(1998) 05 PAT CK 0042

In the Patna High Court

Case No : C.W.J.C. No. 8584 of 1996

Ras Bihari Singh and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-05-1998

Acts Referred:
Constitution of India, 1950 — Article 14, 15, 16

Citation : (1998) 3 PLJR 67

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : Sada Nand Jha, Ashutosh Ranjan Pandey, Anil Kumar Upadhya, Purushottam Kumar Jha and Jai Shankar Pathak, for the Appellant; Maqbool Ahmad, and Ganga Prasad Rai and Binod Kumar for Respondant No. 6, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Dubey, J.—In view of the order dated 21.2.97 this writ petition was heard along with C.W.J.C. No. 2D46 of 1995. However, considering the difference in the facts of the two cases, this writ petition is being decided by a separate judgment.

2. This writ petition is directed against the order dated 22.07.96 of the Board of Directors, Sasaram-Bhabhua Central Cooperative Bank Ltd., Sasaram (for short ''the Bank'') assigning seniority to the Petitioners in he cadre of Assistant with effect from 8.5.86.

3. The case of the Petitioners is that they were appointed as Supervisor in the Bank on 18.04.74. The cadre of Supervisor was merged with the cadre of Assistant on 08.05.86. On 26.12.89 the Respondent No. 6, Managing Director of the Bank invited objections against the provisional seniority list of the combined cadre of Assistant. On 18.04.90 he again invited objections against the new seniority list. On 21.09.90 he published the final seniority list. On 10.08.91 the Petitioners were also granted time bound promotion on the basis of seniority list published on 21.09.90. On 16.01.88, the State Government appointed a

Departmental Promotion Committee. On the objections filed by certain employees the Board of Directors of the Bank decided to review the seniority of the cadre of Assistants published on 21.9.90. On 30.9.94, the Departmental Promotion Committee recommended that the Supervisors should be assigned seniority in the cadre of Assistant with effect from 8.5.86, the date of merger of the cadre of Supervisor in the cadre of Assistant. On 22.7.96 the Board of Directors accepted the recommendation of the Departmental Promotion Committee and directed that the Petitioners should be assigned seniority of the cadre of Assistant from 8.5.86, when the cadre of Supervisor was merged in that cadre. Feeling aggrieved the Petitioners have filed this writ petition.

4. On the other hand, the case of the Respondents is that the Petitioners were appointed as Supervisor in the Primary Cooperative Societies under the Marginal Farmers Scheme at the local level under the arrangements between the then Managing Director of the Scheme and the Management of he Bank. The marginal Farmers Scheme abolished after three years but the Petitioners were wrongly allowed to continue to work. The Respondent No. 2, Registrar Co-operative Societies, Bihar, Patna got the inspection made of the cadres of the Co-operative Bank in the year 1985 when it came to light that the Petitioners were working in the Bank illegally.

In the inspection report, the Supervisors working in different Branches of the Bank were declared additional workers and it was suggested that a separate cadre be kept for them after obtaining permission from the Respondent No. 2. However, on 8.5.66 the Board of Directors of the Bank decided to merge the cadre of Supervisor in the cadre of Assistant. The combined seniority list of the cadre of Assistant was published on 21.9.90 without considering the objections of the Assistants, who were already in that cadre. After publication of the final seniority list the Assistants informed the Administrator that the final seniority list has been published without considering their objections and concealing material facts from him. He, accordingly, again invited objections. In the meantime, a new Board of Directors was constituted and, therefore, no action could be taken by him in the matter. On 16.1.88 the State Government appointed a Departmental Promotion Committee. On 8.9.94 the Departmental Promotion Committee recommended that the combined seniority list published on 21.9.90 be reviewed. On 30.9.94 the Departmental Promotion Committee recommended that the Supervisors may be assigned seniority in the combined seniority list of Assistant cadre with effect from 8.5.86, when the cadre of Supervisor was merged with that cadre. The recommendations of the Departmental Promotion Committee was accepted by the Board of Directors on 22.7.96 and it was decided to assign seniority to the Supervisor in the combined seniority list of Assistant cadre with effect from 8.5.86. It is further stated that there was no cadre of Supervisor in the Bank Service at any point of time and, therefore question of their being appointed in the service of the Bank did not arise. They became member of the Bank Service only after merger of the cadre of Superior in the cadre of Assistant on 8.5.86 and were rightly assigned seniority in that cadre from that date.

5. Heard the learned Counsel for the parties and perused the record.

6. Learned Counsel for the Petitioners contended that the Petitioners were appointed on the post of Supervisor in the Bank on 18.4.74 and, therefore, they should have been given seniority in the combined seniority list of Assistant cadre from that date and the Board of Directors of the Bank has erred in assigning them seniority in the combined seniority list from the date of merger of the cadre of Supervisor in the cadre of Assistant on 8.5.86. He has also invited my attention to a decision of the Supreme Court in Kuldip Chand Vs. Union of India and others, in which the Supreme Court held as under:

The questions, therefore, for our consideration is: who is the senior in the post of the clerk? Admittedly, post of clerk is a feeder post for promotion as an accountant. It is not in dispute that the post of octroi moharrar and the clerk were fused and redesigned as clerks. In the view, it must be deemed that Ashok Kumar has been working as a clerk since inception, viz. November 29, 1976. The Appellant admittedly was appointed as a clerk on 5.2.1979. The post of storekeeper though was a specialized post, the Appellant had not been promoted to that post in his own right. When that post was vacant the. Appellant came to be posted by way of fortuitous circumstances and continued to work in that post, which was otherwise than in his own right. It would not be a ground to claim seniority over Askok Kumar, who admittedly was a clerk from 29.11.1976. The High Court, therefore, was right in its conclusion that the fortuitous circumstance of the Appellant working as a storekeeper in the pay scale of Rs,510-800 cannot permit the Appellant to have a march over the fourth Respondent.

In my opinion, this decision is of no help to the Petitioners. In this case, the Supreme Court was considering the claim of an employee for seniority, who was posted on a vacant post by way of fortuitous circumstance having no right to hold the post. The Supreme Court held that the fortuitous circumstance of that Appellant working in the higher pay scale cannot permit him to have a march over an employee who was otherwise senior to him.

7. The decision of the Board of Directors to assign seniority to the Petitioners in the combined seniority list of Assistants from the date of merger of the cadre of Supervisor in that cadre is a policy decision. It is now well settled that the Courts cannot review the policy unless there is any legal or constitutional bar in adopting such policy or the policy is wholly arbitrary and unreasonable. In Kishori Mohanlal Bakshi Vs. Union of India, , the Supreme Court held as under:

.... There is no denial here of equality of opportunity as among citizens holding posts of the same grade. As between citizens holding posts in different grades in government service there can be no question of equality of opportunity. It is fantastic to suppose that Article 16 of the Constitution forbids the creation of different grades in the government service; that is what the Petitioner''s argument amounts to. The contention that Article 15 has been violated because Class II income tax Officers are not eligible for promotion to higher posts, like the posts of Commissioners and Assistant Commissioners directly is, therefore, wholly unsound.

The only other contention raised is that there is discrimination between Class I and Class II Officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said violates Article 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer''s service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14. The contention that Article 14 of the Constitution has been violated, therefore, also fails.

8. In Reserve Bank of India Vs. N.C. Paliwal and Others, , the Supreme Court held:

...Now under the Combined Seniority Scheme, the integration could only be on grade to grade basis and, therefore, if by the time the Combined Seniority Scheme came Into force, Grade II clerks, junior to the Petitioners, had become Grade I Clerks in the General Departments, they could be equated with only Grade I clerks in the Specialized Departments and to this equation, no valid objection could be taken on behalf of the Petitioners. Undoubtedly, it would cause heart burning amongst the Petitioners to find that Grade II Clerks, junior to them in the General Departments, have become Grade I clerks in the integrated service, while they still continue to be Grade II Clerks, but that is a necessary consequence of integration. Whenever services are integrated, some hardship is bound to result. Reasonable anticipations may be belied.

Now, the first question which arises for consideration, is whether the Reserve Bank violated the constitutional principle of equality In bringing about integration of non-clerical with clerical services. We fail to see how integration of different cadres into one cadre can be said to involve and violation of the equality clause. It is now well settled, as a result of the decision of this Court, in Kishori Mohanlal Bakshi Vs. Union of India, that Article 16 and a fortiori also Article 14 do not forbid the creation of different, cadres for Government service. And if that be so, equally these two articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non clerical with clerical services sought to be effectuated by the Combined Seniority Scheme cannot in the circumstances be assailed as volatile of the constitutional principles of equality.

9. In Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, , the Supreme Court observed:

In regard to the individual instances cited before us as exemplifying the injustice caused to the promo tees, it is not safe to test the constitutionality of a service rule on the touchstone of fortunes of individuals. No matter with what care, objectivity arid foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some members of the service. The paramount consideration is the reconciliation of conflicting claims of two important constituents of service, one of which brings fresh blood and the other mature experience.

10. In K.S. Vora and Others Vs. State of Gujarat and Others, , the Supreme Court held:

The second aspect to be borne In mind is that Rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bonafide and to meet exigencies of the service, no entertain able grievance could be made....

11. In Delhi Science Forum and others Vs. Union of India and another, , the Supreme Court observed:

In Morey v. Doud, Frankfurter, J. said:

In the utilities, tax and economic regulation cases there are good reasons for Judicial self restrain if not judicial deference to legislative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability What has been said in respect of legislation is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The Courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament, which has to approve such policies. Privatization is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power?. What is the mechanism of accountability to ensure that the decision regarding privatization is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations because these issues rest with the policy makers for the Nations. No direction can be given or is expected from the Courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The Telecom policy was placed before the Parliament and it shall be deemed that the Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court.

12. Similarly in State of U.P. and others Vs. Dr. R.K. Tondon and others, etc., , the Supreme Court observed:

Then comes the case of the candidates of third list dated 10.5.1979. Mr. Madhva Reddy has rightly contended that the date of recommendation is not conclusive. Normally, the settled law is that the seniority would be counted from the date on which the candidate actually started discharging the duties of the posts and in the case of direct recruitment the date of appointment in the order of merit prepared by the P.S.C. But in view of the loggerheads between the recruits and the ad hoc doctors, it would be obvious that the ad hoc non-selections should be regularized as per the procedure prescribed in the Ad Hoc Rules. As seen, the third list was sent by the PSC on 10.5.1979, while the Ad Hoc Rules came to be made on 14.5.1979. It is seen that a committee was required to be constituted under Rule 4 to go into the relative merit of the non-selections and those who fulfill the qualifications prescribed in Rule 3(iii) are found to be eligible and fit to be appointed. A list was required to be drawn on the basis thereof and appointments made accordingly. All this exercise obviously would take considerable time. Therefore the non-selections cannot claim any seniority over the candidates already recommended by the PSC in the third list dated 10.5.1979.

13. Same principle was reiterated by the Supreme Court in R.K. Sethi and another Vs. Oil and Natural Gas Commission and others, , in the following words:

On behalf of the Commission, Shri Ashwini Kumar has urged that as a result of fitment under paragraph 5(iii) of the Executive Instructions, the cadre of Telex Operators was merged in the existing cadre of AG-II and the seniority of Telex Operators had to be fixed in accordance with paragraph 1 (viii) of the Executive Instructions read with Clause H(III) of the Principles of Seniority. We find considerable force in this contention. As a result of the fitment policy contained in paragraph 5(iii) of the Executive Instructions the cadre of Telex Operators had been merged in the cadre of AG-II. The words "predestinated" in paragraph 5(iii) has to be read with the words "two or more categories have been merged" contained in paragraph 1(viii) and it can only be construed to mean that as a result of re-designation there was merger of the cadre of Telex Operators into the cadre of AG-II. The statement in paragraph 5(iii) that the total service rendered by the employees in the pay scale of Rs. 360- 640/- and Rs. 370-700 (Rs. 430-880) will be counted for the purpose of promotion to the pay scale of Rs. 470-880 (Rs. 530-1060) only enables the Telex Operators who have been merged in the cadre of AG-II to avail the period of service rendered by them as Telex Operators for the purpose of promotion. But the seniority in the cadre of AG-II will be governed by the provisions contained in paragraph 1(viii) which lays down the principles of fixation of inter se seniority consequent upon merger of two categories. In paragraph 1(viii) it is specified that for the purpose of promotion to the next higher scale, inter se seniority of the employees considered for promotion will be fixed on the basis of length of service put in by the individual in the respective pay scale with those in higher erstwhile scale, being treated as senior to those in the lower erstwhile scale enbloc. This principle is in consonance with the principal''s laid down in Clause H(iii) of the Principles of Seniority prescribed under Regulation 19 of the 1975 Regulations. The said provision deals with the absorption of the employees in the cadre, to which they are temporarily transferred and lays down that their seniority will be counted only from the date of their transfer to the cadre. The merger of the cadre of the Telex-Operator had been brought about by transfer of the Telex Operator to the cadre of AG-II and their absorption in the said cadre. Their seniority will, therefore, have to be determined in accordance with Clause H(iii). We are unable to appreciate how Clause H(iii)(b) can be made applicable. The said Clause relates to fixation of seniority in the matter of departmental promo tees where promotions to a grade are made either from more than one grade or from the same grade divided into different cadres on regional, project or directorate basis. The induction of Telex-Operators Into the existing cadre of AG-II giving the same reason did not involve any promotion from more than one grade or from the same grade divided into different cadres on regional project or directorate basis. The said provisions would have application in the matter of promotion of AG-I from a regional cadre of the post of superintendent in a centralized cadre. In this context, it may also be mentioned that till April 1, 1979 the pay scale of Telex-Operators were lower than those of AG-II and it was only with effect from April 1, 1979 that both are placed on the same scale. The earlier service of the telex-operator in a lower pay scale could not be equated with the service of regular employee in AG-I cadre in a higher pay scale. The Telex-Operators were, therefore, rightly placed below the regular employees in AG-II cadre at the time of merger of the cadre of Telex-Operator in the cadre of AG-II. The High Court in opinion was not right in holding that the Commission had committed an error in placing the Telex-Operator en-bloc below regular employee in AG-II cadre when Telex-Operators were brought in the cadre of AG-II.

14. Now it has to be seen whether there exists any ground for interference with the policy of the Board of Directors of the Bank placing the Supervisors below the Assistants in the combined seniority list. The claim of the Petitioners is that they were appointed as Supervisors in the Bank along with the Assistants in the same pay scale. According to them, not only the advertisement was common but the examination and interview was also held on the same day, in which similar questions were asked from the candidates for both the posts. On the other hand, the case of the Respondents is that there has never been cadre of Supervisor in the Bank and, therefore, question of the Petitioners being appointed in the Bank does not arise. According to them, the Petitioners were appointed as Supervisors in the Primary Cooperative Societies under the Marginal Farmers Scheme at the local level under the arrangements between the then Managing Director of the Scheme and the Management of the Bank. Petitioners have not filed any document to show that there existed cadre of Supervisor in the Bank at any

point of time. Therefore, their claim, that they were appointed in the Bank, cannot be accepted. It is true that both the Supervisors and the Assistants were appointed on the basis of common advertisement in the same pay scale but it is wrong to say that both were appointed in the Bank. On the own case of the Petitioners although the examination and interview for both the posts were held on the same day, but it was not a combined examination. Their claim that similar type of questions were asked from the candidates for both posts clearly shows that it was not a combined examination. Moreover, their claim that they were appointed in the Bank is disproved from the advertisement itself. The relevant portion of the advertisement reads thus:

POSTS of some Supervisors, Cooperative Societies under Marginal Farmers Scheme and some Clerks are vacant under the Sasaram Bhabhua Central Co-operative Bank Ltd. in scale of pay Rs. 220-4-240-5-315.

Use of the words Posts of some Supervisors, Co-operative Societies under Marginal Farmers Scheme in the advertisement are quite significant. If both Supervisors and Clerks were required in the Bank, the advertisement would have said that some posts of Supervisors and Clerks are vacant under the Sasaram Bhabhua Central Co-operative Bank Ltd.

15. In paragraph 4 of the counter affidavit it has been stated that the Petitioners were appointed for the Primary Co-operative Societies under the Marginal Farmers Scheme and their salary was to be paid from the grant of the said scheme at the rate of 100% 75% and 50% for the first, second and third year respectively. The fact that the Petitioners were being paid salary from the grant of Marginal Farmers Scheme has not been denied in the rejoinder affidavit. Rather it has been admitted in paragraph 3 of the rejoinder affidavit in the following terms:

.... It is prerogative of the Bank which is autonomous to decide as to how their business were to flourish and keeping this view in mind the posts of Supervisors were specially created by the Bank although initially some grants were made through scheme but subsequently after the stoppage of grant the Bank never treated them as an outsider and they were regularly paid in the same pay scale admissible to the post of clerk of the bank.

The claim of the Petitioners that subsequently after stoppage of grant the Bank never treated them as an outsider amounts to their admission that they were treated as outsider prior to that, which completely demolishes their case that they were appointed as Supervisors in the Bank along with the Assistants on 18.4.74.

16. The Respondents have also stated in their counter affidavit that the Petitioners were appointed as Supervisor and posted in Primary Co-operative Societies in different areas, whereas the Assistants worked only in the office of the Bank. It is further stated that although the Supervisors and Assistants were in the same pay scale but the Supervisors had neither any promotional avenues

nor were they getting other facilities like contributory Provident Fund etc. available to the Assistants. Moreover, even when the Bank started paying salary to the Petitioners after abolition of the Marginal Farmers Scheme, they were not given any other facilities available to the Assistants till 1982. These facts have also not been specifically denied in the rejoinder affidavit.

17. The Respondents have also filed a copy of the report dated 18.9.88 of the Managing Director of the Bank, in which it has been stated that the Petitioners were appointed as Supervisors under the Marginal Farmers Scheme for three years and were being paid salary from the grant of the scheme. After three years, their services were to be terminated unless the Bank decided to employ them for its own work. It has been further stated that neither the services of the Petitioners were terminated after abolition of Marginal Farmers Scheme nor they were absorbed in the service of the Bank. Since the Petitioners were not employee of general cadre of the Bank, permission of the Registrar, Co-operative Societies, was necessary for continuing them in the Bank and it was decided that they may be allowed to continue in the Bank separate from the Banking Cadre. Subsequently, they were absorbed in the Bank on 8.5.86. Since this report was submitted much before this dispute arose, it can safely be relied upon. The fact that the Petitioners were appointed under the Marginal Farmers Scheme is also proved from the resolution dated 8.5.86 of the Board of Directors of the Bank, in which it has been stated that the services of the Marginal Supervisors working in the Bank be included in the Assistant Cadre of the Bank. This being so, the Petitioners cannot claim that they were in the service of the Bank right from the date of their initial appointment.

18. In my opinion, once it is proved that the Petitioners were appointed as Supervisors in the Marginal Farmers Scheme of the Primary Co-operative Societies on 18.4.74 and their services were included in the cadre of Assistant on 8.5.86, they cannot claim seniority in the cadre of Assistant from the date of their initial appointment as of right. The Board of Directors were quite competent to take policy decision regarding their seniority in the combined cadre. The Board of Directors have taken a policy decision to assign seniority to the Petitioners in the cadre of Assistants from the date of their absorption in the services of the Bank. This policy of the Board of Directors of the Bank is neither arbitrary nor unreasonable or unjust.

19. The next contention of the learned Counsel for the Petitioners is that the Board of Directors of the Bank was not legally justified in reviewing the final seniority list published with the approval of the Administrator of the Bank and that too without affording any opportunity of hearing to the Petitioners. I find no substance in this argument of the learned Counsel. Admittedly no policy decision with respect to seniority of the Petitioners in the cadre of Assistant was taken either by the Board of Directors of the Bank at the time of absorption of their services in the Bank or by the Administrator at the time of granting approval to the combined seniority list. The Petitioners have themselves admitted in

paragraph 4 of the rejoinder affidavit that the matter of inter se seniority between the Supervisors and the Assistants in the combined seniority list was under consideration of the Administrator when a new Board, of Directors was constituted. The relevant portions of the affidavit reads thus:

... When the issue was again re agitated the administrator again rejected the objections and when he was to finally approve the gradation list, a new board was constituted. Therefore he deferred the matter to the newly constituted Board for final approval after keeping the file pending, for about one year.

This being so, it cannot be legally claimed that the Board of Directors was not legally justified in reviewing the seniority list published earlier with the approval of the Administrator of the Bank. It is also wrong to say that the seniority list was reviewed without affording any opportunity of hearing to the Petitioners. From the minutes of the meeting dated 30.9.94 of the Departmental Promotion Committee I find that the representatives of both the parties were duly heard by the committee before deciding that the services of the Supervisors should be considered in the cadre of the Bank with effect from 8.5.86. Moreover, in para 10 of the counter affidavit it has been stated that Vijay Kumar Ojha and the Petitioner No. 1, Ras Bihari Singh, represented the case of Assistants and Supervisors respectively in the meeting of Departmental Promotion Committee on 30.9.94. This paragraph of the counter affidavit has been replied in para 8 of the rejoinder affidavit, which reads thus:

That the statement made in paragraph 10 of the counter affidavit is out and out false and mischievous. The Petitioners had never appeared before the promotion sub-committee meeting on 30.9.94 as apparent from Annexure-11 itself.

Thus, the statements made in para 10 of the counter affidavit has been merely denied without giving any elaborate reply. It is relevant to point out here that Annexure 11 referred to in para 10 of the rejoinder affidavit contains minutes of the meeting dated 30.9.94 of the Departmental Promotion Committee, in which it has been specifically mentioned that representatives of both the sides were duly heard by the committee. It is not clear as to how the denial made in this paragraph of the rejoinder affidavit finds any support from Annexure 11.

20. The last contention of the learned Counsel for the Petitioners is that the Board of Directors of the Bank was not legally justified in reviewing the combined seniority list on the basis of recommendation dated 30.9.94. According to him, entire proceedings of the meeting of that date were vitiated on account of participation of Vice Chairman in the meeting, while he was not a member of the Departmental Promotion Committee. He has also invited my attention to a decision of this Court in Mahesh Chandra Jha v. State of Bihar and Ors. 1989 P.L.J.R. 275, which reads thus:

It is now a well settled principle of law that if an authority, who takes part in a deliberation to which he is not entitled to by reason of the provisions of any statute or any statutory instrument the decision taken in such a meeting becomes vitiated in law.

This contention of the learned Counsel is also without substance. It is relevant to point out here that in para 21 of the writ petition the grievance of the Petitioners was that no government representative participated in the meeting of 30.9.94 while the grievance of their learned Counsel during argument is that the Vice Chairman, who was not a member of the committee, wrongly participated in the meeting. Thus, while no grievance about participation of the Vice Chairman was made in the writ petition, no grievance of non-participation of the government representative was made by the learned Counsel during arguments. However, in my opinion, decision of the Board of Directors to review the combined seniority list cannot be challenged on either of the two grounds. It is true that the government representative did not participate in the meeting of 30.9.94 but it is of no legal consequence. It is not the case of the Petitioners that either the government representative had no notice of the meeting or the Coram of the meeting was not complete. In para 10 of the counter affidavit it has been stated that Sri Jang Bahadur Singh, Vice Chairman was special invitee because he was Honorary Secretary of the Board when decision of absorption of the services of the Petitioners in the Bank was taken. It is not clear as to whether the Vice Chairman participated in the deliberation or not but even assuming that he did so it is of no legal consequence, in view of the fact that the decision of the Departmental Promotion Committee was unanimous and there is no suggestion from the side of the Petitioners that he tried to influence the other members of the committee, although Petitioner No. 1 Ras Bihari Singh was present in the meeting as their representative. Moreover, even assuming that the Vice Chairman wrongly participated in the meeting of Departmental Promotion Committee on 30.9.94, it is of no help to the Petitioners in view of the fact that the decision of Departmental Promotion Committee was not final but was a sort of recommendation to the Board of Directors.

21. As stated above, the recommendation of the Departmental Promotion Committee was considered by the Board of Directors of the Bank in its meeting, dated 22.7.96 and was unanimously accepted. No illegality in the proceedings of the Board of Directors has been pointed out. In my opinion, the decision in Mahesh Chandra Jha (supra) Is not applicable to the facts of the present case.

22. It is relevant to point out here that the Petitioners have filed this writ petition for quashing the resolution dated 22.7.96 of the Board of Directors of the Bank, deciding to treat the Petitioners in the services of the Bank from 8.5.86, as a result of which all the Assistants working in the Bank on that date will rank senior to them in the combined seniority list of Assistant cadre, but they have not imploded the Bank, Board of Directors, the Chairman or the Assistants, who have been benefited by this decision, in the writ petition. Even if lenient view is taken for non-implement of the Bank, Board of Directors and the Chairman in view of the fact that they have imploded Managing Director of the Bank who communicated the decision of the Board of Directors to the Petitioner, non-

implement of the Assistants further disentitles them for any relief in this writ petition. A vested right has accrued in favour of the Assistants from the decision of the Board of Directors of the Bank, which cannot be legally taken away without affording them opportunity of hearing.

23. in the result the writ petition fails and is, accordingly, dismissed.

No order as to costs.

