

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.91 of 2016

IN

Civil Writ Jurisdiction Case No. 3804 of 2012

- =====
1. Yogendra Kumar Singh Son of Late Anand Prasad, Resident of 407, Urvashi Apartment, Bhadurpur, Kankarbagh, P.S. - Kankarbagh, District - Patna.
 2. Birendra Kumar, S/o Shri Shridhar Paswan, REsident of Mohalla - Professors Colony, Dhaneshwar Ghat, P.S. - Biharsharif, District - Nalanda.
 3. Umesh nath Sinha, S/o Late Nath Singh, Resident of Harnichak, P.S. - Anisabad, District - Patna.
 4. Abhay Kumar Sinha, S/o Late Kedar Nath Sinha, Resident of A-18, Vijay Nagar Hanuman Nagar, District - Patna.
 5. Kaushal Kumar Dwivedi, S/o Late Sada Nand Dwivedi, Resident of Mohlla - Priyadarshinagar West of DPS, Bailey Road, District - Patna.
 6. Arvind Amar, S/o Late Prabhu Nandan Singh, Resident of 202 Awadh Vihar Apartment, Mulchand Path Bahdhurpur, P.s. - Kankarbagh, District - Patna.
 7. Manoj Kumar, S/o Shri Madan Mohan Kumar Sinha (Retd. I.A.S.), Anishabad, P.S. - Anishabad, District - Patna.

.... Appellants

Versus

1. The Madhya Bihar Gramin Bank, through its Chairman Meena Plaza, South of Museum Patna.
2. The Board of Directors, through its Chairman, madhya Bihar Gramin Bank Patna.
3. The Chairman, Madhya Bihar Gramin Bank Patna.
4. The General Manager Madhya Bihar Gramin Bank Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Mukesh Kumar No-1, Advocate

For the Respondents : Mr. Mahesh Narayan Parbat

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 04-07-2016

This appeal has been preferred against the order, dated
18.12.2014, passed in C.W.J.C.No. 3804 of 2014, whereby a
learned single Judge, while shifting the date of promotion from
10.11.2011 to 06.04.2004, declined to grant consequential

benefits of Scale-III post with effect from 06.04.2004. The learned single Judge, while partially allowing the writ application to the extent indicated, declined to grant consequential benefits on the ground the petitioners did not fulfill the statutory requirement of seven years of actual work in Scale II for promotion to Scale III.

2. Before we consider the rival submissions of the parties, it is relevant to notice the facts of the case in brief:-

The appellants were appointed as officers in grade of Officer Junior Management Scale -1 in the service of erstwhile Nalanda Gramin Bank, in the year 1985, which, upon amalgamation, was renamed as "Madhya Bihar Gramin Bank". The appellants' services were governed by Appointment and Promotion (Officer and Employees) Rules, 1988, which was subsequently substituted on 29.07.1998 by 1998 Rules with effect from 29.07.1998. On 10.12.1999, the sponsoring bank, namely, Punjab National Bank, approved a proposal, dated 02.09.1999, for up gradation of 18 branches from Scale-I to scale-II. The Board of Directors of the Bank, in its meeting, dated 20.04.2000, initiated process for promotion from Scale-I to Scale-II and from Scale-II to Scale-III for filling up the existing vacancies. The appellants, too, applied for, and were

selected, amongst 22 Scale-I officers. Appellants appeared in the interview on 06.04.2004.

3. In the meantime, one Diwakar Prasad and others filed writ petition, bearing C.W.J.C.No.11692 of 2002, with a prayer that the promotion to the Scale-II was to be governed by old Rules, i.e., Appointment and Promotion (Officer and Employees) Rules, 1988, but the promotion process was initiated under 1998 Rules. The learned single Judge, vide interim order, dated 01.04.2004, observed that respondents may proceed with the interview process, but shall not issue promotion orders until further order of this Court.

4. In the light of order of this Court, as indicated above, though interviews were conducted, the final orders, with respect to promotion, were not issued. The writ petition was finally heard and dismissed by order, dated 31.03.2009. The said Diwakar Prasad preferred an appeal, which came to be registered as LPA No.570 of 2009. The appeal was heard and allowed by order, dated 16.09.2009, in the following terms:-

“vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are

required to be filled in accordance with the law existing as on the date when the vacancies arose”.

5. It was, now, the bank's turn to move the Supreme Court in appeal in the Supreme Court in S.L.A.(Civil) C.C.No.691 of 2010, which was dismissed on 25.01.2010 with observation that the bank may file a review application before the High Court and bring the relevant facts to its notice. A Civil Review, bearing C.Rev.No.53 of 2010, so filed was dismissed on 14.07.2011. The Bank, consequently issued interview letters afresh to the appellants on the basis of written test held on 27.10.2002 and results were published on 10.11.2011, in which 12 persons were promoted as per old Rules, i.e., 1988 Rules, and the appellants were promoted as per the new Rules, i.e., 1998 Rules from the date of the orders.

6. As the appellants were of the view that they ought to have been promoted with effect from 06.04.2004, and ought not to suffer on account of delay caused by litigation not initiated at their instance, filed writ petition, bearing C.W.J.C.No. 3804 of 2012. The learned single Judge vide order, dated 18.12.2004, observed that the bank should consider shifting their date of promotions as posts had fallen vacant, much earlier to their actual promotions.



7. The learned single Judge, relying upon the judgments in cases of **Amarjeet Singh and others V. Devi Ratan and others**, reported in **2010(1) SCC 417**, and **Management of Central Inland Water Corporation V. Brojo Nath Ganguly**, (**AIR 1986 SC 1571**), allowed shifting of the date of promotion for the purpose of notional promotion and not otherwise. The learned single Judge further observed that the shifting of the date of promotion cannot be treated as the period actually worked by the appellants to entitle them for promotion from Scale-II to Scale-III, as it required seven years of actual work.

8. The appellants herein are aggrieved by that part of order, whereby the learned single Judge observed that shifting of date of promotion would not entitle them to further promotion to Scale-II to Scale-III as it requires seven years of actual working. The appellants submit that the learned single Judge failed to appreciate that the promotion of the petitioners were not delayed on account of their fault, but due to litigation started by unsuccessful employees and, as such, petitioners cannot be held responsible for non-issuance of promotion order in 2004 as the same was stayed on account of interim order passed by a Bench of this Court in a writ petition filed by one

Diwakar Prasad and others.

9. Mr. Shahi, learned Senior Counsel, appearing for the appellants, submits that the written examination for the post of Scale-III was taken by the Bank and the appellants had duly appeared in it.

10. On the other hand, learned Counsel for the Bank submits that the Rules mandate that the person, in the grade of Scale-II, would become eligible for promotion in the grade of Scale-III only when one has put in seven years of actual service.

11. We have heard learned counsel for the parties and perused the materials on record.

12. It is not in dispute that a person employed in the grade of Scale-II would become eligible for promotion in grade of Scale-III only when he has put in seven years of actual service. The appellants have not actually put in seven years of actual service in Grade-II. They have, at best, only been allowed notional promotion in Grade-II with effect from 2004. It is also not the case of the appellants that any person junior to them has been promoted to the grade of Scale-III, which may prejudice their seniority or future promotion.

13. Thus, the view of the learned single Judge that shifting of date of promotion of the writ petitioners, notionally

from 10.11.2011 to 05.04.2004 in Scale-II, would not entitle the appellants to promotion in Scale-III unless they fulfill the minimum requirement of seven years of actual service in the said grade, cannot be said to be arbitrary and unreasonable. The appeal bears no merit and is accordingly dismissed.

(Samarendra Pratap Singh, J)

I. A. Ansari, ACJ

I agree.

(I. A. Ansari, ACJ)

Shashi.

AFR/NAFR	
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