

(2014) 05 TP CK 0002

In the Tripura High Court

Case No : W.P. (C) No. 120 of 2013

Sri Ranjan Bhattacharjee, Sri Sajal Bhattacharjee and Sri Naresh Chakraborty Vs The Tripura Gramin Bank, Represented by its Chairman and Others

Date of Decision : 08-05-2014

Acts Referred:

Citation : (2014) 05 TP CK 0002

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : C.S. Sinha and Mr. D.C. Saha, Advocate for the Appellant; B.R. Bhattacharjee, Sr. Advocate, Mr. K. Bhattacharjee and Mr. T.D. Majumder, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—By assailing different Office Orders, being Office Order No. 09/2013, dated 09.04.2013 and Office Order No. 10/2013, dated 09.04.2013, the writ petitions, being W.P. (C) No. 120/2013 and W.P. (C) No. 119/2013 respectively have been filed by the petitioners.

2. The selection process for promotion to the post of Manager (Scale-II) has been challenged in W.P. (C) No. 120/2013 whereas the order of promotion to the post of Sr. Manager (Scale-III), dated 09.04.2013 has been challenged in W.P. (C) No. 119/2013.

3. Indisputably, the writ petitioners are borne in the post of Asstt. Manager (Scale-I). Unless they are promoted to the post of Manager (Scale-II) they cannot come to the zone of consideration for appointment to the post of Sr. Manager (Scale-III). As it is contemplated that the outcome of the writ petition, being W.P. (C) No. 120/2013 would determine the locus standi of the petitioners to challenge the impugned Office Order No. 10/2013, dated 09.04.2013 assailed in the writ petition, being W.P. (C) No. 119/2013, both these writ petitions are tied up together for disposal by a common judgment.

4. Earlier, by some Asstt. Manager (Scale-I) including some of the writ petitioners had challenged the process of promotion to the post of Manager (Scale-II) by filing the writ petition, being W.P. (C) No. 449/2003 (Ranjit Kumar Roy & Ors. Vs. Tripura Gramin Bank & Ors.). By the judgment and order dated 05.04.2012, the Gauhati High Court, on considering Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others, and B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., has observed as under:

25. In the case at hand, when the 1998 Rules make the principle of seniority-cum-merit as the basis for promotion, it was wholly illegal, on the part of the respondent Bank, to not prescribe the minimum benchmark and thereby promote the juniors on the basis of their assessment of merit with the seniors. Thus, the procedure for selection is ex facie illegal and cannot be sustained.

26. In the result and for the reasons discussed above, both the writ petitions are hereby allowed. The impugned circulars, dated 18.03.2002 and 29.09.2009, are hereby set aside and quashed. The office order, dated 04.11.2003, promoting the private respondents to scale-II officer is also hereby quashed. The respondent Bank is hereby directed to undertake the exercise afresh for filling up the post of scale-II officer as well as scale-III officer by laying down a procedure, which would satisfy the principle of seniority-cum-merit.

27. With the above observations and directions, these writ petitions shall stand disposed of.

5. It would be apposite to make reference to what the apex court has observed in Rajendra Kumar Srivastava (supra) as under:

13. Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of "seniority-cum-merit". What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit.

(Emphasis added)

6. As the respondents did not follow that procedure in terms of the principles of "seniority-cum-merit" while making promotion to the post of Manager (Scale-II), the entire selection was set aside with the direction as reproduced. It is not in

dispute that by the notice dated 30.03.2013, a de novo process for selection on the basis of seniority-cum-merit, in terms of the judgment of the Gauhati High Court, delivered in W.P. (C) No. 449/2013 was initiated. The said notice embodies as under:

Officers who had participated in the said selection process on the basis of seniority and are presently in the service of the Bank are eligible to participate. The Officers who got promotion in the said promotion process are also required to participate to the de novo process and secure qualifying marks otherwise their promotion will be treated null and void.

However, the eligible Officers who got promotion in Officer Scale-II under subsequent promotion process may appear before the Interview Committee in the de novo process in terms of an order of the Hon'ble Gauhati High Court forgoing their promotion as Officer Scale-II.

Board of Directors in its meeting held on 11th March, 2013 have decided to fix up 75% as bench mark for selection (under performance 65 marks & oral test 35 marks).

All other remaining terms and condition will remain as it is.

7. By the communication dated 01.04.2013, the petitioners were also given notice for appearing before the Interview Committee. One of the petitioners, namely Naresh Chakraborty was appointed by a different selection process, which was never challenged. The petitioners have challenged the selection process for promotion to the post of Managers (Scale-II) on the grounds as briefly encapsulated hereunder:

(i) Before the selection process was initiated, in terms of the judgment of the Gauhati High Court, delivered in W.P. (C) No. 449/2013, the officers, who were not appointed following the due process, were not reverted to their feeder post. They were allowed to continue in the post of Manager (Scale-II) even though their appointments to the post of the Manager (Scale-II) were quashed;

(ii) the Board of Directors had illegally and arbitrarily fixed 75% as the benchmark for selection. According to the petitioners, the benchmark of 75% cannot stand in law; and

(iii) the promotions cannot be given retrospectively w.e.f. 04.11.2003 so given by the impugned office order No. 09/2013, dated 09.04.2013.

8. Mr. C.S. Sinha, learned counsel appearing for the petitioners has emphatically submitted, having reference to the judgment and order of the Gauhati High Court passed in W.P. (C) No. 449/2013 that by the said judgment, the Office Order dated 04.11.2003, promoting the private respondents to the post of Manager (Scale-II) was quashed. As such, it has to be deemed that on and from 05.04.2012 those officers were not in the post of the Manager (Scale-II). But the respondent-Bank has allowed them to continue in the post as would be evident

from the notice dated 30.03.2013 and to participate in the selection process. According to Mr. Sinha, learned counsel appearing for the petitioners, the Board of Directors by deciding 75% as the benchmark for promotion to the post of Managers (Scale-II), has deliberately sought to resurrect the officers whose promotions were cancelled by the said judgment and order dated 05.04.2012 of the Gauhati High Court, delivered in W.P. (C) No. 449/2013.

9. The respondent-Bank, by filing the affidavit has stated that it is within the discretion of the competent authority to determine the appropriate benchmark having regard to the duties, responsibilities and requirements, attached to the post of Manager (Scale-II). The petitioners do not have any right to question the benchmark unless it is shown unreasonable and impracticable.

10. Mr. B.R. Bhattacharjee, learned senior counsel appearing for the respondents has contended that there is basis to say that the principle of seniority-cum-merit was not observed by the respondent-Bank. He has emphatically submitted that in terms of the judgment of the Gauhati High Court, the respondent-Bank has delineated the procedure that for purpose of selection to the post of Manager (Scale-II). According to Mr. Bhattacharjee, learned senior counsel, the respondent-Bank was directed to undertake the exercise afresh for filling up the post of Manager (Scale-II) from the Scale-I officers by laying down the procedure which shall satisfy the principles of seniority-cum-merit. Mr. Bhattacharjee, learned senior counsel has continued to submit that the Board of Directors had selected the benchmark of 75%, considering the various aspects including the duties and responsibilities attached to the post of Manager (Scale-II). In sequel, he has also submitted that there is no arbitrariness at all.

11. On the face of the rival contentions, this court has scrutinised the records. It has surfaced that the officers who were appointed by the Office Order dated 04.11.2013 were never reverted in terms of the said judgment of the Gauhati High Court and they had been allowed to continue as the Manager (Scale-II). The respondent-Bank ought to have revert those officers who were appointed by the Office Order dated 04.11.2003 subject to the de novo process. However, there is no dispute that those officers appeared before the Interview Committee and they have been appointed by the Office Order No. 09/2013, dated 09.04.2013.

12. The respondent-Bank, no doubt, has conducted the selection process, following the principles of seniority-cum-merit, inasmuch as, by the notice dated 30.03.2013, the said process was notified in the following terms:

Board of Directors in its meeting held on 11th March, 2013 have decided to fix up 75% as bench mark for selection (under performance 65 marks & oral test 35 marks).

All other remaining terms and condition will remain as it is.

According to the respondents, the officers who were participated in the interview

and successfully crossed the benchmark were selected for promotion to the post of Manager (Scale-II) in accordance with their seniority. None of the petitioners had appeared before the Interview Committee, even on receiving the call letters for participation, at their risk.

13. In response to para 7(iii) of the counter-affidavit where the respondent-Bank has averred that the petitioner did not participate in the selection process despite due notice from them. By filing the rejoinder, the petitioners did not explain why they had withdrawn from participating in that selection process. However, the petitioners have stated in the rejoinder that retrospective promotion is nothing but to legalise the cancelled promotions.

14. In the considered opinion of this court, the selection process that has been persuaded by the respondent-Bank is in conformity to the principle of seniority-cum-merit and, thus, it cannot be held that the process was illegal or it was tainted for considering the extraneous matters. This court is of the further opinion that the competent authority in the respondent-Bank is within its authority to determine the benchmark. Unless such benchmark is abjectly unreasonable, that cannot come under the judicial review. Notwithstanding that, this court is constrained to observe that the respondent-Bank has acted in a manner which is entirely unwarranted on the face of the judgment of the Gauhati High Court. Those officers were allowed to continue even after the judgment of the Gauhati High Court. The respondent-Bank does have the authority to give any promotion retrospectively, however, without affecting the extant right of other persons. Thus the respondent-Bank has not done anything illegal or irregular by giving promotion retrospectively w.e.f. 04.11.2003.

15. Hence the writ petition, being W.P. (C) No. 120/2013 is dismissed. As consequence thereof, the writ petition, being W.P. (C) No. 119/2013 is also dismissed. As stated, the petitioners are appointed as the Manager (Scale-II) they cannot be considered for promotion to Scale-III Officers and cannot have any locus standi to challenge the order of promotion to the post of Manager (Scale-III).

However, in the circumstances of the case, there shall be no order as to costs.