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(2000) 11 PAT CK 0038

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1964 of 1988

Vinod Kumar Mishra and Others — APPELLANT

Vs

The Samastipur Kshetriya Gramin Bank and Others — RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Citation : (2000) 3 BLJR 2348 : (2001) 1 PLJR 614

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—In this writ petition, the petitioners have prayed for quashing the Order No. 2/88 dated 23.3.1988 as contained in Annexure 14, whereby and whereunder, Respondent Nos. 4 to 19 were promoted as Field Supervisors under the respondent-Bank. A prayer has also been made for a writ of mandamus commanding the Bank authorities to grant petitioners'' promotion against such posts strictly in accordance with Circular No. 23 dated 30.5.1986, as contained in Annexure 8 to the writ petition.

2. Petitioners and Respondent Nos. 4 to 19 were initially appointed under the respondent-Bank against various posts in the year 1981. Later, with a view to fill up the posts of Field Supervisors and Branch Managers in higher scale, Employment notices were published by the authorities by which certain percentage of Field Supervisors were required to be filled up on direct recruitment from the outside candidates and remaining posts by promotion. Initially on 7.1.1985, interview was held for filling up the posts on ad hoc basis because certain policy matters were still being finalised. Ultimately, on 27.5.1986, the Board of Directors approved and adopted the guidelines of the Bank as contained in Annexure 8 for the purpose of selection and appointment to the posts. Thereafter, on 24.6.1986, the management conducted a second interview. This is also not in dispute that the petitioners and Respondent Nos. 4 to 19 had appeared at the interview and ultimately having examined the relative

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performance of the candidates by Order No. 2/88 dated 23.3.1988 (Annexure 14) Respondent Nos. 4 to 19 were promoted to the post of Field Supervisor.

3. It is contended that from the bare reference to the relevant guidelines of the National Bank for Agricultural and Rural Development (NABARD), as adopted by the Board, contained in Annexure 8 as well as the previous policy 50% posts of Field Supervisors were required to be filled up on direct recruitment from open market and 50% posts were to be filled up by promotion from amongst the Sr. clerk-cum-Sr. cashier on the bass of seniority-cum-merit. The instant promotion was undisputedly against 50% posts which were required to be filled on the basis of seniority-cum-merit. But the respondent authority, as would appear from the impugned order prepared the selection list purely on the basis of merit at interview and no weightage was given to seniority of the petitioners. In other words, since most of the petitioners were admittedly senior to Respondent Nos. 4 to 19, therefore, on the basis of their seniority they were entitled to be promoted.

4. In this regard, learned Counsel has also drawn our attention to the counter-affidavits filed on behalf of Respondent No. 1 to show that he had also admitted that Respondent Nos. 4 to 19 were promoted to the post of Field Supervisors since in the merit list they were placed above the petitioners.

5. Mr. Jha contended that in view of several decisions of the apex Court including that in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., , as also full Bench decision of this Court in the case of Ranchi Kshetriya Gramin Bank and Others Vs. D.P. Singh and Others, , in a case of promotion on the basis of seniority-cum-merit, greater emphasis should, be given on seniority. Such an officer can only be denied promotion, if he is found Unfit to discharge the duty to the higher post. In other words, rule of seniority-cum-merit in the matter of promotion postulates that seniors even though less meritorious shall have priority and comparative assessment of merit is not required to be made.

6. Mr. Sinha, learned Counsel for the respondent-Bank as also learned Counsel for the private respondents repelling the submission on behalf of the petitioners contended that the instant promotion was granted, exclusively on the basis of criteria, i.e., seniority-cum-merit as required by the guidelines of the NABARD. It was further contended that at the time of preparation of selection list due care was taken to consider the seniority of respective candidates along with their merits. Candidates, who at the time of interview were not found fit to hold the post of Field Supervisors, were not included in the selection list. Criteria of the respondent-Bank to grant promotion on the basis of seniority-cum-merit does not mean that the candidates having no capacity to hold the post would be granted promotion exclusively on the basis of seniority.

7. Apart from what has been stated above, it was also pointed out that the post of Field Supervisors were later abolished, therefore, the question of granting promotion to the petitioners against such posts does not arise. To support of the aforesaid submission, Mr. Sinha relied upon an unreported order of the Division

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Bench of this Court dated 26.11.1993 in CWJC No. 11257 of 1992 whereby similar claim on behalf of certain employees of Bhojpur Rohtas Gramin Bank was denied with an option to the authorities to consider their cases in accordance with the policy of the NABARD. Reliance was also placed to another order of this Court in CWJC No. 2035 of 1998 wherein similar grievance was also made. The Court having felt that post of Field Supervisor was abolished observed that the claim for promotion of those petitioners to the next post in higher scales should be considered in accordance with law along with other eligible candidates from the post of clerk-cum-cashier.

8. From the materials noticed above, there is no dispute that as per the relevant guidelines of the NABARD posts of Field Supervisors at the relevant time were required to be filled up on the basis of seniority-cum-merit. This is also in dispute that the posts were advertised and the petitioners as well as Respondent Nos. 4 to 19 had appeared at the interview before the Selection Committee and thereafter merit list was published. This is also not in dispute that some of the respondents were junior to the petitioners in their basic cadre of clerk-cum-cashier.

9. Therefore, in the backdrop of facts stated above solitary question is whether the writ petitioners. Some of whom are definitely senior to Respondent Nos. 4 to 19, are entitled for promotion exclusively on the basis of seniority or merit of the candidates at the interview will also be required to be taken into consideration. In our view, it cannot be ignored that in case of promotion on the criteria of seniority-cum-merit, totality of the service record of a candidates has to be considered. Performance appraisal at the interview is maintained primarily for the purpose of consideration when candidate is concerned for promotion to the higher rank. Therefore, simply because a list of performance appraisal of the candidate is prepared, it cannot be alleged that the seniority of a particular candidate was ignored. The members of selection committee had definitely taken into account the totality of the service record of a particular candidate and also the seniority. Reliance in support of the aforesaid views can be placed to a decision of the apex Court in the case of Sr. Jagathigowda, C.N. and Others Vs. Chairman, Cauvery Gramina Bank and Others, . This was also a case with respect to promotion of a clerk of a Gramin Bank on the basis of the guidelines and circular issued by the NABARD to the post of Area Manager and Senior Manager on the basis of seniority-cum-merits. That apart, in the rejoinder also filed on behalf of the respondent-Bank, a specific stand has been taken that the instant promotion of the respondents was given on the basis of seniority as well as performance of the candidate at the interview.

10. Apart from what has been stated above, yet there is another problem against the petitioners because this Court while examining the claim of other employees of the respective Bank for promotion to the post of Field Supervisors, had declined to issue specific order for promotion. Since the posts were already abolished. A liberty to the Bank authorities was of course given to consider the

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claim of such persons for promotion in higher scale. Therefore, in the changed circumstance, this would also one of the real hurdles against the petitioners in seeking their claim for promotion to the post of Field Officers since as on today such posts are not available.

11. The apart, it cannot be ignored that admittedly all the writ petitioners, had taken part the selection process and had also appeared at the interview but they could not be selected. Therefore, in our view this is also one of the reasons which may disentitle the petitioners to question the validity of the selection process.

12. Thus taking into consideration the totality of the matter, it is not possible for the Court to interfere with the impugned promotion of Respondent Nos. 4 to 19. But, it goes without saying, in case the petitioners are entitled for promotion to the next higher scale presently, if available, their cases should be considered in accordance with law.

13. With the above observations, this writ application is thus dismissed. But, in the facts and circumstances of the case, there shall be no order as to costs.

I.P. Singh, J.

I agree.

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