

GAHC010155302023



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/269/2023

1. Assam Gramin Vikash Bank, represented by the Chairman,
having its Head Office at Adam's Plaza,
G.S. Road, Christian Basti, Guwahati- 781005,
District: Kamrup(M), Assam.
2. The Chairman, Assam Gramin Vikash Bank,
Adam's Plaza, G.S. Road, Christian Basti,
Guwahati- 781005, District: Kamrup(M), Assam.
3. The General Manager, Assam Gramin Vikash Bank,
Adam's Plaza, G.S. Road, Christian Basti,
Guwahati- 781005, District: Kamrup(M), Assam.

.....Appellants

-Versus-

Jayanta Kumar Dev,
Son of Late Chunilai Dev,
Resident of House No- 25, South Jalan
Nagar, Chiring Gaon, P.O.: Central Revenue Building,
Dibrugarh, Assam, PIN- 786003.

.....Respondent

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the appellants : Mr. A. Ganguly,
Mr. A. Dhanuka, Advocates
For the respondent : Mr. S. Chakraborty, Advocate

Date of hearing & judgment : **21.11.2024**

JUDGMENT & ORDER (ORAL)

(Vijay Bishnoi, C.J.)

1. This writ appeal is filed by the appellants assailing the order dated 20.06.2023 passed by the learned Single Judge in writ petition, being, WP(C) 2435/2023 whereby the learned Single Judge has allowed the writ petition filed on behalf of the respondent herein and has directed the appellants to give effect to the select list prepared by the selection board based on participation of the respondent and thereafter, issue order of promotion in favour of the respondent promoting him to SMG Scale-IV. It has also been observed that the order of promotion be given effect from the date on which his juniors were promoted to the SMG Scale-IV and the aforesaid exercise shall be carried out expeditiously as possible but not later than two weeks from the date of receipt of a certified copy of that order.

2. The brief facts of the case are that the respondent was serving as officer in the Assam Gramin Vikash Bank on the post of MMG Scale-III. The appellant

bank initiated promotion process of the officers from MMG Scale-III to SMG Scale-IV and in relation to that a criteria for selection was issued vide letter dated 12.10.2022. The respondent participated in the said selection process for promotion to the next higher grade but he was not promoted. As per the respondent, he enquired from the bank but no satisfactory explanation for not granting him promotion to the next higher post was provided and therefore, he was forced to approach the writ court.

3. The learned Single Judge, after having considered the arguments advanced on behalf of the parties, has allowed the writ petition filed on behalf of the respondent by passing the impugned order. The relevant extract of the impugned order is reproduced hereunder;-

“I have considered the submissions advanced at the bar and have also gone through the materials available on record. There is no dispute about the fact that the writ petitioner herein is presently serving as MMG Scale-III officer in the Bank and he is eligible for being considered for promotion to the next higher grade of MMG Scale-IV. It is also not in dispute that the petitioner had participated in the selection process and had emerged as the 7th candidate in order of merit. The candidates at Sl. No. 1 to 5 have already been promoted. Respondent have, however, not given any reason as to why the other candidates who had participated in the selection process were not promoted.

Record produced by Mr. Ganguly reveals that there was no cutoff mark fixed for consideration of the candidature of the officers who had appeared before the Selection Board. As a matter of fact, Rules of 2017 also do not permit fixation of any such cutoff mark for promotion from MMG Scale-III to MMG Scale-IV. A careful examination of the departmental records also goes to show that the Selection Board had not fixed any criteria based on which, candidates scoring marks below a particular level could be denied promotion. If that be so, the above action on the part of the respondents, in denying promotion to the

petitioner herein, without applying any transparent and reasonable criteria, on the face of the record, appears to be arbitrary. If the petitioner is due for retirement w.e.f. 30-06-2023, then it is also apparent that he would not have any opportunity of being promoted to the post of MMG Scale-IV ever again, during the service career.

Under the circumstances, this Court is of the opinion that the petitioner has succeeded in making out a good case for interference by this Court, where a writ of mandamus can be issued to the respondent. As such, this writ petition succeeds and is hereby allowed.”

4. We have already taken note of the directions issued by the learned Single Judge while allowing the writ petition.

5. Assailing the impugned order, Mr. A. Ganguly, learned counsel for the appellants has argued that the learned Single Judge has grossly erred in allowing the writ petition without considering the fact that the respondent and other unsuccessful candidates may have been eligible to be considered for promotion but such eligibility did not entitle them to automatic promotion as it was the incumbent upon the selection committee to select those suitable candidates for promotion on the basis of performance in the interview and Performance Appraisal Report for the preceding four years in MMG Scale-III.

It is contended that in the absence of allegation of *mala fide* or bias against the selection committee and in the absence of any challenge to the procedure adopted by the selection committee, the respondent was not entitled to get any relief and as such, the learned Single Judge has erred in allowing the writ petition filed on behalf of the respondent.

6. It is further contended that the respondent was placed at serial no.7 in order of merit on the basis of total marks obtained by him in the interview and

Performance Appraisal Report for the preceding four years in MMG Scale-III and looking to the said fact, it cannot be said that the respondent has wrongly been denied the benefit of promotion. It is submitted that the selection committee did not find the respondent suitable for promotion and therefore, the promotion could not be granted to him.

7. It is also contended that the discretion of the selection committee is not open to the judicial review until and unless it is demonstrated that the same is violative of any provision of law or is suffering from *mala fide* or bias.

8. Learned counsel has further submitted that the process of selection for promotion from Grade-III to Grade-IV was published vide letter dated 12.10.2022 wherein it is clearly mentioned that the bank reserves the right to reduce the number of vacancies in case there is shortfall in candidates found suitable for promotion or candidates applying for promotion vis-a-vis the declared number of vacancies. It is argued that in the selection process, it was made clear that the promotions were to be made on the basis of suitability of a candidate and from this it is clear that simply because the respondent is eligible for consideration for promotion, it will not entitle him to automatic promotion.

Learned counsel has, therefore, submitted that the learned Single Judge, without considering this aspect, has erred in allowing the writ petition and therefore, in the facts and circumstances of the case, the impugned order is liable to be interfered with.

9. *Per contra*, Mr. S. Chakraborty, learned counsel for the respondent has vehemently opposed the writ petition and has argued that the learned Single Judge rightly interfered in the matter and committed no illegality in issuing

direction to the appellant bank to promote the respondent on the next higher post. It is submitted that in the absence of fixing any criteria based on which candidates scoring marks below a particular level could be denied promotion, the action of the appellants in denying promotion to the respondent is arbitrary. It is contended that no reasons were assigned to the respondent for denial of promotion and the said action of the appellant bank amounts to violative of Article 14 of the Constitution of India.

Learned counsel has, therefore, submitted that in the above facts and circumstances of the case, no case for interference is made out and the writ appeal lacks merit and therefore, the same is liable to be dismissed.

10. Heard learned counsel appearing for the parties.

11. It is not in dispute that the process of selection for promotion to the posts of SMG Scale-IV from the posts of MMG Scale-III was initiated by the appellant bank and in response to that selection process was notified vide letter dated 12.10.2022 with the intention to promote such officers in MMG Scale-III to the next higher post, i.e. SMG Scale-IV on 11 vacant posts.

It is also not in dispute that for the above 11 vacant posts of SMG Scale-IV, only nine officers of MMG Scale-III, including the respondent have fulfilled the eligibility criteria.

As per the selection criteria, selection shall be on the basis of the combined marks scored in the interview and the average marks awarded in Performance Appraisal Report for preceding four years. The division of marks is given below;

Interview : 40 marks

Performance Appraisal Report : 60 marks

Total : 100 marks

12. In the notified selection process, though it was mentioned that the bank reserves the right to reduce the number of vacancies in case there is shortfall in candidates found suitable for promotion or candidates applying for promotion vis-a-vis the declared number of vacancies, but no transparent and reasonable criteria for denial of promotion was prescribed in the selection process.

13. It is contended on behalf of the appellant bank that since the selection committee did not find the respondent to be suitable for promotion, he was not promoted along with three other candidates. However, the exact reason for which the respondent was not found to be suitable for promotion, has not been disclosed.

14. Even though the notified selection criteria provides that the bank reserves the right to reduce the number of vacancies in case there is shortfall in candidates found suitable for promotion or candidates applying for promotion vis-a-vis the declared number of vacancies, but that does not mean that the selection for promotion to the next higher post is dependent on the whims of the selection committee.

15. The learned Single Judge has also examined the departmental records regarding the selection process and has observed that the selection board has not fixed any criteria based on which a candidate scoring marks below a particular level could be denied promotion.

16. We are of the view that the learned Single Judge has rightly come to the conclusion that in the absence of any criteria based on which, candidates scoring marks below a particular level could be denied promotion, the bank is not justified in denying the promotion to the respondent.

17. In view of the above discussions, we are of the view that the learned Single Judge has not committed any illegality in allowing the writ petition and issuing direction to the appellant bank to promote the respondent on the next higher grade from the date on which his juniors were promoted.

Hence, this writ appeal is devoid of any merit and the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant