

(2007) 09 CAL CK 0068

Calcutta High Court

Case No: M.A.T. No. 813 of 2007

Bangiya Gramin Bikash Bank

APPELLANT

Vs

Amal Krishna Maity and Others

RESPONDENT

Date of Decision: Sept. 7, 2007

Acts Referred:

- Regional Rural Banks Act, 1976 - Section 17, 2, 29

Citation: (2008) 2 CHN 438

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Arunabha Basu, J

Bench: Division Bench

Advocate: Subir Sanyal and Sutirtha Das, for the Appellant; Malay Kumar Baau and Supratik Sanyal, Kashi Kanta Maitra and Pradip Kumar Panja and Pratik Prakash Banerjee and Soumen Dutta for respondent Nos. 33, 35, 36, 37, 38, 41, 43, 44 and Sagar Bandopadhyay and Amit Kumar Nag for respondent Nos. 34, 39, 40, 42 and 48, for the Respondent

Final Decision: Dismissed

Judgement

Arunabha Basu, J.

The appeal is directed against the judgment and order passed by learned Single Judge of this Court whereby and whereunder the said learned Single Judge by judgment and order dated 18.1.2007 allowed the writ petition.

2. In the aforesaid judgment and order under appeal, learned Single Judge passed the following direction:

For these reasons, I allow this writ petition ordering that the petitioners and the added respondents shall be given promotion to MMG Scale-II with retrospective effect from the date their respective juniors were promoted to that scale. They, however, shall be given actual financial benefits from this day. Their pay in the scale shall be notionally fixed from the date of promotion. For all other benefits including continuity of service they shall be treated as promoted to the scale with effect from

the date their respective juniors were promoted, and all consequential benefits for promotion to next grades shall be given to them in accordance with the relevant rules. With respect to the promotions given to the third to twenty first respondents, the bank will be at liberty to take appropriate steps, as it deems fit. Directions given hereby shall be complied with by the bank and its authorities within a fortnight from the date of communication of this order. There shall be no order for costs in the case.

3. Learned Advocate for the appellant Bank while assailing judgment and order under appeal submitted that the learned Single Judge did not take into consideration the various defects in the writ petition even though the same were pointed out during the course of hearing.

4. It was submitted by the learned Counsel appearing for the appellant Bank that in the absence of prayer to issue writ of certiorari, the appellant/ Bank was not in a position to comply with the direction passed by the learned Single Judge as because in respect of private and added respondents, no specific direction was passed by the said learned Single Judge. It was also contended by the learned Counsel of the appellant Bank that while considering the matter, learned Single Judge did not consider the scope of Section 17 of the Regional Rural Banks Act, 1976.

5. In the writ petition, the respondent/writ petitioners mainly challenged the promotion granted to their juniors in violation of the rules framed by the Act.

6. In this connection it may be pointed out that the appellant/Bank did not dispute the legality and validity of the rules framed under the provisions of the Act but sought to distinguish the application of the said rule in view of provision of Section 17 of the Act. Section 17 of the Act is set out below:

17. Staff of Regional Rural Banks.-(1) A Regional Rural Bank may appoint such number of officers and other employees as it may consider necessary or desirable (in such manner as may be prescribed) for the efficient performance of its functions and may determine the terms and conditions of their appointment and service:

Provided that it shall be lawful for a Sponsor Bank, if requested so to do by a Regional Rural Bank sponsored by it, to send such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions:

Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, no award, judgment, decree,

decision or order of any industrial tribunal, Court or other authority, made before the commencement of this Act, shall apply to the terms and conditions in relation to the persons appointed by a Regional Rural Bank.

(3) The officers and other employees of a Regional Rural Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Board.

7. Learned Advocate for the appellant sought to argue that the criteria about merit is stipulated in the provision of Section 17 of the Act in view of the words, "efficient performance of its functions" and as such according to learned Advocate for the appellant, the Bank did not commit any illegality while granting promotion to the juniors of respondent/writ petitioner on consideration of their respective merits.

8. Learned Advocate for the respondent/writ petitioners submitted that in the Act the word, "efficient performance of its functions" only indicates an object. Section 17 has not provided the criteria or the manner which shall be followed by the Bank while granting promotion to the officers/employees following under a particular category.

9. Careful perusal of the language of the Section 17 clearly shows that Section 17 has not prescribed any criteria or qualification for granting promotion but the said section has left the matter, "in such manner as may be prescribed".

10. Section 2(e) of the Act defines "prescribed" which means prescribed by rules made under the Act. In fact rules framed in exercise of the power conferred u/s 29 of the Act should be read with Section 17 of the Act in deciding the issues raised in this appeal.

11. The Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988 prescribed in details about appointment and promotion of different categories of employees and officers of the Bank as mentioned therein.

12. The case of the respondent/writ petitioners squarely falls within the rules framed under the Act.

13. We do not find any force in the argument advanced by learned Advocates for the appellant Bank about the scope of Section 17. We are of the view that the rule framed under the Act will require to be followed while granting promotion to the officers and other employees of the Bank including the writ petitioners and the added respondents.

14. Learned Advocate for the respondent/writ petitioners referred to the decision of [B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc.,](#) . The Hon"ble Supreme Court in the aforesaid case considered the scope and the criteria in the matter of promotion under the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988. Hon"ble Supreme Court in the

aforesaid decision also specifically considered the criterion of "seniority-cum-merit" in the matter of promotion and held:

18. We thus arrive at the conclusion that the criterion of "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 on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

15. Following the aforesaid decision, Hon"ble Supreme Court in the case of [Harigovind Yadav Vs. Rewa Sidhi Gramin Bank and Others](#), held:

17. Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But where the procedure adopted, does not provide the minimum standard for promotion but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the Rule of "seniority-cum-merit"....

16. In view of the aforesaid decisions of the Hon"ble Supreme Court, this Court cannot take a different view in the given circumstances of this particular case. In our view, the judicial discipline requires that High Court must follow the judgment of the Supreme Court as binding precedence while deciding any issue.

17. It may be pointed out in this context that the appellant Bank has also admitted that promotion of the respondents/writ petitioners should be considered following the principle "seniority-cum-merit" as specifically provided in the rule although in the present case, promotion was granted to the juniors of the respondent/writ petitioner on the basis of the comparative merit.

18. For the aforementioned reasons, we are of the opinion that the learned Single Judge has rightly decided the issues raised in the writ petition. The appellant Bank should not have fixed a different standard of its own while considering the promotions of the respondents/writ petitioners and the added respondents ignoring the specific provisions mentioned in the rule framed under the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988.

19. In this case, unfortunately, the concerned authority of the appellant Bank adopted a different standard in violation of the prescribed rules while refusing

promotion to the respondents/writ petitioners and granting promotion to the juniors and, therefore, the learned Single Judge rightly issued necessary directions in favour of the writ petitioners and allowed the writ petition.

It was also contended by the learned Advocate of the appellant Bank that respondent/writ petitioners are nothing but fence sitters as they challenged the decision of the authority after participation in the selection process.

20. In our view, the learned Single Judge has rightly considered the said issue while observing:

It is wholly wrong to suggest that the petitioners were fence sitters. The duly participated in the process: they are not questioning the validity of the process, as incorrectly contended. They are rather saying that the process, at the final stage, just went astray. By accepting promotion given subsequently none of the petitioners was to lose his right to get promotion in terms of the process in question. They were entitled to join in one writ petition.

21. We are in agreement with the aforesaid reasonings given by the learned Single Judge.

22. For the reasons discussed hereinabove, we do not find any illegality and/or irregularity in the judgment and order under appeal and, therefore, we approve the decisions of the learned Single Judge and dismiss the appeal being devoid of any merit.

23. There shall be no order as to costs.

Pranab Kumar Chattopadhyay, J.

24. I agree.