(2002) 05 PAT CK 0100

In the Patna High Court

Case No : C.W.J.C. No. 3899 of 2001

Rakesh Kumar Thakur APPELLANT

Vs

Munger Kshetriya Gramin Bank and Others RESPONDENT

Date of Decision : 16-05-2002

Acts Referred:

Citation : (2002) 05 PAT CK 0100

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard Mr. Shrawan Kumar, Senior Advocate appearing in support of this writ petition and Dr. S.N. Jha, Senior Advocate appearing in opposition to the writ petition on behalf of the Respondent bank.

2. The Petitioner is an employee of the Munger Kshetriya Gramin Bank (''the Bank'', hereinafter) and holds the rank of an officer in Scale I. He seeks to dispute certain provision of the "promotion modalities" framed by the bank for promotion of officers from Junior Management, Scale I to Middle Management Grade, Scale II. The provision by which the Petitioner feels aggrieved stipulates that officers getting 55 out of a total of 100 marks in a written test, interview and assessment report would be considered suitable/fit for promotion.

3. This writ petition was filed at the threshold of the promotion process. But as it happens, the impugned provision ultimately proved to be the Petitioner''s undoing and he was denied promotion because he failed to get the minimum prescribed marks in the overall total.

4. The provision in the promotion "modality" is assailed on the ground that it was in conflict with the provisions for promotion as contained in the statutory rules framed under the Regional Rural Banks Act, 1976.

5. At this stage, it would be apposite to take a brief look at the statutory provisions and then to see whether or not there was any conflict between the provisions in the Rules and the impugned provision in the "modalities" framed by the bank. The broad features of the statutory rules in so far as relevant for the

present may be summarised thus.

6. Promotion of officers from Junior Management, Scale I to Middle Management Grade, Scale II is to be made on the basis of seniority-cum-merit. The selection for promotion is on the basis of marks obtained by the candidates in (i) written test (total marks for which is 60), (ii) interview (total marks being 20), and (iii) performance appraisal reports (total marks being 20); the over all total, thus, being 100. The rules further provide that a candidate must secure at least 40% in the written test (that is, 24 out of 60) to qualify for being called for interview. It is expressly provided that for the interview, which is of a total of 20 marks, there would be no minimum qualifying marks. Performance appraisal also carries a total of 20 marks and for awarding marks under this head, performance appraisal reports for the preceding five years are to be taken into consideration.

7. This being the position under the rules the bank framed certain ''modalities'' for the promotion, working out the details of the selection procedure. The provision in the ''modalities'' that makes, the Petitioner aggrieved is as follows:

Selection: Officers getting a minimum of 55 marks out of the total 100 marks consisting of written Test, Interview and Assessment Report shall be considered suitable/fit for promotion to the post of MMG Scale-II.

8. Now, it is well settled that no exception can be taken to non-statutory provisions/instructions so long as those are supplemental in nature and do not tend to supplant the statutory rules. Therefore, the main question that falls for consideration in this case is whether the impugned provision in the bank''s "modalities" is merely supplemental in nature or it comes within the mischief of supplanting or being in conflict with the statutory rules.

9. Mr. Shrawan Kumar strenuously argued that the impugned provision in the ''modalities'' was clearly in conflict with the statutory rules of promotion. Mr. Kumar submitted that under the rules the only minimum standard prescribed was to secure 40% marks in the written test for being called for interview and thereafter the rules did not lay down any minimum marks in the overall total that by prescribing minimum marks also with regard to the over all total, the bank sought to introduce a further rider in the promotion process. Learned Counsel submitted that, in the criterion of the seniority-cum-merit, seniority had a pre-dominant position and the addition of the impugned rider tended to compromise the pre-dominance of seniority.

10. Citing an illustration Mr. Shrawan Kumar submitted that a candidate securing 24 marks out of 60 in the written test would be qualified for being called for interview but in order to secure 55% marks in the over all total, he must secure 31 out of 40 under the other two heads of interview and performance appraisal (in other words 77.5% in the balance 40 marks out of the over all 100). This would be an achievable target.

11. I do not think Mr. Shrawan Kumar is looking at the matter in the correct

perspective. A candidate who barely scrapes through in the written test may, in any event, find it difficult to find a place in the final select list. But I would like to give here another illustration. A candidate may secure extra ordinarily high marks in the written test, let us say 52 out of 60. In interview, however, he gets only 1 or 2 marks out of 20 and in performance appraisal, he gets a zero for highly adverse reports during the preceding five years. In the absence of the impugned provision he would still be very likely to get the promotion on the basis of the high marks secured in the written test and it is to prevent this kind of anomalies that the provision in the ''modalities'' has been framed.

12. As noted above, Mr. Shrawan Kumar submitted that in the criterion of seniority-cum-merit, seniority must be accorded a pre-dominant position and in support of his submission he relied upon a decision of the Supreme Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., and a full bench decision of this Court in Ranchi Kshetriya Gramin Bank and Others Vs. D.P. Singh and Others, which has followed the Supreme Court decision in B.V. Sivaiah. I fail to see how the decision in B.V. Sivaiah can be held to support the Petitioner''s contention. In para 18 of the decision it was observed as follows:

We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made.

13. It is to be seen that the criterion of seniority-cum-merit does not prevent the authorities from fixing ''the minimum necessary merit requisite'' for efficiency of administration and the impugned provision in the "modalities" seeks to do no more than this.

14. On the basis of the discussions made above, I am clearly of the view that the impugned provision in the ''modalities'' simply supplements the statutory rules relating to promotion and in no way supplants or operates contrary to the provisions of the rules.

15. I, therefore, find no merit in this writ petition. It is accordingly dismissed but with no order as to costs.