

(2002) 01 AP CK 0108

Andhra Pradesh High Court

Case No: Writ Appeal No. 511 of 1998

A.D.V. Prasad and
Others

APPELLANT

Vs

The State Bank of
Hyderabad and
Others

RESPONDENT

Date of Decision: Jan. 23, 2002

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2002) 1 APLJ 133

Hon'ble Judges: S.R.K. Prasad, J; S.R. Nayak, J

Bench: Division Bench

Advocate: Koka Raghava Rao, for the Appellant; V. Jogayya Sarma, for the Respondent

Final Decision: Dismissed

Judgement

S.R. Nayak, J.

The only question that arises for our consideration and decision in this writ appeal preferred against the judgment and order of the learned Single Judge dated 14.8.1997 made in W.P.No.20984 of 1996 is whether the appellants-petitioners are entitled to retrospective notional promotion and the consequential seniority from the dates when vacancies in the cadre of P.C.Os/JMGS.I arose. This question arises in the following factual background.

2. While the appellants-petitioners were serving as clerks, the Management of the Bank conducted the test to fill-up the post of Junior Management Grade Scale-I (JMGS.I) in the year 1990 and at that time, the appellants-petitioners were not eligible to appear for the said test. The eligible and qualified clerks appeared for the said test. However, the result of the said test was not announced till the year 1993. In the meanwhile, in the year 1992, the Management conducted a test to fill-up the

newly created promotional post i.e. Programmer-Cum-Computer Operator (P.C.Os.). The appellants-petitioners herein appeared for the said test conducted in the year 1992 and they were promoted to the post of P.C.Os. in the year 1992 itself. Subsequently, in the year 1993, the result of the test conducted in the year 1990 for filling-up of the post of JMGS-I by way of promotion was declared and the successful candidates were appointed to the post of JMGS-I. It appears that subsequently, at the request of those candidates who appeared for the test in the year 1990 and who were appointed to the post of JMFGS-I in the year 1993 that they might be given retrospective notional promotion with effect from 12.1.1990, the Government granted retrospective notional promotions as requested and on that basis when the Management proceeded to consider their cases for further promotion to the post of Middle Management Grade Scale-II (MMGS.II), the appellants-petitioners made a representation to the Management to grant retrospective notational promotion to them also with effect from the dates of the vacancies. Since their request was not considered and no relief was granted by the Management, they failed W.P.No.20984 of 1996. The prayer in the writ petition reads as under:

"Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate order, direction or a writ particularly one in the nature of writ of mandamus declaring that the petitioners are entitled to appear for written test for considering the petitioners to Middle Management grade Scale-II for the year 1996-97 by giving them the benefit of notational seniority from the date of arising of vacancies".

3. The relief sought by the appellants-petitioners was opposed by the Management by filing a counter affidavit. The learned Single Judge on consideration of the rival contentions and forming an opinion that no retrospective notational promotion could be granted to the appellants-petitioners from the dates of vacancies particularly because when the test was conducted in the year 1990, the appellants-petitioners admittedly did not qualify themselves even to compete for the post by way of promotion, dismissed the writ petition. Hence this writ appeal by the un-successful writ petitioners.

4. Sri Koka Raghava Rao, learned Senior Counsel for the appellants would contend that the refusal of the Management to grant similar treatment that has been extended to the candidates who were appointed to the post of JMGS.I in the year 1993, to the petitioners also tantamounts to an invidious discrimination violating Article 14 of the Constitution.

5. On the other hand, Sri V.Jogayya Sarma, learned Standing Counsel for the Bank would contend that the candidates who were appointed to the post of JMGS.I by way of promotion in the year 1993 on the basis of the test conducted in the year 1990 and the appellants-petitioners do not belong to the same class and therefore, the violation of Article 14 argument is untenable. The Learned Standing Counsel would

alternatively contend that under no circumstance mandamus will go to the Management of the Bank to promote the appellants-petitioners with effect from the date or dates on which admittedly the appellants-petitioners did not qualify themselves for appointment to the post of P.C.Os. or JMGS.I for want of the acquisition of the prescribed qualifications, in terms of experience and otherwise, even assuming but not admitting that these posts are equivalent.

6. We do not find any substantive ground to interfere with the order of the learned Single Judge. Suffice it to state that issuance of a direction to the Management of the Bank to promote the appellants-petitioners also with retrospective date or dates on which they were not even qualified to be considered or appointed to the post of P.C.O/JMGS.I would never arise. Secondly, the candidates who were appointed to the post of JMGS.I in the year 1993 and the appellants-petitioners who were appointed as P.C.Os. in the year 1992 cannot be treated as belonging to the same class, so as to attract the wrath of Article 14 of the Constitution. We say this, because, in the year 1990, though the appellants-petitioners as well as those candidates who were appointed as JMGS.I in the year 1993 belonged to the same class of clerks, since the appellants-petitioners herein did not qualify to be considered for appointment for want of acquisition of prescribed qualifications, they went out of the class and formed a different class. In that view of the matter, they cannot seek similar treatment which the Management chose to extend to the candidates who qualified for appearing for the test conducted in the year 1990 but who came to be appointed for the post only in the year 1993 after declaration of the results. If the Management thinks it appropriate and reasonable to place the persons who acquired the prescribed qualifications first on the top and the others who subsequently acquired the prescribed qualifications below, no exception can be taken to such a course of action, primarily because such an action would be in consonance with the principle of rationality and in conformity with Article 14 postulates.

7. In the result and for the foregoing reasons, the Writ Appeal is dismissed. No order as to costs.