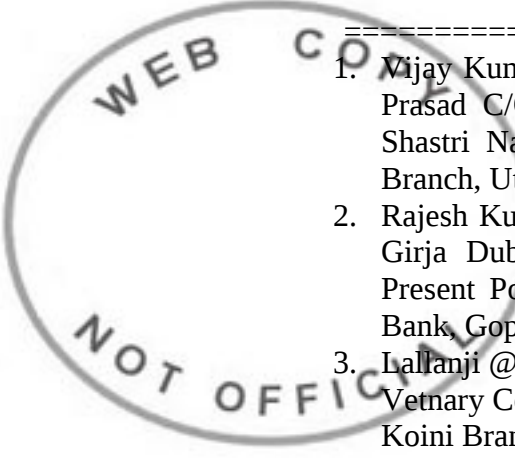


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20669 of 2010

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1. Vijay Kumar Shrivastava @ Vijay Kr. Srivastava, S/O Late Dr. Ganga Dayal Prasad C/O Niraj Kumar, Besides Samarpan Building, South Shivpuri, P.S.- Shastri Nagar, Patna At Present Posted As Branch Manager, Mishrabatraha Branch, Uttar Bihar Gramin Bank, Gopalganj
 2. Rajesh Kumar Shrivastava S/O Sri Gulab Chand Lal R/O Vill. Bakharia, Post-Girja Dubey, P.S.- Bhore, Distt.- Gopalganj P.S.-Shastri Nagar, Patna At Present Posted As Branch Manager, Panchdeori Branch, Uttar Bihar Gramin Bank, Gopalganj
 3. Lallanji @ Lalanjee S/O Sri Dev Narayan Ram R/O Kalyan Vihar Colony, P.O.- Veterinary College, P.S.- Rukanpura, Patna At Present Posted As Branch Manager, Koini Branch, Uttar Bihar Gramin Bank, Gopalganj
 4. Syed Nasir Abbas S/O Late S. Sajid Hussain R/O Vill.- Balkishunganj Ghera, P.S.- Alamganj, Patna At Present Posted As Branch Manager, Rajapatti Branch, Uttar Bihar Gramin Bank, Gopalganj
 5. Pramod Kumar S/O Late Gauri Shankar Prasad R/O At & P.O. & P.S.- Chanpatia, Distt.- West Champaran At Present Posted As Senior Manager Credit, Regional Office, Uttar Bihar Gramin Bank, Gopalganj

.... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank Through Its Chairman Head Office, Kalambagh Chowk, Muzaffarpur
2. The Chairman, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur
3. The Board Of Director Cum Members Of Selection Committee For Promotion From Officer Scale Ii To Officer Scale Iii Uttar Bihar Gramin Bank, Muzaffarpur
4. Suresh Narayan Tiwary, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Bettiah
5. Bir Bahadur Singh, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Araria
6. Anil Kumar Singh, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Saharsa
7. Jitendra Kumar Shrivastava, Branch Manager, Mirganj Branch, Uttar Bihar Gramin Bank, Gopalganj
8. Baiju Sah, Branch Manager, Motihari Branch, Uttar Bihar Gramin Bank, Motihari
9. C.R.V. Krishnan, Branch Manager, Madhepura Branch, Uttar Bihar Gramin Bank, Madhepura
10. Jagdish Thakur, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Purnea
11. Ashok Kumar, Scale III Officer, Uttar Bihar Gramin Bank, Head Officer Muzaffarpur
12. Mani Bhushan Prasad, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Gopalganj
13. Surendra Pathak, Branch Manager, Bettiah Branch, Uttar Bihar Gramin Bank, Bettiah
14. Anil Kumar Singh, Branch Manager, Katihar Branch, Uttar Bihar Gramin Bank, Katihar

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- 15. Shyama Nand Jha, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 16. Laxmi Narayan Mishra, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Sitamarhi
 - 17. Rewati Raman Prasad Singh, Branch Manager, Kanhauli Branch, Uttar Bihar Gramin Bank, Muzaffarpur
 - 18. Arun Kumar Sinha, Branch Manager, Laheria Sarai Branch, Uttar Bihar Gramin Bank, Darbhanga
 - 19. Sunil Kumar Choudhary, Branch Manager, Supaul Branch, Uttar Bihar Gramin Bank, Supaul
 - 20. Anand Mohan Das, Branch Manager, Saharsa Branch, Uttar Bihar Gramin Bank, Saharsa
 - 21. Shashi Shankar Singh, Branch Manager, Madhubani Branch, Uttar Bihar Gramin Bank, Madhubani
 - 22. Raj Narain Prasad, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Jhanjharpur
 - 23. Vijay Kumar Jha, Branch Manager, Purnea Branch, Uttar Bihar Gramin Bank, Purnea
 - 24. Ravindra Kumar, Branch Manager, Dhaka Branch, Uttar Bihar Gramin Bank, Motihari
 - 25. Kishore Kumar Mishra, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 26. Ajit Kumar, Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Muzaffarpur
 - 27. Bipin Kumar Jaiswal, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 28. Rajesh Kumar, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 29. Sujeet Prasad Jaiswal, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 30. Manoj Krishna Singh, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 31. Sunil Kumar Sinha, Branch Manager, Katihar Brach, Uttar Bihar Gramin Bank, Katihar
 - 32. Amit Kumar, Scale Iii Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 33. Prasanna Kumar Singh, Branch Manager, Muzaffarpur Branch, Uttar Bihar Gramin Bank, Muzaffarpur
 - 34. Narendra Kishore, Scale III Officer, Head Office Uttar Bihar Gramin Bank, Muzaffarpur
 - 35. Yogendra Baitha, Branch Manager, Gopalganj Branch, Uttar Bihar Gramin Bank, Gopalganj
 - 36. Pankaj Kumar Thakur, Branch Manager, Barhara Kothi Branch, Uttar Bihar Gramin Bank, Purnea
 - 37. Rajendra Prasad, Branch Manager, Chapra Branch, Uttar Bihar Gramin Bank, Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash, Advocate.
Mr. Shrawan Kumar, Advocate.

For the Respondent/s : Mr. Prabhakar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 30-06-2015

Heard learned counsel for the parties.

2. At the outset, learned counsel for the petitioners, by filing an I.A. No. 1950 of 2011 on behalf of petitioner no. 2, has submitted that the petitioner no. 2, on account of his being given promotion in the year 2014 in Officers Scale-III of Uttar Bihar Gramin Bank (hereinafter referred to as 'the Bank'), is no longer interested in pursuing this writ application wherein he along with four other petitioners had assailed the earlier order granting promotion to the private respondents while rejecting their case of promotion. Interlocutory application is, accordingly, disposed of.

3. Learned counsel for the petitioners has submitted that even other petitioners have been subsequently given promotion in Scale-III but as they would be losing their seniority to private respondents in view of their supersession in the year 2010, they have been advised to press this writ application.

4. Learned counsel for the petitioners, in fact, while praying for the following relief:

(i) For issuance of writ in the nature of certiorari for quashing Letter No. HO:PRS:2010:11:18:-46 dated 23.11.2010 (as contained in Annexure-5) issued by the Chairman, Uttar Bihar Gramin Bank, Muzaffarpur by which 38 Officers Scale II have

been promoted as Officers Scale III.

(ii) For issuance of a writ of mandamus commanding the Respondent Bank and its Authorities to consider the case of petitioners for promotion to Scale III Officers from Scale II Officers with effect from 23.11.2010 when Juniors to the petitioners have been given promotion in Scale III Officers violating the Rule laid down by the Government of India in this regard published in Gazette on 29.07.1998 and in complete disregard of the principle of Seniority-cum-merit.",

has basically raised only two issues. Firstly, he submits that when the respondents have not disclosed the marks obtained by the petitioners in the appraisal of the service records, which was of 75 marks, they have virtually taken away the whole concept of the promotion based on seniority-cum-merit. Secondly, he has submitted that as per the stand taken by the respondents in their counter affidavit, the petitioners have been denied from promotion only because they did not obtain half of the marks in interview confined to 25 marks. This action, according to the learned counsel for the petitioners, was in negation of the settled principle of promotion on the basis of seniority-cum-merit and to that extent he placed reliance on a judgment of the Apex Court in the Case of ***B.V.Sivaiah & Ors. v. K. Addanki Babu & Ors.*** reported in ***(1998) 6 SCC 720***. He has also referred to a judgment of the Full Bench of this Court in the case of ***Ranchi Kshetriya Gramin Bank & Ors. vs. Lal Oraon & Ors.*** reported in ***2000(1) PLJR 251***.

5. Apart from the aforesaid two decisions, he has produced one unreported judgment of the learned single Judge in the case of **Anup Kumar Bariar vs. Siwan Ksetriya Gramin Bank & Ors.** in **C.W.J.C. No. 10896 of 2005** disposed of on 02.03.2007.

6. Learned counsel for the respondents-Bank, on the other hand, submitted that once this position is not a controversy though the petitioners were given opportunity of being considered in the promotion and in the interview, they did not secure 50% marks of the total marks of the interview, they had to face the norms of the rules, which prescribes that any candidate for being considered promotion, if he does not secure 50% marks of the total marks of interview of 25%, he shall not qualify for promotion. To that extent, he also placed reliance at paragraph 7, 8, 9, 10 and 11 of the counter affidavit, which reads as follows:

"7. That the promotion from officer scale II to scale III is governed by the "Appointment and Promotion of Officers and other Employees Rule 1998" hereinafter called "the Promotion Rules" framed vide Government of India Notification dated 29.7.1998 in exercise of powers conferred under Section 29 of the R.R.B.Act read with Section 17 of the said Act.

8. That the Board of Directors of the Bank decided to initiate the interview and complete the promotion process accordingly strictly in terms of Promotion Rules, 1998 which is statutory in nature.

9. That as per Promotion Rules aforesaid the promotion from scale II to scale III is to be done on seniority-cum-merit basis. The Rules prescribes that the performance appraisal will carry 75 marks whereas the interview will carry 25 marks. It is also

provided in the Rule itself that eligible persons will be required to obtain 50% minimum i.e. 12.5% in the interview to qualify for said promotion.

10. That an Interview committee in terms of Promotion Rules was constituted and all eligible persons were called for interview and the persons who obtained the qualifying 50% marks in interview were considered for promotion on the basis of seniority who obtained qualifying marks in interview on seniority-cum-merit basis.

11. That the petitioners did not obtain the minimum qualifying 50% marks in interview as such they were not considered for promotion in the light of Rule 1998. The vacancy was only 39. Therefore, as per seniority-cum-merit only 39 persons who obtained 50% in interview have been promoted."

7. Additionally, learned counsel for the Bank has also placed reliance on a judgment of the Division Bench dated 19.04.2012 in C.W.J.C. No. 19939 of 2010 (**Arun Kumar Chaudhari and Others vs. Union of India and Others**), which according to him, squarely covers the case of the petitioners in view of said rules prescribing securing of 50% marks in interview to be rationale and valid.

8. In the light of the aforementioned submissions, the first and foremost issue will be as to whether the petitioners have been denied promotion contrary to the provisions of the Regional Rural Banks (Appointment and Promotion of Officers and other Employees), Rules, 1998. The Rules thus being relevant, has to be considered which reads as follows:

"Appointment to different categories of Officers and other employees to group "A" "B" and "C" posts whether by direct recruitment or by promotion shall be effected as follows:

- (a) Name of post : Scale III Officer
- (b) Classification : Group 'A'
- (c) Source of Appointment : 100% by promotion
- (d) Whether promotion to
be made on seniority basis
or seniority-cum-merit basis: Promotion shall be made on the basis of
seniority-cum-merit basis.
- (e) Eligibility : Officers holding post for seven years in
Scale II on regular basis in the Regional
Rural Bank shall be considered for
promotion in scale III post in that bank:
Provided that no Officer shall be considered for
promotion unless he has been confirmed in a
feeder grade post:
Provided further that the Board may, with the
prior approval of Natinal Bank, relax the
qualifying service for a period not exceeding two
years, if eligible Officers are not available.

NOTE-I. The Senior Mangers/Area Managers/Officers in Scale-II eligible for promotion, to the post of General Manager/Officer Scale III on or before the publication of this notification shall continue to be considered for promotion to Scale III Officer post.

II. The service of the incumbents, who are holding the post eligible for promotion before publication of this notification, shall continue to be counted for the purpose of promotion to the Scale III Officer post.

- (f) Mode of selection : The selection of the candidates shall be made by the Committee on the basis of interview and assessment of performance Appraisal Reports for the preceding five years as an Officer in Scale III post.
- (g) Composition of Committee: The Committee (for considering promotion) shall consist of the following persons, namely
- (i) The Chairman of the concerned Regional Rural Bank-Chairman
- ii) A director nominated by the Sponsor Bank-Member.
- (g) Composition of Committee: iii) A director nominated by National Bank-Member.

NOTE: If name of the members of the Committee belongs to Scheduled Caste/Scheduled Tribes, the Board may nominate a person belonging to Schedule Caste or Schedule Tribe as an additional member and such

person shall participates in the process of selection by the concerned committee.

(h) Reckoning of the minimum eligibility: The minimum eligibility in terms of the number of years of serving for promotion shall be reckoned as on the 1st April of the year in which the vacancy is expected to arise of has actually arisen.

(i) Number of candidates to be considered for promotion: The number of candidates to be considered for promotion from Officer Scale II to Officer Scale III shall be restricted to three times the number of vacancies available for promotion.

(j) Selection process : The selection shall be on the basis of performance in the interview and Performance Appraisal Reports for preceding five years as per the division of marks given below:

*(A) Interview : 25 marks
The minimum qualifying marks in the interview are fifty percent.*

*(B) Performance Appraisal Report: 75 Marks
Performance Appraisal Repots for the preceding five years shall be considered for the purpose of awarding marks for promotion.*

Total Marks : 100 Marks. "

9. It is not in dispute that when 39 vacancies in Officer Scale-III post in the Bank were sought to be filled up by way of promotion, the case of the petitioners, as per the Rules, alongwith others, total number of 117 persons being three times of the vacancies (39 X 3) were considered. It is again not in doubt that the promotion was to be considered as per the Rules which had prescribed 75 marks for the purpose of appraisal of service records and 25 marks for the interview.

10. The case of the petitioners, by way of performance



appraisal, was considered and thereafter they were also called for interview and in the interview, it is said that they did not secure 50% of the total 25 marks in the interview i.e. 12.5 marks. While considering on these two parameters, it is the specific case of the respondents that when the petitioners had appeared for interview, none of them could be secured 50% i.e. 12.5 marks, they were not found fit for promotion.

11. In absence of any denial by the petitioners to the averment made in the counter affidavit, though copy was served on learned counsel for the petitioners way back on 16.05.2012, the crucial fact, therefore, is admitted that the petitioners did not secure 50% of the marks in the interview. The question, therefore, would be as to whether the prescribing 50% marks for promotion in the Bank will be contrary to the spirit of the principle of seniority-cum-merit. This very aspect was directly gone into by the Division Bench in the case of **Arun Kumar Choudhary** in C.W.J.C. No. 19939 of 2010, wherein it was held as follows:

4. The main ground of challenge is that the afore said impugned provision violates the provision in clause 1(d) of the same very Schedule 3 that the promotion shall be made on the basis of seniority cum merit . According to the learned counsel for the petitioners, since seniority is to have a significant role in the selection hence merit cannot become a dominant factor, and no minimum marks could have been prescribed for the purpose of interview when no cut off marks have been prescribed by the Bank, so that a person getting the minimum required marks in the aggregate could be promoted on the basis of seniority.

5. We have considered the issue in some depth because we find that in the subsequent rules of 2010 the requirement of 50% as minimum qualifying marks in the interview has been retained and

a further minimum requirement of 50% marks out of 75 marks for performance appraisal has also been provided. Thus, under the new rules of 2010 there is requirement of 50% marks as minimum qualifying marks both in the interview as well as for performance appraisal whereas as per the rules under consideration the cut off for performance appraisal as well as cut off in the aggregate has been left to the wisdom of the Bank.

6. For the purpose of ensuring minimum required merit in the highest scale the rules do not debar the bank or the government from fixing required minimum but after setting the minimum qualifying marks the selection should not be on the basis of marks obtained by the candidate but should be on the basis of their seniority as only that will meet the essence of rule requiring promotion by seniority-cum-merit.

7. In the present case since the minimum qualifying marks for the performance appraisal and in the aggregate are not prescribed by the rules, we directed the Bank to make hypothetical exercise whether petitioners would gain and be entitled for any relief if 50% marks were fixed as minimum qualifying marks for performance appraisal as well as for the aggregate. On that direction, while retaining minimum qualifying marks for the interview, the Bank has found that none of the petitioners can get any relief even if the Bank is directed to undertake a fresh exercise of fixing a minimum cut off marks in the aggregate or in the performance appraisal. A few petitioners would gain only if this Court strikes down the provision for 50% as minimum qualifying marks for the interview.

8. Considering the responsibilities of the officers of the Bank at the highest level, in our considered view, prescribing 50% as minimum qualifying marks for the interview cannot be said to be arbitrary or violative of seniority-cum-merit rule. Such rule does not affect the right of the bank to grant promotion only to such officers who meet the minimum standards of merit. Hence, we find no merit in the challenge to the concerned provision. The writ petition is therefore, dismissed."

12. In view of the aforesaid authoritative pronouncement on this very specific aspect, this Court in presence of admitted fact that none of the petitioners had secured 50% of the total marks in the interview can not now interfere with the assessment and consequential decision of the promotion taken in the year 2010 by the Bank specially when the petitioners also have already been subsequently promoted in Officer Scale-III in course of fresh consideration for promotion in subsequent years.



13. The reliance placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of **B.V.Sivaiah** (supra) can have no application to the facts of the present case. It is noted that in this case there is no dispute regarding principle of Seniority-cum-merit. In fact, for fixing the criteria of Seniority-cum-merit, the Bank has framed the rules and regulations of promotion and one of the rules of promotion is quoted above is that a person must obtain 50% marks in the interview. This provision has already been upheld by the Division Bench of this Court in the case of **Arun Kumar Chaudhary** (supra) and, therefore, whatever was said in paragraph 18 of the **B.V.Sivaiah's** case will have nothing to do with the issue in hand in the present case.

14. Similarly, the judgment of the Full Bench of this Court, in the case of **D.B.Singh** (supra), has got no relevance because the issues in the same was confined only with regard to selection of a person for promotion who had secured higher marks in interview. That has not been done in this case. There is only qualifying marks of interview which has been made the basis for grant of promotion. In fact, if the marks secured in interview alone could have been made the basis that would have amounted to promotion by following principles of merit-cum-seniority and not seniority-cum-merit. Here, as noted above, the minimum qualifying marks of the interview has been fixed

and thereafter the old seniority was taken into account for giving promotion.

15. Finally, the reliance placed by the learned counsel for the petitioners on the judgment of the learned single Judge **Anup Kumar Bariar** (supra) is also wholly misplaced inasmuch as that too was on the same principles of **B.V.Sivaiah's** (supra) case, which for the reasons indicated above, will have hardly any relevance in the facts of the present case. In fact in the opinion of this Court the judgment produced by the learned counsel for the respondents is the case of **Arun Kumar Chaudhary** (supra) deals with the issue in hand wherein the petitioners had been denied promotion because they too alike the petitioners had failed to secure the qualifying marks of interview as prescribed in the rules.

16. The remaining submission of learned counsel for the petitioners issue that the respondents have not divulged the marks secured by the petitioners in performance appraisal will have hardly any relevance inasmuch as the respondents in the counter affidavit have made it clear that the petitioners were denied promotion only on account of they having failed to secure the minimum cut off marks in the interview. The aforesaid categorical averments made in the counter affidavit of the respondents that the petitioners did not secure 50% marks i.e. 12 1/2 out of 25 has also not been controverted despite

service of counter affidavit on the learned counsel for the petitioners on 16.05.2012.

17. Thus for the reasons indicated above, this writ application must fail.

18. Before parting with, this Court must clarify that the petitioners cannot be now entitled to get their old seniority on the basis of their promotion secured in the year 2013 or 2014 because once they were superseded by their juniors in 2010 they having stolen march will still carry their seniority over the petitioners and if, therefore, the petitioners have been subsequently promoted, they can be given seniority only from the date of their promotion in Officer Scale-III.

19. That being so, this writ application is devoid of any merit and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 30th June 2015
A.F.R./Sujit/-

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