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HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2391 (S/S) of 2015

Smt. Poonam Verma

.....Petitioner

Versus

Cantonment Board, Dehradun and others

.....Respondents

Present:-

Mr. Sandeep Kothari, Advocate for the petitioner.

Mr. Bhagwat Mehra, Advocate for the Cantonment Board, Dehradun/respondent nos. 1, 2 & 3.

Mr. D.S. Patni, Senior Advocate assisted by Mr. Dharmendra Barthwal and Mr. Karmanya Pandey, Advocates and Mr. M.C. Pant, Advocate for the respondent no. 4.

JUDGMENT

Hon'ble Ravindra Maithani, J.

The challenge in this petition is made to the Resolution No. 906-16 dated 30.07.2015 passed by the respondent No. 1/Cantonment Board and the order dated 14.08.2015 issued by the respondent no. 2/Chief Executive Officer, Cantonment Board, Dehradun, by which the respondent no. 4 was promoted to the post of Principal, SMBG Cantt Girls Inter College, Garhi Cantt, Dehradun ("the College").

2. Heard learned counsel for the parties and perused the record.

3. This is 4th round of litigation between the parties. The chronology of the events, which led to filing of the instant writ petition is as below.

- (i) The respondent no. 1 Cantonment Board established the College. The service conditions of the Cantonment Board are governed by the provisions of the Cantonment Fund Servants Rules, 1937 ("1937 Rules") framed under Section 280 of the Cantonments Act, 1924.
- (ii) The petitioner was appointed as a Junior Lecturer (Civics) in the college on 13.10.1997 and she joined on 20.10.1997.
- (iii) The respondent no. 4 was appointed in the college as Junior Lecturer (English) on 01.07.1999.
- (iv) On 31.12.2000, the then Principal of the College retired creating a vacancy of Principal on 31.12.2000.
- (v) The petitioner was senior most amongst the Junior Lecturers but the Cantonment Board promoted the respondent no. 4 on the post of Principal temporarily by resolution dated 08.01.2001 and subsequently by resolution dated 24.01.2002.
- (vi) The first round of litigation began when the petitioner challenged the action of the Cantonment Board, in Writ Petition (S/B) No. 286 of 2002, Smt. Poonam Verma v. Cantonment Board and others ("the First Petition").
- (vii) The First Petition was decided on 19.04.2003, when the Court directed the respondent

Cantonment Board to make regular appointment to the post of Principal.

- (viii) The petitioner filed a Review Application in the First Petition, which was rejected on 19.04.2003.
- (ix) The Cantonment Board also filed a Review Application in the First Petition, which was rejected on 06.06.2003.
- (x) Again by resolution dated 14.07.2003, the Cantonment Board declared the petitioner unfit for the post of Principal in the College and resolved to promote and appoint the respondent no. 4 as Principal.
- (xi) The petitioner filed second Writ Petition No. 1392 of 2003 (S/S), Smt. Poonam Verma v. Cantonment Board and others, challenging the resolution dated 14.07.2003 of the Cantonment Board ("the Second Petition").
- (xii) The Second Petition was decided by an order dated 28.06.2006 of this Court when the petitioner was given liberty to make a representation to the respondent Cantonment Board.
- (xiii) The petitioner made representation pursuant to the judgment dated 28.06.2006 passed in the Second Petition, but it was rejected by the Resolution No. 104-1 dated 13.09.2006 of the Cantonment Board.

- (xiv) The petitioner finally challenged the resolution dated 13.09.2006 in Writ Petition (S/S) 1674 of 2006, Smt. Poonam Verma v. Cantonment Board and others (“the Third Petition”).
- (xv) The Third Petition was decided by this Court on 13.05.2010, when the Central Government was directed to classify the post of Principal either as direct recruitment post or a promotional post.
- (xvi) The judgment and order dated 13.05.2010 passed in the Third Petition was challenged by the petitioner in Special Appeal No. 100 of 2010, Smt. Poonam Verma v. Cantonment Board, Dehradun and others (“the Special Appeal”).
- (xvii) The Special Appeal was decided by this Court on 06.05.2015, quashing the resolution dated 14.07.2003 and 13.09.2006 and the respondent Cantonment Board was directed to consider the case of the petitioner and the 4th respondent in terms of proviso to Rule 5-B(8) of the 1937 Rules and keeping in view the principle laid down by the Hon’ble Apex Court relating to the criteria of seniority-cum-merit.
- (xviii) Thereafter, the Cantonment Board by its resolution dated 30.07.2015 resolved to promote the respondent no. 4 to the post of the Principal of the College. Consequent to it, the respondent no. 2/Chief Executive Officer of the Cantonment Board issued the impugned order appointing the

respondent no. 4 to the post of Principal of the college on promotion. They are impugned.

4. It is the case of the petitioner that the impugned resolution dated 30.07.2015 is in absolute violation of the provisions of the law, particularly when specific interpretation of the Rule has been made by this Hon'ble Court in respect of the same parties; the respondent Cantonment Board has promoted the respondent no. 4 on the post of Principal in an predetermined manner ignoring the judicial pronouncement made by this Court in the Special Appeal. Post decision dated 06.05.2015 passed in the Special Appeal, there remained no doubt as to what would be the criteria for giving promotion on the post of Principal of the college and it was legally incumbent upon the respondent Cantonment Board to make the promotion applying the principle of seniority-cum-merit. It is also the case of the petitioner that in view of the law enunciated by the Hon'ble Supreme Court that in the case of seniority-cum-merit, the seniority would play the primacy and the *inter se* merits of the candidates will not be compared, however, the respondent Cantonment Board ignoring the aforesaid principle of law compared the *inter se* seniority of the petitioner *vis-à-vis* the respondent no. 4 and promoted her giving a complete go by to the seniority of the petitioner.

5. The respondent nos. 1, 2 & 3 filed their counter affidavit. According to it, Rule 5-B(8) of the 1937 Rules provides that appointments to the promotion post shall be made by the appointing authority on the seniority lists maintained for this

purpose by the Board, subject to rejection of those considered unfit; provided that promotion to selection posts shall be made on the basis of seniority-cum-merit.

6. It is the case of the respondent nos. 1, 2 & 3 that the petitioner did not challenge the order of this Court dated 06.05.2015 passed in the Special Appeal, instead she approached the OBC Commission, Uttarakhand by making a complaint. However, in para 12 of their counter affidavit, the respondent nos. 1, 2 & 3 have stated that the petitioner participated in the selection process in the month of July, 2015 without any objection or notice. If she had any objection or was not satisfied with the direction dated 06.05.2015 passed by this Court in the Special Appeal, she could have challenged the same before the higher forum. It has been the case of the respondent nos. 1, 2 & 3 that in compliance of the judgment dated 06.05.2015 of this Court passed in the Special Appeal, an expert technical committee of three members was constituted, who were experts in the field of education. The committee interviewed both the candidates. Their wisdom cannot be challenged in the court of law.

7. It has further been the case of the respondent nos. 1, 2 & 3 that the documents of the committee reveal that, in fact, the petitioner is not a deserving candidate for the post of Principal, which has to lead and run an educational institution. With regard to the conduct of the committee, according to the respondent nos.

1, 2 & 3, the committee had allotted marks and submitted their separate reports before the President, Cantonment Board, which is the highest decision taking body, which after due consideration accepted the report of the committee.

8. According to the respondent nos. 1, 2 & 3, in the committee, the petitioner did receive only 48 average marks out of 100 marks, whereas the respondent no. 4 scored 73.67 average marks out of 100 marks. It has been submitted that the petition is devoid of merit.

9. The respondent no. 4, the candidate, who was appointed as Principal by the impugned resolution and order, filed separate counter affidavit and in paras 10, 11 and 12 has stated about the constitution of the committee post judgment dated 06.05.2015 of this Court in the Special Appeal and has stated that the interview committee met on 15.07.2015 and both the candidates i.e. the petitioner and the respondent no. 4 faced the interview and produced all the testimonials regarding educational qualifications, experience, etc. and after examining them the committee awarded point marks on each head, such as educational qualification, experience, extra-curricular activities, general awareness, confidence, bilingual competence and managerial activities. Based on the marks allotted, the merit list was prepared. The petitioner secured 48 average marks out of 100, whereas the respondent no. 4 secured 73.67 average marks out of 100. Accordingly, the respondent no. 4 was promoted to the post of Principal of the college.

10. Learned counsel for the petitioner submits that in the matter of appointment on seniority-cum-merit, merit is also given due consideration. Referring to the judgment of the Hon'ble Supreme Court in the case of B.V. Sivaiah v. K. Addanki Babu and others, (1998) 6 SCC 720, the learned counsel submits that first and foremost, the competent authority had to prescribe for the minimum necessary merit and it is only thereafter the assessment of merit could have been done based on service record, interview, etc. and those who cross the minimum necessary merit could be promoted, while considering the seniority. He referred to para 15 of the judgment dated 06.05.2015 passed in the Special Appeal, in which the Division Bench of this Court referred to the judgment in the case of B.V. Sivaiah (*supra*). Learned counsel has also referred to other parts of the judgment dated 06.05.2015 passed in the Special Appeal to argue that the criteria for promotion is seniority-cum-merit; *inter se* seniority has no significance; the assessment is done so as to assess the minimum necessary merit of the candidates and if a senior deserves that minimum necessary merit standard, he is to be promoted, despite the fact that the junior to him is far more meritorious than the minimum necessary merit standards.

11. Learned counsel for the petitioner has also raised the following points in his submissions:-

- (i) Earlier by resolution dated 14.07.2003, the respondent Cantonment Board had appointed the respondent no. 4 as Principal of the college,

examining their *inter se* merit and the same mistake has been repeated again by the resolution dated 30.07.2015 and the order of the respondent no. 2/Chief Executive Officer dated 14.08.2015. Again the Cantonment Board has put the petitioner and the respondent no. 4 to compete so as to assess their *inter se* merit, which, it is argued is not permissible in the matter of promotion when the criteria is seniority-cum-merit.

- (ii) According to the respondents, the petitioner did get 48 average marks, but nowhere it is suggested by the respondents as to how 48 average marks is less than the minimum necessary merit.
- (iii) The respondent no. 4 is not B.Ed. qualified.
- (iv) Post judgment in the Third Petition, again the respondents have not made the selection in accordance with law.
- (v) The composition of the committee was not upto the mark. The Principals of other colleges were in the committee for making assessment of a candidate to the post of Principal, which it is argued cannot be termed as a competent committee.

12. In support of his contentions, learned counsel for the petitioner has widely read the judgment dated 06.05.2015 passed by the Division Bench of this Court in the Special Appeal.

13. On the other hand, learned counsel for the respondent no. 4 submits that since the petitioner participated in the interview committee, now its composition and method of making assessment cannot be questioned. It is argued that if the petitioner had any objection to it, she would have raised objections before she participated in the interview. In support of his contentions, learned counsel for the respondent no. 4 has placed reliance on the principle of law as laid down in the case of Anupal Singh and others v. State of Uttar Pradesh through Principal Secretary, Personnel Department and others, (2020) 2 SCC 173.

14. In the case of Anupal Singh (*supra*), the Hon'ble Supreme Court observed that the result of the interview cannot be challenged by a candidate, who has participated in the interview. In para 56 of the judgment, the Hon'ble Supreme Court observed as follows:-

“56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in *Madan Lal v. State of J&K* [*Madan Lal v. State of J&K*, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , it was held as under : (SCC p. 493, para 9)

“9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the

interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.”

15. The Hon’ble Supreme Court further observed in the case of Anupal Singh (*supra*) that **“It is thus clear that the candidates who appeared in the interview were well aware about the modification/revision in number of vacancies of Technical Assistants in different categories. The private respondents/intervening applicants have appeared in the interview with their eyes wide open regarding the modified vacancies to be filled up in various categories of the posts. Having appeared in the interview without any demur or protest, it is not open to the candidates to challenge the selection process on the ground that there was modification in the number of vacancies in different categories and they are estopped by the principle of estoppel from challenging the same.”**

16. Learned counsel for the respondent no. 4 also submits that the Government can decide mode as to how make selection. It is a selection post. Seniority alone is not a criteria; merit is also to be seen. In support of his contention, learned counsel has placed reliance on the principle of law as laid down in the case of State of Odisha and others v. Sreepati Ranjan Dash, 2026 SCC OnLine SC 879.

In the case of Sreepati Ranjan Dash (*supra*), the Hon'ble Supreme Court observed as under:-

“27. The Government as the employer, in its wisdom, chose to select and appoint Assistant Regional Transport Officers by way of direct recruitment through combined competitive recruitment examination conducted by the OPSC. In such case, Dash and Sahoo would have no right to be appointed or promoted to such post other than in a manner consistent with the 2021 Rules. A profitable reference may be drawn to a decision of this Court in *Sant Ram Sharma v. State of Rajasthan* 1967 SCC OnLine SC 16, where it was held thus:

6. ... If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstance that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection posts and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available.

28. The post being a selection post and not one of promotion, the manner of selection is a matter of policy which completely vests with the Government. If the

Government deemed it fit to change the method of selection, it was within its power, authority and competence and unless the changed policy is proved to be arbitrary, Dash and Sahoo cannot have a claim to the post.”

17. Learned Senior Counsel for the respondent no. 4 also raised the following points in his submission:-

- (i) Setting up of benchmark is not necessary in the matter of selection based on seniority-cum-merit. What is to be seen is minimum necessary merit, which can be assessed by individual assessment. Learned counsel has referred to the judgment in the case of B.V. Sivaiah (*supra*) and read over para 10 of the judgment, which reads as follows:

"10. On the other hand, as between the two principles of seniority and merit, the criterion of "seniority-cum-merit" lays greater emphasis on seniority. In *State of Mysore v. Syed Mahmood* [AIR 1968 SC 1113 : (1968) 3 SCR 363 : (1970) 1 LLJ 370] while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the Rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". It was pointed out that where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted."

It is argued that the Hon'ble Supreme Court has also held that where promotion is based on seniority-cum-merit, a senior cannot claim promotion as a matter of right by virtue of his seniority alone; his merit is also to be seen. Referring to para 18, in the judgment of B.V. Sivaiah (*supra*), learned Senior Counsel further argued that fixing of minimum benchmark is not necessary when the criteria is seniority-cum-merit. Para 18 of the judgment in the case of B.V. Sivaiah (*supra*) reads as follows:

“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.”

- (ii) Minimum benchmark is one of the modes of making assessment for appointment, when the criteria is seniority-cum-merit. In support of his contention, learned counsel for the respondent no. 4 has placed reliance on the principle of law as laid down in the case of Rajendra Kumar Srivastava and others v. SamyutKshetriya Gramin Bank and others, (2010) 1 SCC 335.

In the case of Rajendra Kumar Srivastava (*supra*), the Hon'ble Supreme Court in para 13 of the judgment observed as follows:-

“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.”

- (iii) In the instant case, the Cantonment Board had constituted an expert committee and assessed the minimum necessary merit of the petitioner and the respondent no. 4. It is argued that it is one of the modes of assessing the minimum necessary merit. It is lawful and permissible. Therefore, no interference is warranted. In support of his contention, learned counsel has further placed reliance on the principle laid down

in the case of Rama Negi v. Union of India & others, (2022) 5 SCC 150.

In the case of Rama Negi (*supra*), when the assessment of the candidates was made, it was found that senior was appointed when the junior was also facing departmental proceedings. The Hon'ble Supreme Court categorically held that the suitability of the candidate was attributed to two factors i.e. merit and *inter se* seniority and also noted that in the matter of merit, it was found that the selected candidate had unblemished record. In para 31 of the judgment, the Hon'ble Supreme Court observed as follows:-

“31. This Court must also be mindful of the fact that the Cantonment Board applied the criterion of seniority-cum-merit and treated the post to be of the “selection category”. Moreover, the unblemished service record of the appellant vis-à-vis the pending disciplinary proceedings against Respondent 3, (eventually resulting in penalty), were taken into account. All these circumstances in our opinion, weigh in favour of the appellant Rama Negi. Her suitability for the selection post was attributable to two factors i.e. merit of the candidate and the *inter se* seniority. Despite the difficulty in encapsulating the parameters for “merit”, a significant marker can be found in the unblemished record of the employee. A marred service record, though not an insurmountable bar, must carry some consequences, and it could be a comparative disadvantage in promotion for a selection post. The employer's preference for a person with a clean service record can be well appreciated.”

18. It may be noted that in the case of Rama Negi (*supra*), the Hon'ble Supreme Court did not advert to the criteria for selection on the basis of seniority-cum-merit and the standard of minimum necessary merit as such, which has been defined and elaborated by the Hon'ble Supreme Court in the case of B.V. Sivaiah (*supra*), which is three-Judges Bench judgment.

19. Learned counsel for the respondent nos. 1, 2 & 3 submits that in the Special appeal, directions were given to the Cantonment Board to consider the appointment of the Principal of the College in accordance with the principle of law. It is argued that individual basis assessment can be made in such cases. He would refer to the judgment of the Hon'ble Bombay High Court in the case of Prakash Jagannath Mane v. Hon'ble Registrar G. H.C. of Jud. Bom. and others (W.P. No. 6073 of 2012).

20. It may be noted that in the case of Prakash Jagannath Mane (*supra*), the issue was relating to appointment of Registrar of the Court and in page 7 of the judgment, the Hon'ble Bombay High Court has categorically stated that in view of the conjoint reading of the rules, it is not possible to accept the submission of the learned counsel for the petitioner that the promotion to the post of Registrar will be governed by only seniority-cum-merit rule and further held that **"In fact, the Rules do not specifically lay down whether seniority-cum-merit should be the criteria or whether it should be merit-cum-seniority as far as the promotion to the post of the Registrar is concerned."** In the case of Prakash Jagannath Mane (*supra*) reference to the judgment in the case of K Samantaray v. National Insurance Company Limited, (2004) 9 SCC 286 has also been made.

21. In the case of K. Samantaray (*supra*) also, the Hon'ble Supreme Court held that if the promotion is based on seniority-cum-merit, a person cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of higher post, he may be passed over and an officer junior to him may be promoted.

22. Extensive pleadings and long drawn arguments have been made. But, the issue is within a very short compass.

23. In the Special Appeal, on 06.05.2015, a Division Bench of this Court has already held that the appointment of the Principal is to be treated as a selection post, which shall be filled up by applying the principle of seniority-cum-merit. This discussion was made in para 14 of the judgment dated 06.05.2015 of the Division Bench of this Court in the Special Appeal. On the question of application of seniority-cum-merit, from para 15 to para 21 of the judgment dated 06.05.2015 passed in the Special Appeal, this discussion has been made by this Court. Para 18 of the judgment in the case of B.V. Sivaiah (*supra*) has already been quoted hereinabove, as referred to by the parties. At the cost of cost of repetition, it may be noted that in the case of B.V. Sivaiah (*supra*), the Hon'ble Supreme Court concluded 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.”**

24. What is important to be noted is that the Hon'ble Supreme Court in the case of B.V. Sivaiah (*supra*), in the same para 18 has observed that in order to assess 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. It further provides that **“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”**.

25. Para 10 of the judgment in the case of B.V. Sivaiah (*supra*) has been referred to by the learned counsel appearing for the respondent no. 4. It also speaks that the seniority is to be given weightage. This para 10 of the judgment in the case of B.V. Sivaiah (*supra*) does not stipulate as to how to assess the merits. It also does not speak that merit alone may be a criteria for promotion when the criteria is seniority-cum-merit. Merit has to be examined, but seniority is to prevail if the merits are equal and if there is minimum necessary merit.

26. The question is how to assess the minimum necessary merit?

27. In the case of B.V. Sivaiah (*supra*), which is a three-Judges Bench judgment, the Hon'ble Supreme Court has, in fact, discussed the process of selection when the criteria is seniority-cum-merit and has interpreted the concept of minimum necessary merit in

para 18 of the judgment, which has been referred to and which has been discussed hereinbefore.

28. That two instances, which have been referred to in the judgment in the case of B.V. Sivaiah (*supra*), the Hon'ble Supreme Court in para 26 and 29 of the judgment while examining the promotion of Branch Manager in Rayalseema Grameena Bank held that if only those officers who had secured the highest number of marks were ultimately promoted, it was rightly held by the High Court that it was contrary to the principle of seniority-cum-merit. In para 26, the Hon'ble Supreme Court observed as follows:-

“26. Having heard the learned counsel for the Rayalaseema Grameena Bank as well as the five Branch Managers who had been promoted as Area/Senior Managers in the proceeding on 1-12-1989, we find that no case is made out for interference with the said view of the High Court. The promotion process laid down by the Rayalaseema Grameena Bank in its circular dated 27-9-1989, on the basis of which the selection for promotion had been made on 1-12-1989, sets apart 34 marks for seniority, 10 marks for qualifications, 20 marks for interview and 56 marks for performance which shows that out of a total number of 120 marks, the maximum number of marks that could be awarded for seniority is 34 and that 0.75 mark was to be given for each completed month of service over and above the minimum qualifying service. In other words, if two persons are appointed on the same day, the same number of marks had to be awarded for seniority. Moreover, out of a total number of 120 marks, more than 50% marks were set apart for interview and performance. **The High Court has found that only those officers who had secured the highest number of marks were ultimately promoted. It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secure the prescribed minimum qualifying marks are selected for promotion on the basis of seniority. In the circumstances, it must be held that the High Court has rightly come to the conclusion that the mode of selection**

that was in fact employed was contrary to the principle of “seniority-cum-merit” laid down in the Rules. Civil Appeals Nos. 3799-3803 of 1996 filed by the Rayalaseema Grameena Bank as well as Civil Appeals Nos. 3811-3812 of 1996 filed by the promoted officers are, therefore, liable to be dismissed.”

(emphasis supplied)

29. Similarly, in para 29 of the judgment also, in the case of B.V. Sivaiah (*supra*), the appointments based on merit, when the criteria was seniority-cum-merit was not upheld. The Hon’ble Supreme Court in para 29 of the judgment observed as follows:-

“29. From the circular dated 16-3-1992 laying down the promotion process, it is evident that selection was to be made on the basis of marks to be awarded by the Selection Committee and that out of a total number of 100 marks, 55 marks were to be awarded for seniority while 25 marks were assigned for performance and 15 marks for interview. There was no indication in the said circular as to how 55 marks for seniority were to be given to the Branch Managers who were eligible for consideration for promotion on 31-3-1992. **The said circular did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected and,** as pointed out by the High Court, the selection was made of only those officers **who secured the highest number of marks amongst the eligible officers. In the circumstances, the High Court, in our view, has rightly held that this method of selection was contrary to the principle of “seniority-cum-merit” and it** virtually amounts to the application of the principle of “merit-cum-seniority”. We, therefore, do not find any merit in Civil Appeals Nos. 3809-3810 and 3798 of 1996 and the same are also liable to be dismissed.”

(emphasis supplied)

30. What is not to be done is assessment of *inter se* merit. In para 29 of the judgment in the case of B.V. Sivaiah (*supra*), the

Hon'ble Supreme Court has noted that, in fact, the circular awarding marks did not prescribe minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected, which was not correct by the standard of seniority-cum-merit.

31. The judgment in the case of Rama Negi (*supra*) does not discuss as such the minimum necessary standard. Even otherwise, in that case, merit and *inter se* seniority both were seen and the unsuccessful candidate had blemished service record. The factual narration in the case of Rama Negi (*supra*) was distinct. The principle as laid down in the case of B.V. Sivaiah (*supra*) has not been overruled in the case of Rama Negi (*supra*). Under the factual situation of the case, the decision in the case of Rama Negi (*supra*) has been made.

32. Earlier, on 14.07.2003, the Cantonment Board had appointed the respondent no. 4 as the Principal of the College. That was challenged in the Second Petition, which was decided on 20.06.2006, when the Court had directed the authorities to consider the representation that was to be made by the petitioner.

33. What was done by the impugned order in the Second Petition has been quoted by the Division Bench of this Court in para 20 of the judgment passed in the Special Appeal, which reads as follows:

“20. In the light of the case law, we will approach now the impugned orders. In the order dated 14.07.2003, which is passed pursuant to the earlier direction of the Court, authorities proceeded on the basis that the appellant is unfit. In the second impugned

order, following is the discussion which we find in the concluding paragraph:

“Therefore, in order to establish the inter se merit, as warranted by the proviso to Rule 5-B(8) of the Cantonment Fund Servants Rules, 1937, between Smt. Poonam Verma and Smt. Nidhi Khanduri, both of them were interviewed by the Board today. To assist the Board in the said interview eminent educationist Shri R.C. Shingal, Principal Cambrian Hall, Dehradun was also present. Shri R.C. Shingal guided the Board in conducting the interview of both the candidates to assess their administrative acumen and merit. After a **detail interview of both the candidates the Board found that Smt. Nidhi Khanduri was a better and more suitable candidate by virtue of her merit as was ascertained through the interview, for the post of Principal of Shaheed Mac Bahadur Girls’ Inter College.** Having thus ascertained the inter se merit, the Board resolved to ratify the decision taken to the extent of promotion of Smt. Nidhi Khanduri to the post of Principal of Shaheed Mac Bahadur Girl’s Inter College vide CBR No. 3-3 dated 14.7.2003”.

(emphasis supplied)

34. The above narration categorically makes it clear that earlier when on 14.07.2003, the petitioner was declared unfit for the position of the Principal and the respondent no. 4 was promoted as the Principal, *inter se* merit was examined and at that occasion also, after a detailed interview of both the candidates, the Cantonment Board found the respondent no. 4 as a better and more suitable candidate. The words “better and more suitable” are not in consonance with the principle of seniority-cum-merit. *Inter se* merit of the candidate is not to be seen in such matter. What is to be assessed is minimum necessary merits of the candidates participating in the promotion process and if a senior possesses minimum necessary merit, he gets qualified for promotion inspite of the fact that the candidate lower to him is more meritorious.

35. What has been done in the instant case? It is the stand of the respondents that after the judgment dated 06.05.2015 of the Division Bench of this Court in the Special Appeal, a committee consisting of three eminent persons were constituted for the purpose of the interview. They assessed the petitioner and the respondent no. 4 under different heads, namely, educational qualification, experience, extra curricular activities, awareness, confidence, bilingual competence, managerial aptitude and based on separate marks awarded by the members of the expert committee, the average marks which the petitioner got was 48 %, whereas the respondent no. 4 got 73.67 % and the President, Cantonment Board approved the selection of the respondent no. 4.

36. Learned Senior Counsel for the respondent no. 4 has extensively read over the proceedings of the interview committee as to how questions were asked and how they were replied. Out of three expert members, the first one records about the petitioner that she was satisfactory in answering the questions, whereas for the respondent no. 4, he writes that the respondent no. 4 answered all the questions with far better approach. The second member of the committee recommends the respondent no. 4 for the Principal of the College because she has done her education through regular courses and is aware about the recent educational development. Moreover, she was confident and had bilingual competence. The third member of the committee made an interview report and found the petitioner not suitable and the respondent no. 4 suitable to the post of Principal.

37. The non-suitability of the petitioner has not been found by the Board as such. Though one member has stated that the petitioner is not suitable for the post of Principal, but the other two have not given such opinion. They have made comparative assessment between the petitioner and the respondent no. 4. The first member, who was a Principal of Cambridge Hall, Dehradun found the petitioner satisfactory in answering the questions, though in the comparative assessment, he writes that the respondent no. 4 answered all the questions with far better approach. Similarly, the second member, who was the Section Master, RIMC, recommends the respondent no. 4 but does not write anything against the petitioner. He has made *inter se* assessment and gave 57 marks to the petitioner, whereas the respondent no. 4 was awarded by him 79 marks and based on the comparative assessment, he made the recommendation.

38. *Inter se* assessment of merit is not a criteria for promotion when it is to be done on seniority-cum-merit basis. Para 18 of the judgment in the case of B.V. Sivaiah (*supra*) lays down the guidelines. The competent authority has to lay down the minimum standard. In the instant case, it has not been done. Despite the directions issued by the Division Bench in judgment dated 06.05.2015 passed in the Special Appeal, the competent authority did not lay down the minimum standard that is required for promotion to the post of the Principal of the College. The Cantonment Board also did not prescribe the mode of assessment of merit of the candidates, who are eligible for consideration for promotion. Merely, an interview committee was constituted, which made a comparative assessment of

the petitioner and the respondent no. 4. The interview committee did not find the petitioner unfit, although one of the members had found her unfit, but the other two members had found the respondent no. 4 better than the petitioner and cumulatively the interview board gave 48 % marks to the petitioner, whereas the respondent no. 4 was given 73.67% marks, out of 100. Based on *inter se* assessment, by the resolution dated 30.07.2015, the promotion has been made, which is against the principle of seniority-cum-merit. Consequently, the writ petition deserves to be allowed and the impugned Resolution No. 906-16 dated 30.07.2015 passed by the Cantonment Board and the order dated 14.08.2015 passed by the respondent no. 2 deserve to be quashed.

39. The writ petition is allowed. The Resolution No. 906-16 dated 30.07.2015 passed by the Cantonment Board and the order dated 14.08.2015 passed by the respondent no. 2 are quashed.

40. For promotion to the post of Principal of the College, the competent authority i.e. the Cantonment Board, Dehradun is directed to firstly lay down the minimum necessary merit that is required for the post of Principal of the college. Thereafter, the Cantonment Board shall also prescribe the mode of assessment of merit of the teachers, who are 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. Let the entire promotion exercise be completed by the Cantonment

Board within a period of two months from today, keeping in view the fact that the dispute in hand is too old i.e. almost 25 years now.

(Ravindra Maithani, J.)
09.07.2026

Avneet/