
(2013) 07 MP CK 0276

In the Madhya Pradesh High Court

Case No : Writ Petition No. 617 of 2003 (S)

Rakesh Kumar Shrivastava and Another

APPELLANT

Vs

Vidisha Bhopal Kshetriya Gramin Bank and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 07 MP CK 0276

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anmol Khedkar, for the Appellant; M.P. Agarwal, Advocate for the Respondent No. 1-Bank, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—The questions involved in these matters are identical, therefore, on the joint request of the parties matters are analogously heard and decided by this common order.

Writ Petition No. 617/2003:

The petitioners were appointed in the respondent-Bank in the officer category vide Annexures P-2 and P-3. A gradation list showing the position as on 1.1.2000 was issued showing the names of petitioners at serial no. 14 and 18 whereas the respondents No. 2 to 6 were below at serial nos. 17, 22, 24, 28 and 29. This seniority list is filed as Annexure P-4.

The channel of promotion from Scale-I Officer to Scale-II Officer is on the basis of criteria of "seniority-cum-merit". The rules governing the field are known as "Regional Rural Banks (Appointment and Promotion of Officers and other employees) Rules, 1988" (hereinafter called as "1988 Rules"). The case of the petitioners is that the respondents decided to fill up 10 promotional vacancies of Scale-II Officer. Pursuant to an advertisement, a written examination of eligible candidates was held. The petitioners, private respondents herein and other eligible candidates appeared in the examination. It is contended that the

petitioners were eligible and were confirmed in the feeder post. The written examination was held on 7.7.2002 and the result was declared subsequently. The petitioners were declared as "passed" in the result dated 9.1.2003 [Annexure P-5 (A)]. The names of petitioners find place at serial no. 8 and 11. It is contended that the petitioners qualified the minimum eligibility condition of merit and thereafter they should have been considered for promotion as per seniority. The grievance of the petitioners is that they were not considered by applying the criteria of seniority-cum-merit and, therefore, juniors were promoted pursuant to an interview. The interview was held on 29.6.2003 and the result was declared on 1.7.2003. It is stated that even in the interview the petitioners were selected but the respondents have erred in not promoting the petitioners and in lieu thereof promoted the private respondents herein. The petitioners preferred an appeal, Annexure P/6 dated 26.7.2003 and Annexure P/7, which has been rejected by order, Annexure P/8 dated 31.7.2003.

2. Shri Anmol Khedkar, learned counsel for the petitioners, relied on a judgment of Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., to submit that the respondents have in fact applied the criteria of merit-cum-seniority.

3. Per Contra, Shri M.P. Agarwal, learned counsel for the Bank supported the orders and submits that even in criteria of seniority-cum-merit, the merit has a role to play and it cannot be ignored. He relied on subsequent judgments of Supreme Court on this point, which will be dealt with in subsequent paras.

Writ Petition No. 730/2004:

4. Learned counsel for the parties submitted that the only difference in this matter is that the promotions are made from the feeder post of Clerk to Junior Manager Grade-I. This is not in dispute that certain petitioners are senior to their respective private respondents. They have passed the written examination and yet they have not been promoted and juniors have been promoted.

5. The matter was heard on 12.7.2013 and Shri M.P. Agarwal, learned counsel for the Bank prayed for time to produce the relevant record by 17th July, 2013. Prayer was accepted. However, Bank had not chosen to produce the relevant record for the perusal of this Court.

6. Before dealing with the rival contentions advanced at the bar, it is apt to quote the relevant portion of 1988 Rules. As per 1988 Rules published in Official Gazette (Annexure P/5) dated 29.7.1988, the post of Scale-II Officer is classified as Group-A post. The criteria for promotion is mentioned as "seniority-cum-merit". The eligibility of the candidates in the present case is not in dispute. Selection process is also defined in the Rules. Allotment of marks and its division is as under:-

As against (A) Written test (60 marks), the candidates shall be required to appear for written test comprising of two parts viz., Part (A) covering Banking

Law and Practice of Banking and Part (B) covering Credit Policy, Credit Management including Priority Sector, Economics and Management. 60 marks allotted to written test shall be further divided as under:-

It is important to note that the rules prescribe that "a list of only those candidates, who secure a minimum 40% marks in each part shall be prepared and such candidates shall be called for interview."

Although 20 marks are allotted in the head of "Interview", it is made clear that there is no minimum qualifying marks for the interview. For "Performance appraisal reports", 20 marks are given.

7. The respondents in their return have not disputed that the petitioners are senior to the private respondents herein. The criteria for promotion is also not disputed by them. However, it is submitted that the promotion was done according to the Board's meeting held on 18.12.2001 vide Agenda Item No. 40. It is filed as Annexure R/1. It is contended that as per the policy, the confidential report and performance appraisal of past five years is to be taken into account. The Board had decided the minimum qualifying marks for judging the merits of the candidates. The marks were allotted by the Board as under:-

It is further stated that written examination will be comprising of two parts mentioned in the rules. 60 marks of written examination are also divided in two parts as per the rules. In addition, it is stated that only those candidates who secure 40% minimum marks in each part shall be called for interview. It is further contended at page 4 of the return as under:-

The candidates who obtained the marks equal or above the minimum qualifying marks were listed as per seniority and accordingly, the final selection was made. For example, if ten officers are to be promoted then the name of officials appearing at first ten placing the list i.e. according to the seniority will be selected. A copy of the board decision whereby, cut of marks were fixed vide letter dated 29.5.2002 by the Board of Directors is being submitted herewith and marked as Annexure R/2.

The Supreme Court judgment mentioned in Annexure R/3 is also relied upon in support of the action of the respondents. It is further stated that the action is in accordance with circular dated 12.4.2002 issued by the Bank.

8. On the basis of aforesaid factual backdrop, it is clear that the petitioners are senior on the feeder post. They were eligible to be considered on the promotional post. Their names find place in the list of the candidates, who passed the written examination. The rule, as narrated above, makes it clear that a list of only such candidates needs to be prepared who have secured minimum 40% marks in each part. Once the petitioners' names are mentioned in the list dated 9.1.2003 as passed candidates, it must be presumed that they have secured 40% marks in each part. The respondents have neither produced the record nor shown any breakup of marks allotted to candidates in their return and, therefore, I am

unable to hold that the petitioners have not qualified the written examination. It has to be presumed that they did qualify the written examination and secured more than 40% marks and, therefore, their names figured in the list dated 9.1.2003. The petitioners were also called in interview. There are no qualifying marks in the interview as per the rules. The respondents have not stated that the petitioners' performance appraisal was of a nature which made them "unfit" for promotion.

9. In this background, the question is whether the action of the respondent is justified in superseding the petitioners.

10. In *B.V. Sivaiah* (supra) the Apex Court dealt with almost similar question with regard to similar criteria for promotion. After taking stock of the earlier judgments on the point, the Apex Court opined that the criteria of seniority-cum-merit implies fulfillment of minimum prescribed standard of merit by eligible candidates for consideration and then making promotion out of them on the basis of their inter se seniority irrespective of their comparative merit. The employer's contention was rejected that the seniority has no relevance in the aforesaid criteria. This was held that if minimum qualifying marks are obtained by the candidates, thereafter seniority must prevail otherwise the criteria will be merit-cum-seniority and not seniority-cum-merit.

This judgment was again considered by Supreme Court in *Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others*, . The Apex Court again opined that criteria of seniority-cum-merit envisaged only providing of minimum standard and if such standard is achieved, the selection has to be on the basis of seniority. It cannot be with reference to comparative marks otherwise it would be contrary to rule of seniority-cum-merit.

In *Haryana State Electronics Development Corporation Ltd. and Others Vs. Seema Sharma and Others*, the Apex Court again considered the difference between merit-cum-seniority and seniority-cum-merit. It is held that in seniority-cum-merit, seniority is given greater importance. Promotion of a senior person cannot be denied unless he is found totally unfit on merit.

11. On the basis of aforesaid factual backdrop and legal position, it is clear that the petitioners have achieved minimum merit and they are admittedly senior to respective private respondents. There is no material on record to show that they were unfit for promotion for any reason whatsoever. Thus, applying the ratio of *B.V. Sivaiah* (supra), and aforesaid judgments, in my considered opinion, the respondents have erred in not promoting the petitioners. The respondents were custodian of records and should have disclosed in their return as to why the petitioners were superseded. Since the petitioners obtained minimum marks and passed written examination coupled with the fact that there were no passing marks in the interview, there is no justification in superseding the petitioners. More so, when there is nothing to indicate that they were unfit for promotion.

12. In this view of the matter, in the light of aforesaid judgments of Supreme

Court, in my opinion, the respondents have wrongly applied the principle of seniority-cum-merit. Consequently, petitions deserve to be and are hereby allowed. The respondents are directed to convene review selection and apply the criteria of "seniority-cum-merit" as discussed above in its true spirit and then pass appropriate orders. The said exercise be completed within 60 days from the date of production of certified copy of this order. If upon such consideration, the petitioners are found fit for promotion, they be promoted from the same date their juniors were promoted with all consequential benefits.

13. It is noteworthy that the private respondents despite service did not contest the present matter. If required, it will be open for the respondent-Bank to revert them to accommodate the petitioners in the event of their promotion. Petitions are allowed. No costs.