

(2015) 10 OHC CK 0025

In the Orissa High Court

Case No : W.P. (C) Nos. 12653 and 12419 of 2014

Saroj Kumar Pradhan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

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

Citation : (2015) 10 OHC CK 0025

Hon'ble Judges : C.R. Dash, J.

Bench : Single Bench

Advocate : Satyabrata Mohanty, S.K. Das, S.S. Mohapatra and P.K. Das, for the Appellant; A.K. Bose, A.S.G.I., for the Respondent

Final Decision : Disposed Off

Judgement

C.R. Dash, J.—As both these writ applications involve common facts and questions of law, they are taken up together for disposal by this common order.

2. Petitioners in W.P.(C) No. 12419 of 2014 are working as Office Assistants (Multipurpose) Group-"B" Clerical in the Odisha Gramya Bank. The said post is a feeder cadre for promotion to the post of Officer, Junior Management (Scale-I) ("OJM Scale-1" for short). The petitioners were initially appointed as Junior Clerks in Puri Gramya Bank after due selection. Subsequently, they got promotion to the post of Senior Clerks. In the year 2007, Puri Gramya Bank was amalgamated with Dhenkanal Gramya Bank and on such amalgamation, a new Bank in the name of "Nilachal Gramya Bank" was constituted. Pursuant to such amalgamation, the post of Senior Clerk held by the petitioners was re-designated as Office Assistant (Multipurpose Group-"B" Clerical). Subsequently, Nilachal Gramya Bank was merged with Baitarani Gramya Bank and Odisha Gramya Bank was constituted. Initially, the appointment and promotion of Officers and other employees of Rural Banks was governed under the Regional Rural Bank (Appointment and Promotion of Officers and Other Employees) Rules, 1998. In

the year 2010, Union of India, in exercise of its power U/s. 29 of the Regional Rural Banks Act, 1976 framed new Rules called as "Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2010" superseding the earlier Rule of 1998 ("2010 Rules" in short). Copy of the extract of the said "2010 Rules" has been filed as Annexure-2 to W.P.(C) No. 12419 of 2014 and Annexure-1 to W.P.(C) No. 12653 of 2014.

3. Third Schedule of the 2010 Rules read with Rules-8 and 11 thereof provides for mode of promotion to OJM (Scale-I) in classification of Group-"A". As per the Rule, 50% of the posts in the OJM (Scale-I) is to be filled up by direct recruitment and 50% of the posts is to be filled up by promotion from the feeder cadre, i.e., Group-"B".

4. The grievance of the petitioners is that, though the process vide Annexure-8 to W.P.(C) No. 12419 of 2014 and Annexure-5 to W.P.(C) No. 12653 of 2014 have had been initiated and completed for filling up the posts of OJM (Scale-I) through direct recruitment, no step has been taken for filling up the post of OJM (Scale-I) through promotion. It is further alleged that number of vacancies of different years to be filled up by promotion are there. But the opposite party No. 4, i.e., the Bank authorities are acting ad-libitum and to the prejudice of the petitioners in not filling up those posts. Therefore, prayer has been made by the petitioners to quash the recruitment proceeding for filling up of the post of OJM (Scale-I) through direct recruitment vide Annexure-8 and to consider the case of the petitioners for promotion before going for direct recruitment.

5. Petitioner in W.P.(C) No. 12653 of 2014 is the General Secretary of Odisha Gramya Bank Karmachari Sangha. He has preferred the writ application on behalf of the employees entitled to the promotion with the self-same prayer and the grievance.

6. It is asserted by the petitioners in both the writ applications that the employees in Group-"B" including the petitioners in W.P.(C) No. 12419 of 2014, who are otherwise entitled for promotion, have been working as Office Assistants in the Bank for more than 30 years and 1 or 2 of them are on the verge of retirement. Though they are the senior-most employees in the cadre, they are being ignored for promotion due to the lackadaisical attitude of the authorities in management of the Bank. In the year 2008, the opposite party No. 4-Bank notified for appointment by promotion to 84 posts of OJM (Scale-I). But the authority of the Bank withdrew from the process by Notification dated 22.01.2011 for the reasons best known to them. On 11.06.2011, the Bank again notified for appointment through promotion to 98 posts of OJM (Scale-I). The process of selection was initiated and completed, but the petitioners in W.P.(C) No. 12419 of 2014 could not get through the selection process. Challenging the selection process, more than 10 writ applications are stated to have been filed in this Court and those are stated to be sub-judice in writ applications and writ appeals. Again on 09.07.2012, the Bank notified for appointment through promotion to 51 posts of OJM (Scale-I). By virtue of the interim order passed by

this Court, 38 posts were kept reserved for the petitioners in the aforesaid writ applications and others, who had challenged the aforesaid Notification dated 09.07.2012. Later, the Bank, vide Notification dated 01.12.2012 withdrew from the selection process. On 28.12.2013, the Bank declared about the Board's approval on 20.12.2013 regarding appointment by promotion to 192 vacancies in OJM (Scale-I). In spite of the Board's decision, however, the authorities of the Bank did not go for appointment through promotion and invited applications in September, 2012 and in September, 2013 for filling up of the posts through direct recruitment. It is alleged that such attitude by the authorities of the Bank in not giving appointment to the employees from the feeder cadre in the OJM (Scale-I) through promotion is unreasonable, illegal and violative of Article-14 of the Constitution of India. It is further alleged that, if the direct recruits are allowed to be appointed ignoring the quota fixed for the promotees, such direct recruits shall be senior to the promotees, who may get promotion subsequently and they have to work under their juniors. It is submitted that the quota rule is linked up with seniority rule and any de-linking would render the seniority rule wholly unreasonable.

The interveners are the persons, who have come out successful in the recruitment test for direct recruitment. Their plea is that the process of promotion being entirely different from the process of selection for direct recruits, they should not be debarred from getting the appointment.

7. The opposite party No. 4-Bank, in its counter affidavit, has taken the plea that the Bank has circulated the news of approval of its Board about certain posts, but the same by itself does not mean that the Bank is to go for appointment to the said posts through promotion, since the said posts are yet to be notified. The Notification in question requires fulfillment of certain conditions and one of such conditions is making/declaring the "inter se seniority list", which has not yet been approved by the Bank due to pendency of various writ applications before this Court. Moreover, interim orders are continuing in W.P.(C) No. 12440 of 2014, W.P.(C) No. 12582 of 2014, W.P.(C) No. 12696 of 2014 & W.P.(C) No. 12915 of 2014. The writ appeal vide W.A. No. 109 of 2014 is also pending and all these matters relate to promotion issue of the employees. As the inter se seniority list has not yet been prepared, it is difficult for the Bank to proceed to give appointment in OJM (Scale-I) through promotion. It is further averred in the counter affidavit that similar issue was raised before this Court in W.P.(C) No. 12060 of 2013 (Annexure-B/1 to the counter affidavit). In paragraph-7 of the said writ application, this Court has held that two different methods have been prescribed to fill up the post of Officer Junior Management (Scale-I) by way of direct recruitment and by promotion from Group-"B". The procedure to fill up the post of OJM (Scale-I) by direct recruitment and by promotion are totally different aspects and procedure. In view of such ruling of this Court, there is no substance in the prayer of the petitioners to quash the recruitment process for filling up the post of OJM (Scale-I) through direct recruitment.

8. For better appreciation, the relevant clauses of 2010 Rules are quoted below:-

" xxx xxx xxx xxx xxx

Rule-5. Vacancies:-

The Board may determine the number of vacancies in each category of posts to be filled by direct recruitment or promotion, keeping in view the Guidelines approved by Central Government from time to time.

Rule-6. Filling up of vacancies:-

(i) All vacancies determined under rule 5 by the Board shall be filled by promotion or direct recruitment in accordance with the provisions contained in these rules and Third Schedule of these rules;

(ii) Officers in Senior Management of Scale IV and Scale V are liable to be posted in any other Regional Rural Bank sponsored by the same Sponsor Bank as General Manager as per the decision of the Sponsor Bank.

Rule-8. Direct recruitment:-

The vacancies of Officers and employees shall be filled by each Regional Rural Bank in accordance with the provisions of Third Schedule of these rules and subject to guidelines as may be issued by the Central Government from time to time.

Rule-11. Constitution and function of Committee:-

(i) The Board may, from time to time, constitute Committees consisting of the persons specified under each post in the Third Schedule for the purpose of recommending candidates for recruitment or promotion to the posts referred to in the Third Schedule.

(ii) The Committees shall function for such period as may be determined by the Board.

(iii) The Committees shall recommend to the Appointing Authority the candidates for recruitment or promotion to the posts mentioned in the Third Schedule to these rules, in accordance with the provisions contained in that Schedule."

THIRD SCHEDULE (See rule 8 and 11)

Appointment to different categories of officers and employees to Group "A", "B" and "C" posts whether by direct recruitment or by promotion shall be effected as follows:

Part I-Group "A" Recruitment and Promotion

9. On interpretation of the above Rule and the Third Schedule, this Court, in W.P. (C) No. 12060 of 2013 disposed of on 20.01.2014 in paragraph-7 held thus:-

"From the above Rules, 2010, it is clear that two different methods have been

prescribed to fill up the post of Officer Junior Management (Scale-I) by way of direct recruitment and by promotion from Group "B". The candidates are to appear written test and interview in both the system. The employees who are to be promoted from Group "B" are also to appear the written test and interview and their performance appraisal reports are to be considered. Their eligibility criteria are also to be relaxed in case they passed JAIIB and CAIIB. Therefore, the procedure to fill up the post of Officer Junior Management (Scale-I) by direct recruitment and by promotion are totally different aspects and procedure. In the present case in the meanwhile the written test and interview has been completed so far as promotional posts are concerned. However, the employees who are eligible to get promotion, their cases shall be considered from the date of completion of the selection process."

10. Taking into consideration the self-same grievance of the petitioners in the aforesaid writ application as asserted in the present writ applications, this Court disposed of the aforesaid writ application with a direction to the opposite party No. 4-Bank to issue appointment letters in favour of the candidates, who have been selected by way of direct recruitment for the post of Officer Junior Management (Scale-I) in accordance with the Rules, 2010 as expeditiously as possible preferably within a period of four weeks from the date of production of certified copy of the order.

11. So far as the observation of the Court in W.P.(C) No. 12060 of 2013 in paragraph-7 is concerned, I do not and I cannot take a different view. But fact remains that appointment to OJM (Scale-I) through promotion have had not been taken up since years as alleged by learned counsel for the petitioners. The 50% quota fixed for promotion has been lying vacant. The intention of the rule is not to fill up the post in a particular year through direct recruitment, keeping the promotional quota vacant. In that event, the persons, who are otherwise eligible to compete for the promotion, may be prejudiced for the latches on the part of the Bank, i.e., the appointing authority. Principle of justice and fairness demands that, if there is a quota system, the quota for each category be filled up in the same year. Filling up the quota of a particular category ignoring filling up the quota for other categories is not in the interest of justice and fairness. In that event, the quota for the category, which lies vacant without being filled up, creates prejudice in the mind of the aspirants and they lose their seniority for the said period. In the instant case, however, the promotional quota from Group-"B" category is not being filled up, as matters regarding seniority of employees of Group-"B" category are subjudice in the Court and interim orders having been passed in those cases, the appointing authority, i.e., the Bank is in a fix to get rid of the situation.

12. Taking into consideration the above discussion and especially the grievance of the petitioners in both the writ applications, I feel inclined to issue the following directions:-

(i) The Opp. Party-Bank, i.e., the Appointing Authority shall ear-mark the quota

of promotional posts year-wise from the year, they are vacant. Number of vacancies in each year, from the year, the posts are vacant be clearly mentioned against each year till the date of preparation of the list.

(ii) The recruitment process for promotion be taken up immediately when it becomes feasible and possible on the part of the opp. Party No. 4 after disposal of the pending writ applications. The entire exercise for all the years as per the list according to the above direction be taken up in one go.

(iii) The candidates selected shall be fitted against the vacant quota of each year successively on the basis of their position in the select list irrespective of their date of appointment. Such promotees fitted against each year's vacancy shall be paid salary in the scale, they would have been entitled to get, had they been promoted in time in that year.

(iv) No payment shall be made towards any arrear for the non-working period.

13. If these methods are adopted, I think prejudice caused to the promotee can be lessened to some extent, though not fully eradicated. The opposite party No. 4-Bank should take immediate steps to get the pending writ applications and writ appeals disposed of by the assigned Bench and should take expeditious steps for promotion of the employees following the method as outlined (supra). If required, a Special Committee shall be formed to fix the "inter se seniority" between the direct recruits and promotees of a particular year, as such rule is found to be absent in 2010 as placed before me.

14. The Bank authority may also give ad hoc promotion from the feeder cadre on officiating basis pending selection process after taking leave in the pending writ applications and the writ appeals, if such leave is required to be taken.

15. So far as the direct recruits are concerned, the selection process having been completed and taking into consideration the hardship, the Bank is facing for the shortage of staffs, appointment letters in favour of the selected candidates be issued in accordance with the 2010 Rules as expeditiously as possible preferably within a period of four weeks from the date of production of certified copy of this order.

16. Both these writ applications are accordingly disposed of.