
(2012) 01 AHC CK 0713
In the Allahabad High Court
Case No : C.M.W.P. No. 21633 of 2011

Pradeep Kumar Dwivedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 300A
Regional Rural Banks Act, 1976 — Section 29

Citation : (2012) 4 AWC 3827 : (2012) 133 FLR 783

Hon'ble Judges : Sunil Ambwani, J; Manoj Misra, J

Bench : Division Bench

Advocate : B.B. Paul and Anil Kumar Sharma, for the Appellant; Y.K. Sinha, G.P. Srivastava, O.P. Srivastava, S. Tiwari and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani and Manoj Misra, JJ.—We have heard Sri B.B. Paul and Sri Anil Kumar Sharma for the petitioner. Sri Y.K. Sinha alongwith Sri G.P. Srivastava appears for the respondents. The petitioner was appointed as Clerk-cum-Cashier in Etawah Gramin Bank on 8.9.1982. At present, he is working on the post of Senior Clerk-cum-cashier in the Branch Office, Kunaira.

2. The Etawah Gramin Bank was amalgamated with Ballia-Gramin Bank w.e.f. 1.1.2010, and has acquired a joint name as Ballia-Etawah Gramin Bank with its Head Office at Indira Market, Ballia. The Central Bank of India is the sponsor bank of the amalgamated Ballia-Etawah Gramin Bank. The service conditions of the employees and officers of the Ballia-Etawah Gramin Bank were regulated by Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988, made u/s 29 of the Regional Rural Banks Act, 1976.

3. By a notification dated 29.7.1998, a new set of rules, namely, the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998, were framed, replacing the old Rules of 1988. By a notification dated 13.7.2010, issued by the Ministry of Finance, Department of Financial

Services, New Delhi dated 13.7.2010, the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 2010, were framed, by which the officers and employees of the bank have been classified into three categories, namely, Group-A posts to officers; Group-B posts to Office Assistants (multipurpose) and Group-C posts to Office Attendants (multipurpose).

4. It is submitted by Sri B.B. Paul that under Rule 4 of the Rules of 1988, the vacancies were provided to be filled up. The new guidelines approved by the Central Bank of India, vide gazette notification dated 13.7.2010, for recruitment and promotion, provided in Second Schedule are applicable. As regards promotion to the post of Officers, it was provided under the Rules of 1988 that 50 % post shall be filled up by direct recruitment and 50% post by promotion, on the basis of seniority-cum-merit. For promotion to the post of Officers, the experience of five years as Field Supervisor was mandatory. He submits that for the vacancies, which were existing at the time when the selection process was initiated, the rules as they existed prior to the notification dated 28.9.1998, are applicable. All the existing vacancies were required to be filled up in accordance with the provisions of Rules, as they existed, prior to the dates on which the vacancy had arisen. The amendment by notification dated 29.7.1998. will not apply to the procedure for promotion to these vacancies.

5. Sri B.B. Paul refers to para 13 of the writ petition, in which it is stated that total 76 vacancies existed prior to 28.12.2010, as informed by letter of the Senior Manager (Personnel), Ballia-Etawah Gramin Bank. These vacancies had arisen either due to death of the employees, or on account of those employees who had left the service of the Bank in between 28.10.1989 to 1.1.2007. The respondents, however, have illegally and arbitrarily proceeded to fill up the vacancies in accordance with the old Rules of 1998.

6. On 8.1.2011, a letter was issued by the Ballia-Etawah Gramin Bank, to all its branches, with regard to procedure for promotion on the post of Office Assistant. By the said circular, Rules of 1998 have been made applicable to the vacancies existing prior to enforcement of these Rules. On 7.2.2011, a letter has been issued by the Ballia-Etawah Gramin Bank to all its Branches, with regard to existing vacancies. In this letter, it is stated that in Group-A (Scale-I), 136 vacancies and in Group B (Clerk/Assistant) 146 vacancies were existing, and that the service rules for promotion applicable, are those which were effective on that date, namely, the Rules of 1998. On 10.2.2011, a letter was issued by the Ballia-Etawah Gramin Bank, stating that written examination for promotion from Messenger to Clerk will be held on 24.4.2011, and for promotion to 194 posts of Officers, from Group-B post, to be made in accordance with notification dated 18.12.2010.

7. The petitioner made a representation on 25.1.2011, to the Chairman of the Ballia-Etawah Gramin Bank, with prayers that the number of vacancies be declared year-wise, and that the selection to the vacant posts by promotion, be made in accordance with rules, which is prevailing at that time.

8. Sri B.B. Paul, submits that some of the vacancies were existing in the year 1988, and thereafter in the year 1998 and upto 2010, on which promotions have to be made in accordance with the existing rules. The amended rules will not apply for the posts, which had fallen vacant prior to the amendment. He has relied judgments of the Supreme Court In State of Rajasthan Vs. R. Dayal and Others, and B.L. Gupta and Another Vs. M.C.D., .

9. The writ petition was amended on 14.12.11, challenging the orders of the Bank dated 8.1.2011, as violative of Articles 14, 16, 21 and 300A of the Constitution of India. By this order/circular dated 8.1.2011 issued by the Chairman of the Ballia-Etawah Gramin Bank to all its Branches, Regional Offices and Department with regard to promotion of Group-B Officers to Group-A post [M.M.G.S.-I], it is provided that the selection shall be made on the basis of seniority cum merit after taking into assessment of five years work. For the purposes of eligibility, 10 years service in Group-B upto 1.4.2010 is provided. Three times to the number of vacancies, will be considered for interview. The procedure for promotion is provided in para 5 of the circular.

10. In a supplementary-affidavit filed on behalf of the petitioner, it is stated that there are only 43 vacancies in Officer Scale-I as the posts, which had fallen vacant prior to 29.7.1998, which respondent bank is obliged to fill up under the Promotion Rules of 1988. The break-up of these vacancies Is given as follows:

- (a) 6 vacancies admitted in the letter of respondent bank dated 14.2.1984.
- (b) 7 vacancies admitted in the letter of respondent bank dated 9.1.1991.
- (c) 7 vacancies admitted In the letter of respondent bank dated 28.11.1994.
- (d) 6 vacancies admitted in the letter of respondent bank dated 31.1.2006.
- (e) 3 vacancies admitted in the letter of respondent bank dated 28.12.2010.
- (f) 13 vacancies admitted in the letter of respondent bank dated 28.12.2010.

Total vacancies-43 (Forty-three)

11. Sri B.B. Paul submits that during the pendency of the writ petition the respondent bank through the National Bank for Agricultural and Rural Development (N.A.B.A.R.D.) has admitted that these vacancies were existing from before 29.7.1998, and which could not be filled up by the respondent bank, have to be filled up as per Promotion Rules dated 28.9.1998.

12. Sri Y.K. Sinha, appearing for the respondent bank has raised a preliminary objection to the maintainability of the writ petition. He submits that the petitioner has participated in the selection process with open eyes. He is now stopped from challenging the selection process on the grounds of acquiescence and estoppel. On merits, he submits that there was ban on promotions in Ballia Gramin Bank and Etawah Gramin Bank. Two different banks were amalgamated, on which Ballia-Etawah Gramin Bank came to existence w.e.f. 1.1.2010. In

pursuance to the Thorat Committee recommendation, the vacancies could be filled up on the basis of financial performance of the Bank. The Board of Directors of the Ballia-Etawah Gramin Bank in their meeting dated 28.5.2010. considered the report of its financial performances, and sanctioned posts for two financial years (1.4.2008 to 31.3.2009 and 1.4.2009 to 31.3.2010), for which selection process is under way. Since these posts were sanctioned/created on 31.3.2010, there was no question of these vacancies arising prior to 31.3.2010, and thus Rules of 2010 will be applicable for selection on these posts on the basis of seniority-cum-merit.

13. In the supplementary-affidavits filed on 8.12.2011 and 13.12.2011, it is stated by the petitioner that all the available vacancies on the posts of Officers Scale-I, Scale-II and Scale-III were created before 29.7.1998. They should be filled up by respondent Bank as per promotion Rules dated 28.9.1988. The respondent Bank in its communication dated 8.1.2011. had mentioned that vacancies disclosed in the said letter will be filled up as per promotion Rules dated 29.7.1998 and once again by communication dated 8.11.2011, the respondent Bank had notified that promotion from the post of Clerk-cum-Cashier to the post of Officer Scale-I in the 68 vacancies within promotion quota will be filled as per promotion Rules dated 29.7.1998. These orders, as well as the orders by which the criteria for promotion has been changed are illegal, arbitrary and liable to be set aside by this Court.

14. We have considered the respective submissions, and examined the documents annexed to the pleadings.

15. The petitioner was appointed as Junior Clerk in Etawah Kshetriya Gramin Bank, and was promoted as Senior Clerk in the year 1998. The N.A.B.A.R.D. vide its letter dated 8.4.1993, restrained all the Regional Rural Banks from making any promotion from clerical cadre to an officer cadre. The policy was continued by the N.A.B.A.R.D. vide its letter dated 19.9.1998.

16. On the recommendation of the Thorat Committee, a comprehensive assessment of human resource policy of Regional Rural Bank of the staff business level was carried out in respect of Ballia-Etawah Gramin Bank on 31.3.2010. The bank falls in category-II, with 139 Branches, and business level of Rs. 1,633.17 crores as on 12.9.2008. On the detailed staff assessment, total number of 399 vacancies were worked out as on 31.3.2010, including 136 vacancies of Officers Scale-I. Out of these 136 vacancies, 68 were to be filled up by promotion and 68 by direct recruitment. Since these vacancies were worked out, on the assessment of staff and business level as on 31.3.2010, they have to be treated as vacancies, which were identified to be filled up after the enforcement of the 1998 Rules. We, therefore, do not agree with the submission of Sri B.B. Paul that these vacancies are old vacancies, which had arisen prior to the enforcement of the Rules of 1998, and required to be filled up in accordance with 1988 Rules. Accordingly the judgments cited by Sri Paul are not applicable to the present case.

17. We may also observe that the petitioner is seeking promotions to the post of Officer Scale-I, which carries higher duties and responsibilities. The promotion, therefore, under the Rules of 1998, which came into force from 29.7.1998, on the basis of seniority-cum-merit, in which minimum merit has to be found by subjecting the candidates to written examination and interview, and in which seniority is not sacrificed, is both in the interest of the employees, and the Bank.

18. We also find that the petitioner after having participated in the selection process with open eyes having knowledge of amended rules, does not have a right to turn around, and challenge the entire process and criteria for promotion in the Rules of 1998, which is apparently need based, and is fair and transparent. There is no merit in the grounds taken in the writ petition. The writ petition is accordingly dismissed.