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**(2013) 10 MP CK 0361**

**In the Madhya Pradesh High Court**

**Case No :** Writ Appeal No's. 704, 705, 706, 707, 708 and of 2010

M.B. Gramin Bank and Others

APPELLANT

Vs

Rajesh Kumar Mathur and Others

RESPONDENT

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**Date of Decision :** 18-10-2013

**Acts Referred:**

**Citation :** (2014) 1 MPHT 266 : (2014) 1 MPLJ 576

**Hon'ble Judges :** Sujoy Paul, J;Sheel Nagu, J

**Bench :** Division Bench

**Advocate :** Raju Sharma, for the Appellant; Sunil Jain, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sujoy Paul, J.—This order will govern the disposal of this batch of writ appeals, which are analogously heard on the joint request of parties. By filing these writ appeals, challenge is made to the common order passed by the Writ Court in Writ Petition No. 2025/2008 (S) (Rajesh Kumar Mathur v. Madhya Bharat Gramin Bank and others). In the writ petition, petitioner challenged the order dated 5-3-2008 by which appellants promoted about 57 officers from the post of JMGS-I to MM Scale-II. It was not in dispute between the parties that the appellants-Bank is constituted under Regional Rural Bank Act, 1976. In exercise of powers conferred u/s 17 read with Section 29 of the said Act, Central Government framed the Rules known as Regional Rural Bank (Appointment and Promotions of Officers and other Employees) Rules, 1998 (hereinafter called as "1998 Rules"). The criteria for promotion is "seniority-cum-merit". The relevant portion of the rules is reproduced by the Writ Court in its order. As per this rule, marks are allotted as under:--

It is made clear in the rules that written examination will be in two parts. 30 marks are allotted to each part. The candidates who secure 40\$ marks in written examination shall be called in interview. For interview, no minimum qualifying marks are assigned. For work assessment, it has been decided to assign the

marks on the basis of last 5 years performance.

2. By filing reply before the Writ Court, the employer made it clear that the candidate has to secure aggregate 65% marks. The candidate has to secure 40% marks in written examination and has to secure 65% in aggregate. The person who secures 65% marks, is held to be eligible for consideration for promotion.

3. This is admitted position between the parties that earlier 70% marks in aggregate were prescribed as benchmark which was reduced to 65%. The Writ Court after taking stock of various judgments on the subject opined that prescription of 65% marks is improper and does not match with the requirement of criteria of "seniority-cum-merit".

4. Shri Raju Sharma, learned Counsel for the appellants criticised the said order of Writ Court and contended that the Apex Court in *Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others*, has affirmed the action of Bank in prescribing 78% marks (aggregate) as benchmark. By placing heavy reliance on the said judgment, it is contended that the Supreme Court affirmed 78% as minimum qualifying marks in *Rajendra Kumar Srivastava (supra)*, and therefore, in the present case, prescription of 65% marks, by no stretch of imagination can be said to be in violation of criteria "seniority-cum-merit". Per contra, Shri Jain, learned Counsel for the respondents/employees supported the order passed by Writ Court. No other point is raised by the parties.

We have heard the parties at length.

5. In catena of judgments, the Apex Court considered the criteria of "seniority-cum-merit". The common principle laid down in these judgments is that criterion of "seniority-cum-merit" is different from criterion of merit and also from the criterion of "merit-cum-seniority". Where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of higher post, he may be passed over and officer junior to him may be promoted. "Seniority-cum-merit" means that, given the minimum necessary merit required for efficiency of administration, the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. 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 employees. This view can be gathered from *State of Mysore and Another Vs. Syed Mahmood and Others*, *State of Kerala and Another Vs. N.M. Thomas and Others*, *B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.*, *Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others*, and *Rajendra Kumar Srivastava (supra)*.

6. On the basis of aforesaid principles, it cannot be held that it is not within the domain of employer to prescribe the minimum qualifying marks based on various factors. The only question before this Court is whether the prescription of 65%

marks in the facts and circumstances of the present case is in consonance with criteria of "seniority-cum-merit". The Writ Court opined on the basis of Bhagwandas Tiwari and Others Vs. Dewas Shajapur Kshetriya Gramin Bank and Others, , that prescription of 65% marks is not in accordance with the principle of seniority-cum-merit.

7. Although heavy reliance is placed by learned Counsel for the appellants on the judgment of Supreme Court in Rajendra Kumar Srivastava (supra). Careful reading of said judgment makes it clear that 78% prescribed in the said matter cannot be mechanically compared with 65% marks prescribed in the present matter as a minimum benchmark by the employer. In Rajendra Kumar Srivastava (supra), the Apex Court opined that if the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge as being opposed to the principle of seniority-cum-merit (Para 13). The Apex Court added that what should be the minimum necessary merit for promotion, is a matter that is decided by the management, having in mind the requirements of the post to which promotions are to be made. The employer has the discretion to fix different minimum merit, for different categories of posts, subject to the relevant rules. For example, for promotions at lower levels, it may fix lesser minimum qualifying marks and fix a comparatively higher minimum qualifying marks for higher posts. The Apex Court has further opined that another aspect requires to be noticed. Where the assessment of minimum merit is with reference to previous performance record (Annual Confidential Records) and/or by interview, as contrasted from a written examination, prescription of 78% as minimum, will not be considered as unreasonably high. In Paragraph 18, the Apex Court made it crystal clear that whether the provisions adopted for assessing the minimum necessary merit by prescribing marks under several heads or by prescribing a specific minimum mark, is reasonable or arbitrary, would depend upon the facts of each case. It is further held that where the minimum marks are shown to have been fixed to defeat or nullify the mode of "seniority-cum-merit" for promotion, there may be a cause for interference. The Apex Court in Rajendra Kumar Srivastava (supra) has also taken note of fact that in the said case promotion was to be made on the post of higher management.

8. In the present case, the promotion is not for the apex level in the management category. It is from junior management to middle grade. The respondents have prescribed 40% marks as minimum qualifying marks for written examination and prescribed 65% as aggregate marks as benchmark. Fixing of 65% aggregate as benchmark means one has to get following marks:--

The aforesaid example makes it clear that even if a candidate secures minimum qualifying marks in written examination 24/60 and then gets full marks (100%) in interview and on service record (20/20), in total he will not get 65% marks in aggregate, which will fall short the minimum requirement of benchmark. Putting it differently, the aforesaid example makes it clear that even after obtaining minimum passing marks in written examination and after securing 100% marks

allotted for interview and service record, the candidate will not get minimum qualifying marks (65%) and shall get only 64%. Thus, the criteria is designed in such a manner that it defeats the criteria of "seniority-cum-merit" and gives weightage to the merit. In the manner, the number of marks are allotted and aggregate percentage is fixed, it is clear that a candidate after obtaining qualifying marks in written examination needs to have more than 100% marks in interview and in the head of service record. Thus, this criteria is tilted towards merit and not based on seniority. At the cost of repetition, it is worth noting that in *Rajendra Kumar Srivastava (supra)*, the Apex Court opined that where the minimum marks are shown to have been fixed to defeat or nullify the mode of seniority-cum-merit, interference can be made. In the present case as noticed above, the marks are distributed and its net effect will show that it is not in consonance with the principle of seniority-cum-merit.

9. As analysed above, the judgment of *Rajendra Kumar Srivastava (supra)*, is of no assistance to the appellants. On the contrary as laid down in the said judgment mere percentage of marks (78% in the said case) cannot be applied as thumb rule for all cases. Various factors such as nature of the post on which promotions are to be made, break up of marks, its reasonableness etc. is to be seen. In nutshell, it needs to be examined whether break up of marks given in various heads and its total effect is in consonance with the criteria of "seniority-cum-merit". If it defeats the purpose and is not in accordance with the said criteria, interference can be made. As noticed above, at first glance, it looked attractive that prescription of percentage in the present case 65% is much below than what has been affirmed in *Rajendra Kumar Srivastava (supra)* (78%), on closure scrutiny and as analysed above, it is found that prescription of the marks 65% is arbitrary and is not in consonance with the principle of "seniority-cum-merit". On the basis of aforesaid analysis, in our considered opinion, Writ Court has rightly interfered in the matter and no flaw can be found in the order passed by the Writ Court which is hereby upheld though for different reasons. Writ appeals are meritless and are dismissed. No costs.