

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: August 12, 2015
Judgment Delivered on : August 14, 2015

+ **LPA 293/2013**

SHRI C M GANGA RAM Appellant
Represented by: Ms.Praseena Elizabeth Joseph,
Advocate

versus

ANDHRA BANK Respondent
Represented by: Mr.R.P.Vats, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. On September 27, 1985 the Management of Andhra Bank and Andhra Bank Employees Union (Regd.) entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 concerning promotion of subordinate staff to the clerical cadre. In a nut shell, the settlement envisaged that 10% vacancies at the entry level of the clerical cadre would be filled up by promotion of the subordinate staff. Clause 2 and 3 of the Settlement Agreement read as under:-

“2. The candidates fulfilling the following conditions shall be eligible for promotion without a written test but after an interview as provided hereunder, subject to suitability as appraised in the interview.

(a) Graduates of those who have passed PUC or

intermediate examination with English as one of the subjects in Matriculation or subsequent examinations.

(b) Matriculates of those who have passed equivalent examination with English and Arithmetic as subjects and securing 60% of marks in aggregate.

(c) Candidates qualifying for promotion under (a) and (b) supra should have put in a minimum of 3 years service in the Bank, including period of probation on the date of the written test to be conducted as per clause 3 below.

(d) 1/10 of the total promotions made in each calendar year shall be filled in from the Senior Employees with a minimum service of 20 years, irrespective of their qualifications and their selection is subject to suitability as assessed in the interview.

The total number of candidates called for interview shall be thrice the number of vacancies. However, in case, sufficient number of candidates with 20 years of service are not available in any particular calendar year the eligibility criteria for calling them for interview shall be relaxed upto 15 years of service.

3. The sub-staff fulfilling the following conditions shall be eligible for promotion after passing a written test followed by an interview, subject to suitability as assessed in the interview.

(a) Graduates or those who have passed PUC or intermediate Examination with English as one of the subjects of study in Matriculation or subsequent examination.

(b) Matriculates of those who have passed equivalent examination with English and Arithmetic as subject with an aggregate of less than 60% marks.

(c) Candidates qualifying for promotion under (a) and (b) supra should have put in a minimum of 5 years of service in the Bank, including the period of probation as on the date of the written test.

(d) Candidates who have passed VII class with English and Arithmetic as subjects and who can produce a certificate in proof thereof.

(e) Candidates qualifying for promotion under (d) supra have put in a minimum of 3 years service the Bank including the period of probation as on the date of written test.

(f) All Ex-servicemen candidates qualifying for promotion under 3(a) and (b) supra should have completed at least 3 years of service, if they possess qualification matriculation and above. For others who have non-matriculantes, the period of service to qualify shall be 5 years.”

2. A perusal of para (d) of Clause 2 of the agreement shows that 1/10th promotions were to be made from amongst the senior subordinate staff who had served for a minimum of 20 years, irrespective of their qualifications but subject to suitability as assessed in the interview. It is further apparent that 9/10th posts had to be filled up by promotions and amongst others, evinced by clause (d) of para 3 of the settlement, in this category of eligible employees minimum educational qualification was class VIII pass with Arithmetic and English as a subject. To put it differently, of the 10% clerical posts at the entry level which fell in the promotion quota, 1/10th thereof had to be filled up from amongst the eligible employees without any minimum educational qualification prescribed keeping in view the

seniority but subjecting them to the assessment of suitability and 9/10th of the posts had to be filled up by a process of merit selection with eligibility prescribed as minimum educational qualification of class VIII pass with Arithmetic and English as a subject.

3. Espousing the cause of the appellant the Andhra Bank Shramik Union Delhi (Regd.) raised an issue concerning appellant, appointed as a sub-staff (Daftry) with Staff Code No.1650 on March 16, 1967, being overlooked for promotion in the 1/10th quota for promotion at the entry level in the clerical cadre from amongst the sub-staff of the Bank. To put it pithily, the grievance of the appellant projected by the Union was that since the appellant was not class VIII pass he had to be considered for promotion in the 1/10th quota fixed as per the settlement for promotion of the sub-staff strictly on the basis of seniority but subject to suitability. The Union pointed out that persons junior to the appellant were promoted in this 1/10th quota, and for which a seniority list of clerks as on April 01, 1990 was referred to. The Bank did not accept the demand raised by the Union pertaining to the appellant. The Central Government therefore made a reference on January 31, 1995 to the effect whether the demand of the Union for grant of promotion to the appellant to the clerical cadre was justified.

4. In the statement of claim filed by the Union before the Central Government Industrial Tribunal, in paras 10 to 13 it was pleaded as under:-

“10. It cannot be disputed that the Workman was within the zone of consideration. The seniority list of clerks as on 1.4.1990 promoted from sub-staff contains as many as 107 promotees from sub-staff as indicated by Column 10 of the said list. The Workman’s date of joining the sub-staff cadre was 16.3.1966. All the persons denoted by letters S/S (meaning Sub-Staff) in column 10 of the seniority list were

juniors to the workman except the persons shown at serial No.17, 1586, 1588, 4457, 4458 and 6823. As seniority in sub-staff cadre was only with reference to the dates of joining when the said promotees (juniors) were placed in the zone of consideration, the workman also should have been in the zone of consideration. He was not so placed as evidenced by the fact that he did not get a call for interview. Thus, the provisions of the settlement dt.27.9.1985 have been violated.

11. The Management of the Andhra Bank has been holding written tests for the purpose of promotion from sub-staff to clerical cadre. There is no provision in the settlement dt.27.9.1985 for holding any examination or written test for persons whose education qualification is below VIII standard. The workman was in the category. He was also asked to appear for the written test under threat of being disqualified for promotion in the event of not appearing for the same. The action of the Management in having stipulated the requirement of facing a written test is clerical violative of the terms of the settlement which were arrived at under the statute. The workman was clearly entitled to be called for interview without being required to appear for the written test

12. One of the reasons why the promotion was not given, was due to the factor that some subordinate staff Members have given wrong information regarding educational qualification so-much-as, those who had much higher educational qualification has disclosed their educational qualification as 7th standard or less than that so that they could get the promotion under 1/10th quota under the aforesaid Memorandum of Settlement. It is pertinent to note that those who have passed 8th class are ineligible to be appointed as sub-staff, as per the policy of Andhra Bank. At the time of appointment, the Workman was only 6th pass. During the employment, the Workman studied upto 8th class. Because many senior sub-staff members had made statement

with wrong disclosure of their actual educational qualifications, those who are otherwise entitled for promotion are denied their promotions. In spite of the fact that such misconduct on the part of some senior sub-staff members were known to the Management, the Management has taken a lenient and unwarranted view, as can be evidenced by Circular No.688 dt.9th March 1989 wherein such candidates were denied their eligibility for promotion only for a period of one year; but those who are adversely affected were not considered for promotion. Clear favouritism was shown so-much-so, promotions were given to the selected candidates who were acceptable to the Management.

13. It is also pertinent to note that those who had the same educational qualifications as that of the workman, but who had entered into the services of the Bank as late in 1978, 1980, 1982 and 1985 and 1986 were promoted, thereby clearly making a discrimination, which is highly illegal. It is also pertinent to note that in spite of the fact that such promotions shall be affected without written test and only on the eligibility assessed by an interview only, the Management has been conducted a written test for effecting such promotions; and in the test those who had otherwise possessed higher educational qualifications be gaining advantage thereby, and those resulting in denial of promotion to the workman and to those who are similarly situated. The Management be directed to disclose the correct number of promotions affected since 1986, if not earlier; and the method adopted for affecting such promotion and as to whether such promoted candidates are those who had made wrong disclosure of their actual educational qualifications.”

5. In the written statement filed to the statement of claim the Bank gave a composite reply to paras 10 to 13 of the statement of claim. The composite reply reads as under:-

“10. Contents of paras 10 to 13 are not admitted as stated. It is reiterated that the workman was not within the zone of consideration. The claimant is trying to mislead and confuse this Hon’ble Tribunal. It is submitted that none of the juniors of the workman has been promoted under the seniority quota. However, under the settlement the sub-staff are also entitled to be promoted under the merit quota. It is for this purpose that written tests are held in terms of the settlement. The juniors were promoted only under the merit quota. The interpretation of the settlement is not admitted. It is denied that the workman was ever threatened that in case he did not appear for the written test he would be disqualified for the promotion as alleged. The management has acted in accordance with the settlement. The allegations relating to wrong information regarding educational qualification etc. are vague and lacking in material particulars and cannot even be taken into consideration. It has also not been shown how the workman’s case was affected by the action of the Bank. The management reserves the right to give a proper reply as and when the particulars are supplied. It is denied that there was any favouritism as alleged or at all. It is also submitted that Bank was fully within its rights to take a lenient view, and the same does not furnish any cause of action in favour of anyone else. In any case this objection should have been raised in 1989.”

6. A perusal of the rival pleadings would show that the Management of the Bank justified persons junior to the appellant being promoted in the clerical cadre on the stand that they had been inducted under the 90% quota kept to be filled up on the basis of selection by means of a limited departmental competitive process. As per the appellant persons junior to him had been promoted in the 10% quota reserved strictly on basis of seniority but subject to assessment to suitability with further grievance that appellant’s suitability was never considered when he came within the zone

of consideration.

7. The Union proved the seniority list of clerical staff as on January 1993 it had made pleadings in the statement of claim and we simply highlight that in the said list there are names of persons shown as clerks whose educational qualifications are class VII passed and below.

8. It is apparent that these persons could not have earned a promotion in the clerical cadre in the 90% quota because for said quota the minimum educational qualification prescribed was class VIII passed with Mathematics and English as a subject.

9. The Labour Court therefore held in favour of the appellant and published the award on November 11, 2005 directing that appellant be treated as having been promoted in the clerical cadre with effect from January 01, 1995, notwithstanding it being proved that persons junior to the appellant were promoted under the 10% quota kept for promotion based on seniority with fitness/suitability to be assessed. The Labour Court postponed the promotion in view of the fact that the claim was made in the year 1996.

10. Challenge to the award in the writ petition filed by the Bank has succeeded when vide impugned order dated March 12, 2013 the learned Single Judge has observed that the persons promoted who were junior to the appellant were in the 90% quota to be filled on the basis of a competitive selection process.

11. The learned Single Judge has simply held in favour of the Management without analysing the settlement arrived at between the Management and the Union on September 27, 1985 and without even noting that persons junior to the appellant who were promoted and whose names

were reflected in the list of clerks of the Bank as of April 01, 1993 were either class VII pass or less. The learned Single Judge has overlooked the fact that these persons could never ever earn a promotion in the 90% quota reserved to be filled up by a limited departmental competitive process because eligibility to compete in this quota was class VIII pass with Mathematics and English as subjects.

12. Accordingly, the appeal is allowed. Impugned judgment dated March 12, 2013 allowing WP(C) 14142/2005 filed by the respondent is set aside and the writ petition is dismissed. The award in favour of the appellant is upheld.

13. The appellant shall be entitled to costs in the writ petition filed by the respondent as also costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 14, 2015
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