respondents in the writ petition and challenged the promotion. The learned Single Judge by an order in the case of D.V. Chidananda Murthy and Ors. v. Kalpatharu Grameena Bank and Ors. ILR 1999 Kar. 2242, allowed the writ petitions and set aside the promotion made by the Bank and directed the Bank to redo the interview afresh. Aggrieved by this order, the Bank has also filed W.A. Nos. 1702 to 171.1 of 1999. The officers who were promoted and whose promotion was set aside have also filed W.A. No. 2227 of 1999 connected with W.A. Nos. 4483 to 4490 of 1999. Since the writ appeals arise out of a common order, a common judgment is passed.

3. The only question that arises for consideration in these appeals is whether in judging an eligible candidate on seniority-cum-merit, marks can be prescribed for interviews and also after prescribing marks for interviews whether minimum marks can be prescribed at the interviews. In other words, can a person who is eligible for promotion from Scale-I Officer to Scale-II Officer be denied promotion if the eligible candidate does not get minimum marks at the interview although he may be senior to the persons who have been promoted. In this particular case, the marks prescribed are set-out as under:

CAIIB

:

10 marks (Part I = 4, both parts = 10)

Performance Appraisal

:

60 marks confidential reports

20 marks to be given on the basis of

overall reports for the last

3 years

8 for Average

12 for above Average

16 for Good

20 for Excellent

40 marks to be given on the basis of

overall performance

16 for Average

24 for above Average

32 for Good

40 for Excellent

Interview

:

30 marks

Total

:

100 marks

4. Respondent 1 is the Board Note dated 27-4-1995. In respondent 1, it is stated that the interview marks was fixed at 30 and minimum qualifying marks was determined as 12. This minimum qualifying marks, according to the learned Counsel for the contesting respondents in this case, was not mentioned in the circular. That point was never urged before the learned Single Judge. Be that as it may, the Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , made a distinction between seniority-cum-merit and merit-cum-seniority. The emphasis with respect to seniority-cum-merit was placed on seniority and other things remaining equal. The Supreme Court held that:

"The criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the Competent Authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit". (emphasis supplied)

5. The Supreme Court also dealt with the case at paragraph 37 of the judgment where not less than 50 marks was given as minimum marks out of 100 marks in the interview, the Supreme Court held that:

"It was therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. In the circumstances, it cannot be said that the selection has not been made in accordance with the principle of "seniority-cum-merit" ". (emphasis supplied)

6. In the present case before us, the marks fixed in the interview was determined at 30 out of which minimum of 12 marks was prescribed and it comes to around 40%. It is also submitted that it was a common ground that interview was conducted by a Selection Committee consisting of the Chairman, a Director nominated by Reserve Bank of India, a Director nominated by the Nationalised Bank and a Director nominated by a Sponsored Bank. At this interview, those persons who got less than 12 marks were not considered for promotion to Scale-II Officer.

7. The learned Single Judge took a view that such minimum marks at the interview was arbitrary, capricious and violative of Articles 14 and 16 of the Constitution of India. In the light of the pronouncement of the judgment by the Hon"ble Supreme Court in B.V. Sivaiah"s case, supra, we do not think that the

threshold theory of fixing 12 marks out of 30 marks is unreasonable or capricious. There was no allegation of mala fide against the Committee. No doubt, when once the candidate passes the interview, due weightage was given to seniority. But the problem is that the petitioners in the writ petitions did not get minimum marks prescribed in the interview and the interview was applicable to both senior persons as well as junior persons in Scale-I cadre. Therefore, there was no discrimination between the seniors and juniors for the purpose of interview. All had to appear for the interview and get minimum marks of 12 to be eligible; only after that credit was given to seniority.

8. In these circumstances, we have no other alternative except to set aside the judgment of the learned Single Judge and dismiss the writ petitions and allow the writ appeals.

9. These batch of writ petitions have a happy ending in that the respondents who had failed at the interview have subsequently been promoted. A memo has been filed by the learned Counsel for the Bank, dated 7-6-2002 stating that the respondents have been promoted on the basis of their performance during the pendency of the writ appeals and an assurance has been given by the Bank that they will not be reverted and the promotion of the respondents in the writ appeals is against the permanent vacancies. Statement of the Counsel for the Bank is placed on record. Writ appeals are accordingly allowed. No order as to costs.