

(2014) 05 RAJ CK 0238
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1941/1996

P.R. Agarwal and Others

APPELLANT

Vs

Marwar Gramin Bank and Others

RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0238

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : M.R. Singhvi, Sr. Advocate and Mr. Hukum Singh, Advocate for the Appellant; Jagdish Vyas for the Bank, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—Learned counsel for the petitioner states at Bar that the issue/controversy involved in the present writ petition, is covered by the decision of the Division Bench decision of this Court in the case of M.K. Goyal Vs. The M.G.B. Gramin Bank & Ors. (DBCWP No. 7624/2009) decided on 04th July, 2012, in which the Division Bench of this Court after noticing the submissions of the petitioners held as under:-

The submission of the petitioners is that the respondents, while taking up the matters for promotion to Scale-III, which is required to be considered on seniority-cum-merit basis as per the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998, have wrongly proceeded to assess comparative merits of the persons falling in the zone of consideration; and on that basis, have declined promotion to the petitioners, ignoring the relevant criterion of seniority. It is submitted that in the promotion on seniority-cum-merit basis, only the minimum necessary merit is required to be examined and once a person answers to the requirement of minimum necessary merit, the case for promotion is ultimately required to be considered on the basis of seniority. It is submitted that on these basic principles, a learned Single Judge of this Court earlier decided several writ petitions concerning the

same respondent-Bank as led by CWP No. 390/2003: Dinesh Kumar Maheshwari Vs. Mewar Anchalik Gramin Bank, decided on 06.08.2008. It is further pointed out that the said order in CWP No. 390/2003 and other akin orders were challenged in intra-court appeals that were considered and decided by a Division Bench of this Court on 06.01.2012 in the batch of appeals led by SAW No. 2000/2011: The Marwar, Ganganagar, Bikaner Gramin Bank Vs. Krishan Lal & Anr. Therein, the coordinate Bench approved the principal part of the order as passed by the learned Single Judge but the operative portion, where the learned Single Judge directed even the consequential benefits to be granted, was modified and, instead, the appeals were disposed of with the following directions:-

1. The appellant (Bank) shall examine the case of each writ petitioner for granting him promotion on the post of Officer Scale-I provided he has cleared the examination as one of its eligibility required for promotion and then taking into account his seniority and service record as per Rules.
2. In case if writ petitioner (employee) is found to qualify for the promotion then necessary orders for his promotion be passed.
3. In the event of grant of promotion, the promoted employees will be entitled to claim seniority and all other benefits except monetary claim of salary payment for the period in question. In other words, award of consequential benefits after the grant of promotion would not include award of monetary claim of salary for the period in question.
4. The cases which are already considered may not be considered afresh.
5. Let this exercise be done within two months as an outer limit by the Bank.

It is submitted that the only distinction in the present cases from the orders above referred is that for the purpose of promotion herein, the incumbent is not required to clear any written examination and rather, the consideration is on the basis of Annual Performance Appraisal Reports and Interview. The learned counsel for the petitioners has also referred to the decision of the Hon'ble Supreme Court in the case of Haryana State Warehousing Corporation Vs. Jagat Ram and Another, in support of the contention that the promotion on the basis of seniority-cum-merit criterion, requires minimum necessary merit but does not envisage comparative assessment of merit.

After having heard the learned counsel for the parties, we are satisfied that the principles aforesaid are also required to be applied in consideration of the cases of the petitioners for promotion; and these petitions deserve to be allowed in terms of the aforesaid order dated 06.01.2012 with the necessary modification as requisite for the present cases.

It is, therefore, ordered that: (i) the respondent-Bank shall examine the case of each of the writ petitioner for granting promotion on the post of Officer Scale-III with reference to the requirements of the Rules but then, shall take into account

his seniority and service records as per the Rules; (ii) in case the writ petitioner (employee) is found qualifying for the promotion then, necessary orders for his promotion be passed; (iii) in the event of grant of promotion, the promoted employees will be entitled to claim seniority and all other benefits except monetary claim of salary payment for the period in question; and (iv) the necessary exercise shall be carried out by the respondent-Bank as expeditiously as possible, preferably within a period of three months from today.

The petitions are allowed to the extent and in the manner indicated above. No cost.

2. Learned counsel appearing on behalf of respondent-Bank does not oppose these submissions.

3. In the present writ petition, the petitioners have sought following reliefs:-

It is, therefore, most respectfully prayed that record of the selection committee be called for which met on 15th, 16th, 18th and 19th March, 1996 and by an appropriate writ, order or direction:-

i-the selection list dated 19.3.1996 (An. 6) and the respective individual order of promotions in respect of private respondents No. 3 to 19 be declared void, illegal, in-operative, in-effective and in-consequential and as such be quashed and set aside;

ii-the decisions of the Board of Directors dated 22.6.1995 (An. 4), 29.9.1995 (An. 5), 18.11.1995 (An. 6) and 12.12.1995 (An. 7) may also be quashed and set aside;

iii-the respondent Bank be directed to adhere to strictly and religiously and circulars/guidelines/orders of the NABARD dated 31.12.1984, 1.12.1987 and 17.9.1994 and to accord promotions to the posts of MMG-II while applying the criteria of "seniority-cum-merit" and they should keep in view the judgment of Kerala High Court as affirmed by Hon"ble Supreme Court and also the judgments of Hon"ble Rajasthan High Court affirmed by the Division Bench as referred herein above and to accord promotions to the eligible persons with effect from the date of occurrence of the vacancy, with all consequential benefits pertaining to pay fixation, seniority, further promotions etc. etc;

iv-a declaration may also be made to the effect that the experience gained by the private respondents No. 3 to 19 under the impugned orders is invalid, inoperative and in-effective vis-?-vis the promotions which shall be made in compliance of the judgment of this Hon"ble Court;

v-during the pendency of the writ petition operation and effect of the selection list dated 19.3.1996, An. 8 and individual orders of the promotions passed thereafter be stayed; and respondents be further restrained from altering the position of the private respondents in the garb of select list dated 19.3.1996"

vi-any other appropriate relief(s) which this Hon"ble High Court deems just and

proper in the facts and circumstances of the case be passed;

vii-Writ petition of the petitioners be allowed with costs.

4. In view of above decision of the Division Bench of this Court, the present writ petition is also disposed of in the same terms. No costs. A copy of this order be sent to the concerned parties forthwith.