

(2004) 03 JH CK 0015

Jharkhand High Court

Case No: Writ Petition (S) No's. 1284, 1639 and 1671 of 2002

Bikas Kumar Sahai, Pradeep
Kumar Pathak and Another and
Navin Kumar

APPELLANT

Vs

Giridih Kshetriya Gramin Bank
and Others

RESPONDENT

Date of Decision: March 15, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 2 JCR 234

Hon'ble Judges: Amareswar Sahay, J

Bench: Single Bench

Advocate: Anil Kumar Sinha and Saurav Arun, for the Appellant; M.M. Pal, K.K. Sahay, for the respondents 4 and 5 and M.S. Anwar, for the respondents 3, 5, 6 and 8, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Amareswar Sahay, J.

All the above three writ petitions were heard together and are being disposed of by this common order.

2. In all the three writ petitions the circular dated 2.2.2001, final selection list for promotion of the candidates from Scale I to Scale II dated 9.10.2001 and the letter dated 18.1.2002 passed by the Chairman, Giridih Kshetriya Gramin Bank, Giridih rejecting the representation of the petitioners are under challenge and have been annexed as Annexures 2, 4 and 8, respectively in all the three writ petitions.

3. The facts of W.P.(S) 1284 of 2002 is that the petitioner presently holding post of Manager (Personnel) in Scale I Grade in Giridih Kshetriya Gramin Bank. The case of the petitioner is that on 1.1.1996 a seniority list of the officers working in the Giridih Kshetriya Gramin Bank was published under the signature of the Chairman, Giridih Kshetriya Gramin Bank in which the name of the petitioner's figure at Serial No. 7. On 21.6.2001 a circular as contained in Annexure 3 was issued wherein it was mentioned that it was decided to initiate promotion process for the officers of the Bank from Scale I to Scale II, In terms of Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 and therefore, applications were invited from eligible officers in the prescribed format. Pursuant to the said circular dated 21.6.2001, the petitioner applied for his promotion from Scale 1 to Scale II. Firstly, a written test was conducted and thereafter interview was held and then the list of the selected candidates for promotion from Scale 1 to Scale II as contained in Annexure 4 dated 19.10.2001 was published. In the said list of the selected candidates for promotion, the name of the petitioner is not there whereas the respondents No. 3 to 15, who were juniors to the petitioner, were selected for promotion.

4. The grievance of the petitioner is that the criteria for promotion from Scale I to Scale II was "seniority-cum-merit" but the respondent-Bank adopted the criteria for promotion on the basis of the merit only. It is said that only on the basis of the marks obtained in the written examination and interview, the selection list as contained in Annexure 4 was published without making any provision or fixing any mark for seniority and therefore, the entire list as contained in Annexure 4 was illegal being violative of criteria laid down or fixed for promotion. It has been alleged by the petitioner that the respondent-Bank by issue of Circular dated 2.2.2001 has wrongly and illegally allotted and fixed 60 marks for written test, 20 marks for interview and 20 marks for performance/appraisal reports of last five years. It has also wrongly laid down the criteria that only those candidates who secured 40% marks in the written test will be called for interview. According to the petitioner, the procedure adopted by the respondent-bank was completely contrary to the criteria fixed for the said promotion on the basis of "seniority-cum-merit". The petitioner and others moved before this Court in W.P.(S) No. 5820 of 2001 challenging the action of the respondent-Bank. This Court vide order dated 3.12.2001 as contained in Annexure 6 to the writ petition disposed of the said writ petition with following directions :

"In my opinion, the petitioner should pursue their representation before the respondent No. 2 who is supposed to consider and dispose of the representation by passing a reasoned order stating as to why the petitioner's case either have not been considered or they were not found fit for promotion. If any such representation is pending before the respondent No. 2 he shall consider and dispose of the same within six weeks from the date of production of a copy of this order. The petitioners will be at liberty to file individual representation in addition to

the representation which is pending before the concerned respondents.

With the aforesaid observation, this application is disposed of."

5. Pursuant to the order of this Court detailed representation was filed by the petitioner which has been rejected by the Chairman, Giridih Kshetriya Gramin Bank vide order dated 8.1.2002 (Annexure 8), which is under challenge in the present writ petition by the petitioner.

6. From perusal of the impugned order as contained in Annexure 8 it appears that the Chairman considered/ noticed that the promotion in question from Scale I to Scale II was made on the basis of the guide lines and directions as approved by the Government of India (Department of Economic Affairs, Banking Division) vide notification dated 29.7.1998 and the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998, i.e., on the basis of seniority-cum-merit.

7. From Annexure 8. i.e., the order of Chairman it further appears that the Circular No. 52/2000-01 dated 2.2.2001 as contained in Annexure 2 to the writ petition was issued in the principle laid down by this Court in the case of Ranchi Kshetriya Gramin Bank and Ors. v. D.P. Singh, reported in 2000 (1) PLJR 251 and pursuant to the direction in the said case overall minimum qualifying marks were fixed at 45 marks for General Category and 35 marks for reserved category inclusive of written test, interview and annual appraisals out of total marks of 100 and out of those officers scoring minimum 45 marks and above in the case of General Category and minimum 35 marks in the case of SC and ST category officers who were seniors in service were given preference in promotion over the junior colleagues and then after giving more weightage to the senior a list as contained in Annexure 4 was published. In Paragraph 3 of the said order (Annexure 8) it has specifically been mentioned that the promotion in question was made on the basis of principle of "seniority-cum-merit" and senior persons have been given preference over juniors subject to satisfaction of the minimum qualifying marks and since the petitioner obtained only 43.80 marks in the written test against minimum qualifying marks of 45 and therefore, he was not selected for promotion from Scale I to Scale II officer. In Paragraph 6 of the said order the main reason for not selecting the petitioner for promotion has been assigned by the Chairman which is quoted hereinbelow :

"So far your grievance in respect of the minimum qualifying marks for the Interview, it is to be noted that the candidates those who have obtained minimum qualifying 45 marks in General and 35 marks for SC/ST out of 100 marks all together in written, interview and appraisal, have been given promotion after giving preference to their seniority and marks for interview were not relevant separately for the purpose of promotion."

8. The learned counsel for the petitioner Mr. A.K. Sinha, Sr. Advocate citing two decisions (1) in the case of the Ranchi Kshetriya Gramin Bank and Ors. v. D.P. Singh,

reported in 2000 (1) PLJR 251 and (2) in the case of B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., has submitted that as per the criteria laid down for promotion, i.e., "seniority-cum-merit" it was incumbent upon the respondents-Bank to give weightage the seniority and as such maximum marks should have been fixed for seniority but in the present case no mark at all was fixed for seniority and only 100 marks were fixed in which 45 marks for written test, 20 marks for interview and 20 marks for performance/appraisal and therefore, the criteria for promotion on the basis of seniority-cum-merit was totally ignored and was a go by the respondents-Bank and therefore, the entire selection process in selecting candidates for promotion was absolutely illegal and arbitrary and as such the list as contained in Annexure 4 as well as the order dated 18.1.2002 rejecting the representation of the petitioner by the Chairman as contained in Annexure 8 are liable to be quashed,

9. On the other hand Mrs. M.M. Pal learned counsel for the respondent Nos. 1 and 2, i.e., Bank by filing a counter-affidavit has asserted that the promotion process was done in terms of the Government of India Notification dated 29.7.1988 the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 circulated vide Circular No. 52/200.0/2001 dated 2.2.2001. It has been stated in the counter-affidavit that the case of the petitioner was duly considered along with others eligible candidates but since the petitioner failed to obtain minimum qualifying marks fixed by the Selection Committee and therefore, he was not selected for promotion. It has further been stated in the counter-affidavit that out of 36 applicants who applied for promotion from Scale I to Scale II including the petitioner altogether 35 candidates appeared in the written test and it was conducted on 26.8.2001. It has further been stated in the counter-affidavit that out of total 100 mark is, for written test 60 marks were fixed, for appraisal/performance 20 marks and for interview 20 marks under each category. The Selection Committee recommended 11 candidates under general category for promotion on the basis of seniority who secured minimum qualifying 45 marks in the written test. In Paragraph 17 of the counter-affidavit it has specifically stated in pursuance of the principle laid down by this Court in its Full Bench decision reported in 2000 (1) PLJR 251 and the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 framed by the Government of India, the minimum qualifying marks has been fixed for the promotion to the post in question and the cases of all eligible candidates including the petitioner were considered objectively and whoever obtained the minimum qualifying marks out of total 100 marks in their respective category, they were given the promotion on the basis of their seniority position and since the petitioner obtained only 43.80 marks, i.e., much below the minimum mark fixed for written test, interview and appraisal and therefore, he was not selected for promotion. In support of the said assertion a list of the candidates and total marks obtained by them out of total 100 marks (written, interview and appraisal) has been annexed as Annexure E to the counter-affidavit. It has further

been stated by the respondents-Bank that the promotion order was issued strictly as per the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 on the basis of seniority-cum-merit as laid down by the Apex Court decision in the case of B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., in which the Apex Court had given liberty to the respondent-Bank to fix minimum qualifying marks for assessment of comparative merit of promotion and therefore, no illegality has been committed by the Bank for fixing the minimum qualifying marks for the purpose of promotion.

10. Mr. K.K. Sahay learned counsel appearing for the private respondents has submitted that in view of the decision in the case of B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., the respondents-Bank rightly fixed minimum qualifying marks for the purpose of promotion. According to him, no mark at all was required to be fixed or to be given for seniority in view of the said decision. In order to test the respective submission of the learned counsel for the parties it is necessary to notice the decision in the case of B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., and in the case of Ranchi Kshetriya Gramin Bank and Ors. v. D.P. Singh, reported in 2000 (1) PLJR 251 .

11. In the case of B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., wherein it has been held that seniority-cum-merit in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance which in turn may be based on service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

12. In the said very case the Apex Court while examining the circular dated 2.2.1989 issued by the Rewa Sidhi Gramin Bank prescribed that the candidates who have secured less than 40% marks in the interview will not be considered for promotion and their names will not be included in the final list. The Apex Court held that the said circular was not in consonance with the principle of seniority-cum-merit prescribed in the relevant rules.

13. In the case of Ranchi Kshetriya Gramin Bank v. D.P. Singh, (supra), the Full Bench of this Court while answering the reference has held as follows :

28. To conclude all these aspects the answer to the reference shall be as under :

(i) In case of merit on the basis of criteria of seniority-cum-merit greater emphasis has to be given on seniority. But an officer can not claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duty of

higher post, he may be promoted.

(ii) Seniority-cum-merit in the matter of promotion postulates that given minimum necessary merit requisite for efficiency of administration, seniors even though less meritorious shall have priority and a comparative assessment of merit is not required to be made.

(iii) Board of Directors can fix norms laying down marks for seniority, educational qualification, assessment of performance and interview for promotion to the post of Area/Senior Manager but allocation of less marks for seniority and more marks for assessment of work and interview is not permissible when promotion is to be made on "seniority-cum-merit" basis. Similarly selecting the persons for promotion who secured highest marks in the interview is not in consonance with the prescribed principle of "seniority-cum-merit".

14. From sub-para (iii) of Para 28 as quoted above it appears that the Full Bench held that the Board of Director can fix norms laying marks for seniority, educational qualification, assessment of performance and interview for promotion to the post of Area/Senior Manager but allocation of less marks for seniority and more marks for assessment of work and interview is not permissible when promotion is to be made on "seniority-cum-merit" basis.

15. Now coming to the facts of the present case and the stand taken by the respondent-Bank in their counter-affidavit that the selected list as contained in Annexure 4 to the present writ petition was prepared on the basis of Circular No. 52/2000-2001 dated 2.2.2001 which was issued pursuant to the decision of the Apex Court and also the Full Bench of this Court as stated above but from perusal of the Annexure 2 the Circular dated 2.2.2001 it appears that the mode of selection of the candidates was fixed on the basis of the written test, interview and performance/ appraisal reports for preceding five years and so far as the allotment of marks is concerned, Clause (J) of the said Circular which prescribed selection process for promotion says that the selection shall be made on the basis of the performance of the written test, interview and performance/ appraisal report. For written test 60 marks were allotted, for interview and performance/ appraisal reports 20 marks each were allotted. Therefore, *prima facie* it appears that the maximum marks was allowed for written test and no mark at all was allotted for seniority.

16. From perusal of Annexure 4, i.e., final selected list compared with Annexure E to the counter-affidavit, i.e., the list showing marks obtained by the candidates who applied for promotion from Scale I to Scale II and appeared for test, it appears that seniority was not given due weightage before selecting candidates for promotion and only the merit of the candidate who applied for promotion was considered pursuant to the Circular dated 2.2.2001, as contained in Annexure 2 to the writ petition, which was absolutely contrary to the decision of the Supreme Court as well as the Full Bench as noticed above. Therefore, I find that the Circular as contained in

Annexure 2 dated 2.2.2001 was contrary to the aforesaid decision of the Supreme Court as well as the Full Bench of this Court and consequently the selected list as contained in Annexure 4 based on the Circular was also contrary to the law laid down by the Supreme Court as well as by the Full Bench as aforesaid,

17. Consequently all the three writ petitions are allowed and the Circular dated 2.2.2001 contained in Annexure 2, final select list dated 19.10.2001 contained in Annexure 4 as well as the letter/order dated 18.1.2002 passed by the Chairman, Giridih Kshetriya Gramin Bank, Giridih contained in Annexure 8 rejecting the representation of the petitioners in all the three writ petitions are hereby quashed.

18. However, the respondent-Bank are hereby directed to formulate criteria for promotion of the officers from Scale I to Scale II strictly in compliances of the aforesaid two decisions, i.e., the Apex Court as well as the Full Bench of the Patna High Court by fixing and allotting the maximum marks for seniority for promoting the officers from Scale I to Scale II strictly on the criteria of the seniority-cum-merit basis.