

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shivshankar Warde and ors. Vs. Dewas-shajapur Kshetriya GramIn Bank and anr.

Shivshankar Warde and ors. Vs. Dewas-shajapur Kshetriya GramIn Bank and anr.

SooperKanoon Citation : sooperkanoon.com/509449

Court : Madhya Pradesh

Decided On : Feb-26-2004

Reported in : (2005)ILLJ437MP; 2004(3)MPLJ381

Judge : Deepak Verma and ;Uma Nath Singh, JJ.

Acts : Regional Rural Banks Act, 1976 - Sections 29; Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 - Rule 7

Appeal No. : L.P.A. No. 294/2001

Appellant : Shivshankar Warde and ors.

Respondent : Dewas-shajapur Kshetriya GramIn Bank and anr.

Advocate for Def. : P.B.S. Nair, Adv. for Respondent No. 1 and ;Meena Chaphekar, Adv. for Respondent Nos. 2 to 8

Advocate for Pet/Ap. : A.M. Mathur and ;Paresh Saraf, Advs.

Disposition : Appeal dismissed

Judgement :

1. This intra-Court Appeal under Clause X of Letters Patent has been preferred by some of unsuccessful petitioners of Writ Petition No. 799/2000, decided by learned single Judge on June 25, 2001. Writ Petition was filed by as many as ten petitioners. But, this appeal has been preferred only by five aggrieved petitioners, remaining five were joined as respondents. During pendency of appeal, appellant No. 3-Rakesh Patidar sought permission to withdraw from this appeal, thus, his name was directed to be deleted. Appellant No. 5-Sudhir Wakde died during pendency of this appeal, thus, his name was deleted. Appellants had approached writ Court by filing a Writ Petition under Article 226/227 of the Constitution of India challenging Order of Promotion issued by respondent No. 1-Dewas Shajapur Kshetriya Gramin Bank on March 16, 2000. Appellants have been working on the post of Junior Management Grade-I and were to be promoted to the post of Middle Management Grade-II.

2. Since they were denied promotion and instead seven other employees of respondent No. 1 Bank, arrayed herein as respondent Nos. 2 to 8, were given promotion, they challenged the same on the ground that in Gradation List, respondent Nos. 2 to 8 are much Junior to petitioners and if criteria of Seniority-cum-Merit was applied in true sense, then appellants would have an edge over these respondents.

3. Learned single Judge, placing reliance on judgments of Supreme Court reported in Jagathidowda C.N. v. Chairman Cauvery Gramin Bank AIR 1996 SC 2733 : 1996 (9) SCC 677 and B. V. Sivaiah v. K. Addanki Babu AIR 1998 SC 2565 : 1998 (6) SCC 720 : 1999-I-LLJ-754, held that no case for interference was made out and respondent-Bank had adhered to criteria of Seniority-cum-Merit while granting promotion to respondents. It was further held by learned single Judge that cases of appellants were also considered, but they had failed to secure minimum required marks for becoming eligible for promotion. It was further held that their past record was not found as per norms prescribed. Thus, they were rightly not promoted. Against these findings recorded by learned single Judge, as mentioned above, some of petitioners have preferred appeal. We have heard learned counsel for parties at length and perused record.

4. During the course of arguments, it has not been disputed before us that criteria for promotion was Seniority-cum-Merit and said criteria alone has been made applicable, while considering cases of appellants and that of respondents. Our attention has also been drawn to Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 (hereinafter referred to as 'Rules of 1988'). The aforesaid Rules of 1988 have been framed in exercise of powers conferred by Section 29 of Regional Rural Banks Act, 1976. Rule 7 of said Rules contemplates that vacancies of officers and employees shall be filled by each Regional Rural Bank in accordance with provisions of Second Schedule of these Rules and subject to such guidelines as may be issued by Central Government from time to time. In Second Schedule, Serial No. 7 pertains to Area Managers and Senior Managers. It has different clauses such as source of recruitment, Qualifications and eligibility, Mode of selection. Under the heading 'Mode of Selection', criteria is 'Interview and assessment of performance for the preceding (sic) three years period as officer for promotion'. This, however, does not make any provision for allotment of marks on the strength of seniority.

5. Guidelines issued from time to time are also in conformity with said Rules. While allocating marks under different heads, respondent No. 1-Bank, vide its Circular dated November 26, 1999, kept thirty marks for assessment and performance for preceding three years as officer for promotion, maximum forty marks towards seniority and maximum thirty marks for viva voce. Thus, total one hundred marks were kept. In the said Circular, it is further mentioned that for claiming promotion, forty five marks would be minimum required marks, then only an officer would be considered for promotion. Similar conditions have been imposed by respondent No. 1-Bank in its Minutes Books of 105th and 107th Meeting, filed by both parties in Writ Petition. Respondent-Bank has also filed a Chart showing necessary details of all appellants and respondents No. 2 to 8, who have since been promoted by impugned order. After critically examining said chart, learned counsel for appellants submitted that respondents No. 2-Ashwini Gautam and respondent No. 3- Shivprasad Ban, were admittedly senior to appellants, therefore, their promotion order cannot be challenged on any ground. It was further submitted that respondent No. 4-Kailash Prasad Yadav having been appointed on the very same date on which present appellants were appointed, thus, the marks which have

been obtained by Kailash Prasad Yadav, after appraisal of his work for last three years and in viva voce, have got to be considered and if they are found more, then for his promotion also, appellants would not be justified to challenge the same. Chart further reveals that Kailash Prasad Yadav had obtained fifty three marks out of sixty marks, whereas appellant No. 1 had obtained only 30.4 marks, appellant No. 2 had obtained only 44.3 marks and appellant No. 3 had obtained 32.8 marks. In the light of said Chart, learned counsel for appellants has not raised any challenge to promotion order of respondent Nos. 2, 3 and 4.

6. Now, we are required to consider whether promotion of respondents No. 5, 6, 7 and 8 was rightly made or there has been any deviation from Promotion Policy applicable to Officers of respondent No. 1-Bank. It was strongly contended by learned counsel for appellants that what was required to be considered for promotion was obtaining of forty five marks out of one hundred and not obtaining of minimum forty five marks out of sixty. Our attention was drawn to Circular of respondent No. 1- Bank, and it was submitted that after totalling the total marks earmarked for each item, it was specifically mentioned that for promotion, forty five marks would be minimum pass marks. Thus, it was contended that it should be construed that what Bank wanted to convey to officers was that forty five marks are required to be secured out of one hundred and not out of sixty, as has been pleaded and claimed by respondent No. 1 herein.

7. We have given our anxious consideration to this rival submission. Reverting to Rule 7 once again, it is necessary to read provision under Clause (c), captioned 'Mode of Selection' for Area Managers and Senior Managers. It only stipulates interview and assessment of performance for preceding three years period as officer for promotion. Even though this fact has not been clarified either in the Circular or in 105th and 107th Meeting of respondent No. 1-Bank. But, true and correct interpretation of this Rule leads to only one conclusion that what was required to be conveyed by Bank was that out of sixty marks, forty five marks was minimum required marks which a candidate had to secure for claiming promotion from Junior Management Grade-1 to the post of Middle Management Grade-II. It was further submitted that since the Rules stipulate that for each completed year of service, two marks will be allotted. Thus, this factor would be common to all

officers as they knew as to how many years of service they have already put in. This fact also gets fortified from the Chart filed by respondent No. 1-Bank, which shows that all candidates from 1 to 16, having put in sixteen years of service, have secured thirty two marks in this regard. In the light of aforesaid doubt which was created in the Circular and Board's Meeting, learned counsel for respondent submitted that doctrine of Reading Down of provisions has to be applied. For the said purpose, reliance has been placed on various judgments of Supreme Court, reported in Raipur Development Authority v. Anupam Sahkari Griha Nirman Samiti and Ors. 2000 (4) SCC 357, State of Maharashtra v. Ravdeep Singh Sohal 2000 (9) SCC 184, High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat AIR 2003 SC 1201 : 2003 (4) SCC 712 and lastly on Calcutta Gujarati Education Society v. Calcutta Municipal Corporation AIR 2003 SC 4278 : 2003 (10) SCC 533.

8. Supreme Court in Calcutta Gujarati Education Society (supra) has held as under:

'The rule of reading down a provision of law is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of 'reading down', however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes.'

9. Applying said provision of law, we have no doubt in our mind that while Reading Down relevant rule, the only harmonious construction that can be arrived at is that an officer was required to secure minimum forty five marks, out of sixty and not out of one hundred, as the rule does not contemplate anywhere, allotment of marks for seniority. Relevant Rule shows that for each year of completed service of officer, he would be allotted two marks. Thus, there should not be any dispute with regard to marks which the officer would have secured with regard to his seniority. Now, coming to merits of appellants and respondents No. 5 to 8, Chart shows that

respondent No. 5-Jagdish Chand Kulmi had secured 51.2 marks; respondent No. 6-Babulal Khandelwal had secured 48.3 marks; respondent No. 7-Pradeep Kumar Takzariya had secured 51.2 marks, and respondent No. 8-Guruvendra Bhardwaj had secured 49 marks. All these marks were secured out of sixty marks, whereas appellant No. 1-Shivshankar Warde had secured only 30.4 marks; appellant No. 2- Pramod Kumar Pandey had secured only 44.3 marks, and, appellant No. 3- Bhagwandas Tiwari had secured only 32.8 marks, out of sixty marks. Thus, on merits also neither of appellants had secured more marks than any of the seven respondents who were promoted vide impugned order. Thus, on this ground also we find that appeal has got no force or merits.

10. Thus, considering the observations made by Supreme Court in B. V. Sivaiah (supra), at paragraph 18, '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'. Said Judgment clearly lays down that while criteria of seniority-cum-merit is to be considered, it does not mean that seniority alone has to be considered and merit has to be ignored. In fact, what the Supreme Court has said is that while applying this criteria, a fine balance has to be struck while allotting marks for seniority as well as for merit. Thus, both have got to be taken into consideration, then only a promotion can be made.

11. Here, in the case in hand, as has been pointed out by us from the Chart filed by respondent No. 1, which has not been disputed by appellants, neither of the appellant had secured more marks than respondents on reappraisal of the record for three years and marks obtained in viva voce. Since respondent No. 2 to 8 were certainly more meritorious they have been given promotion.

12. Thus, we find that respondent No. 1-Bank committed no error nor there has been any deviation from the criteria as has been made applicable to appellants and respondents while considering cases of promotion. A correct view of the matter has been taken by learned single Judge. Thus, the appeal being devoid of any merit or substance is hereby dismissed but with no order as to costs.

