

(2005) 03 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No's. 36247 and 36257 of 2000

Shivaji

APPELLANT

Vs

Malaprabha Grameena Bank and Another

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 2 KarLJ 467 : (2005) 2 KCCR 92 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; S. Shekhar Shetty, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The petitioners in these petitions, assailing the correctness of the impugned circular dated 3rd November, 2000 issued by the first respondent vide Annexure-J in respect of norms provided for filling up of posts of clerk from the cadre of Messenger-cum-Sweeper, have presented the instant writ petitions. Further, the petitioners have sought for a direction, directing the respondents to consider the case of the petitioners in terms of the circular dated 21st April, 1997 and declare that, without considering the case of petitioners in terms of the circular dated 21st April, 1997 and resorting to fill up the posts by means of the norms as contemplated under the circular dated 3rd November, 2000 is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2. The grievance of the petitioners in these petitions is that, petitioner in first petition and petitioner in second petition were initially appointed as Probationary Messenger-cum-Sweeper during the years 1988 and 1993 respectively. Subsequently, they have been confirmed and posted as officiating clerks in the years 1995 and 1994 respectively. Thereafter, the petitioners have been given an order to draw the officiating allowance by a communication. When things stood thus, the respondents, by their order dated 3rd August, 1999, have relieved the

petitioners from clerical duties and asked them to work as Messenger-cum-Sweeper vide Annexure-C and D respectively in these two petitions. Being aggrieved by the said order dated 3rd August, 1999, the petitioner earlier had filed Writ Petition No. 18106 of 2000 and Writ Petition No. 28241 of 2000 respectively before this Court. Both these petitions had come up for consideration before this Court on 8th August, 2003 and this Court, after hearing both sides, has rejected Writ Petition No. 18106 of 2000 (filed by petitioner in first petition) and so far as Writ Petition No. 23241 of 2000 filed by the petitioner in second writ petition is concerned, the same has been disposed of with a direction to respondent-authority to consider the representation stated to have been filed by the said petitioner on 15th August, 1999, if it is available in the records and pass appropriate orders in accordance with law, as expeditiously as possible. Be that as it may.

3. Thereafter, the petitioner in first writ petition has given detailed representations to the Chairman of the first respondent-Malaprabha Grameena Bank, Dharwad (hereinafter called "Bank") on 15th August, 1999, 12th December, 1999 and 20th December, 1999 respectively vide Annexures-D, E and F and the second petitioner has given representation dated 15th August, 1999 vide Annexure-F. When such being the position, it is the case of the petitioners that, though the petitioners are eligible to the post of Clerks, the respondents have proceeded to fill up the said posts by means of the impugned circular dated 3rd November, 2000. Being aggrieved by the impugned circular dated 3rd November, 2000 and also for not extending the benefit of the circular dated 24th March, 2000 the petitioners having no other alternative efficacious remedy, felt necessitated to present these petitions.

4. The principal ground urged by the petitioners in the instant writ petitions is that, as per circular dated 3rd November, 2000, the Bank has admittedly followed the procedure seniority-cum-merit and thereby the Bank further provided for 80 marks for written test and 20 marks for viva-voce and therefore, the circular is contrary to law laid down by this Court. The petitioners have already worked as Clerk on officiating basis in terms of the circular dated 21st April, 1997 and the respondents are under obligation to extend the benefit of the said circular as these petitioners have already acquired graduate qualification. He submitted that, the petitioners had worked as "officiating clerks" from 1995 to 1999 respectively and have been paid 7.5% as officiating allowance which is calculated on the basic salary of the petitioners in terms of the circular issued by the Bank which was issued in accordance with the National Industrial Tribunal Award. Therefore, he submitted that, since the petitioners have already worked as clerks in the vacancies, at least in the said vacancies, the petitioners should have been continued and since the same has not been done by respondents, the petitioners have approached this Court. He further submitted that, the respondents have no power to prescribe the marks for written test and viva-voce, which is contrary to the selection by way of seniority-cum-merit. Therefore, the impugned circular is liable to be set aside.

5. Per contra, the learned Standing Counsel appearing for respondents-Bank has filed a detailed statement of objections, inter alia, contending and substantiating the circular issued by respondents-Bank stating that, the said circular has been issued fully in concurrence with the decision of the Apex Court in B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., and also in pursuance of the observations made by this Court in Writ Petition Nos. 23867 to 23870 of 1995, DD: 24-3-2000 (Mohan Pavate and Others Vs. Management of Malaprabha Grameena Bank, Dharwad and Others, and also in accordance with the Regional Rural Banks (Appointment and Promotions of Officers and Other Employees) Rules, 1988, notified by the Government of India, Ministry of Finance. Department of Economic Affairs (Banking Division) on 29th July, 1988 which was made uniformly applicable to all the 196 Regional Rural Banks operating throughout the country, which is self-explanatory and evident as to how promotion should be made. In pursuance of the said rule, the impugned circular has been issued without any infirmities and the same is in conformity with the rules. Further, it is specifically contended that, in fact, in the said rule issued for promotion, it has been provided that, an extent of 10% of total available vacancies to be filled up from the cadre of Messenger-cum-Sweeper by way of promotion and such eligible candidates for promotion should have completed 8 years in the post of Messenger-cum-Sweeper and should have passed 8th class examination. He submitted that, the relevant portion, namely "4(B) --For Promotees" is extracted at page 5 of the objections filed by respondents which is at ink page 39 in the instant petitions. The stand taken by petitioners and the specific ground urged in the writ petitions are contrary to the material on record. He submitted that, the allegation that, the petitioner's seniority has not been considered by respondents is incorrect, false and baseless in view of the fact that, in the seniority list published vide Annexure-R2 enclosed to the statement of objections, the name of the petitioner in first petition finds a place at Sl. No. 169 and the name of the petitioner in second petition finds a place at Sl. No. 195. He submitted that, the petitioners having not challenged the seniority list, wherein they respectively stand at Sl. Nos. 169 and 195, it is not open for them now to state that, the said list is not based on factual position. Therefore, the claim of the petitioners is misconceived and they are not entitled to any relief whatsoever at the hands of this Court.

6. So far as the specific ground taken by the petitioners in the instant writ petition that, the petitioners are claiming right under the circular dated 21st April, 1997, learned Counsel for respondents-Bank submitted that, the said circular is not at all applicable to respondents-Bank and at no point of time, the said circular has been made applicable to the respondents-Bank; but on the contrary, the respondents-Bank is governed by the Rules framed by Central Government on 29th July, 1998 vide Annexure-R1 produced along with the statement of objections. Therefore, the claim of the petitioners on the basis of the circular dated 21st April, 1997 is not at all sustainable in law. Therefore, he submitted that, the writ petitions filed by the petitioners are misconceived and

they have not made out any good grounds for interference by this Court and the writ petitions are liable to be rejected as devoid of any merit.

7. I have heard the learned Counsel for petitioners and the learned Counsel for respondents. After careful perusal of the grounds urged by the petitioners and the stand taken by respondents in their statement of objections, referred above and after careful perusal of the impugned circular dated 3rd November, 2000, it is manifest on the face of the said circular that, the respondents have not committed any error of law much less irregularity. As a matter of fact, the said circular dated 3rd November, 2000 has been issued in concurrence with the notification dated 29th July, 1988 issued by Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi and in view of that, there is promotional opportunity to the cadre of Messenger-cum-Sweeper to an extent of 10% of the total available vacancies, and eligibility for direct recruits namely the qualifications, etc., are mentioned at 4(A); and eligibility for promotees and their required qualification has been indicated at 4(B) at page 32 of the said notification. Therefore, I do not find any error or illegality as such committed by respondents. So far as the contention taken by petitioners in the instant writ petitions that, a reversion order has been passed by the authority from officiating Clerks to Messenger-cum-Sweeper is concerned, it is relevant to note that, the writ petition filed by the first petitioner was dismissed and the writ petition filed by the second petitioner was disposed of with a direction to the Department to consider the representation. As rightly pointed out by the learned Counsel for respondents-Bank, the said circular has been issued fully in concurrence with the decision of the Apex Court in Sivaiah's case and the order passed by this Court in Mohan Pavate's case, and also in consonance with the Regional Rural Banks (Appointment and Promotions of Officers and Other Employees) Rules, 1988 notified by Government of India, Ministry of Finance (Department of Economic Affairs) (Banking Division), dated 29th July, 1988, which was made uniformly applicable to all the 196 Regional Rural Banks operated throughout the country. If that is so, I am of the view that, there is no justification for the petitioners to contend before this Court that, they are entitled to the relief sought for by them to declare that, the circular issued by the respondents-Bank is not sustainable. Merely making averments in the writ petitions and urging a specific ground will not suffice to set aside the circular issued by respondents. The said circular has been issued in strict compliance and in pursuance of the judgment of the Apex Court in Sivaiah's case, the order passed by this Court, as stated above, and the notification issued by Ministry of Finance. Therefore, I do not find any justification or good grounds to interfere with the impugned circular issued by the Bank, especially when a specific provision has been made by reserving 10% of the total vacancies to be filled up by promotion from the cadre of Messenger-cum-Sweeper and the petitioners' names are found in the seniority list prepared by the authority at Sl. Nos. 169 and 195 respectively.

8. Yet another ground on which the instant writ petitions are liable to be dismissed is, if at all the petitioners are aggrieved by the impugned notification

dated 29th July, 1988 they cannot maintain these writ petitions without challenging the same.

9. Having regard to the facts and circumstances of the case, as stated above, the writ petitions filed by the petitioners are liable to be dismissed as misconceived. Accordingly, they are dismissed. However, the dismissal of these petitions will not preclude the petitioners from redressing their grievances by giving fresh representation to the authority. If the petitioners give representations, the Bank authority is directed to consider the same and dispose of the same in accordance with law, if they are otherwise found eligible, as expeditiously as possible.