

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.411 of 2007
IN
Civil Writ Jurisdiction Case No. 3249 of 2003**

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Motilal Prasad & Ors

Versus

.... Appellant/s

Gorakh Nath Singh & Ors

with

.... Respondent/s

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**Letters Patent Appeal No. 397 of 2007
IN
Civil Writ Jurisdiction Case No. 3249 of 2003**

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The Siwan Kshetriya Gramin Ban

Versus

.... Appellant/s

Gorakh Nath Singh & Ors

.... Respondent/s

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Appearance :

(In LPA No. 411 of 2007)

For the Appellant/s : Mr. Saket Tiwary

For the Bank : Mr. Prashant Vedasen

For the petitioner : Mr. Udit Narayan Singh
Mr. Gyan Prakash

(In LPA No. 397 of 2007)

For the Appellant/s : Mr. Prashant Vedasen

For the Respondent/s : Mr. Udit Narayan Singh, advocate
Mr. Gyan Prakash, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 13-07-2015

These two Intra Court Appeals arise from the Judgment and
order of the learned Single Judge dated 23.03.2007 passed in

C.W.J.C. No. 3249 of 2003 (Gorakh Nath Singh & Ors Vrs. Siwan Kshetriya Gramin Bank & Ors.). In one of the Appeals, the appellants are three Private respondents of the Writ petition and the other Appeal is by the Bank itself.

Initially, these two appeals were dismissed by the Division Bench by a brief order stating that the learned Single Judge was correct in holding that in case of promotion on the basis of “Seniority-cum-Merit”, interview can not be the sole criterion.

The Private respondents to the writ petition, who are appellants in one of the Intra Court Appeal, after being aggrieved, took the matter to the Hon’ble Apex Court.

The Hon’ble Apex Court, after hearing the parties, inter alia, held that it was not a case where promotion was solely granted on the basis of interview. At the same time, the Hon’ble Apex Court also held that in “Seniority-cum-Merit”, seniority has to be determined on the basis of established principle i.e. if all persons were appointed on the same day, their seniority would be determined on the basis of the merit based on panel prepared for the purpose of appointment.

This was relevant because the stand of the Bank and the Private respondents in the writ petition was that 21 persons were appointed on the same day and, therefore, all 21 were required to be



assessed for their performance and as such all of them were called for interview against the vacancies being filled up. According to them, those, who met the minimum criteria of performance on assessment were considered for promotion on basis of seniority. As per the Hon'ble Apex Court this would not make the promotion to be on "Merit-cum-Seniority" but would retain the character of "Seniority-cum-Merit".

However, while allowing the appeal, the Hon'ble Apex Court remanded the matter to this Court on a very limited issue as urged on behalf of the writ petitioners, who were respondents in the Appeal before the Hon'ble Apex Court. It was urged that there was a ratio restriction of 1:3 for the purposes of selection process for promotion in respect of vacancy required to be filled viz a viz persons to be considered.

Accordingly, there being four vacancies, at best 12 senior persons could have been called for consideration and not all 21 persons. Those twelve would be according to seniority. On behalf of the appellant before the Hon'ble Apex Court, this position was contested. Therefore, only for resolving this limited issue, the matter was remanded to this Court.

We have heard the parties on this issue.

We may first note that there are statutory rules dated



28.09.1988 with regard to promotions. We are concerned with promotion of Clerk-cum-Cashier to the posts reserved for them as Field Supervisor, who are in Officer Scale-I. Out of the vacancies, 50% is to be filled up by direct recruitment and remaining 50 % by promotion and only thing therein is that the appointment, by way of promotion, would be on the basis of “Seniority-cum-Merit” and the merit determination would be basis of the interview and assessment of performance for the preceding three years. Nothing is said about the ratio of number of people to be considered.

We then have the resolution of Board of Directors of the Siwan Kshetriya Gramin Bank in its 128th meeting which was held at 27.11.2002, Annexure-14 to the Supplementary Affidavit to the writ petition.

This is the complete proceedings in original of the Board including Agenda No. 8 with which we are concerned. This Agenda No. 8 is appended, as was circulated by the Bank, by the respondents in their counter affidavit. There is a difference between them. Whereas in the complete resolution (Annexure-14), while dealing with promotion of Clerk to Officer Grade, there is mention of ration 1:3 for consideration in selection but in Annexure 4 of the L.P.A. 411 of 2007 which is also the extract of Boards 128th Meeting dated 27.11.2002 Agenda No. 8, this crucial line is missing. The Bank now



stands by this full resolution as appended as Annexure-14. No one contests the position. The result would be that as there were four vacancies in Officer Scale –I to which promotion was being considered from Senior Clerk-cum-Cashier, the first consideration zone would have to be determination of the first 12 persons in Seniority. The Hon’ble Apex Court has already clarified as to what would be the seniority from amongst persons appointed on the same post on the same date. It would be the position in the panel considered for appointment. Their respective positions have been noted in the writ Judgement.

The first writ petitioner Gorakh Nath Singh figured at serial no. 4, Petitioner No. 2 Anup Kumar is at serial no. 5, petitioner No. 3 Narendra Kumar Dwivedi is at serial No. 9 and petitioner No. 4 Anil Kumar Srivastava is at serial No. 12, where as, amongst the private respondents, Moti Lal Prasad would be at serial No. 6, Amrendra Kumar Arun is at serial No. 14 and Sheo Shankar Prasad Yadav is at serial No. 16.

We have noticed that respondent- appellant Amrendra Kumar Arun and respondent-appellant Sheo Shankar Prasad Yadav would not come within the cut off ratio of 12 persons, who had to be considered for appointment by way of promotion. Thus we hold that there is a provision limiting the number of persons as to who would be

called for consideration i.e. 1/3rd. The writ petitioners are thus correct.

Therefore, in view of the directions in respect of the limited point on which remand has been made by the Hon'ble Apex Court, we dispose of these appeals, observing as above and it would now be open to the authorities to re-consider the matter.

In view of what has been noted above, we would like to observe that any one, who had been given promotion earlier would not be deprived of his promotion because obviously he did not play fraud and he was not at fault.

Having worked as an Officer for over ten years in the Bank, they can not be reverted to the post of Clerk –cum-Cashier Grade. A further observation is made in our Judgment to ensure to those persons, who had wrongly been deprived, the authorities would consider the promotion of those persons which will only get them seniority but it would not entitle them to any additional remuneration.

These appeals are accordingly, disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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