

(2004) 01 BOM CK 0067

In the Bombay High Court

Case No : C.A. No's. 4593-4594, 4595-4596 and 4597 of 2002

Ramrao and Others

APPELLANT

Vs

All India Backward Class Bank Employees Welfare Association
and Others

RESPONDENT

Date of Decision : 05-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 4 BomCR 162 : (2004) 106 BOMLR 791

Hon'ble Judges : S.B. Sinha, J;Arun Kumar, J

Bench : Division Bench

Judgement

S.B. Sinha, J.—Civil Appeal Nos. 4593-4594 of 2002 and 4595-4596 of 2002 have been filed by the appellants thereof (hereinafter referred to as "Promotees") upon obtaining permission to file the special leave applications against the judgment and order dated 10.8.2000 passed by the High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition No. 255/1990. Writ Petition No. 1551/1990 has been filed by All India Backward Class Bank Employees Welfare Association (hereinafter referred to as "Association") which is the respondent No. 1 in the aforementioned appeals and the appellant in Civil Appeal No. 4597/2002.

FACTS:

2. The Promotees are employees of Marathwada Gramin Bank (hereinafter referred to as "Bank").

3. A circular bearing No. HO/ST/Cir No. 35/88 (159) dated 8.11.1988 was issued by the respondent. Bank notifying the eligibility criteria for internal promotion to the post of Officers and Field Supervisors. The Board of Directors of the Bank passed a resolution dated 10.1.1989 approving the proposal to fill in 23 posts of Officers and 45 posts of Field Supervisors by promotion fixing the cut-off date for eligibility there for as on 31.8.1989. The promotions were to be made on application of the principle of seniority-cum-merit. Out of 45 posts of Field

Supervisors, 13 including the backlog were proposed to be reserved for Scheduled Tribe category. On or about 27.1.1989, the respondent Bank issued another circular bearing No. HO/ ST/Cir No. 43/89 notifying the vacancies.

4. Writ Petition No. 255/1990 was filed by the respondent No. 1 herein questioning the cut-off date of 31.8.1989 fixed by the Bank for deciding the eligibility of its employees for promotion to the posts of Field Supervisors and Officers.

5. On 2.2.1990, the High Court passed an interim order in the said writ petition in the following terms :

Notice before admission returnable within four weeks. Interim relief in terms of prayer Clause (c) in the meanwhile.

6. Thereafter, the said interim order dated 2.2.1990 was modified by the High Court in terms of an order dated 9.4.1990 directing that the appointment made shall be subject to the result of the writ petition.

7. In the meantime, interview of eligible candidates was held between 10.2.1990 to 15.2.1990.

8. It is contended that no eligible Scheduled Tribe candidate was available for promotion in the vacancies reserved for Scheduled Tribe category in the post of Field Supervisor as on the cut-off date of 31.8.1989 or even thereafter including for filling up the backlog and thus, the Board of Directors passed a resolution on or about 17.4.1990 for dereserving the vacancies which were reserved for Scheduled Tribes candidates. The said proposal was also forwarded to the Ministry of Finance, Government of India as well as to the sponsor Bank and NABARD for requisite permission stating that there was no eligible Scheduled Tribe candidate for appointment on the said 13 reserved posts.

9. The Ministry of Finance, Government of India approved the proposal for dereservation of 13 vacancies which were earlier reserved for the Scheduled Tribe candidates. NABARD also granted its permission for dereservation of said 13 vacancies.

10. The contention of the appellants is that by reason of such dereservation the said vacancies became available for being filled up by the candidates belonging to the general category. During pendency of the aforementioned writ petition, interview was held in between 10.2.1990 and 15.2.1990. The Association filed the writ petition marked as W.P. No. 255 of 1990, as noticed hereinbefore, only questioning the cut-off date. Another writ petition was filed by one Shri Ashok which was marked as Writ Petition No. 1551 of 1990 questioning the cut-off date as also the order of promotion. However, in both the writ petitions, neither the promotees nor the Union of India or NABARD were impleaded as parties. In the said writ petitions the order of dereservation was also not questioned.

HIGH COURT JUDGMENT :

11. By reason of the impugned judgment, a Division Bench of the High Court held that the cut-off date fixed by the respondent Bank was valid. It further held that the Bank did not have any questionable motive in fixing the said cut-off date and the explanation given by it being a plausible one could not be rejected. The contention raised by the Association to the effect that the said circular dated 8.11.1988 was issued for the purpose of frustrating the reservation policy did not find favour with the High Court, as upon a perusal of the select panel, it became explicit that the candidates from the S.C. Categories had been appointed. The High Court further observed that even if in place and instead of 31.12.1989 being the cut-off date, the same was to be taken as 31.3.1990, nothing had been brought on record to show that any Scheduled Tribe candidate would have become eligible.

12. The High Court further opined that the Scheduled Tribe candidates having been appointed sometimes in the year 1994 onwards, the requirements of six years service as set out in the rules could not have been waived by the Bank by its impugned resolution. It, however, came to the conclusion that reservation policy being in issue in the said writ petition, the challenges raised therein should not limit the scope thereof. Keeping in view the subsequent action taken by the Bank including the issue of dereservation and appointment of open category candidates to the respective posts pursuant to the decision of dereservation, the High Court proceeded to analyse the requirements for notifying dereservation as contained in the Brochure and held that the Bank did not follow the requisite procedure to undertake a fresh survey regarding the availability of the eligible candidates from the respective categories even though such candidates were not available on the cut-off date. It was observed :

We, therefore, direct the Bank to examine the availability of candidates belonging to S.T. Category for promotion to the post of Field Supervisor and Officer who became eligible from 18.4.1990 to 17.4.1991 as well as during the next two years i.e. up to 17.4.1993 thereby making a period of 3 years for filling in the backlog of such reserved category candidates, by examining the caste claims of all such candidates including their service record so as to fulfil the principle of seniority-cum-merit. This shall be done within a period of two months from today and those Scheduled Tribe Category candidates who are found to be eligible, shall be given promotion to the post of Field Supervisor and/ or Officer, as the case may be, and the open category candidates who have been appointed against such posts shall vacate these posts forthwith. We clarify that while withdrawing the appointments made in favour of the open category candidates against reserved posts, the candidates who joined last would go first and the Bank shall not be entitled to recover any amount from them as they have already worked in the higher posts. Their pay fixation in the lower posts shall be done as per the Rules. The reserved category candidates, who shall be so promoted, shall not be entitled to claim arrears in salary, but for the purpose of seniority in the respective grades, the date of promotion shall be counted.

13. Promotees have filed appeals upon obtaining leave of this Court questioning the directions issued by the High Court. Association's appeal is against that part of the judgment wherein "cut-off date fixed by the Bank has been found to be valid.

SUBMISSIONS :

14. The learned Counsel appearing on behalf of the promotees contended that the High Court committed a manifest error in passing the impugned judgment as in the writ petitions neither they were impleaded as parties nor the order of dereservation was in question.

15. Besides, supporting the impugned judgment, the contention of the Association, on the other hand, is that keeping in view the fact that 29 vacancies are existing in the Bank as the concerned employees have either resigned, dismissed or died, the appellants as also the Scheduled Tribe candidates can be accommodated against the said posts. It was urged that although the Association itself did not question the order of promotion, the same was done by Ashok in his writ petition and, thus, the High Court cannot be said to have committed an error in passing the impugned judgment. Furthermore, 13 other writ petitions were filed by other employees of the Bank questioning the appointment of the appellants herein which had also been disposed of relying on or on the basis of the impugned judgment.

16. It was urged that the Bank was not correct in raising the contention before the High Court that no eligible Scheduled Tribe candidate was available for promotion to the posts of officers as on 31st December. 1985 as two persons names of whom appeared at SI. Nos. 67 and 87 of the seniority list were members of Scheduled Tribe. It has been contended that as on today as many as 13 Scheduled Tribe candidates are available for promotion to the post of Officers and, thus, this Court may direct the respondent Bank to adjust the appellants as also the Scheduled Tribe candidates against the existing vacancies. Mr. Ganpule, would further submit that the cut-off date fixed by the Bank was arbitrary and, therefore, the same was liable to be declared as such by the High Court.

17. The learned Counsel appearing on behalf of the Bank, however, has drawn our attention to the counter-affidavit filed in Civil Appeal No. 4597 of 2002 wherein inter alia, it has been averred :

(iv) That the document at the Serial No. 5 (under the heading "Extract of Seniority List as on 31.12.1985") of the additional documents sought to be brought on record by the petitioners is also grossly misleading as it suppresses the material fact known to the petitioners that against the names of persons at Serial Nos. 52 and 67 the said list erroneously mentioned "S.T." which error was subsequently corrected after due notice to the concerned persons Shri Pendalwar Shivaji Ramanna and Shri Tehra Kiransinh Gangusingh. Accordingly, these persons were called for the interview for promotion in the year 1990 as general category candidates.

18. It was urged that all the requisite procedures for dereservation had been complied with and in that view of the matter the High Court committed a manifest error in passing the impugned judgment.

19. The learned Counsel would further submit that keeping in view the present policy decision of the Bank, it is not possible to make any further appointment adjusting the "promotees" and the eligible members of the Association and in this behalf our attention has been drawn to the following statements made in paragraph 3 of the counter-affidavit :

3 (i) In the instant SLP it is erroneously pleaded that, the S.T. Category employees can be considered for promotions to cadre of officers without disturbing status of the petitioner as there are vacancies in the officers" cadre. In this regard, it is respectfully submitted that although, it is true that due to one or the other reasons certain officers ceased to work with the respondent Bank, but, according to the Man Power Norms in Regional Rural Banks" introduced by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi, vide its Order/Memorandum, F. No. 3/(24)/99-RRB dated 22.1.2001 and adopted by the Board of Directors of the respondent Bank, in the meeting dated 18.5.2001, (here is no shortfall in manpower in the officer grade, of the respondent Bank and, on the contrary, there exists as excess manpower in the said grade.

(ii) It further needs to be kindly considered by your Lordships that the accumulated losses of the respondent Bank are to the tune of Rs. 53.47 crores as on 31.3.2001. In view of the Implementation of manpower planning norms and in view of the accumulated losses of the respondent Bank, it is not possible for the respondent Bank to add manpower in officer cadre, without getting the corresponding number of posts vacated, inter alia, by reversion of the petitioner.

GRANT OF PROMOTIONS :

20. The respondent Bank is a Regional Rural Bank established under the Regional Rural Banks Act, 1976 of which the Bank of Maharashtra is the sponsor Bank. It appears that in terms of an award issued by the National Industrial Tribunal in 1991 which was given retrospective effect from 1.9.1987, 23 vacancies in officers cadre (Junior Management-I) and 45 vacancies in Field Supervisors cadre (which have since been merged in the officers" cadre) were identified for being filled in by internal promotion from amongst the eligible Field Supervisors and Clerks working in the Bank. It is also not in dispute that promotion to the said posts are governed under the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1981 (The Rules).

21. It is furthermore not in dispute that for the purpose of effecting promotions to the post of Field Supervisor or Officer, the following conditions laid down in the Rules were required to be taken into consideration:

5(b)(ii) For Promotion :

Confirmed Senior Clerk-cum-Cashier with minimum of four years service as Senior Clerk Cum-Cashier.

Or

(b) Six years service either as confirmed Junior Clerk-cum-Cashier or Junior Clerk-cum-Typist or Stenographer or Steno Typist or as a confirmed Senior or Junior Clerk-cum-Cashier, as the case may be. For the first six years, after the year of recruitment, post of Field Supervisor will be filled only by direct recruitment and the promotion quota of these posts will be notionally carried forward and made good by promotions in the subsequent years. From the year in which the backlog, if any, in the promotion quota is wiped out, the stipulated quota of fifty percent recruitment from the open market and fifty percent by promotion will be adhered to.

6(b)(ii) For Promotion :

Confirmed Field Supervisor with a minimum of five years service as Field Supervisor. The above condition of minimum service is relaxable as stated below:

(i) Regional Rural Banks which have not completed three years of existence after their year of establishment will fill up all vacancies in the officer cadre only by direct recruitment.

(ii) Regional Rural Banks which have completed three years of existence after the year of their establishment but have not completed five years, may, but only with prior approval of National Bank, consider for promotion confirmed Field Supervisors having a minimum of three years experience in that capacity. However, if even after this relaxation suitable candidates are not available, the vacancies to be filled by direct recruitment and the vacancies so filled will be notionally carried forward to the subsequent years till the backlog, if any, is cleared. Thereafter, the stipulated quota of fifty percent from open market and fifty per cent by promotion will be adhered to.

22. The candidates eligible for promotion were subjected to an interview by the Selection Committee constituted in terms of Rule 10(1)(b) of the Rules pursuant where to and in furtherance whereof the appointments in question were made.

DERESERVATION :

23. It appears that the respondent Bank initially reserved 8 posts of "officers" for the Scheduled Tribe candidates and 13 thereof for the posts of "Supervisors". Chapter VII of the brochure admittedly laid down the procedure for dereservation. Clause 7.6 provides for carry forward of reservations whereas Clause 7.7 deals with exchange of reservation between S.C./S.T. and vice-versa. Clause 7.9 provides for reservation and carry forwarding of a single vacancy reserved for Scheduled Caste or Scheduled Tribe candidates which may be filled up by a general candidate, as the case may be.

24. As regard difficulty in carrying out the policy of reservation it appears that

the Central Government by a letter dated 19th September, 1989 advised the respondent Bank to approach the sponsor Bank for guidance and only in the event a specific issue arises, a reference was required to be made to the Government through the sponsor Bank. The Bank of Maharashtra admittedly having been approached to give approval for the proposal of dereservation by the respondent Bank having regard to non-availability of any Scheduled Tribe candidate for promotion by a letter dated 13th August, 1990 granted such permission and forwarded the proposal for final approval of the Government of India. The NABARD also granted approval to the proposal of dereservation by its letter dated 31st August, 1990. As indicated hereinbefore, the Central Government had also approved the same.

EFFECT OF ABSENCE OF DERESERVATION AS AN ISSUE :

25. Order of dereservation was admittedly not in issue before the High Court. In the aforementioned fact situation, we are of the opinion that the High Court in absence of any specific challenge to the dereservation policy adopted by the Bank could not have gone into the said question. It is true that the High Court is entitled to take into consideration the subsequent events, but the same can only be a relevant factor for the purpose of moulding the reliefs. But while moulding such reliefs, the High Court could neither have considered grant of a relief wherefor no factual foundation existed was laid in the pleadings of the parties.

26. It has been accepted at the Bar that no factual foundation was laid down in the writ petition before the High Court as to whether the Bank complied the requirement of Clause 7.7 of the procedure providing for exchange of reservation between S.C./S.T. and vice-versa. The question as to whether any eligible Scheduled Caste candidate was available for promotion to the post of Officer or not is essentially a question of fact. It was, thus, not open to the High Court to advert to the said question.

EFFECT OF ABSENCE OF THE APPELLANTS AS PARTIES :

27. It is true that the order of promotion was in question in Writ Petition No. 1551 of 1990 at the instance of one Ashok but even in the said writ petition the promotees were not impleaded as parties. As in the case of the Association, even in the writ petition filed by Ashok, the order of dereservation passed by Union of India or NABARD or the sponsor Bank had not been questioned. Admittedly, Union of India or NABARD were not parties in the said writ petitions. An order issued against a person without impleading him as a party and, thus, without giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour had been directed to be withdrawn indisputably were necessary parties. In their absence, therefore, the writ petition could not have been effectively adjudicated upon. In absence of the "promotees" as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment.

ANALYSIS :

28. It is not the contention of the Association that procedures for effecting promotion had not been followed. The promotees were, admittedly eligible for promotion and they had, thus, legally been promoted. The only question which was raised related to compliance on the part of the Bank as regard the procedure of dereservation. The High Court, therefore, was required to consider the said question only in the event, the factual foundation therefore had been laid down in the writ petition. The Association did not file even any supplementary affidavit or an application for amendment of the writ petition praying for a relief as regard quashing of the order of dereservation or bringing the appellants herein as parties thereto in the writ petition. In absence of any challenge to the order of dereservation and in absence of the promotees having been impleaded as parties, the impugned directions could not have been issued by the High Court, more so when the appellants herein had not been given an opportunity of being heard. Once dereservation is made, the vacancies became available for being filled up by general category candidates and, thus, therefore the respondent bank was not required to re-examine the question of availability of the Scheduled Tribe candidates for appointment on dereserved vacancies. The view taken by the High Court that even after dereservation was made, the bank was required to re-examine the availability of S.T. candidates on the dereserved vacancies, was, therefore, not correct particularly when the High Court itself found that the cut-off date being 31.8.1989 was correctly fixed by the bank.

CUT-OFF DATE :

29. It is now well-settled that for the purpose of effecting promotion, the employer is required to fix a date for the purpose of effecting promotion and, thus, unless cut-off date so fixed is held to be arbitrary or unreasonable, the same cannot be set aside as offending Article 14 of the Constitution of India. In the instant case, the cut-off date so fixed having regard to the directions contained by the National Industrial Tribunal which had been given a retrospective effect cannot be said to be arbitrary, irrational, whimsical or capricious.

30. The learned Counsel could not point out as to how the said date can be said to be arbitrary and, thus, violative of Article 14 of the Constitution of India.

31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In *University Grants Commission Vs. Sadhana Chaudhary and Others*, . It has been observed :

21. ...It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable

mark. [See Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, and Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, .

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employee seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

34. In State of W.B. Vs. Monotosh Roy and Another, it was held :

13. In AII India Reserve Bank Retired Officers' Association v. Union of India (1992) 19 A.T.C. 856 a Bench of this Court distinguished the judgment in D.S. Nakara and Others Vs. Union of India (UOI), and pointed out that it is for the Government to fix a cutoff date in the case of introducing a new pension scheme. The Court negatived the claim of the persons who had retired prior to the cut-off date and had collected their retiral benefits from the employer. A similar view was taken in Union of India Vs. P.N. Menon and others, . In State of Rajasthan and others etc. Vs. Amrit Lal Gandhi and others etc., the ruling in P.N. Menon case (supra), was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits.

14. In State of U.P. and Another Vs. Jogendra Singh and Another, a Division Bench of this Court held that liberalised provisions introduced after an employee's retirement with regard to retiral benefits cannot be availed of by such an employee. In that case the employee retired voluntarily on 12.4.1976. Later on, the statutory rules were amended by Notification dated 8.11.1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalised provision which came into existence after his retirement. A similar ruling was rendered in V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, .

15. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the writ petition...

35. In Vice Chairman and Managing Director A.P.S.I.D.C. Ltd. and Another Vs. R.

Varaprasad and Others, in relation to "cut-off date fixed for the purpose of implementation of Voluntary Retirement Scheme, it was said:

...The employee may continue in service in the interregnum by virtue of Clause (i) but that cannot alter the date on which the benefits that were due to an employee under the V.R.S. to be calculated. Clause (c) itself indicates that any increase in salary after the cut-off point/date cannot be taken into consideration for the purpose of calculation of payments to which an employee is entitled under the V.R.S.

36. The High Court in its impugned judgment has arrived at a finding of fact that the Association had failed to prove any malice on the part of the authorities of the Bank in fixing the cut-off date. A plea of malice as is well-known must be specifically pleaded and proved. Even such a requirement has not been complied with by the writ petitioners.

CONCLUSION :

37. An upshot of the above discussions is that the High Court could not have issued the impugned directions in absence of the promotees having not been impleaded as parties. Furthermore, the order of dereservation was not under challenge.

38. In these appeals, this Court is not concerned with the effect of the orders passed by the High Court in the writ petitions filed by 13 Scheduled Tribe candidates. We must, however, notice that it has been stated at the Bar that the said writ petitions had been disposed of only relying on or on the basis of the impugned judgment. What would be the effect of the orders passed in the said writ petitions is not a matter which we have been called upon to determine. Suffice, it, however, to point out that in relation to the said orders also the requisite consequences of setting aside the judgment of the High Court must ensue and it would be open to the High Court to pass appropriate orders in accordance with law in appropriate proceedings.

39. Submission of Mr. Ganpule to the effect that both the appellants and the Scheduled Tribe candidates can be adjusted in view of the fact that 29 posts are lying vacant is also not a matter which can be decided by this Court for the first time in these appeals. As noticed hereinbefore, the bank had categorically stated that having regard to the changed situation, they are not in a position to make any further promotions to the post of "officers". This Court, in the aforementioned situation, cannot, thus, issue any directions upon the bank to change its policy decision and accommodate the Scheduled Tribe candidates in violation of its own policy decision. It is for the bank, the sponsor bank as also NABARD to take an appropriate decision in this matter.

40. For the reasons aforementioned, the impugned judgments of the High Court cannot be sustained which are set aside accordingly. Civil Appeal Nos. 4593-4594 and 4595 4596 of 2002 are allowed; whereas Civil Appeal No. 4597 of 2002 is

dismissed. No costs.