
(2010) 04 PAT CK 0004
In the Patna High Court

Ramesh Prasad Mishra and Others

APPELLANT

Vs

The Magadh Gramin Bank

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Magadh Gramin Bank (Officer and Employee) Service Rules — Rule 38

Citation : (2010) 04 PAT CK 0004

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioners and the Magadh Gramin Bank.

2. Petitioners at the relevant time were serving the Magadh Gramin Bank on the post of Officer Scale-I. During the pendency of this application Magadh Gramin Bank has been renamed as Madhya Bihar Gramin Bank (hereinafter referred to as the Bank). In C.W.J.C. No. 8709 of 2003, there are two petitioners. In C.W.J.C. No. 8710 of 2003, there are four petitioners, but the application is not pressed on behalf of petitioner No. 4.

3. In these writ, applications, petitioners have assailed order dated 12.8.2003, as contained in Annexure-2 series in both the writ applications, whereunder they have been restrained from appearing in the written examination conducted for promotion on the post of Officer Scale II on the ground that on the cut off date i.e. 1.4.2003, petitioners were under cloud of punishment, which was imposed on petitioner Ramesh Prasad Mishra under order dated 8.3.2002, Rajeev Nayan Prasad under order dated 6.3.2002, Md. Ataur Rahman under order dated 1.8.2000, Midhat Karim Khan under order dated 5.12.2000 and Saryu Mistry under order dated 9.5.2001 and having not come out of the cloud, they could not have appeared in the written examination for promotion in the light of the guidelines issued by the Sponsor Bank contained in letters dated 1.12.1987 and 27.2.1999 and subsequent clarification made under letter dated 21.12.2002, Annexure-B to the counter affidavit filed on behalf of the Respondents, which,

inter alia, provides that officers under cloud of punishment other than one reprimand/censure are not to appear for five years in the written examination for promotion. Punishment is imposed on the employees of the Bank in the light of the provisions contained in Rule 38 of the Magadh Gramin Bank (Officer and Employee) Service Regulations, which, inter alia, provides for imposition of minor and major penalties. Punishment imposed on the petitioners, as is evident from Annexure-2 series, was minor in nature. Petitioners had also challenged the punishment imposed on them by filing appeal. The appellate authority, in the case of petitioner Ramesh Prasad Mishra, modified the punishment imposed to punishment of censure under orders dated 26.7.2005. In the case of petitioner No. 2, Rajeev Nayan Prasad, punishment was modified to warning under order dated 12.2.2005, Annexure-7. In C.W.J.C. No. 8710 of 2003, punishment of petitioner No. 2, Midhat Karim Khan was modified to censure under order dated 27.7.2005, Annexure-11 to the Additional supplementary affidavit filed today and petitioner No. 3 Saryu Mistry was exonerated of the charge under orders dated July 26, 2005. Appeal filed by petitioner No. 1, Md. Ataur Rahman was dismissed, as he had accepted his guilt. In the circumstances, his case for promotion has to be considered separately after passage of five years when he comes out of the cloud of punishment.

4. Learned Counsel for the petitioners, with reference to the aforesaid appellate order modifying the punishment of petitioner Nos. 1 and 2 of C.W.J.C. No. 8709 of 2003 and petitioner Nos. 2 of C.W.J.C. No. 8710 of 2003, to censure and the order exonerating petitioner No. 3 of the latter case, submitted that they were erroneously restrained under the impugned orders from appearing in the written examination for promotion and their case has to be considered with effect from the date their juniors have been promoted in the light of the result of the examination, as petitioners were not at fault by not appearing in the examination.

5. Counsel for the Bank has opposed the prayer. He states that on the cut off date i.e. 1.4.2003, petitioners were under the cloud of punishment and were rightly restrained by the authorities of the Bank from appearing in the written examination, their appeal has been allowed during the pendency of the writ application but the clock which has moved forward, cannot be put back and they cannot be considered and granted promotion with effect from the date their juniors have been granted promotion even if they become successful in the examination held for promotion.

6. Having heard counsel for the petitioners and the Bank and having perused the relevant instructions of the Sponsor Bank, I am of the view that those officers, who are under cloud of punishment other than one reprimand/censure, cannot be allowed to appear in the examination conducted for promotion for five years, but if the officers are not under any cloud of punishment, they have to be given opportunity to appear in the examination held for promotion. True it is that on the cut off date i.e. 1.4.2003, petitioner Nos. 1 and 2 of C.W.J.C. No. 8709 of 2003 and petitioner Nos. 2 and 3 of C.W.J.C. No. 8710 of 2003 were under cloud

of punishment, but in course of time their appeal filed against the punishment order, which was made prior to the cut off date, was allowed. Once the appeal was allowed and punishment was either modified to censure or set aside, the appellate order modifying or setting aside the punishment will date back to the date of punishment order, which is prior to the cut off date and once it is held that petitioner Nos. 1 and 2 of the former case and petitioner No. 2 of the latter case suffered only one censure/reprimand on the cut off date and petitioner No. 3 of the latter case stood exonerated on the cut off date, they became eligible for appearing in the examination. the appellate order should date back to the date of the original order and there by petitioners have become eligible to appear in the examination on the cut off date, but could not appear in the examination on account of punishment order which was modified or set aside on a later date but the juniors in the meanwhile stole a march over them and if the petitioners are not considered for promotion with retrospective effect, they shall suffer prejudice for the remaining period of their service life and such prejudice cannot be allowed to perpetuate. Punishment order has been modified in case of petitioner Nos. 1 and 2 of C.W.J.C. No. 8709 of 2003 and petitioner No. 2 of C.W.J.C No. 8710 of 2003 and set aside in case of petitioner No. 3 of C.W.J.C. No. 8710 of 2003, accordingly, I direct the bank to consider the case of petitioner nos. 1 and 2 of C.W.J.C. No. 8709 of 2003 and petitioner Nos. 2 and 3 of C.W.J.C. No. 8710 of 2003 for promotion with effect from the date their juniors have been granted promotion after subjecting them to the same procedure, which is applicable to others for granting such promotion in the officers Scale II in accordance with law. Petitioner No. 1 of C.W.J.C. No. 8709 of 2003 retired in January, 2008, as such, his case be also considered in the light of this order for grant of retrospective promotion with effect from the date his other juniors have been allowed such promotion. Petitioners will appear in the next examination whenever it is held for promotion in the officers Scale II.

7. The writ applications are, accordingly, disposed of.