

## Hirak Kumar Banerjee Vs Bangiya Gramin Vikash Bank and Others

**Court:** Calcutta High Court

**Date of Decision:** Aug. 23, 2012

**Acts Referred:** Constitution of India, 1950 " Article 226, 32  
Regional Rural Banks Act, 1976 " Section 17, 29

**Citation:** (2012) 4 CALLT 76 : (2012) 5 CHN 796

**Hon'ble Judges:** Harish Tandon, J

**Bench:** Single Bench

**Advocate:** Malay Kumar Basu and Mr. Ayan Banerjee, for the Appellant; L.K. Gupta Mr. Suddhasatwa Banerjee and Utthiyo Mallick, for the Respondent

**Final Decision:** Dismissed

### Judgement

Harish Tandon, J.

The petitioner has prayed for an order granting promotion to him from the post of Junior Management Grade (JMG)

Scale-I to Middle Management Grade (MMG) Scale-II on the basis of a seniority-cum-merit in terms of the judgment and order passed in W.P.

No. 7823 (W) of 1998. Admittedly the petitioner was appointed as JMG Scale-I Officer in Sagar Gramin Bank on October 15, 1982. The said

Bank was established under the Regional Rural Bank Act, 1976. By virtue of a notification dated February 21, 2007, all other Rural Bank

including the Bank where the petitioner is appointed were amalgamated and were renamed as Bangiya Gramin Vikash Bank the respondent No. 1

herein.

2. Pursuant to section 17 read with section 29 of the Regional Rural Bank Act. 1976, the Central Government framed the Regional Rural Bank

(Appointment and Promotion of Officers and other Employees) Rules, 1988. Prior to amalgamation of the erstwhile bank with the respondent No.

1, a circular dated March 31, 1998 was issued for promotion for the post of Area/Senior Manager from JMG Scale-I to MMG Scale-II. The said

circular provides the mode of promotion on seniority-cum-merit basis where 50 marks were allotted for seniority and 25 marks each for

performance and interview. However. 20 marks was reserved as minimum qualifying marks for assessment of merit for promotion. In terms of the

said circular, the petitioner was brought within the zone of consideration but his juniors are promoted in stead of petitioner by converting the

process of selection from seniority-cum-merit to merit-cum-seniority basis.

3. Admittedly the petitioner did not assail the said process immediately upon the promotion of the juniors. It is stated that some of the persons who

were within the zone of consideration for such promotional post assailed the legality of the said circular dated March 31, 1998 in Writ Petition

being W.P. No. 7823 (w) of 1998. At the time of admission of the said writ petition, an interim order was passed to the extent that the respondent

shall proceed to publish the results of the interview and may fill up the vacancies excepting 8 vacancies. The said writ petition was ultimately

disposed of on July 23, 2009 by quashing and setting aside the said circular on the ground that it is contrary to the said rules of 1988 framed under

the Regional Banks Act, 1976. The petitioner, thereafter, filed the instant writ petition on June 11, 2010 seeking for the promotion in terms of an

order by which the said writ petition being W.P. 7823 (W) of 1998 was disposed of.

4. In affidavit-in-opposition filed by the respondents, it is stated that the process for filling up the promotional post was initiated for 27 posts and

the petitioner did not qualify to be appointed to such promotional post. It is further stated that the order by which the aforesaid writ petition was

disposed of cannot be extended to the benefit of the petitioner, as it was restricted to the petitioners therein. It is further stated that the petitioner

participated in the subsequent process for promotion and have been promoted to MMG Scale-II and as such cannot fall back upon the

promotional process commenced in the year 1998 after a lapse of considerable period of time.

5. Mr. Malay Kumar Basu, the learned Advocate appearing for the petitioner submits that the writ petition cannot be thrown on the ground of

gross delay as the petitioner immediately filed the writ petition after the order dated July 23, 2009 by which the other writ petition being W.P. No.

7823 (W) of 1998 was disposed of. He vehemently submits that if the promotional post is required to be filled up on the basis of seniority-cum-

merit then the seniority should be considered and the merit does not play any significant role. He further submits that the respondent bank should

not have given much weightage to the merit at the time of granting promotion to the juniors as the same violates the statutory rule of 1988 and

placed reliance upon an unreported judgment in case of Amal Krishna Maiti & Ors. v. Sagar Gramin Bank & Ors. (W.P. No. 13959 (W) of

1998) decided on 18.01.07 which is affirmed by the division bench in MAT No. 813 of 2007 dated 07.09.2007.

6. Mr. L.K. Gupta, the learned Senior Advocate appearing for the respondents submits that there is no illegality and irrationality in fixing a

minimum cut off marks for merit at the time of filling up the promotional post by following the principle of seniority-cum-merit. He succinctly argues

that if the method of selection is seniority-cum-merit then merit has some significant role to play in judging the eligible candidate for such

promotional post. He further submits that by issuing a circular, if the mode of selection for promotion is fixed on seniority-cum-merit basis by

dividing the marks for seniority and merit separately, the same does not infringe the statutory rules and placed reliance upon a judgment of the

Supreme Court in case of Rajendra Kumar Srivastava and Others Vs. Samyut Kshetriya Gramin Bank and Others, . He contends that the

petitioner participated in a subsequent selection process for promotion and in fact, have been promoted to a promotional post. Therefore, he

cannot turn round and claim the promotion under the earlier process of promotion commenced in the year 1998. Lastly he submits that the instant

writ petition should be dismissed on the ground of inordinate delay.

7. Having considered the respective submissions, it is undisputed that the selection process for promotion to the post of MMG Scale-II was

undertaken on the basis of a circular dated March 31, 1998. The respondent bank is situated under the Rural Bank Act, 1976. Section 17 read

with section 29 of the said Act permits the Government to frame rules and in exercise thereof Regional Rural Banks (Appointment and Promotion

of Officers and other Employees) Rules, 1988 was framed, Rule 5 of the said rule provides that all vacancies shall be filled up by deputation,

promotion or direct recruitment in accordance with the provisions contained in second schedule of the rules. The promotional post of Area/Senior

Manager is required to be filled up by promotion amongst the JMG Scale-I Officers on the basis of seniority-cum-merit as would be evident from

entry 7 in the second schedule of the said rules. By circular dated March 31, 1998 the mode of promotion was made on the basis of seniority-

cum-merit whereas 50 marks were allotted for seniority and 25 marks each for performance and interview.

8. Admittedly, the petitioner was brought into the zone of consideration for such promotional post and was included in Serial No. 50 of the score

sheet. However, the petitioner placed reliance upon of final score sheet of 27 participants selected in the promotional post being annexure P-4 to

the writ petition in support of his eligibility for such post as he has been ranked 27th therein. In the said annexure, the name of the successful

candidates have been arrayed on the basis of the marks obtained in descending orders. Mr. Gupta is right in contending that if criteria is "seniority-

cum-merit" then by fixing a reserved marks under the merit category, the candidates who obtained such reserved marks would be promoted on

the basis of a seniority. Therefore, the petitioner having ranked 50th in the score sheet in the order of seniority was not eligible to be promoted to

MMG Scale-II.

9. The Apex Court in case of Rajendra Kumar Srivastava (supra) was considering the similar and identical point and discussed the principles of

seniority-cum-merit. In the said case, a process was undertaken for filling up. the promotional post of Area/Senior Manager under the said rules

1988 on the basis of a circular dated 29.11.1996 which provides the manner of selection on seniority-cum-merit basis. By the said circular, 60

marks was earmarked for the work done during the previous three years and 40 marks for interview. It was further provided therein that the

qualifying marks would be 78% and those who secured such qualifying marks would be promoted according to the seniority. The appellants

challenged the said circular by contending that the concept of promotion of seniority-cum-merit does not contemplate prescribing of the minimum

qualifying marks for assessment of performance in interview and is thus violative of such principle. The Apex Court in such perspective held that if

the mode of promotion is seniority-cum-merit then it should not be done only on the basis of seniority as merit has some significant role to play in

these words:

11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of ""seniority"" and the principle of

merit-cum-seniority"". Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle

of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of

seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of

service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the

minimum necessary merit strictly in the order of seniority. The minimum merit necessary for the post may be assessed either by subjecting the

candidates to a written examination or an interview or by assessment of their work performance during the previous years, or by a combination of

either two or all the three of the aforesaid methods. There is no hard-and-fast rule as to how the minimum merit is to be ascertained. So long as the

ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate

against the principle of seniority-cum-merit.

10. Therefore, the candidates who secured the minimum qualifying marks under the merit category would be promoted to the promotional post on

seniority basis.

11. The petitioner founded his claim on the basis of judgment and order passed W.P. 7823 (W) of 1998 by which the co-ordinate bench quashed

and set aside the said circular dated March 31, 1998. On perusal of the said judgment it appears that the said writ petition was disposed of by

relying upon a judgment and order passed in W.P. No. 13951 (W) of 1998 (Amal Krishna Maiti & Ors. v. Sagar Gramin Bank & Ors. dated

January 18, 2007 which was affirmed by the division bench in MAT No. 813 of 2007). In Amal Krishna Maity (supra), the Hon"ble Single Bench

held that the respondent has adopted the principle of merit-cum-seniority instead of seniority-cum-merit by giving weightage to the total marks

obtained by each of the candidates. The division bench in (MAT No. 813 of 2007) noticed the three judges bench judgment of the Apex Court in

case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., nd held that the respondent bank has followed the different standard

while considering the promotions of the JMG Scale-I Officers and thus is contrary to the statutory rules. The said three judges bench judgment of

the Apex Court rendered in case of B.V. Sivaiah (supra) was considered by the supreme court in case of Rajendra Kumar Srivastava (supra) and

by applying the ratio decided in the three judges bench decision held:

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.

12. There is no hesitation in my mind that if a candidate secured a minimum qualifying marks fixed under the merit category, the promotional post is

required to be filled up on seniority basis. The respondent authorities have no doubt adopted a different standard by filling up the promotional post

on the basis of the total marks obtained in the said process, which really makes the mode of selection into a merit-cum-seniority instead of

seniority-cum-merit.

13. Furthermore, in *Amal Krishna Maiti (supra)* where the self-same selection process was challenged by some other candidates, it is specifically

recorded that the promotional post has been filled up by giving weightage to a total qualifying marks obtained by each candidate which offends the

principle of seniority-cum-merit. Therefore, the fact remains that the respondent authorities have filled up the said promotional post on the basis of

the different method than what was required to be adopted in terms of the said statutory rules of 1988.

14. On such aspect, I have no doubt that the respondent authorities have acted in contravention to the statutory rules and should have filled up the

promotional post on the basis of seniority-cum-merit.

15. The next aspect which in my opinion is very vital, so far as granting the relief to the petitioner in this writ petition, is concerned.

16. Admittedly the petitioner did not assail the said circular dated March 31, 1998 under which the respondents have conducted the process for

filling up the promotional post till the year 2010. In *Amal Krishna Maiti (supra)*, the petitioner therein assailed the said circular by filing the writ

petition in the year 1998 and the another writ petition which was disposed of on the basis of a judgment passed in *Amal Krishna Maiti (supra)* was

also initiated in the year 1998. Although the subsequent writ petition was disposed of in the year 2009 but the petitioners therein were ventilating

their grievance since 1998.

17. The petitioner was sitting on the fence and watching the proceeding and the moment, this Court passed an order which may enure to the

benefit of the petitioner as well, the petitioner approached the court by filing the instant writ petition after a gap of 12 years. The Apex Court in

case of *Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others*, held that the fence sitter cannot be allowed to raise the dispute and

challenge the validity of the order after its conclusion as no party can claim the relief as a matter of right. The relief can be refused if the person

approaching the Court is guilty of delay and laches. The aforesaid principle is reiterated in a subsequent decision of the Supreme Court in case of

*Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass and Others*, in the following words:

27. In *Jagdish Lal and others Vs. State of Haryana and others*, the appellants who were general candidates belatedly challenged the promotion of

Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in *Ajit Singh Januja v. State of Punjab, Union of India v. Virpal*

*Singh Chauhan and R.K. Sabharwal v. State of Punjab* and this Court refused to grant the relief saying: (*Jagdish Lal case*, SCC pp. 562-63, para

18.... this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It

is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long

and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at

rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying

the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in

Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law

laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the, candidate has already been further promoted to the

higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh case a Bench of two Judges to which two of us,

K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not

open to judicial review. In Chander Pal v. State of Haryana a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered

the effect of Virpal Chauhan. Ajit Singh. Sabharwal and A.B.S. Karamchari Sangh cases and held that the seniority of those respondents who had

already retired or had been promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were

holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Virpal Chauhan and Ajit Singh; but

promotion, if any. had been given to any of them during the pendency of this writ petition was directed not to be disturbed.

28. Since the respondents preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the

benefit of the order dated 7.7.1992 of the Tribunal in Santosh Kapoor case and will only be entitled to the benefit of the Circular dated

13.12.1995 which was in force in 1997.

18. In most recent decision, the Supreme Court in case of Leela Wanti and Others Vs. State of Haryana and Others, denied the relief to a litigant if

the delay is more than the period prescribed for filing a suit in absence of any cogent explanation in these words:

14. In State of M.P. v. Bhailal Bhai a Constitution Bench of this Court held that even though no period of limitation has been prescribed for filing a

petition under Article 226 of the Constitution, the High Court can non-suit the petitioner who is guilty of laches. The Constitution Bench also

observed that if the delay is more than the period prescribed for filing a suit then the same would ordinarily be treated as unreasonable and the High

Court will be fully justified in denying relief to the petitioner unless cogent explanation is offered for the delay.

15. These propositions are borne out from the following extracts of the judgment: (Bhailal Bhai case, AIR 1011 12, paras 17 & 21)

17.... It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the

case of power to issue writs in the nature of mandamus. Among the several matters which the High Court rightly takes into consideration in the

exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the

nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these

cases, a person comes to the Court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and

having paid it under a mistake is entitled to get it back, the Court, if it finds that the assessment was void, being made under a void provision of

law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered

in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any rule

for universal application. It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend

its aid to a party by this extraordinary remedy of mandamus.

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21.... Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article

226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be

brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court

may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is

more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery

of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these

cases on or shortly after 17.1.1956 the delay in making these applications should be considered unreasonable.

16. The doctrine of laches has been invoked in Bhagat Singh v. State of U.P. Northern Indian Glass Industries v. Jaswant Singh, Haryana State



Handloom & Handicrafts Corpn. v. Jain School Society and Govt. of A.P. v. Syed Akbar for negating challenge to the acquisition of land.

There is no explanation, far to speak of cogent explanation, in the writ petition filed by the petitioner. Additionally, the petitioner participated in a

subsequent selection process for filling up the promotional post and have been promoted thereto. Therefore, the petitioner can not fall back to the

selection process undertaken in the year 1998.

The writ petition is thus dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.