

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.11390 OF 2001

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949, is filed by the petitioner to issue a writ of *Mandamus* declaring the clarification order passed by the 1st respondent *vide* proceedings in Rc.No.20723/94-C4, dated 22.06.1999 as arbitrary, illegal and consequently direct the respondents to promote the petitioner to the post of Manager (Category-III) with effect from 14.07.1999, duly considering his educational qualifications and length of service with all other consequential benefits.

The case of the petitioner, in brief, is that he joined in service of the 2nd respondent-District Co-operative Central Bank Limited on 19.04.1986 in category V and, later, promoted to category IV as Assistant Manager on 14.07.1998; since then, he is working as Assistant Manager in the 2nd respondent-bank; having set-up an unblemished service record of more than 30 years, became eligible for promotion to the category III *i.e.*, Manager with effect from 14.07.1999, when he acquired the required qualification of completion of one year service in the feeder cadre with postgraduate qualification, as stipulated under the A.P. Co-operative Societies Rules, 1964 (for short, 'the Rules'). In fact, the petitioner acquired the qualifications of graduation and post graduation during the years 1980 and 1985, as in service candidate, expecting promotion, but contrary to Rule 28 of the Rules, the 1st respondent started promoting the Assistant Managers without adverting to the stipulated procedure and disowned promotion of the petitioner to category-III. The petitioner highlighted his grievance of non consideration of his candidature for promotion to the concerned authorities and came to know that the 1st respondent has issued a

clarification dated 22.06.1999 to the effect that the requirement of prescribed service qualifications are applicable only for promotion from category V to category IV and not for higher categories thereafter. The petitioner was not aware of the clarification for substantive time and, after he came to know about the clarification, submitted a representation dated 07.12.1999 to the respondents to promote him to category III with effect from 14.07.1999 but no purpose was served. Further, he made sincere attempts to convince the authorities by way of representations but they were proved futile. The petitioner further contended that the staffing pattern and the eligibility criteria for promotion is relatable to statutory power under Section 116-C of the A.P. Co-operative Societies Act, 1964 (for short, the Act of 1964') and Rule 28(1) of the Rules, having fixed criteria for promotions to the higher category prescribing the qualification in the feeder cadre. The 1st respondent has no authority in law to issue a clarification stating that the service qualification requirement is only for effecting promotion from category V to IV but not to other higher categories. Therefore, the impugned clarification dated 22.06.1999 is not only without any authority of law but also arbitrary and irrational for granting promotion to the next higher cadres; it is fundamental that some prescribed length of service should be put in for promotion from feeder cadre. If it is satisfied, any employee is entitled to get promotion subject to seniority but contrary to the guidelines, issued clarification fixing criteria to promotion only from category V to IV, denying promotion to the petitioner while promoting the persons in the cadre of Assistant Managers to the category III Managers based on proof of seniority. K. Venkata Rao, Ch. Satyanarayana and D.K. Satyanarayana are such staff members who were promoted based on their seniority disregarding the eligibility criteria. Therefore, the clarification issued by the 1st respondent is illegal, arbitrary and prayed to set-aside the impugned clarification.

During pendency of the writ petition, the 3rd respondent was impleaded as proper party *vide* order of this Court in W.P.M.P. No.20561 of 2001 dated 18.08.2001.

Respondents 1 and 2 did file no counter. However, the 3rd respondent filed counter, in the capacity of the District Secretary of the Co-operative Central Bank Employees Union, contending that the petitioner intentionally avoided impleading him as party to the Writ Petition though he is aware who the proper parties are. The parties who are likely to be affected by the clarification order were not impleaded to this Writ Petition and on this ground the Writ Petition is not maintainable. Respondents admitted about issuance of the circular dated 15.03.1979 fixing staffing pattern and qualification for promotion *etc.*, and later, issued clarification in the year 1999 dated 22.06.1999 even before the petitioner became eligible, as per the original circular, but the petitioner ignoring that circular filed the instant Writ Petition challenging the power of the 1st respondent to issue such clarification and prayed to dismiss the Writ Petition raising various other grounds which are not relevant.

During course of hearing, learned counsel for the petitioner contended that when a circular was issued prescribing the qualification for appointment and promotions from lower cadre to the higher cadre, till it is modified or amended, the 1st respondent is incompetent to issue any circular by way of clarification. Therefore, the circular is invalid without any significance of law.

Whereas, learned counsel appearing for the respondents 1 and 2 would contend that the 1st respondent is competent to issue such clarification in view of the powers conferred on him under Section 116-C of the Act of 1964 read with Rule 28 of the Rules; therefore, the clarification order dated 22.06.1999 cannot be found fault and it is

strictly in accordance with law and, moreover, as the petitioner had already retired from service no purpose would be served on account of granting any relief and prayed to dismiss the Writ Petition.

Learned counsel for the 3rd respondent did advance no argument, though filed counter.

Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is:

Whether the 1st respondent is competent to issue clarification dated 22.06.1999 *vide* Rc.No.20723/94-C4?
If not, is it liable to be set-aside?

POINT: Undisputedly, the petitioner joined in service of the 1st respondent-bank in category V on 19.04.1968 and, thereafter, he was promoted to category IV as Assistant Manager on 14.07.1988 and worked as such till his retirement. The only dispute is regarding fixation of qualification for promotion by the 1st respondent *i.e.*, 5 years of service for under graduate or one year service for post graduate for equating to the two years service of graduate only in the lower category *i.e.*, category V and the said condition should not be insisted upon for every further promotion but the same should be in accordance with the seniority of the initially promoted cadre. Rule 28 of the Rules, 1964 enables the 1st respondent to frame guidelines fixing qualifications, method of filling of posts, staff pattern *etc.*, and, accordingly, the 1st respondent issued the circular fixing qualifications for promotion from various cadres in the managerial and other cadres in RC. No.5199/79-CI (A) dated 15.03.1979 by exercising power under Rule 28(1) read with Section 116 of the Act of 1964. According to the Circular dated 15.03.1979, when a vacancy arises in a higher cadre and earmarked for promotion by the management, the persons in the next lower cadre (feeder cadre) may be given opportunity of promotion

based on their seniority in the present cadre subject to fulfilment of any of the following conditions:

- 1) A matriculate with minimum 5 years of service in the present category; or
- 2) A graduate with 2 years of service in the present category; or
- 3) A post graduate with 1 year service in the present category.

Therefore, the employees in the lower cadre immediate to the vacancy in the higher cadre are entitled to claim promotion based on their seniority in the feeder cadre subject to fulfilment of any of the above condition. The petitioner became eligible for promotion to the next higher post *i.e.*, Manager Category III with effect from 14.07.1999, when he completed the required qualification of one year service as the petitioner is a postgraduate. It is the specific case of the petitioner that he acquired the degree and postgraduate qualifications during 1980-85 with legitimate expectation that the higher qualifications would enhance chances of promotion to higher post. Respondents giving go-by to the rules governing recruitment and promotion qualifications in the Circular dated 15.03.1979, promoted the Assistant Managers as Managers though they have not put up the qualified service in the feeder cadre.

While the matter stood thus, the 1st respondent issued the clarification dated 22.06.1999 to the effect that the requirement of service qualifications are applicable only for promotion to Cadre IV from Cadre V and not for the higher posts of cadre III *etc.*, In Para 4 of the Circular dated 22.06.1999, the 1st respondent, after examining the matter in detail, with a view to leave no ambiguity in implementation of the circular dated 15.03.1979 and proceedings dated 15.03.1979, clarified that the D.C.C.B. shall consider the services of 5 years for

under graduate or 1 year service of the postgraduate for equating to the 2 years service of graduates only in the lower cadre *i.e.*, category V for considering initial promotion only and the said condition should not be insisted upon for every further promotion in each cadre but to consider further promotions; thereafter, strictly adhering to the seniority of the initially promoted cadres.

Thus, from the circular, it is clear that the qualifications prescribed in the circular are only for promotion from category V to IV but not for other higher cadres. At this stage, it is relevant to advert to the promotions clause of the Circular dated 15.03.1979, wherein the 1st Para of page 13, it reads as follows:

- “1) A matriculate with minimum 5 years of service in the present category; or
- 2) A graduate with 2 years of service in the present category; or
- 3) A post graduate with 1 year service in the present category.”

An illustration was also given in the Circular as to how the employees can be considered for promotion, from the lower cadre to higher cadre. The entire circular does not disclose anything that the above qualification is only restricted to promotion from category V to IV but the clarification dated 22.06.1999 was issued stating that it applies only to one time promotion from Category V to IV. The rules framed by the 1st respondent exercising power under Rule 28 read with Section 116 of the Act of 1964 acquired statutory recognition and unless those guidelines are amended by way of any circular, it would result in depriving the eligible candidates in the lower cadre for promotion to higher cadre. Therefore, the clarification issued by the 1st respondent is totally contrary to the Circular dated 15.03.1979 and that too such circular was issued just before the petitioner became eligible for promotion from Cadre IV to III. Issue of the impugned clarification is

totally contrary to the earlier circular issued by the 1st respondent, in exercise of power conferred on him under Rule 28 read with Section 116-C of the Act of 1964, and it is nothing but an administrative illegality.

Normally, the courts would not interfere in administrative actions but when the acts of the authorities under the administration are unfair or unreasonable, the Courts can interfere with such acts. To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona-fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the *Wednesbury* test.

The Apex Court in ***Union of India and another Vs. G. Ganayutham***^[1], laid down certain principles by applying the *Wednesbury* test to prove as to when the Courts can interfere with the administrative actions. In the present facts of the case, clarification issued by the administrative authority *i.e.*, 1st respondent is irrational since it was issued without amending the guidelines for recruitment, promotions *etc.*, issued on 15.03.1979. If really, there is any ambiguity in the guidelines, the authority can exercise its discretion to clarify such ambiguity but in the absence of any ambiguity, nothing made the 1st respondent to issue such a clarification. In such case, the Courts can quash the impugned clarification by exercising discretionary

power in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end. Since the clarification is against the guidelines issued by the 1st respondent, without amending such guidelines or following appropriate procedure, such clarification is un-warranted and it is nothing but administrative unfairness or bias to deprive the petitioner for being promoted from category IV to III, which act appears to be an intentional one so as to create an interdict to get promoted; at the same time, promoting juniors on one ground or the other under the garb of the clarification directly amounts to administrative unfairness. Therefore, in such case, this Court, while exercising power of judicial review, can interfere with such orders denuded by the administrative unfairness and quash the impugned clarification.

Learned counsel appearing for the 2nd respondent would contend that the circular dated 22.06.1999 is only a clarification to the earlier circular dated 15.03.1979; in fact, there is no ambiguity which requires clarification in the Circular dated 15.03.1979. Therefore, the contention of the 2nd respondent is that the clarification dated 22.06.1999 was issued in accordance with the law is not sustainable. If, for any reason, the 1st respondent intend to clarify any ambiguity it must be only by way of amendment to the Circular but not by a memo to clarify the ambiguity. However, I find no ambiguity in the Circular dated 15.03.1979 which requires clarification from the 1st respondent. Therefore, such clarification is illegal exercise of his power to deprive the petitioner from promoting him to the higher cadre *i.e.*, category III from category IV. Therefore, the clarification is hereby declared as illegal, void and arbitrary. Accordingly, the point is answered.

In the result, the Writ Petition is allowed setting-aside the circular dated 22.06.1999, declaring the same as illegal and arbitrary. Further, the 1st respondent is directed to consider the candidature of

the petitioner for his promotion strictly adhering to the Circular dated 15.03.1979 and extend all consequential benefits, on fulfilment of the eligibility criteria.

In consequence, miscellaneous petitions, if any, pending in this Writ Petition shall stand allowed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 26-04-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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