
(2006) 02 GAU CK 0075

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 449 of 2003

Ranjit Kumar Roy and Others

APPELLANT

Vs

Tripura Gramin Bank and Others

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16
Regional Rural Banks Act, 1976 — Section 29

Citation : (2006) 1 GLT 553

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : C.S. Sinha and D.C. Roy, for the Appellant; S. Deb, K. Bhattacharjee, S. Saha, K.P. Bhowmik, R.C. Debnath, J. Islam, Somik Deb and S. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

T. Vaiphei, J.—In this writ petition, the legality of the procedure for promotion of officers from Scale-I to Scale-II in the Tripura Gramin Bank contained the Circular dated 18.03.02 and the promotion of the private Respondents on ad hoc basis to the scale-II officer by the office order No. 426/03 dated 4.11.2003 have been called into question.

2. Heard Mr. C.S. Sinha, learned Counsel assisted by Mr. D.C. Roy, learned Counsel for the Petitioners. Also heard Mr. S. Deb, learned senior Counsel, Mr. K.N. Bhattacharjee, learned senior Counsel, Mr. S. Saha, Mr. K.P. Bhowmik, Mr. R.C. Debnath, Mr. J. Islam, Mr. Somik Deb and Mr. S. Choudhury, learned Counsel for the Respondents.

3. The material facts of the case are not in dispute. The Petitioners No. 1, 2, 3 and 4 were initially appointed as Filed Supervisors on different dates and were subsequently promoted to Scale-I officers on various dates. The Petitioners No. 5, 6 and 8 were initially appointed to the post of Junior Clerks and promoted to Scale-I officers on various dates. The Petitioner No. 7 was directly appointed as

Scale-I officer on 28.1.1983 and is now holding the post of Scale-II officer on officiating basis and posted as Branch Manager, Tripura Gramin Bank, Dhaleswar Branch, Agartala, West Tripura. As of now, all the Petitioners are holding the substantive posts of Scale-I officers otherwise known as Junior Management officers, Grade-I. The Tripura Gramin Bank was constituted under the Rural Banks Act, 1976 (A Central Act) and is sponsored by the United Bank of India. The next promotional post of the Junior Management officer, Grade-I is Area Manager/Senior manager, which is also known as Middle Management Officer, Grade-II. The procedure for promotion of Junior Management officer, grade-I to Middle Management, Grade-II post is regulated by the Circular No. TGB/HO/P&A/Promotion-50/Cir-7/3529/2002 dated 18.3.2002 issued by the Tripura Gramin Bank. In this circular, it was stated that the promotion process for promotion to the post of Middle Management Officer, Grade-II could be held shortly for filling up 43 vacancies and that the source of recruitment is cent percent by promotion from among the officers of the Bank and further that the criteria for promotion would be seniority-cum-merit. The eligibility for the post in terms of the said circular is a graduate from a recognized University or any other equivalent qualification as recognized by the Govt. of India and preference was to be given to the Agriculture or Commerce or Economic graduate. The circular further provided weightages for various factors.

7. Weightages for various factors.

Promotion Seniority On the job Performance Oral test Total

Scale I to Scale II 40 25 35 100

8. Seniority The interse seniority on promotion in the post of scale II officer shall be reckoned with reference to their seniority in the immediately proceeding grade or scale or previous cadre to which they belong in the banks service.

4. The Petitioners are admittedly senior to the private Respondents. But it is contended by the Respondents that the difference in the seniority of the Petitioners and the private Respondents are marginal in nature. It is the case of the Petitioners that since they were found to be eligible to be considered for promotion to the said post and are within the zone of consideration, they were called for oral interview by the selection Committee on different dates i.e. 20.7.2003, 21.7.03, 22.7.03, 24.7.03, 25.7.03. However, the private Respondents, who are admittedly junior to them, were selected by the Selection Committee for the said posts and were given ad hoc promotion by the impugned office order with effect from 4.9.2003. The case of the Petitioners is that when the criteria prescribed for promotion to the post of Middle Management Officer, scale II is seniority-cum-merit, a comparative assessment of merit is unnecessary and that what is required is the necessary merit requisite for efficiency of administration, the senior even though less meritorious, shall have priority. According to the Petitioners, when out of the total marks of 100, 40

marks are allotted for seniority, 25 marks for job performance and 35 marks for oral test/interview, more than 50 marks are thus kept for assessment of merit, but the circular does not prescribe the minimum qualifying marks for assessment of performance and merit on the basis of which an officer will be considered for selection. By adopting this procedure, the Respondent authorities have virtually followed the principle of merit-cum-seniority. In other words, when the minimum qualifying marks for interview and minimum standard for assessing the merits of the candidates are not prescribed, the concept of seniority has been completely ignored. It is thus submitted by the Petitioners that the circular in question is illegal and arbitrary and is liable to be quashed. It is further submitted by the Petitioner that the promotion order of the private Respondents made on the basis of the aforesaid circular is, a fortiori, not sustainable in law. The Petitioners further contended that there has been no promotion from Scale-I to Scale-II officer under the Tripura Gramin Bank for a considerable period of time, and that they have been serving as officer under the Bank for the last twenty years without promotion, which is unfair and unjust. It is also pointed out by the Petitioner that except for the Petitioner No. 2 and 3, they have been officiating as Scale II officer since 1997 with satisfactory performance and without any departmental proceeding against any of them. The impugned promotion order dated 4.11.2003 and the weightage for various factors prescribed in the aforesaid circular are, therefore, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

5. The Respondent 1 and 2 contested the writ petition and filed their counter-affidavit. The Respondents No. 6 to 24 i.e. the private Respondent also opposed the writ petition and filed their counter-affidavit. On perusal of the two counter-affidavit, I find that the contentions of the Respondents therein are in pari materia and, as such, suffice it to refer to the counter-affidavit of the Respondents No. 1 and 2. The main contention of the Respondent from their pleadings are that the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 is framed by the Central Govt. in exercise of power conferred u/s 29 of the Regional Rural Banks Act, 1976 and the Petitioners, having not impleaded the Union of India in this writ petition, are precluded from challenging the vires of the said Rules and that the post of Middle Management Officer, Grade-II being a selection post, seniority cannot be the main consideration for such promotion. It is also contended by the Respondent that the Petitioners, knowing fully well the contents of the impugned circular, participated in the interview before the Selection Board and having failed in the interview, cannot now challenge the selection process by filing this writ petition, they are thus estopped by their conduct. It is also pointed out by the Respondent that the impugned circular was issued on 18.3.2002 and the process of selection was completed on 4.11.2003 and in the intervening period, they never challenged the validity of the impugned circular. It is denied that the principle for selection adopted in the impugned circular is contrary to the principle of seniority cum-merit. They also deny that the procedure for selection suffers from any

arbitrariness. It is asserted by the Respondent that the Selection Committee has taken into consideration the eligibility of the candidates appearing for the selection on the parameters of inter se seniority of the candidates as well as the principles of weightage factors prescribed in the impugned circular.

6. At the outset, it will be pointed out that the cause title of the writ petition clearly shows that the Union of India has been impleaded as the Respondent No. 5 and, as such, the contention of the Respondent that the Union of India is not represented is baseless. It is a common ground of the parties that in terms of the impugned circular, the criteria for promotion to the post of Middle Management Officer, Grade II (Scale II officer) is seniority-cum-merit basis. The concept of the seniority-cum-merit in the matter of promotion postulates that given the minimum necessary merit 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. While applying the principle of seniority-cum-merit for the purpose of promotion, what is required to be considered is inter-se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between the employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principles of seniority-cum-merit gives effect to such rights flowing from seniority. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration of promotion. Such assessment can be made by assigning marks on the basis of the appraisal of the performance, on the basis of the service records and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of the seniority-cum-merit see B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.,

7. In the instant case, out of a total number of 100 marks, 40 marks are to be awarded by seniority while 25 marks are assigned for performance and 35 marks for oral test. There is no indication in the impugned circular as to how 40 marks of seniority are to be given to the candidates who are eligible for consideration for promotion. Nor does the circular prescribe the minimum qualifying marks for assessment of performance and merit on the basis of which a candidate would be considered for being selected. In the counter-affidavit of the Respondent No. 1 and 2, it is admitted that the selection has been made on the basis of the over all gradings in the selection based on the assessment of the Selection Committee. This plainly shows that selection was made only to those officers who secured the highest number of marks among the candidates. In other words, no weightage is given at all to seniority. That apart, more than 50 marks are set apart for performance and oral test. It is also evidently not a case in which minimum qualifying marks were prescribed for the assessment of performance and merit or those who secured the prescribed minimum qualifying marks are

selected for promotion on the basis of seniority. Under the circumstances, the method of selection prescribed in the impugned circular is contrary to the principle of seniority-cum-merit and virtually amount to the application of the principles of merit-cum-seniority.

8. The legal position on the concept of seniority-cum-merit and the manner of its application have been firmly settled by the Apex Court in B.V. Sivaiah's case (supra). In this case, the Apex Court held that where more than 50% marks were set apart for interview and performance and where only those who secured the highest marks were ultimately promoted and where no minimum qualifying marks were prescribed for performance and merit for applying principle of seniority to those who crossed it, the selection was contrary to seniority-cum-merit principle. It was further held therein that in seniority-cum-merit principle, it would be improper application of this principle if those who secured highest marks in the interview were selected. The Respondents, or assessing the minimum necessary merit, should have laid down the minimum standard that is required and also prescribe the method of assessment of merit of the candidates who are eligible for consideration of promotion and such assessment can be made by assigning marks on the basis of appraisal of the performance, which in turn may be based on service records and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit. Having not done so by the Respondents in this case, both the impugned circular and the promotion of the private Respondents made thereunder are contrary to the law laid down by the Apex Court in B.V. Sivaiah's case (supra). In that view of the matter, both the impugned circular and promotion order of the private Respondents are liable to be quashed.

9. It is next contended by Mr. S. Deb, learned senior Counsel for the Respondents authorities that once the Petitioners had already participated in the interview and having failed in the interview, they are now estopped from challenging the validity of the selection process in which they took part. He places strong reliance on the following cases: (1) Om Prakash Shukla v. Akhilesh Kumar Sukla, 1986 (Suppl) SCC 285 ; (2) Madan Lal and Others Vs. State of Jammu and Kashmir and Others, (3) Suneeta Aggarwal Vs. State of Haryana and Others, (4) Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others,

10. I have carefully gone through the decision cited by the learned Counsel and undoubtedly when a candidate appears at the examination without protest and is subsequently found not successful in the examination prima facie, the question of entertaining an objection challenging such examination would not arise. However, in a three Judges Bench's decision of the Apex Court in Raj Kumar and Others Vs. Shakti Raj and Others, the Court distinguished Madan Lal's case (supra) and held that where the procedure of selection and the exercise of power to exclude the posts from the purview of the SSSB suffered from glaring illegalities, the candidate appearing for selection and remaining unsuccessful has

the locus standi to challenge the legality of the constitution of Selection Board or the method of selection and is not barred from questioning the selection and that in such cases, the principle of acquiescence/estoppel is not applicable. In the instant case, both the impugned circular as well as the promotion orders of the private Respondents are found to be plainly illegal being contrary to the law declared by the Apex Court in B.V. Sivai's case (supra). Incidentally, B.V. Sivaiah's case (supra) also arose out of the selection process concerning the employees of (a) Rayalaseema Grameena Bank, (b) Pinakini Gramina Bank, (c) Bastar Kshetriya Gramin Bank, (d) Rewa Sidhi Gramin Bank and (e) Chindwara Seoni Kshetriya Gramin Bank, which are a part of or under the control of the Respondents Nos 3,4 and 5. Since the decision in B.V. Sivaiah's (supra) was rendered on 17.7.1998, it cannot be said that the said Respondent were not aware of the same when they circulated the impugned circular in 2002.

11. Under Article 141 of the Constitution of India, the law laid down by the Apex Court is binding upon all Courts, tribunal and the executive authorities throughout the territory of India. The binding nature of the law declared by the Apex Court is reiterated in S. Nagaraj v. State of Karnataka, 1993 Supp (4) SCC 594 as under:

If an order had been passed by a Court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher Court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. Any order passed by a Court of law, more so by the higher Courts and especially the Supreme Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No Court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the Court which passed the order and not by an authority according to its own understanding.

12. As to who are bound by the law laid down by the Apex Court, the matter came up for consideration before the Supreme Court in U.P. Pollution Control Board and Others Vs. Kanoria Industrial Ltd. and Another, when it was examining the validity of a particular levy. Holding that in view of the binding nature of the judgment, the declaration would bind all persons and not only the parties before the Apex Court, the Apex Court further observes:

When the Supreme Court declares a law and holds either a particular levy as valid or invalid it is idle to contend that the law laid down by the Supreme Court in that judgment would bind only those parties who are before the Court and not others in respect of whom appeal had not been filed. To do so is to ignore the binding nature of a judgment of the Supreme Court under Article 141 of the Constitution. To contend that the conclusion reached in such a case as to the validity of a levy would apply only to the parties before the Court is to destroy

the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. When the main judgment of the High Court has been rendered ineffective, the judgment of the Supreme Court would be applicable even in other cases.

13. It is thus inevitable to conclude that the said Respondents have knowingly refused to rectify the mistake of law committed by them even after the same was pointed out by the Apex Court in B.V. Sivaih's case (supra) and proceeded to continue the same mode of assessment of merit for consideration of promotion of their employees, which is held a by the Apex Court to be contrary to the principle of seniority-cum-merit. Had they rectified their past mistakes in the light of the decision of the Apex Court in B.V. Sivaih case (supra), the parties would have been saved from unnecessary, expensive and extremely avoidable litigation. When the law declared by the highest Court of the land does not suffer from any ambiguity, and is loud and clear, there can be no reasonable excuse for not following the same. Under the circumstances, the said Respondents cannot take the shelter of estoppel or acquiescence to perpetuate the patent error of law committed by them, if I may say so, deliberately while issuing the impugned circular and the promotion orders of the private Respondents.

14. The result of the aforesaid discussion is that this writ petition is disposed of with the following direction:

(1) the impugned circular dated 18.3.2002 (Annexure-2) is hereby quashed.

(2) The office order dated 4.11.03 (Annexure-4) promoting the private Respondents to the post of Middle Management Officer, grade II (Scale II officer) in the Tripura Grain Bank is also quashed.

(3) The Respondent No. 1 to 5 are, therefore, directed to formulate a fresh promotion procedure in accordance with law laid down by the Apex Court in B.V. Sivaiah's case (supra) and thereafter, undertake a fresh promotion process for the promotion of the Petitioners and other eligible candidates to the post of Middle Management Officer Grade II in accordance with the new promotion procedure so formulated.

(4) The entire exercise shall be completed by the said Respondents within period of three months from the date of receipt of this judgment.

(5) To avoid management problems resulting from the quashing of the promotion order of the private Respondents, the private Respondents may be allowed to continue in the posts currently held by them pending completion of the fresh selection process as directed in the foregoing.

It is made clear that the private Respondents by this arrangement will not be entitled to any weightage in any manner.

15. This writ petition is allowed to the extent indicated above. On the facts and circumstances of the case, the costs quantified at Rs. 10,000/- shall be paid by

the Respondent No 1 to 3 to the Petitioners.