(2010) 10 AHC CK 0108

In the Allahabad High Court

Case No : Special Appeal No''s. 721 and 722 of 2007

Raj Vardhan APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:
Regional Rural Banks Act, 1976 — Section 17, 29

Citation : (2011) 1 UPLBEC 498

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—We have heard Shri Bhoopendra Nath Singh and Shri S.K. Singh for the Appellants. Shri Jayont Banerji appears for the Respondents.

2. Shri Raj Vardhan (Special Appeal No. 721 of 2007) and Shri Lal Singh (Special Appeal No. 722 of 2007), are aggrieved by judgment of learned Single Judge dated 17.4.2007, by which the Writ Petition No. 22450 of 2002 and Writ Petition No. 22529 of 2002, filed by them were dismissed and Writ Petition No. 6334 of 2003 Rajesh Kumar Agrawal v. Union of India and Ors. was allowed and a writ of mandamus was issued to the Respondent-bank namely ''Aligarh Gramin Bank'', which has been re-named as ''Shreyas Grameen Bank, Aligarh'' to pass an order of the promotion of Shri Rajesh Kumar Agrawal in Writ Petition No. 6334 of 2003 on the post of Officer Scale-I, within four weeks.

3. Learned Single Judge found that the Respondent-bank had followed the procedure of selection as per the rules. The guidelines dated 28.2.2001, were not in derogation of the Regional Rural Banks (Appointment and Promotion of the Officers and Other Employees) Rules, 1998 framed u/s 29, read with Section 17 of the Regional Rural Banks Act, 1976.

4. Learned Single Judge further found that the Petitioners are not permitted to

agitate the issue as they had participated in the process with open eyes in terms with the existing conditions under the Rules of 1998 and the policy/guidelines framed by the Bank. The Petitioners had applied and had appeared in the written examination, qualified and appeared in the interviews. Since their names were not found in the select list, they cannot turn around and urge that the selection process was illegal. The learned Judge has relied upon Union of India and Another Vs. N. Chandrasekharan and Another, Ramesh Rai Vs. Chairman, S.K.G. Bank and Others, and Rajendra Kumar Srivastava and Ors. v. Samyut Kshetriya Gramin Bank and Ors. (2001) 3 ESC 1257 and also on G. Sarana Vs. University of Lucknow and Others, where the Supreme Court held that a candidate, appearing in the selection knowing fully well the relevant facts, and had appeared voluntarily in the interviews without raising any objection is not permitted to challenge it subsequently.

5. The Rules of 1998 provide for filling up 50% of the post of Officers Scale-I, by direct recruitment and 50% by promotion. The promotion was required to be made on the basis of seniority-cum-merit. The bank notified 20 posts for promotion by selection. The Petitioners applied for promotion and appeared in the written test. All the Petitioners qualified in written test, and were called for interviews. The final list did not include their names. Shri Rajesh Kumar Agarwal filed the writ petition alleging that no action was taken on his representation. Shri Raj Vardhan and Shri Lal Singh filed the appeals and after rejection of their appeals, they filed the writ petitions.

6. The principal challenge of the learned Counsel for the Petitioners is that the Rules of 1998 were not complied with. The Circular dated 28.2.2001, was in violation of the Rules of 1998. The candidates, who did not qualify in the written examination, were selected and juniors were promoted, whereas the promotions were to be made on the principle of seniority-cum-merit. It is further contended that the persons, who were caught using unfair means, were also eventually selected and promoted.

7. It is alleged that Clause 11 of the Circular dated 28.2.2001 is in violation of the Rules of 1998. This clause required an average 50% minimum qualifying marks, for being considered to be included in the final select list. This clause put the criteria of seniority-cum-merit for promotion on the back seat and adopts the criteria of merit-cum-seniority. Learned Counsel has relied upon the judgment in Bhagwandas Tiwari and Others Vs. Dewas Shajapur Kshetriya Gramin Bank and Others, in support of his submission.

8. Shri Jayont Banerji, appearing for the Respondent-bank submits that there is no error of fact or law in the judgment. Clause-11 of the circular dated 28.2.2001, providing for guidelines is not in derogation of the Rules of 1998. It is in consonance with the judgment of Supreme Court in Bhagwan Das Tiwari''''s case (supra). The bank could prescribe minimum qualifying marks for promotion in its policy. The Petitioners had secured 40% marks in the written test and had qualified for the interview. The two Petitioners namely Raj Verdhan and Lal Singh

who have filed these two Special Appeals, however, did not secure overall 50% marks under all the parameters prescribed under the Rules, namely the written test, interviews and performance aggregate and therefore, they did not qualify for promotions. It is contended by the Counsel for the bank that none of the Petitioners had challenged the guidelines in the Circular/policy dated 28.2.2001, and therefore, they could not be permitted to argue the point. They participated in the selections knowing fully well the terms and conditions in the rules and have acquiesced to the process. They are now estopped from challenging the selections.

9. We have anxiously considered the submissions that the policy of the bank was changed contrary to the rules and that the selections to be based on seniority-cum merit were turned into merit-cum-seniority by the guidelines prescribed in the circular/policy letter dated 28.2.2001. According to the Petitioner-Appellants, though the criteria of promotion on the basis of seniority-cum-merit was not changed, the provision of minimum qualifying marks laid greater emphasis on the merit, changing the criteria to be loaded in favour of merit. Para 11 of the Circular dated 28.2.2001, provides: .

11. Minimum Qualifying marks.-For the purpose of selection, keeping in view a minimum necessary merit requisite for efficiency of administration and shouldering onerous responsibility of the higher post an overall minimum qualifying marks of 50 out of 100 marks are fixed. The select list will be prepared as per seniority from amongst the candidates securing minimum qualifying marks or 50.

10. This special appeal can be dismissed on a short point that Petitioners have acquiesced to the selections. They appeared in the selections with full knowledge and understanding of the selection process and the change in policy for a minimum qualifying marks of 50 out of 100 in the selections and have not challenged the guidelines in the circular/policy letter dated 28.2.2001. We may, however, observe that even on merits the change of policy to provide overall minimum qualifying marks of 50 out of 100 keeping in view of the onerous responsibility of the highest post of an officer and keeping in view of the minimum necessary merit requisite for efficiency of administration, did not violate the criteria of seniority-cum-merit as the abiding criteria prescribed in para-4 of the guideline of the policy/circular dated 28.2.2001. The policy was in consonance with the decision of the Supreme Court in Bhagwan Das Tiwari''s case (supra) in which it is held in paragraphs 17 to 20 as follows:

17. These aspects were highlighted in K. Samantaray Vs. National Insurance Co. Ltd., and in State of Uttar Pradesh Vs. Jalal Uddin and Others,

18. There is no basis, in the instant case, for the stand that for assessing merit a minimum number of marks has been prescribed. The contention that minimum marks were 45 out of 60, means that an employee is to secure 75% of marks. Such a high percentage cannot be a measure of prescribing minimum marks to

assess merit. It obviously would be a case of shifting the focus to merit-cum-seniority. In Para 37 of Sivaiah case (supra), this Court noted that minimum marks prescribed for assessing merit do not depart from the seniority-cum-merit principle. But the factual position is different here. There is no mention that 45 marks out of 60 relate to the prescription of minimum marks for assessing the merit. In Jalal Uddin''a case (supra) it was noted that in seniority-cum-merit greater emphasis is on seniority though it is not the determinative factor. In the case of merit-cum-seniority, merit becomes a determinative factor. In fact, the position noted by this Court in Paragraphs 19, 20, 24 and 25 of Sivaiah case (supra) dealt with almost identical fact situation, apart from Paragraph 16 of the judgment.

19. Appellants have no grievance so far as Respondents 2, 3 and 4 are concerned as their date of joining is earlier and they have secured higher marks. The appeal stands dismissed, so far as they are concerned.

20. The appeal is bound to succeed to the extent indicated. The Respondent No. 1 shall issue fresh orders for promotion in line with the judgment after working out the necessary details. There will be no order as to costs.

11. In B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., it was held that when the criteria for promotion is seniority-cum-merit, seniority alone is not to be considered; the merit cannot be ignored. The prescription of 45 marks as minimum out of 60 which is 75% of the marks were not found in Bhagwan Das Tiwari''s case to be the determinative factor. The prescription of overall and at least 50% marks in the selection for assessing merit, cannot be treated to be so excessive, that the selections can be treated to be converted to selections based on merit alone. The bank employees holding clerical posts, on their promotions to Officers posts have to shoulder greater responsibility. The prescription by the bank of at least overall 50% marks in the written test and interview and which also included the assessment of the performance appraisal report carrying 10 marks out of 100 based on service records, cannot be treated to change of criteria to merit as a dominant factor. The candidates were required to secure overall minimum qualifying marks of 50 out of 100. They were required to secure 35 marks in the written test (English) in Part-A; 35 marks in written test in Part-B (banking law practice and procedure including working procedure in the bank), and 20 marks in interview.

12. The banks policy, to allow only those who have requisite minimum necessary merit and efficiency of administration by scoring 50% marks in the written test and interview, is not an unreasonable precondition. It is essential for the job profile. The selection thereafter is governed by the seniority.

13. It is not always necessary to associate merit with unfitness. If an objective criteria is fixed to find out suitability, or fitness for the purposes of judging the minimum merit, the bank could have prescribed the test, with a reasonable overall qualifying marks, to judge the suitability. The seniority, thereafter is

misgoverning criteria for selections.

14. Both the Special Appeals are dismissed.

