
(2007) 05 AHC CK 0022
In the Allahabad High Court

Ram Prakash and Others

APPELLANT

Vs

Farrukhabad Gramin Bank and Others

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 7 AWC 7679

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Both the writ petitions are connected and as agreed by the learned Counsel for the parties, involved common questions of law and fact and have been heard together and are being decided by this common judgment.

WRIT PETITION No. 13347 OF 2001

2. The petitioners 10 in numbers working as Branch Manager in Farrukhabad Gramin Bank, Farrukhabad have filed this writ petition under Article 226 of the Constitution challenging the validity of the circular dated 29.6.1995 (Annexure-3 to the writ petition) and 4.12.2000 and the consequential promotion order dated 14.3.2001 issued by the respondent No. 1 and 3 promoting 44 persons in the Middle Management Grade-II (hereinafter referred to as "MMG-U"). The petitioners have also sought a writ of mandamus commanding the respondents to consider promotion of Manager on higher posts in the light of Promotion Policy dated 1.12.1987 and 10.2.1988.

3. The facts in brief are that Farrukhabad Gramin Bank, Farrukhabad (hereinafter referred to as the "Bank") is a Regional Rural Bank, (hereinafter referred to as "RRB") under Regional Rural Banks Act, 1976 (hereinafter referred to as the "Act, 1976"). All the petitioners were appointed as Branch Manager in Junior Cadre level-I and after completion of probation period have been confirmed. The National Bank for Rural Development (hereinafter referred to as "NABARD")

issued circular, dated 1.12.1987 and 10.2.1988 providing criteria for promotion of Managers to the post of Area/Senior Manager in Regional Rural Banks, in exercise of powers u/s 29 of Act 1976 the Central Government in consultation with National Bank and the sponsored Banks framed Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 (hereinafter referred to as "1988 Rules") laying down provisions for appointment and promotions for officers and employees of RRB. However, contrary to the provisions of the aforesaid orders and circulars, respondent No. 2 issued a circular on 29.6.1995 directing that till the Government of India takes decision on the amended conditions of recruitment and promotion policy, till then the RRB, where classification of Branches have completed, may promote their Junior Management Grade-1 (hereinafter referred to as "JMG-I") officers in MMG-II. The criteria and policy for promotion as circulated by the Bank's Headquarter on 8.4.1985 and 27.11.1990 shall be adhered to. It is said that against the circular dated 29.6.1995, assailing the same being inconsistent with the NABARD's circular dated 1.12.1987 and 10/2.1988, a Writ Petition No. 30005 of 1995, P.K. Dixit v. The Farrukhabad Gramin Bank and Ors. was filed. This Court directed the parties to exchange pleadings and also provided that promotions, if any, shall be subject to final decision of the writ petition. Another circular was issued by the Chairman of the Bank on 1.1.2000 (Annexure-5 to the writ petition) for initiating promotion process in MMG-II from JMG-I laying down a different criteria of promotion. The aforesaid circular was also challenged before this Court in Writ Petition No. 16857 of 2000, Babulal Kushwaha and Ors. v. Farrukhabad Gramin Bank and Ors. wherein a division Bench of this Court vide order dated 7.4.2000 issued notices and directed that promotions, if any, shall be subject to the decision of the writ petition. The respondents however proceeded ahead to make selection and promotions pursuant to the circular dated 4.1.2000 and had issued order of promotion on 14.3.2001 whereafter the petitioners having not been selected and promoted, have filed this writ petition.

4. The respondents have filed counter affidavit stating that except petitioner No. 5, who was appointed as Branch Manager, rest were appointed as officers. However, it is not disputed that all the petitioners were confirmed in service of the Bank after completion of probation period and are working as Branch Managers and Officers of the Bank, it is said that upto 31.3.1998, 46 posts of MMG-II were identified as vacant for which recruitment by promotion was initiated and the result was finally declared on 14.3.2001 against 44 posts. The result of two posts have been kept in sealed cover due to pendency of disciplinary action. It is further said that 1988 Rules have already been superseded by the Government of India by another set of Rules published on 27.7.1998. It is further said that earlier circular dated 29.6.1995 was issued but when the guidelines contained therein were challenged in writ petition of P.K. Dixit (Supra), promotions were not made on the basis of the said circular. The criteria of promotion contained in circular dated 4.1.2000 is not contrary to that provided by the Government of India. Circular dated 4.1.2000 invited applications from

the officials working in feeder cadre to show their willingness to be considered for promotion in prescribed proforma and all the petitioners applied in prescribed proforma accordingly. The criteria for proforma is seniority-cum-merit and in the circular dated 4.1.2000 the said policy has been adhered to by laying down guidelines for assessing merit of the candidate which is valid and in accordance with law. It is said that selections and promotions have been made absolutely in accordance with law and warrants no interference. It is also said that all the petitioners appeared before the selection committee but having failed to secure minimum merit have not been selected and thereafter they have filed the present writ petition.

5. The petitioners have filed rejoinder affidavit wherein the criteria prescribed in the circular dated 4.1.2000 has been said to be contrary to the rules and it is also said that no new rule has been framed w.e.f. 29.7.1998. It is also said that selection itself has been conducted arbitrarily and despite that there is no adverse entry in the service record of the petitioners they have not been selected.

WRIT PETITION No. 17837 OF 2001

6. During the pendency of earlier writ petition No. 13347 of 2001, in respect to the vacancies occurred for the period subsequent to the enforcement of Regional Rural Bank (Appointment and Promotion of other Employees) Rules, 1998 (hereinafter referred to as "1998 Rules") and after identifying 20 vacancies in MMG-II, the Bank issued a circular on 28.9.2000 to fill in the said vacancies in accordance with 1998 Rules. Consequently notification was issued by the General Manager of the Bank on 10.4.2001 and 20.4.2001 where against the same petitioners have approached this Court by filing the instant writ petition under Article 226 of the Constitution challenging the aforesaid circulars dated 28.9.2000 and 10.4.2001 and consequential order dated 20.4.2001 passed by respondent No. 1 in respect to promotion in MMG-II.

ISSUES

7. The petitioners have also filed a written argument in Writ Petition No. 13347 of 2001. In respect to Writ Petition No. 17837 of 2001 the learned Counsel for the petitioners has not made any submission showing any discrepancy in the orders assailed therein and the arguments are confined only to Writ Petition No. 13347 of 2001. The learned Counsel for the petitioners in oral submission has changed his basic ground of attack and has submitted that after promulgation of 1998 Rules from 29.7.1998, 1988 rules stood superseded and therefore the selection which was notified on 4.1.2000 ought to have been conducted in accordance with 1998 rules though the respondents have held the entire selection in accordance with 1988 Rules, hence it is illegal. He also submits that the procedure prescribed under 1988 rules is totally different than what it is prescribed in 1998 Rules and therefore, promotion made as per 1988 Rules is vitiated in law and. The same thing has been said in paragraphs No. 7, 8 and 9 of the written argument which is reproduced as under:

7. That there are material differences between the procedure provided by 1998 Rules and those provided by 1988 Rules. The provisions of Rule 7 of 1988 Rules (page 32 of the Writ Petition) specifically provide that all vacancies are to be filled up in accordance with the provisions of Second Schedule. The Second Schedule in its Item No. 7 (page 40 of the Writ Petition) provides for the procedure to be followed up for the filling up the posts of Area Managers or Senior Managers. The mode of selection is interview and assessment of performance report for the preceding three years period as Officer (page 40 of the writ petition).

The 1998 Rules provide for procedure to be followed for promotion of Junior Manager-I to Junior Manager-II in paragraph 2 of the 1998 Rules. Rule 2(g) of the 1998 Rules provides for promotion on the basis of written test, interview and assessment of performance appraisal report for preceding five years as an officer of Scale-I/Field Officer.

As such it is clear that there are material differences between the procedure of mode of selection for promotion in the 1998 Rules and 1988 Rules.

8. It is respectfully submitted that by following the procedure provided in the 1988 Rules and not by 1998 Rules, the entire selection procedure for promoting Junior Manager-1 to Junior Manager-II has become a nullity as it has relied/followed obsolete and non-existent 1988 Rules and has failed to apply the prevailing 1998 Rules.

9. That it is respectfully submitted that the entire selection process held for promoting the Junior Manager-I to Junior Manager-II by means of circular dated 4.1.2000 is a nullity and deserves to be issued by the Hon'ble Court to the opposite parties to rehold the promotion process in accordance with 1998 Rules.

8. The Court found that the petitioners have raised a totally different argument than what they have pleaded initially in the writ petition inasmuch as in the entire writ petition there was no reference of 1998 Rules and on the contrary the entire case set up by the petitioners is that the circular dated 4.1.2000 is contrary to the Government of India and NABARD's circular dated 1.12.1987 and 10.2.1988, hence, selection in question is vitiated in law. Thereafter for the first time, when the respondents by counter affidavit placed on record that 1998 Rules have superseded 1988 Rules, only thereafter, the petitioners got their petition amended adding ground that the selection in question is vitiated in law being inconsistent with 1998 Rules.

FINDINGS

9. The controversy now, therefore, has narrowed down to the question whether selection in question was required to be held in accordance with 1998 Rules or 1988 Rules and whether it has been held validly according to the applicable rules.

10. The post in question for which the promotions have to be made are MMG-II i.e. Area Manager or Senior Manager. Second schedule of 1988 Rules, item 7

provided source of recruitment, qualifications, eligibility and mode of selection for the aforesaid posts and reads as under:

7. Area Managers or Senior Managers: a) Source of recruitment Hundred per cent by promotion from amongst confirmed officers working in the bank. Promotions will be on the basis of seniority-cum-merit. If suitable officers are not available internally, those posts could be filled by the sponsor banks and other-banks of organizations on deputation. b) Qualification and eligibility i) A Graduate of recognized University or any equivalent qualifications recognised as such by Government of India, preference being given to Agriculture or Commerce or Economics Graduates. ii) Eight years service as an officer in the regional rural bank concerned. Provided that the Board may, with the prior approval of National Bank, relax the period of service by a period not exceeding two years. If suitable candidates of requisite experience are not available. Note: The post of Area Managers and Senior Managers will of equivalent in rank and will be interchangeable. c) Mode of Selection Interview and assessment of performance report for the preceding three years period as officer for promotion.

11. Therefore, criteria for promotion under 1988 Rules was seniority-cum-merit and for the purpose of assessment of merit, Rules provided interview and assessment of performance report of the preceding 3 years.

12. In 1998 Rules, 3rd schedule contains procedure of promotion and item 2 applicable for the post in question provides mode of selection, criteria of promotion etc. and reads as under:

2.a) Name of post : Scale II Officer h) Classification : Group "A" c) Source of appointment : 100% by promotion j) Whether promotion to Promotion shall be made on seniority the basis of seniority-cum- basis of seniority-cum-: merit. merit basis. e) Eligibility : Officers holding post for either years as an officer on regular basis in the Regional Rural Bank shall be considered for promotion in scale II post in that bank: Provided that no officer shall be considered for promotion unless he has been confirmed in the feeder grade post: Provided further that the Board may, with the prior approval National Bank, relax the qualifying service for a period not exceeding two years, if eligible officers are not available. Note: i) The officers eligible for promotion to the post of Area Manager/ Senior Manager/ Officers Scale II on or before publication of this notification, shall continue to be considered for promotion to Scale II officer post. ii) The service of the incumbents, who are holding the post eligible for promotion before publication of this notification shall continue to be counted for the purpose of promotion to the Scale II officer post. f) Mode of Selection : The Selection of the candidate shall be made by the committee on the basis of written test, interview and assessment of Performance Appraisal Reports for the preceding five years as an officer in scale-I/Field supervisor. g) Composition of committee : The committee (for considering promotion) shall consist of the following persons, namely- i) The Chairman of the concerned

Regional Rural Bank-Chairman. ii) A director nominated by the Sponsor Bank-Member. iii) A director nominated by the National Bank-Member. Note: If none of the members of the Committee belongs to Scheduled Castes/ Scheduled Tribes, the Board may nominate a person belonging Scheduled Castes/ Scheduled Tribes as an additional member and such person shall participate in the process of selection by the Committee. h) Reckoning of the minimum The Minimum eligibility in eligibility : term of the number of years of service for promotion shall be reckoned as on the 1st April of the year in which the vacancy is expected to arise or has actually arisen. i) Number of candidates to be The number of candidates to be considered for promotion : be considered for promotion from officer scale I to Officer scale 11 shall be restricted to four times the number of vacancies available for promotion. j) Selection Process for The selection shall be on the promotion. : basis of Performance in the written test, interview and Performance. Appraisal Reports for preceding five years as per the division of marks given below: A) Written test : 60 marks B) Interview : 20 marks C) Performance Appraisal : 20 marks Reports Total Marks : 100 marks 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: Part "A" 30marks Part "B" 30 marks A list of only those candidates, who secure a minimum of 40% marks in each part shall be prepared and such candidates shall be called for interview. (B) Interview (20 marks) : There shall be minimum qualifying marks for the interview. (C) Performance appraisal Performance Appraisal Reports (20 marks) : Reports for the preceding five years shall be considered for the purpose of awarding marks for promotion.

13. A perusal of 1998 Rules also make it clear that criteria of promotion continued to be same i.e. seniority-cum-merit but the method of assessment of merit has been changed inasmuch as it provides written test, interview and assessment of performance appraisal reports of preceding five years.

14. Now it would be appropriate to consider the circular dated 4.1.2000. The time of occurrence of vacancy will decide the Rule which will be applicable in the case and whether the selection is valid or not. The circular dated 4.1.2000 refers to its earlier circular dated 29.6.1995, a copy whereof is also on record, at page 52 of the writ petition, and says that earlier 10 vacancies which were existing in MMG-II and process for promotion was initiated for the same but for certain reasons it had to be postponed. Now the Board of Directors in their meeting dated 18.11.1999 resolved to fill in 46 existing vacancies as on 31.3.1998 in accordance with the procedure applicable at the time when those vacancies occurred and therefore the cut-off date for eligibility was also taken to be 31.3.1998. The detail of the vacancies occurred in various years is also mentioned in para 3 of the circular showing 42 vacancies in 1993-94, 1994-95, 1995-96, 1996-07 and 1997-98. further four more vacancies occurred due to

retirement of MMU-II officers and therefore on 31.3.1998 there existed in all 16 vacancies for which recruitment was to be held in accordance with the old procedure i.e. the Rules applicable when the vacancies occurred. It is, therefore, evident from the record that the vacancies for which selection has been made vide circular dated 4.1.2000 were those which occurred up-to 31.3.1998, i.e., before promulgation of 1998 Rules which admittedly have come into force on 29.7.1998. Since during the course of argument the learned Counsel for the petitioner has confined his submission only on the ground that the selection has not been held in accordance with 1998 Rules though it ought to have been held in accordance with 1998 Rules and is vitiated in law, therefore, we are confining ourselves and considering the limited question as to whether the procedure prescribed under 1988 Rules would apply in the selection held pursuant to Circular dated 4.1.2000 or 1998 Rules would apply. As pointed out above, from a bare reading of the circular dated 4.1.2000 it is evident that the vacancies sought to be filled in by the Bank were those which had occurred up to 31.3.1998 and therefore, the management decided to fill in the same in accordance with the procedure as it was applicable up to 31.3.1998 i.e. 1988 Rules. The decision in our view is well in accordance with law of the land that the procedure for promotion which was applicable on the date of occurrence of vacancy must govern the same. In *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, it was held that procedure for promotion as it was prevailing on the date of occurrence of the vacancy shall have to be followed and the amendment made in the Rules shall apply to the vacancies subsequent to the amendment. In *A.A. Calton Vs. Director of Education and Another, and P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others*, the same view was reiterated. Again in *B.L. Gupta and Another Vs. M.C.D.*, the Apex Court in para 9 of the judgment held as under:

When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules, The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr. Mehta to a decision of this Court in the case of *N.T. Devin Katti v. Karnataka Public Service Commission*. In that case after referring to the earlier decisions in the cases of *Y.V. Rangaiah v. J. Sreenivasa Rao*, *P. Ganeshwar Rao v. State of A.P.* and *A.A. Calton v. Director of Education* it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules. Though, the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.

15. In this case admittedly the recruitment for the vacancies which were earlier available up to 31.3.1994 was already initiated vide circular dated 29.6.1995 but

for unavoidable reasons it was postponed and thereafter the Bank decided to fill in all the vacancies which had occurred up to 31.3.190S in accordance with the rule as they were applicable till that time Decision of the Bank in view of the exposition of law as disc assed above cannot be faulted. We are of the view that the selection in question which has been held in accordance with 1988 Rules since all the vacancies for which selection was notified had occurred up to 31.3.1998. is valid and legal. No other argument has been advanced by learned Counsel for the petitioners.

16. So far as Writ Petition No. 1.7837 of 2001 is concerned, though it is contended in the writ petition that the selection is being made by awarding marks which has resulted in changing the criteria from seniority-cum-merit to merit-cum-seniority and, therefore, the same is illegal, hut when the matter was taken up for hearing, learned Counsel for the petitioner did not advance any submission pointing out any error in the orders impugned in this writ petition. Moreover, since the vacancies which are under consideration in the impugned circulars are those which have fallen vacant after the enforcement of 1998 Rules, it cannot he, disputed that the selection has to be made in accordance with 1998 Rules, in tins view of the matter we do not find any infirmity in the procedure adopted by the respondents in conducting the selection.

In the result, both the writ petitions lack merit and are accordingly dismissed. No order as to costs.