

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.23645 of 1999

ORDER:

Heard Sri P.B.Vijaya Kumar, learned counsel for the petitioners, and Ms.V.Uma Devi, learned Standing Counsel for respondent No.8. Though respondent Nos.4 to 7 have been served and Sri D.Rama Linga Swamy entered appearance on behalf of respondent Nos.5 and 6, there is no representation on their behalf.

2. The issue raised in this writ petition is regarding promotions to the posts of Scale II officers (Area Managers/Senior Managers) in the Visakha Grameena Bank, Srikakulam (respondent No.3), which was subsequently merged with other Grameena Banks with effect from 01.04.2006 forming as A.P. Grameena Vikas Bank (respondent No.8).

3. The petitioners were working in the respondent No.3 Bank in the cadre of Junior Management Grade Scale - I. They had also put in considerable service and claim to be eligible for promotion to the post of MMGS-II (Middle Management Grade Scale II).

4. In exercise of the powers conferred by Section 29 read with Section 17 of the Regional Rural Banks Act, 1976, the Union of India framed the Regional Rural Banks (Appointment and Promotion of Officers and other employees) Rules, 1988. These rules were subsequently superseded by another notification dated 29.07.1998.

5. As regards MMGS-II (Scale-II) Officers, the said rules provide for filling up of the posts by promotion on the basis of seniority-cum-merit. It is stated in the said rules that officers holding the posts for eight years on regular basis in the Regional Rural Bank shall be considered for promotion in Scale – II post in the bank. The mode of selection was on the basis of written test, interview and assessment of performance and appraisal reports for the preceding five years as an officer in Scale II post. A Committee would be constituted consisting of the Chairman, a Director nominated by the Sponsor Bank and a Director nominated by the National bank. Marks of 60 were earmarked for written test, 20 marks were fixed for interview and 20 marks were fixed for performance appraisal. No minimum qualifying marks were fixed for interview.

6. Petitioners contend that though they are seniors to respondent Nos.4 to 7, the committee selected respondent Nos.4 to 7 and others through the impugned Circular (Staff) No.29, dated 06.11.1999 by applying the principle of merit-cum-seniority instead of seniority-cum-merit, as prescribed in the Regional Rural Banks (Appointment and Promotions of Officers and other employees) Rules, 1998. They contend that seniority was not given any weightage at all and respondent Nos.4 to 7, who are juniors to the petitioners, were promoted. They also contend that bench mark to determine merit was not notified and the principle that a senior even though less meritorious should have priority over a junior and that no

comparative assessment of merit is required to be made, was not followed. Petitioners place reliance on the judgment of the Supreme Court in **B.V. Sivaiah and others etc., vs. K.Addanki Babu and others**¹.

7. Counter-affidavit is filed on behalf of respondent No.3 stating that 17 posts were sought to be filled up and 68 eligible candidates were considered for the written test of whom 35 candidates secured the minimum bench mark. It is stated that these persons were asked to attend for interview and selections were made by a Interview Committee consisting of a Chairman, one Director nominated by the State Bank of India, another Director nominated by a National Bank and one additional member belonging to Scheduled Caste/Scheduled Tribe category nominated by the sponsor bank. It is stated that this committee fixed a bench mark for final selection basing on the aggregate marks obtained by the successful candidates in the written test, performance appraisal and interview. A final selection was made by the interview committee based on the aggregate marks of written test, performance appraisal and interview. It is claimed that the 17 persons including respondent Nos.4 to 7, who were promoted, were in fact selected for promotion on the basis of seniority-cum-merit and that their names were notified vide impugned circular dated 06.11.1999 and they were performing their duties as Scale – II officers. It is stated that as the petitioners did not get the bench mark

¹ AIR 1998 SUPREME COURT 2565

in the written test and the interview fixed by the committee, they were not selected.

8. However, the respondents have neither stated what the bench mark in the written test and interview was nor did they produce any material in support of the plea that the petitioners did not cross the bench mark as fixed by the committee. In the absence of material being placed by respondent No.3/respondent No.8 in that regard, an adverse inference is drawn against them that if such details were disclosed, it would not support their stand.

9. Also the respondents are supposed to fix only minimum necessary merit and cannot do a comparative assessment of the candidates. Whether the so called bench mark fixed is in the nature of minimum necessary merit or not is not explained by respondents. Therefore, it has to be held that the petitioners did cross the bench mark in the written test and interview fixed by the Committee.

10. In **B.V. Sivaiah**'s case (1 supra), the Supreme Court held as follows:

“The criterion of ‘seniority-cum-merit’ in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is

required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.”

It approved the decision of the High Court of Andhra Pradesh which set aside promotions given to officers, who have secured highest number of marks, on the ground that the bank therein did not take into account minimum qualifying marks prescribed for assessment of performance and merit and it directed the bank to promote those persons who possessed such minimum merit on the basis of seniority.

11. In the present case, I have already held that respondent No.3/respondent No.8 has not indicated what was the benchmark/minimum qualifying marks fixed in the written test and interview and also did not place any material to show that the petitioners did not cross the threshold of minimum merit prescribed for maintaining efficiency of administration. Therefore, it is clear that instead of following the principle of seniority-cum-merit, as the rules referred to above postulate, they followed the principle of merit-cum-seniority by taking into account the comparative assessment of merit on the basis of the marks of the candidates in the written test, performance appraisal and interview. This procedure followed by the respondent No.3/respondent No.8 is contrary to the above rules as

well as the principle laid down by the Supreme Court in the decision cited supra.

12. However, since it is now stated that all the petitioners have retired from service, no useful purpose would be served by setting aside the promotions of respondent Nos.4 to 7. However, respondent No.3/respondent No.8 is directed to treat the petitioners also as having been promoted to the post of MMGS-II cadre with effect from 06.11.1999 and pay them all consequential and attendant benefits till their respective dates of retirement in the year 2006. This exercise shall be completed within four (4) months from the date of receipt of a copy of this order.

13. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

14. Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.08.2017
AMD

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