

(2014) 09 PAT CK 0076

In the Patna High Court

Case No : LPA No. 749 of 2014 in CWJC No. 3368 of 2010

Shambhu Dayal Pathak and Others

APPELLANT

Vs

Madhya Bihar Gramin Bank and Others

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : (2015) 2 PLJR 474

Hon'ble Judges : I.A. Ansari, J;S.P. Singh, J.

Bench : Division Bench

Advocate : Mukesh Kumar No. 1, for the Appellant

Final Decision : Dismissed

Judgement

S.P. Singh, J.?The instant appeal filed by only four of the ten writ petitioners is against the order, dated 24.2.2014, passed by a learned Single Judge of this Court, in C.W.J.C. No. 3368 of 2010, rejecting the prayer of the writ petitioners to cancel the entire exercise of promotion from Officer Scale-II to Officer Scale-III, conducted pursuant to the Circular, dated 6.11.2009, bearing No. 21 of 2009 of Human Resources Development Department of Madhya Bihar Gramin Bank (hereinafter referred to as "Gramin Bank"). The writ petitioners had challenged the selection process of promotion on the ground of unfair play and manipulation.

2. Resisting the assertion of the writ petitioners, the case of Gramin Bank was that the promotion from Officer Scale-II to Officer Scale-III was conducted in accordance with the statutory rules, being Regional Rural Bank (Appointment and Promotion of Officials and other Employees) Rules, 1998 (hereinafter referred to as "1998 Rules"), framed by the Ministry of Finance, Government of Bihar.

3. Before we examine the rival submissions of the parties, it would be relevant to notice that the Human Resources Development Department of the Gramin Bank, vide Circular, dated 6.11.2009, bearing No. 21 of 2009, initiated exercise of promotion from Officer Scale-II to Officer Scale-III. The exercise of promotion was to be conducted in accordance with 1998 Rules. Rule 6 of 1998 Rules

provides that all vacancies, determined under Rule 5 of 1998 Rules by the Banking Service Recruitment Board, shall be filled up by promotion for direct recruitment in accordance with the provisions contained in 1998 Rules read with the third Schedule to 1998 Rules. The third Schedule appended to 1998 Rules, mandates that appointment to the post of Officer Scale-III shall be made by promotion only on the basis of seniority-cum-merit and officers, who had put in minimum seven years in service in Officer Scale-II on regular basis in the Regional Rural Bank, would be eligible for promotion to Officer Scale-III.

4. Clauses 1(i) and 1(j), which contain the process of selection, is quoted hereinbelow for easy reference:--

"1. (i) Number of candidates to be considered for promotion.--The number of candidates to be considered for promotion from Officer Scale II to Officer Scale III shall be restricted to three times the number of vacancies available for promotion.

(j) Selection Process.--The selection shall be on the basis of performance in the interview and Performance Appraisal Reports for preceding five years as per the division of marks given below:--

(A) Interview.--25 marks

The minimum qualifying marks in the interview are fifty percent.

(B) Performance Appraisal Reports.--75 marks

Performance Appraisal Reports for the preceding five years shall be considered for the purpose of awarding marks for promotion.

Total Marks-100"

5. It would appear from Clause 1(i) and 1(j) of the third Schedule that selection was to be made on the basis of performance in interview and performance appraisal report of preceding 5 years. While 75 marks were earmarked for performance appraisal report, 25 marks were earmarked for interview. Clause 1(j)(A) also provides that minimum qualifying marks in the interview was 50 per cent.

6. In order to be selected for promotion, it was necessary for a candidate to secure, at least, 12.5 marks in interview. A candidate, securing less than 12.5 marks, would have, thus, rendered himself ineligible for being selected.

7. Altogether 68 persons were found eligible and were placed in the zone of consideration. Out of 68 candidates, only 58 candidates participated in the selection process. Furthermore, only 29, out of 58 candidates, secured 50 per cent of the qualifying marks in the interview. Since the number of seats, available for promotion to Officer Scale-III, was 29, all the said 29 employees were selected for promotion. None of the writ petitioners was selected, because they had failed to secure, in the interview, the qualifying marks.

8. In the writ petition, the writ petitioners alleged that there was unfair play and manipulation in the selection process. In support of this submission, the writ petitioners contended that it would be highly improbable that the number of candidates, who had qualified in the interview, was same as the number of vacancies. The learned Single Judge dismissed this contention of the writ petitioners holding that the interview was conducted by a panel of experts and the writ petitioners had not brought any material on record to show that the experts were either biased or acted unfairly and as such, the learned single Judge declined the writ petitioners' prayer to cancel the selection process on the ground of bias or mala fide.

9. The learned Single Judge further noticed that 9, out of the 10 writ petitioners, including the appellants (save and except writ petitioner No. 2, who retired), again, participated in the selection process, in the year 2012, for promotion to the post of Office Scale-III from Officer Scale-II and three, out of the four appellants, succeeded in the selection process of the year 2012 and the selection process was, again, conducted in the year 2013, and while appellant No. 1 herein did not participate in the selection process so held and the writ petitioner No. 4 retired in the meanwhile and though the writ petitioner No. 8 had participated in the selection process, he failed.

10. We find that the only ground, which the appellants have taken in the appeal, while assailing the impugned order passed by the learned single Judge is that the action of the respondents herein suffered from bias and mala fide and that they have manipulated the results, particularly, the interview. The appellants state that the respondents deliberately did not give them qualifying marks in order to deny them promotion and, thus, ensured promotion of their favoured ones, though some of them were junior to the appellants.

11. The submissions of the appellants are devoid of any material foundation. The appellants have not brought any material before this Court to demonstrate as to which of the selected candidates was favoured and by whom. This Court, sitting in writ jurisdiction, would not sit in judgment over the marks allotted by the experts on the basis of interview held unless and until it is demonstrated that a particular candidate has been given more marks or less marks on account of personal bias and/or mala fide. In this regard, reference may be made to *Madan Lal & Ors. vs. State of J & K & Ors.*, (AIR 1995 SC 1028), *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, , and *Sanchit Bansal and Another Vs. The Joint Admission Board (JAB) and Others*, .

12. We further find that the selection was carried out in accordance with 1998 Rules as well as the mode of selection as provided in the third Schedule to 1998 Rules. The appellants have neither challenged the vires of 1998 Rules nor is it their case that the selection process had been conducted in violation of the statutory provisions. In the result, we do not find any reason to interfere with the conclusions reached by the learned single Judge. This appeal is accordingly dismissed.

I.A. Ansari, J.

I agree.