

(2018) 04 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9889, 8986, 10063, 10675, 11031, 11033, 11136, 11137, 11144 of 2017

Shesha Ram @APPELLANT@Hash State of Rajasthan

Date of Decision : 02-04-2018

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 26A

Citation : (2018) 04 RAJ CK 0095

Hon'ble Judges : ARUN BHANSALI, J

Bench : Single Bench

Advocate : S.K.M. Vyas, Premlata Gaur, V.S. Bhati, Mahaveer Singh, Surendra Bagmalani, Salil Trivedi, Kusum Rao

Final Decision : Allowed

Judgement

These writ petitions have been filed by the petitioners aggrieved against condition No. 4 indicated in order dated 09.05.2017 (Annexure-5) issued by,,,,,,

respondent No.3 Bank regarding age limit for selection to the post of Loan Supervisor and a direction has been sought to allow the petitioners to,,,,,,

participate in the ongoing process for selection/appointment on the post of Loan Supervisor.,,,,,,

The petitioners were initially appointed on the post of Â Manager of the respective Gram Sewa Sahkari Samiti (â??the Â Societyâ??) under the,,,,,,

provisions of Agriculture Credit Cooperative Societies Managers Selection/ Appointment and Service Rules, 1977 (â??the Rulesâ??) and they were",,,,,,

discharging their duties on the said post.,,,,,,

It is claimed that the next selection post for the persons holding the post of Manager would be that of Loan Supervisor and looking to the exigency of,,,,,,

work qualification and seniority, they were directed to discharge duties on the

post of Loan Supervisor by order dated 04.06.2014 passed by the Bank,",,,,,
resulting in the petitioners discharging duties on the post of Loan Supervisor as well as Manager of the Society.Â,,,,,

The State Government by its order dated 21.09.2016 (Annexure-4) issued directions indicating qualifications and conditions for the,,,,,

selection/appointment to the post of Loan Supervisor.Â Â It is claimed that in the Schedule-C as attached to the order dated 21.09.2016, age criteria",,,,,

was not indicated and only condition indicated was that 100% selection would take place from PACS Managers (regularly selected).,,,,,

Pursuant to the order dated 21.09.2016, the respondent No.3 bank issued a communication dated 09.05.2017 (Annexure5), inter alia, indicating that",,,,,

selection to the post of Loan Supervisor in Regular (cadre/selection through screening) is proposed and a copy of application form was enclosed,,,,,

requiring Branch Manager to get prepared the application forms from eligible candidates for further proceedings.,

In the application form, condition No.4 pertain to date of birth & age and it was indicated therein that the minimum age was 21 years and maximum",

aged was 33 years with relaxation of 5 years to the candidates belonging to SC, ST, OBC, Ex Service Man, persons with disabilities and Woman",

applicants.,

The petitioners though had crossed the upper age limit as indicated in the application form, applied pursuant to the order dated 09.05.2017 (Annexure-",

4) but was orally told that their applications on account of eligibility conditions of age may be rejected.,

Representations were made by the petitioners, which were not considered.",

It is submitted by learned counsel for the petitioners that by order dated 09.03.2005 (Annexure-R/3/1), procedure for selection, promotion and for",

taking persons on contract basis were issued providing for the educational qualification, age etc. for direct recruitment, promotion etc. and in the",

Schedule to the procedure for promotion, for Central Cooperative Banks under field staff promotion from Manager PACS to Loan Supervisor and",

from Loan Supervisor to Assistant Executive Officer has been clearly indicated.Â The same also provided for the constitution of the Promotion,,

Committee and Procedure for promotion etc.,

The Schedule attached at the relevant time, indicated that the post of Loan Supervisor would be filled in 100% by selection from PACS Manager, who",,,,,,

must be Graduate and further provided for "not less than 5 years" service on the post of PACS Manager (Senior Grade) in the same",,,,,,

establishment", which clearly indicated that the position of Loan Supervisor is a promotional post, the criteria of age, which has been prescribed for",,,,,,

"direct recruitment" has no application to the post of Loan Supervisor.Â The said order dated 09.03.2005 was modified by order dated",,,,,,

21.09.2016 (Annexure-4), wherein, while maintaining the mode of recruitment at 100% by selection from PACS Managers, procedure for selection by",,,,,,

way of written test and merit based on the written examination has been provided.",,,,,,

It was submitted that the prescription of maximum age of 33 years with relaxation of 5 years for certain categories is de hors the order dated",,,,,,

09.03.2005 (Annexure-R/3/1) and order dated 21.09.2016 (Annexure-4) and, therefore, the condition deserves to be quashed and set aside.",,,,,,

With reference to the order dated 09.03.2005, it was submitted that the age criteria has only been indicated for direct recruitment and as the post of",,,,,,

Loan Supervisor is not a post of direct recruitment, the said age criteria cannot be applied for selection to the post of Loan Supervisor.Â It was",,,,,,

submitted that the said aspect in the context of applicability of Rule 26A of the Rajasthan Service Rules, 1951 for the purpose of fixing pay on",,,,,,

promotion as Loan Supervisor, when a stand was taken by the Bank that the position of Loan Supervisor was that of direct recruitment, the said",,,,,,

argument was examined and negated by the Court in Amar Singh v. The Jalore Central Cooperative Bank Ltd., Jalore : S.B.C.W.P. No. 6996/2014,"",,,,,,

decided on 17.10.2016 which judgment has been upheld by the Division Bench in The Jalore Central Cooperative Bank Ltd., Jalore v. Amar Singh :","",,,,,,

D.B. Special Appeal (W) No. 433/2017, decided on 18.07.2017 and the submissions made by the respondents are baseless.Â It was prayed that the",,,,,,

writ petition be allowed and the condition No. 4 as indicated in the application form (Annexure-5) may be quashed and set aside.",,,,,,

Learned counsel appearing for the respondent Bank vehemently opposed the submissions made by learned counsel for the petitioners and submitted",,,,,,

with reference to the order dated 09.03.2005 (Annexure-R/3/1) that the order dated 21.09.2016 (Annexure-4) issued by the Registrar has to be read",,,,,,

with order dated 09.03.2005 (Annexure-R/3/1), which clearly prescribes age limit i.e. minimum 21 years and maximum 33 years and, therefore, the",,,,,,

submission made in this regard are baseless and the writ petition deserves to be quashed and set aside.,,,,,,

Further reliance has been placed on orders dated 21.05.2008 (Annexure-R/3/3) and corrigendum dated 28.06.2008 (AnnexureR/3/4), wherein, the",,,,,,

eligibility criteria as indicated in the order dated 09.03.2005 came to be modified and it was clarified that for the post of Loan Supervisor, the selection",,,,,,

would take place and if anywhere promotion has been indicated, the same would be read as selection and therefore, once the selection is to take place",,,,,,

for the post of Loan Supervisor, the age criteria as prescribed in direct recruitment would apply and, therefore, the submissions made in this regard",,,,,,

cannot be countenanced.Â It was submitted that merely because for the purpose of Rule 26A of the RSR, it has been laid down that the said",,,,,,

provision would apply, the same ipso facto cannot make the position of Loan Supervisor as a Â promotional post and, therefore, also the writ petition",,,,,,

deserves to be dismissed.,,,,,,

A submission was sought to be projected that as the Central Cooperative Banks are independent to the PACS the very concept of promotion would,,,,,,

have no application as essentially the promotion can take place within the same organization and, therefore, also the writ petition deserves to be",,,,,,

dismissed.,,,,,,

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.,,,,,,

The foundational order for the purpose of Â recruitment/promotion under the Rajasthan Cooperative Societies Rules is order dated 09.03.2005.Â The,,,,,,

said order provided for the educational qualification, age, determination of vacancies, procedure for selection and constitution of the selection",,,,,,

committee under the head procedure for selection, procedure for direct recruitment, appointment on contract basis and for promotion have been",,,,,,

indicated.Â Under the procedure for promotion, various posts have been indicated alongwith promotional cadre for Rajasthan State Cooperative",,,,,,

Banks, Rajasthan State Land Development Banks and Central Cooperative Banks.Â Under the Central Cooperative Banks, banking staff and field",,,,,,

staff have been separately categorized and for field staff, promotion from the

post of PACS Manager to Loan Supervisor and Loan Supervisor to" ,,,,,,

Assistant Executive Officer has been indicated.,,,,,,

Under the title age, the following has been indicated:-" ,,,,,,

S.No.,Designation,"Mode of
Recruitment", "Qualifications
for direct
recruitment/
contract", "Qualification
for selection", "Qualifying
service on the
post of
CCBâ??s
from which
eligible for
selection",Remarks
1,2,3,4,5,6,7
12,"LoanÂ
Supervisor","100% by
selection from
PACS
Managers
(regularly
selected)",-,"Academic
qualification, as
may be
prescribed in
the PACS
Managers
service rules, at
the time of his

selection i.e.

Higher

Secondary/

Senior

Secondary or

Graduate or

equivalent.", "PACS/LAMPS

Managers who

have total 5

years

experience as

regularly

selected

Managers", "For selection on

the post of loan

supervisor,

written test will

be

conducted.Â

All

PACS/LAMPS

man agers will

be eligible who

fulfill

educational

qualifications

and qualifying

service as

mentioned in

column 5&6.Â

The selection
shall be on
basis of merit
list of the
aforesaid
written
examination.

recruitment and laid down as under:-,,,,,,

As a consequence of the discussion made herein above, I am of the firm opinion that the action of the respondent bank in treating the",,,,,,

petitioners' appointment on the post of Loan Supervisors to be by way of direct recruitment rather than by way of promotion from the cadre of",,,,,,

PACS Manager is totally unjust, illegal and contrary to the statutory orders governing the selections. This Court has no hesitation in holding that the",,,,,,

petitioners' selection as Loan Supervisors in the Bank was definitely by way of promotion. As",,,,,,

The Division Bench of this Court in appeal filed by the Bank, upheld the judgment of the learned Single Judge, inter alia, observing as under:-",,,,,,

We have examined the nature of the appointments in question. It is not in dispute that at the relevant time, recruitment was made by the Bank as",,,,,,

per order dated 09.03.2005 prescribing the mode of appointment to the post of Loan Supervisor inter alia. Clause (1) of the order dated 09.03.2005",,,,,,

prescribed that the educational qualification for direct recruitment as well as for promotion shall be as per Schedule A to C appended with the order",,,,,,

Clause (2) of the order referred above pertains to minimum and maximum age limit for appointment to different posts in different cadres of the",,,,,,

appellant Bank. Suffice to mention that a higher maximum age limit is prescribed for the working staff with an additional relaxation of 5 years. Clause",,,,,,

(3) of the order provides procedure for direct recruitment as well as for promotion. The order aforesaid also provides a mode to maintain seniority of",,,,,,

the persons appointed by way of direct recruitment and by way of promotion. An important aspect of the matter is that clause (3) and (4) of the order",,,,,,

aforesaid prescribes the constitution of Departmental Promotion Committee and the procedure that is to be followed by the Departmental Promotion",,,,,,

Committee while considering case of a person for promotion. It is not in dispute that the appointments in question were made in accordance with the,,,,,,

procedure laid down in the order dated 09.03.2005. The appellant in their reply to the writ petition quite specifically stated that the Registrar has laid,,,,,,

down the service conditions under the order dated 09.03.2005 and that was adhered while making the appointments. It is also not in dispute that the,,,,,,

respondent-petitioners were already working as Manager with different Primary Agriculture Credit Cooperative Societies and they were eligible to be,,,,,,

considered for appointment to the post of Loan Supervisor by way of promotion as per the order dated 09.03.2005.,,,,,,

It is also pertinent to notice that the orders of appointment issued in favour of the respondent-petitioners nowhere refers about the procedure that was,,,,,,

to be adhered while making appointments through direct recruitment. No advertisement, which is necessary requirement to initiate the process of" ,,,,,,

appointment through open market, too has been brought to our knowledge.â??" ,,,,,,

In view thereof also, the submissions made in this regard cannot be accepted." ,,,,,,

The argument sought to be projected by learned counsel for the respondent Bank that as the Banks are independent of the PACS/LAMPS, it cannot" ,,,,,,

be said that the position of Loan Supervisor is that of promotion, also cannot be accepted in view of the judgment in the case of Amar Singh (supra)." ,,,,,,

Besides the above, even if, the orders dated 09.03.2005 (Annexure-R/3/1) or 21.09.2016 (Annexure-4) provides for a written test and provides for" ,,,,,,

selection on the basis of merit, still it cannot be said that the position of Loan Supervisor is that of direct recruitment, inasmuch as, a direct recruitment" ,,,,,,

envisage several other things as prescribed in order 09.03.2005 e.g. an open advertisement, which procedure admittedly is not applicable/has not been" ,,,,,,

followed.,,,,,,

In view of the above discussion, the action of the respondents in providing for the age criteria in the application form (Annexure-5) under condition" ,,,,,,

No. 4 cannot be sustained.,,,,,,

Consequently, the writ petitions filed by the petitioners are allowed.Â The prescription of maximum age limit of 33 years by the respondents for" ,,,,,,

selection to the post of Loan Supervisor is quashed and set aside.Â The

application forms filed by the petitioners if they are otherwise eligible shall,,,,,,
not be rejected by the respondent Bank on the ground of age and in case other
eligible candidates, who on account of prescription of maximum age",,,,,,
limit have not applied, they will also be provided opportunity to apply, pursuant
to the order dated 09.05.2017." ,,,,,,
No order as to costs.,,,,,,