IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WP(C).No.15321 of 2011 (M)

PETITIONER(S):

P.B.SREEKUMAR,
ASST.GENERAL MANAGER, KERALA FINANCIAL CORPORATION,
REVATHY, HOUSE NO.43
RIVER GARDEN, KAIMANAM, TRIVANDRUM-40.

BY ADVS. SRI. GEORGE THOMAS (MEVADA) [SENIOR ADVOCATE],
SRI. MANU GEORGE KURUVILLA
SMT. RINU JOSE.

RESPONDENT(S):-
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1. THE KERALA FINANCIAL CORPORATION,
HEAD OFFICE, VELLAYAMBALAM, THIRUVANANTHAPURAM-33,
REP. BY ITS MANAGING DIRECTOR.

2. THE MANAGING DIRECTOR,
THE KERALA FINANCIAL CORPORATION, HEAD OFFICE,
VELLAYAMBALAM, THIRUVANANTHAPURAM-33.

3. STATE OF KERALA, REP. BY THE SECRETARY,
FINANCE DEPARTMENT, THIRUVANANTHAPURAM.

4. MR. C. JANARDHANAN, DEPUTY GENERAL MANAGER,
KERALA FINANCIAL CORPORATION, HEAD OFFICE,
VELLAYAMBALAM, THIRUVANANTHAPURAM-33.

5. MR. C.R. RENGASWAMY,
ASST.GENERAL MANAGER (EMPANELLED AS DEPUTY GENERAL MANAGER),
KERALA FINANCIAL CORPORATION, HEAD OFFICE,
VELLAYAMBALAM, THIRUVANANTHAPURAM-33.

R1 & R2 BY ADV.SRI.JAJU BABU [SENIOR ADVOCATE] &
STANDING COUNSEL SMT.M.U.VIJAYALAKSHMI.

R3 BY GOVERNMENT PLEADER SRI.P.V. LONACHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-10-2015, ALONG WITH WPC. 9894/2013-J & CONNECTED CASES, THE COURT ON 20-10-2015 DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	TRUE COPY OF INTEGRATED LIST OF MANAGERS OF GENERAL AND TECHNICAL WINGS IN KFC.
EXT.P2	TRUE COPY OF SERVICE ORDER N0.2068 DATED 06.06.2007.
EXT.P3	TRUE COPY OF THE PROMOTION GUIDELINES APPROVED BY THE 1ST RESPONDENT DATED 02.06.2009.
EXT.P4	TRUE COPY OF THE NOTE TO THE SELECTION COMMITTEE DATED 28.10.2010.
EXT.P5	TRUE COPY OF THE SERVICE ORDER NO.1226 ISSUED BY THE 1ST RESPONDENT DATED 16.05.2011.
EXT.P6	TRUE COPY OF THE SERVICE ORDER NO.1227 ISSUED BY THE 1ST RESPONDENT DATED 16.05.2011.
EXT.P7	TRUE COPY OF THE SERVICE ORDER NO.1228 ISSUED BY THE 1ST RESPONDENT DATED 16.05.2011.
EXT.P8	TRUE PHOTOCOPY OF THE INTERIM ORDER DATED 30.09.2010.
EXT.P9	TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENTS 1 AND 2 IN W.P.28268 OF 2010.
EXT.P10	TRUE PHOTOCOPY OF THE ORDER DATED 09.02.2012 PROMOTING YESUDAS AND OTHERS.
EXT.P11	TRUE PHOTOCOPY OF THE ORDER DATED 3.7.2012.
EXT.P12	TRUE PHOTOCOPY OF THE OFFICE ORDER DATED 12.7.2012.
EXT.P13	TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT DATED 01.03.2013.
EXT.P14	TRUE PHOTOCOPY OF THE WRITTEN SUBMISSIONS BEFORE THE SECOND RESPONDENT ON 2.3.2013.

RESPONDENT'S EXHIBITS:-

EXT.R1(a)	TRUE COPY OF THE LETTER NO.19668/PUA/04/FIN. DATED 17.9.2004 ISSUED BY THE 3RD RESPONDENT.
EXT.R1(b)	COPY OF THE WRITTEN REQUEST DATED 11.5.2012 SUBMITTED BY THE PETITIONER TO THE CHIARMAN & MANAGING DIRECTOR OF THE KERALA FINANCIAL CORPORARTION.
EXT.R1(c)	COPY OF THE ORDER DATED 18.5.2012 ISSUED BY THE CHAIRMAN & MANAGING DIRECTOR OF THE KERALA FINANCIAL CORPORARTION.

vku/ [true copy]

K. Vinod Chandran, J

W.P.(C).Nos.15321 of 2011-M, 9894 of 2013-J,
19910 of 2014-K, 22113 of 2014-L, 11160 of 2015-T,
12613 of 2015-B, 15385 of 2015-W,
15432 of 2015-D & 15640 of 2015-D

Dated this the 20th day of October, 2015

JUDGMENT

The above writ petitions seek to bring the promotions effected in the managerial cadre of the respondent-Corporation under judicial scrutiny. The individual facts will be referred later, since the common question raised is, the sustainability of the promotion policy brought in by the Promotion Guidelines purportedly by the Board of the respondent-Corporation, which is produced as Exhibit P3 in W.P.(C).No.15321 of 2011, the documents in which are referred; when not specifically mentioned otherwise.

2. The challenge raised to the promotion guidelines is on the oft-quoted principle of ***[Taylor v. Taylor*** **[(1875) 1 Ch.D 426]** that, when law requires that a particular thing should be done in a particular manner, the same should be done in that manner or not at all, which proposition has been consistently upheld by the Hon'ble Supreme Court. The statute which is relevant to the subject matter of the above case is State

Financial Corporations Act, 1951 [for brevity "the Act"] and the relevant provisions which arise for consideration are Section 23, 48(1)(2)(j) and 48A, which are extracted hereunder:

> **"Sec.23 Officers and other employees of the Financial Corporation.-** The Financial Corporation may appoint such officers, advisers and employeesw as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them**".**

> **"Sec.48. Power of Board of make regulations.- (1)** The Board may, after consultation with the Small Industries Bank and with the previous sanction of the State government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

> **(2)** In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for -

> xxx xxx xxx

> **(j)** the duties and conduct of officers, other employees, advisers and agents of the Financial Corporation;

> xxx xxx xxx".

> **"Sec.48A. Laying of rules and regulations before State Legislature.-** Every regulation made under section 48 shall be laid, as soon as may be after it is made, before the State Legislature".

The above provisions under the statute has not been complied with in framing the Promotion Guidelines, is the short contention.

3. The respondent-Corporation has brought out the Staff Regulations of 1966, exercising the powers conferred under Section 48 of the Act. As per the Regulation, the promotion policy is delineated in the following manner as per Regulation 9A and 9B, which are also extracted hereunder:

> "**9(A) Promotion Policy**
>
> I. There will not be stagnation promotion or time bound promotion. Promotion will be vacancy based only.
>
> II. Qualifying Service
>
> 1) For considering promotion to the post of Deputy Manager in all wings/System Analyst and above, the officer should have completed minimum 3 years in the lower cadre.

2) The qualifying service for the promotions in other lower categories i.e., to the post of Assistant Manager and below levels in all wings and categories is fixed as minimum 6 years.

3) Minimum three years qualifying service would be mandatory for promotion to any post. However relaxation can be made with the approval of the Board.

4) There will be a written test for promotion to the post of Manager in all wings. The criteria of weightage for promotion by Selection Committee for the post of Manager will be as follows:

		Percentage
i)	Length of service in the present post	40
ii)	Performance Appraisal	40
iii)	Written test	20
		100

5) Departmental tests with prescribed syllabus will be introduced as a qualifying test for Junior Executive/Junior Technical Officer/Legal Officer/Data Entry Operator/Computer Operator for their promotion to Assistant Manager cadre subject to stipulation that written test for promotion to Assistant Manager will not be insisted for Junior Executives of 1981 PSC batch who have completed 15 years of service in Assistant/Junior Executive cadre, on a one time basis.

6) For the purpose of performance appraisal, Selection Committee shall verify the confidential report file of the promotees together with biodata covering details of

past service and consider rewards, disciplinary action, punishment etc. during the entire service period.

7) For promotion by Selection Committee to categories other than Assistant Manager and Manager for which written test is not insisted upon, the criteria will be the following:

		Percentage
i)	Length of service in present post	50
ii)	Performance appraisal	50
		100

<u>9B. Integration:</u>

There shall be integration at the level of Assistant General Manager and above for General and Technical wings. Managers of General and Technical Wings eligible to be promoted as Assistant Gheneral Manager will be considered for promotion by the Selection Committee. Integrated list of Managers with common seniority will be prepared from existing seniority list of Managers of General and Technical wings. Legal and EDP wings because of their specialised character shall be kept separate".

Exhibit P3 Promotion Guidelines bring in a sea-change to the policy, which the Board does not have the power to do, unless the provisions of the statute are strictly complied with, is the contention of the petitioners.

4. The respondent-Corporation, however, would seek to sustain the Regulation as having been not challenged for umpteen years since it came into force and rely on Section 23 as an independent clause with respect to framing of service conditions, which does not require the rigmarole of Section 48. The Board also relies on Regulation 4 of the Regulations of 1966 to contend that the Regulation as brought out at Exhibit P3 does not in fact amend the earlier Regulations, but only ensures more stringent measures in the promotion; based on individual efficiency of the candidate. The learned counsel for the petitioners rely on ***Dipak Babaria and Another v. State of Gujarat and Others*** **[(2014) 5 SCC 502]** to contend that the manner in which the Regulation has been brought in vitiates it. The respondent-Corporation relies on ***Kamalakshy Amma.P.G. v. President, Indian Council of Agricultural Research, New Delhi and Others*** **[2014 (2) KLT 997]** and ***Nair Service Society v. Government of Kerala*** **[2015 (2) KLT 625]** to assert that executive instructions which do not override statutory provisions are permissible and the guidelines for promotion giving emphasis to merit cannot be assailed.

5. The Corporation also contends that the Government of Kerala holds 97.06% shares of the Corporation and SIDBI 2.89% of the shares. The total shareholding of the Government and SIDCO comes to 99.9% and the Board includes 2 nominated members of the State Government and 2 from the SIDBI. The Government and the SIDBI being amply represented in the Board of Directors, the amendments made to the Regulations are to be construed as approved by the State Government and SIDBI in principle. Exhibit P3 hence, is asserted to be an amendment brought under Regulation 4 in compliance with Section 48(1).

6. The Corporation alternatively contends that while Rule 9A of the Staff Regulations prescribes the criteria for promotion to all posts, beginning from the entry cadre, the Board has the authority to make amendments as stipulated under Rule 4. However it is to be noticed that any amendments made under Regulation 4, on a reading of the said Regulation itself, is again to be made in consultation with the RBI and with the previous sanction of the Government as prescribed under Section 48(1). Though the new Regulation or amendment

could be issued in the form of a Circular, the said mode is only for the purpose of circulation among the staff and it does not indicate a deviation from the procedure prescribed under Section 48(1).

7. The power to frame Regulations; with respect to the conditions of appointment and service and the remuneration of the officers, advisers and employees in the Corporation definitely has to be traced to Section 23. In that context, sub-clause (j) of sub-section (2)(ii) of Section 48 is not the power to make Regulations, for what is provided under Section 23. While Section 48(2)(j) prescribes the duties and conduct of officers, other employees, advisors and agents of the Financial Corporation, service conditions are to be framed under Section 23. When a specific power is conferred, then invocation of such power has to be traced to that provision and not a general provision as seen from Section 48. Section 23, all the same, is not a *non-obstante* clause and has to be regulated by Section 48. The power conferred under Section 23 is on the Financial Corporation, the business of which, including all affairs, is carried on by the Board of Directors under Section 9

of the Act.

8. Even in invoking Section 23, the Board has to make such Regulations under Section 48. Sub-section (1) specifically confers such power to be exercised in consultation with the Small Industries Bank of India [for brevity “SIDBI”] and with the previous sanction of the State Government to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Section 23, hence, can be properly invoked only in the manner provided under Section 48. A reading of the Staff Regulations of 1966 also would indicate that the same has been framed under Section 48 of the Act after consultation with the Reserve Bank of India [for brevity “RBI”] (as the provision then existing) and with the previous sanction of the Government of Kerala.

9. The question as to how “consultation” has to be made has been delineated in ***State of M.P. v. Sanjay Nagayach*** **[(2013) 7 SCC 25].** There, the Hon'ble Supreme Court was concerned with the provision in the Madhya Pradesh Co-operative Societies Act, 1960, which provided for consultation with the Reserve Bank of India, before a

supersession of an elected Managing Committee was resorted to. It was held so in paragraphs 22 and 23:

> "22. We have already quoted the second proviso to Section 53(1), the meaning of which is clear and unambiguous which, in our view, calls for no interpretation or explanation. In this respect, reference to the often quoted principle laid down by Tindal, C.J. in *Sussex Peerage case* [(1844) 11 Cl & Fin 85 : 8 ER 1034] is useful, which reads as follows: (ER p.1057)
>
> > "... If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense."
>
> Reference may also be made to the judgments of this Court in *Lalu Prasad Yadav. State of Bihar* [(2010) 5 SCC 1] and *Ansal Properties and Industries Ltd. v. State of Haryana* [(2009) 3 SCC 553].
>
> 23. The mere serving a copy of the show-cause notice on RBI with supporting documents is not what is contemplated under the second proviso to Section 53(1). For a meaningful and effective consultation the copy of the reply filed by the Bank to the various charges and allegations levelled against them should also be made available to RBI as well as the action proposed by the Joint Registrar, after examining the reply submitted by

> the Bank. On the other hand, RBI should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the view expressed by RBI will be a relevant material for deciding whether the elected Board be superseded or not. In other words, the previous consultation is a condition precedent before the forming of an opinion by the Joint Registrar to supersede the Board of Directors or not".

A consultation, hence, shall be an effective one and the sanction definitely has to be by the Government.

10. Section 48(1) specifically speaks of consultation with the SIDBI and a prior sanction from the Government. The Government nominees in the Board of the Corporation, undoubtedly has a say in the general affairs and day-to-day administration and the Government puts forward its view as to the general administration of the Corporation through its nominees. However, they, by themselves cannot accord a sanction which has to be expressly made by the State Government. The sanction which the provision mandates cannot be by reason of a tacit approval of the nominees of the Government, in the Board, by reason only of an approval of the amendments at the Board meeting. The prior sanction has to

be specifically sought for by the Board of Directors from the Government and obtained before the Regulation is validly framed under Section 23 read with Section 48(1). The said position is so, even for consultation with the SIDBI, which has to be communicated and expressed by the SIDBI and not by its nominees in the Board. The issue with respect to Section 48A hence, need not be gone into, since this Court has found that the Regulation itself is framed without following the procedure under Section 48(1). The principle re-stated in ***Dipak Bahariya*** (*supra*) applies squarely. It is also to be noticed that the Corporation does not have a case that the amended Regulations has been placed before the Legislature.

11. An alternate contention raised by the learned Senior Counsel appearing for the Corporation is that the revised guidelines were introduced with the object of achieving professionalism and efficiency in the functioning of the organization considering the need to determine the eligibility; with emphasis on the expertise and competence of the employees. A person selected for promotion should have the necessary wherewithal and potential to shoulder the higher

responsibilities. The change in Regulations can be sustained even as an effective implementation of the original Regulations, is the contention. To understand the aforesaid argument, one has to compare the promotion policy as per the original Regulations and the change made now.

12. The Promotion Policy under Regulation 9A, as extracted hereinabove, is applicable to the hierarchy of posts, starting from Assistant Manager, Deputy Manager, Manager, Assistant General Manager, Deputy General Manager and General Manager. The qualifying service for promotion to the post of Deputy Manager/System Analyst is three years in the lower cadre and that to the post of Assistant Manager is minimum 6 years in the feeder category. For all other posts, a minimum 3 years qualifying service is mandatory. A written test is prescribed only for promotion to the post of Manager and the criteria for weightage for promotion is specifically indicated as 40% for length of service, 40% for performance appraisal and 20% for written test. Hence, the criteria evolved is merit-cum-seniority with merit having a slight edge over the seniority. The same is applicable only upto the level of

Manager and for promotion to any other category other than Assistant Manager or Manager, the criteria prescribed is seniority and merit with length of service and performance appraisal being evaluated equally with 50% marks set apart for each.

13. The Regulations brought in by Exhibit P3 provide for a common criterion of evaluation upto the post of Manager, with weightage of 25% marks set apart for length of service; performance and test/interview being set apart 50% and 25% marks respectively. To the post of Assistant General Manager, performance appraisal has a higher significance with 75% marks and length of service reduced to a mere 10%. Interview too has been provided with 15% marks. To the post of Deputy General Manager and General Manager, seniority has been given a complete go by with only performance and interview being the criteria for evaluation, in the ratio of 75 : 25.

14. The significant difference on a comparison of the earlier Regulations and the guidelines is that, length of service has been given lesser relevance in the lower posts than provided in the Regulations, further reduced, to the post of

Assistant General Manager and totally removed for the post of Deputy General Manager and General Manager. The decision in ***Kamalakshy Amma*** (*supra*) cited by the learned counsel for the Corporation, on facts, does not apply here. True, the Division Bench noticed that as time advances, the principle of seniority-cum-fitness would dwindle, paving way to the operation of the principle “seniority-cum-merit” as we go up in the hierarchy in an establishment. The guidelines brought in, definitely is in consonance with the said declaration of the Division Bench.

15. The declaration in ***Kamalakshy Amma*** (*supra*), however, was made in the context of the Scientists in a Research Institute being placed in the promotion posts of Selection Grade and Senior Scale respectively based on the fact whether the performance appraisal report is “good” or “satisfactory”. The petitioner therein sought for placement in the Selection Grade, while she was granted only a promotion to the Senior Scale. It is specifically based on the scheme of Career Assessment of the Scientists of the ICAR, that the declaration above was made, sustaining it in the context of the

changing times, where seniority has to take a back seat, while considering placement in the higher post and merit has to be given more relevance. There can be no dispute to the said principle. However, on noticing the changing times and the needs of the organization, to have more efficient persons at the helm of affairs; the Board alive to such needs, if decides to have an amendment; it has to be made in the proper manner as has been held earlier.

16. The guidelines cannot also be supported on the dictum laid down in ***Nair Service Society*** (*supra*). There the Division Bench examined the provisions of the Kerala Education Rules to find no absolute or unbridled right on the Manager of an aided school to make appointment of teachers. Such appointments were held to be regulated not only by the statutory provisions but also by the executive orders issued from time to time by the Government and the competent authority. No such provisions in the statute or the Regulations are available herein. The guidelines bring substantial change to the method of evaluation, and runs contrary to the Regulations. That can be brought in only by amendment. The amendment

having not been done in the proper manner, the mere fact that the guidelines/amendments were made in the best interest of the organisation cannot be the only reason for sustaining the same. To wit, “the road to hell, is paved with good intentions” (old saying).

17. It is of consieerable import that there is substantial change made in the Promotion Policy; by Exhibit P3. Seniority definitely has been given a back seat, which, even if justifiable in the changing times and tested with the requirements of the Organisation, has to be made in the proper manner. While the earlier Regulations prescribed a definite relevance for seniority and experience, by providing for 40% evaluation criterion for length of service, for promotion to the post of Assistant Manager and Manager and more so with 50% to the higher posts, the present Regulations deviates from it substantially and seniority is given a marginal relevance in the lower posts and is reduced in the next higher post and stands totally erased in the highest posts. Though the mere introduction of an interview cannot be said to amount to a substantial difference, the increased relevance of seniority in

the earlier Regulations has been totally reversed with a decreasing relevance. This postulates an amendment which had to be brought in under the provisions of the Act as provided thereunder or not at all.

18. The further contention with respect to none of the petitioners having challenged the Regulations which was in force right from 2009 is of no consequence, since a challenge would be relevant only when the cause of action arises, i.e., in the present case when an officer is considered for promotion. If a challenge is made to the promotion policy before an employee falls within the zone of consideration, it would necessarily be rejected especially in the context of none having a vested right to promotion, but only one for consideration. The aspect of delay on that context has to be negatived, but however, the same would have to be considered in the individual cases, applying the sit-back theory.

19. In considering the prayer for *certiorari* of the new guidelines as prayed for in W.P.(C).No.15321 of 2011, this Court cannot but notice that the same would not be permissible on the well heeled principles of the circumstance in which

certiorati could be issued **[***vide* ***Surya Dev Rai v. Ramchander Rai*** **[(2003) 6 SCC 675].** The promotions as such have not been challenged and the party respondents are impleaded only, with respect to the contextual circumstance of the respective petitioners being denied of promotion. One or other of the party respondents, an admitted junior, but allegedly more meritorious; given an opportunity to have a march over, in the matter of promotions, is what is assailed.

20. If the Promotion Guidelines are declared bad *in toto*, then it would lead to a consequence of the entire promotions made over the years from 2009 being set aside, which would have far-reaching consequences affecting a number of persons who are not in the party array. This Court would, hence, only caution the Corporation from carrying on future promotions under Exhibit P3 guidelines without a proper amendment being brought to the Regulations of 1966. Since this Court is acting under Article 226 of the Constitution, necessarily it has to be conscious of the consequences of an order which would bring forth drastic results. In the intervening years when the writ petition was pending, there would have

been a number of promotions effected in the Corporation, which are not under challenge herein. Neither does the petitioners challenge such promoptions or the manner in which it was carried out nor do they seek that it be set aside. They are only concerned with their denial of promotion or assignment of seniority, which even now could be re-worked by a mathematical conversion of the marks obtained by them added with the seniority in the feeder category. It is made clear that promotion as per the Regulations of 1966 does not give an edge to seniority and it prescribes an equal evaluation of seniority and merit. Hence, merely because a person is senior, he is not assured of the promotion.

W.P.(C). No.15321 of 2011.

21. The subject matter of the above writ petition is promotion to the post of Deputy General Manager. The petitioner admittedly is a senior in all the lower posts, having been appointed as an Assistant Manager in 1989 and promoted as a Deputy Manager and then as Manager on 11.12.2003. In the seniority list of Managers, the petitioner is

16th and respondents 4 and 5 are 20th and 22nd. The petitioner and respondents 4 and 5 were promoted to the next higher post of Assistant General Manager with effect from 06.06.2007, 07.06.2007 and 01.09.2007.

22. The petitioner's contentions having been upheld, what remains is only the re-consideration as per the norms contained in the Regulations of 1966. As was noticed above, the Regulations of 1966 provided for seniority and performance appraisal in the ratio of 50 : 50 which had to be applied for the subject promotion. The Guidelines by which the instant promotions were made, provided for a performance appraisal and interview, evaluated in the ratio of 75 : 25. Hence, what would be required by the respondent-Corporation is to convert the same into seniority-cum-performance appraisal, with both being evaluated in the ratio 50 : 50. As was found above, there was no defect in bringing in an interview, which also would be in the nature of a performance appraisal. Hence, the marks awarded out of 75 for performance and out of 25 for interview should be taken as out of 50; i.e., reduced to half and the length of service in the post of Assistant General

Manager ought to be converted into marks out of 50 and the promotions re-worked to that extent.

23. This Court would also notice that there would not be much variation, since the petitioner and the 4th respondent are said to have been appointed on subsequent dates and the 5th respondent after three months. In any event, the said exercise should be undertaken, since a post has been kept vacant by an interim order dated 03.07.2012. The post shall be filled up by the aforesaid evaluation and the seniority in the promoted post re-worked accordingly. The writ petition is allowed with the above directions.

W.P.(C).No.9894 of 2013

24. The petitioners seek consideration of their claims in accordance with the amended guidelines for promotion. Herein, the question is with respect to promotion from the post of Deputy Manager to the Post of Manager. The petitioners were promoted to the post of Deputy Manager (Legal) on 17.03.2005, while the 3rd respondent got promoted only on 01.06.2005. The petitioners contend that they were

declined promotion, since in the written test held on 29.10.2006 they were erroneously shown as “failed” candidates because of the failure to score 35% marks. The contention is that, there is no cut off marks prescribed and the petitioners ought to be ranked giving due weightage of whatever marks obtained in the written test; in which event, they claim, they would be entitled to be promoted over the 3rd respondent.

25. As was noticed above, the written test itself was held on 29.10.2006 and the 3rd respondent was promoted as Manager on 30.09.2009. The relief sought for by the petitioners is, a declaration that the petitioners are entitled to have weightage of percentage of marks obtained in the written examination, which has to be clubbed with the performance appraisal to rank them in the select list. They claim that they are entitled to be promoted from the date of acquiring of three years experience in the feeder category, i.e., from 17.03.2008 or at least with effect from 30.09.2009, the date on which the 3rd respondent was promoted.

26. It is to be noticed that the promotion of the 3rd respondent on 30.09.2009 is challenged after four years. It is

also not clear as to when the results of the written examination were declared and the averments also reveal that later to the selection procedure, which is under challenge in the writ petition, the 1st petitioner had appeared in a second test in 2010, in which also the said petitioner had failed. The contention of the petitioners have been urged after a delay of four years. The decision of the Hon'ble Supreme Court in ***Shiba Shankar Mohapatra v. State of Orissa*** **[2010 (12) SCC 471]** would stand against them, since they sat back and allowed the other person to be settled in the higher post. The further contention with respect to keeping two posts of Manager (Legal) vacant till 09.02.2012 also cannot be looked into, since the petitioners' right for promotion would be only when the consideration is made and not when they complete the minimum eligibility period in the feeder category or when posts fall vacant in the higher cadre. For all the above reasons, the writ petition would stand dismissed.

W.P.(C) No.19910 of 2014

27. The dispute herein is the seniority granted to

the 2nd respondent over the petitioner in the post of Assistant General Manager (Legal). The petitioner and the 2nd respondent had joined service on the same day as Assistant Manager (Legal) after a written test and interview. The petitioner was ranked as Sl.No.1 and 2nd respondent ranked at Sl.No.2. In their successive promotions also, they retained that seniority. However, in the promotion to the post of Assistant General Manager (Legal), the 2nd respondent stole a march over the petitioner and was ranked No.1, while the petitioner was shunted below the 2nd respondent.

28. Before looking at the Regulation itself, the contention of the respondent-Corporation, before this Court that the writ petition is delayed, has to be addressed. It is to be noticed that the promotions and assignment of seniority, which was the subject matter of the writ petition, occurred in 2012 and the writ petition is of the year 2014. However, the counter affidavit clearly admits that the petitioner had submitted a representation to the Chairman and Managing Director, dated 02.02.2012. The said representation has been disposed of by exhibit P16 on 03.07.2014 and immediately thereafter the

petitioner was here with the above writ petition. In such circumstance, the contention of delay is negatived.

29. As to the claim of seniority over the 2nd respondent, it is to be noticed that the challenge is against the guidelines and the promotions having been made contrary to the Regulations of 1966. The petitioner feels that, if such evaluation with length of service granted 50% weightage is made, he would remain as senior to the 2nd respondent in the promoted post also. As was noticed, though the petitioner and the 2nd respondent were appointed on the same day and promoted to the higher post also on the same day retaining respectively seniority Nos.1 and 2, in the feeder category of the post of Assistant General Manager (Legal) they are said to have been promoted on two different dates. The petitioner is said to have been promoted as Manager (Legal) on 28.10.2008. The 2nd respondent is promoted to the said post on 01.03.2009. Here also, the further promotion was based on a performance appraisal and interview at the ratio of 75 : 25. That has to be re-worked to be out of 50% and the petitioner and the 2nd respondent ought to be given weightage according

to the length of service in the feeder category, which would also carry 50% marks. There shall be a re-evaluation carried out in that manner and the seniority assigned in accordance with the marks obtained by each of the parties. The writ petition is allowed.

W.P.(C).No.22113 of 2014

30. The petitioner herein also challenges the assignment of seniority and claims that he has to be assigned seniority over respondents 2 to 5 in the cadre of Assistant General Manager. In the category of Manager, the feeder category, the petitioner is said to have been Sl.No.23 in the seniority list, while respondents 2 to 5 at Sl.Nos.30, 33, 27 and 32. The contention raised herein is also similar to that noticed above, regarding no weightage having been given to length of service.

31. Herein also the question of delay assumes significance. The interview to the post of Assistant General Manager is said to have been held on 03.01.2012. The petitioner, in paragraph 17 of the petition, specifically avers that

he had objected to the same for reason of such interview having not been provided in the Regulations of 1966. However, admittedly an order was issued on 03.01.2012, produced at Exhibit P8 and the petitioner did not challenge the assignment of seniority. The petitioner has chosen to challenge the seniority after 2½ years. The writ petition would stand dismissed for reason of the delay occasioned in making a challenge, despite the clear averment that he had objected to the procedure followed even at the time of interview.

W.P.(C)Nos.11160 of 2015, 12613 of 2015, 15385 of 2015, 15432 of 2015 & 15640 of 2015

32. All the petitioners in the above writ petitions challenge the promotion effected, on the basis of the guidelines, in the year 2015. The affected parties are also in the party array. It is also pertinent that prior to the promotions, W.P.(C).No.12613 of 2015 was filed and the promotions were specifically directed to be subject to the result of the writ petition, as per interim order dated 17.04.2015. In view of the findings in the other writ petitions regarding the guidelines and the guideline being unsustainable, for reason of the procedure

under the statute having not been followed, necessarily the promotions which are under challenge herein would have to be set aside as such. However, this Court has also held that the interview conducted as part of the performance appraisal cannot be interfered with. Hence, the promotions to the various categories would have to be conceded to the method as prescribed in the Regulations of 1966. Sufficient guidance can be garnered from the directions issued in W.P.(C).No.15321 of 2011 and 19910 of 2014. There would be no requirement for a fresh selection to be conducted; but, however the marks in the performance appraisal and interview have to be re-worked by mathematically converting it to the percentage available for merit as per the Regulations of 1966 and the marks for seniority would have to be added to the same; to decide on the person selected. It is also expedient that before such promotions are effected, an integrated seniority list has to be drawn up as indicated in Rule 9B of the Regulations of 1966. The above procedure shall be completed within a period of three months from the date of receipt of a certified copy of this judgment. The writ petitions are allowed.

33. Before parting it is to be observed that the new guidelines were interfered with only since the same was not brought out in the manner provided and this Court has not sat in decision of the scheme itself; which if approved and sanctioned as provided in the Act; would be perfectly above-board; on the principle stated in ***Kamalakshy Amma*** (*supra*).

W.P.(C) Nos.15321 of 2011 and 19910 of 2014 are allowed with the direction to re-appraise their respective marks in accordance with the directions above and grant promotion/assign seniority as per such working; without any observation on the merits of the claim of the petitioners. W.P.(C)Nos.11160 of 2015, 12613 of 2015, 15385 of 2015, 15432 of 2015 & 15640 of 2015 would also stand allowed as indicated above. W.P.(C).Nos.9894 of 2013 and 22113 of 2014 are dismissed. Parties are directed to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

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