

**(2001) 09 SC CK 0036**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No: 145 of 1998

Mohan Lal Aggarwal and Others

APPELLANT

Vs

Bhubaneswari Prasad Mishra and Others

RESPONDENT

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**Date of Decision :** 13-09-2001

**Acts Referred:**

**Citation :** (2002) 1 CALLT 13 : (2001) 91 FLR 1179 : (2001) 9 JT 21 : (2002) 1 LLJ 463 : (2001) 8 SCALE 328 : (2002) 1 UPLBEC 148

**Hon'ble Judges :** S. Rajendra Babu, J; Doraiswamy Raju, J

**Bench :** Division Bench

**Advocate :** G. L. Sanghi

**Final Decision :** Dismissed

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## **Judgement**

1. The appellants before us and the first respondent are officers of Bolangir Anchalika Gramya Bank (for short "the bank"). A promotion policy was formulated by the bank on October 25, 1991 by which the promotion to the cadre of area managers/senior managers would be pursuant to a selection as provided in Clause 3 thereof on the basis of a written test, seniority, performance and/or service record, CAIIB examination and interview.

2. The officers' association of the bank submitted a representation to the Chairman protesting against the issuance of the circular on the promotion policy on the ground that it is violative of the provisions contained in the relevant rules. The promotion policy indicated that even an officer who submits (i) a conditional refusal, and/or (ii) absents himself from written examination, and/or an interview without prior intimation or valid proof, shall be permanently debarred from the promotion to the higher grades and officiating chances too and suitable noting would be made in his service record also. The first- respondent participated in the tests and interview conducted by the bank and had not been selected thereof while the appellants before us had been selected. The first-respondent challenged the promotion policy and the consequential action taken by the bank in promoting the appellants and sought for consideration of his case for

promotion.

3. The High Court allowed the writ petition after examining the relevant rules and the promotion policy. That decision is consistent with the decision of this Court in *B. V. Sivaiah and Ors. v. K. Addanki Babu and Ors.*. This decision was rendered after considering the effect of the decision in *Jagathigowda, C.N. and Ors. v. Chairman, Cauvery Gramina Bank and Ors.*

4. Undaunted by this legal position, Shri G.L. Sanghi, learned senior advocate and Shri Janaranjan Das, learned counsel very strenuously contended that the appellants had been promoted by an order made on December 21, 1991 w.e.f. 1986; that the respondent having participated in the selection process, cannot now turn round to challenge the same in a writ petition; that the High Court ought not to have considered any of the contentions raised on behalf of the first respondent but straight-away dismissed his writ petition on the ground of laches and they relied upon the decisions of this Court in *Dr. G. Sarana v. University of Lucknow and Ors.*; *Manak Lal v. Dr. Prem Chand*; ; *Utkal University v. Dr. Nrushigha Charan Sarangi and Ors.*; *U.P. Lama and Ors. v. State of Sikkim and Ors.*.

5. In all these decisions what is pointed out is that the concerned parties against whom the decisions were rendered by dismissing the writ petition on ground of acquiescence having participated either in the selection process or in the proceedings conducted by a Tribunal without any demur. However, in the present case, as pointed out earlier the officers' association did raise an objection as to the manner of promotion policy by stating that the same is not consistent with the relevant rules, which contention has been upheld subsequently by this Court in the decision in *Sivaiah's case (supra)*. Further, when the conditions of policy were such that if he did not participate in the selection process, he forfeits his right to promotion permanently, there is hardly any choice for him except to participate in the selection process. However, it is contended that he need not have participated in the selection process but taken the matter to the Court. As the time gap between declaration of the policy, the protest made by the officers' association of the bank and the selection process being too short, there was hardly any time left to him to approach even the High Court.

6. In those circumstances, we think the principles stated in any of these decisions cannot be applied to the present case. In that view of the matter, we think the High Court was justified in considering the matter on merits and deciding the same.

7. Further, the question of equities in the matter of appellants having been promoted to posts of area manager/senior manager in the year 1991 the High Court has adequately protected their interests by giving appropriate directions and the matter argued by the learned counsel for the appellants need not be re-examined or any fresh relief given.

8. In the, result, we find absolutely no merit in this appeal and it is dismissed

accordingly.