

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11537 OF 2015

Suryakant Mohanrao Galande .. Petitioner

Versus

Registrar General Bombay High
Court Mumbai and another .. Respondents

Shri. P.S. Paranjape, Advocate for the Petitioner.

Shri. Nitin B. Suryawanshi, Advocate for Respondent Nos. 1 and 2.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATED : 27th February, 2018

PER COURT:

. The petitioner seeks directions against the respondents to promote the petitioner as Bailiff.

2. At the relevant time the petitioner was working as a Photo copy operator. The recruitment process for filling in the post of Bailiff by

promotion was undertaken in the year 2015. The candidature of the petitioner was considered. The petitioner was not promoted. Aggrieved thereby, the present petition.

3. Mr. Paranjape, the learned advocate for the petitioner submits that the respondents ignored the seniority while promoting the persons to the post of Bailiff. The petitioner was in the zone of consideration and the petitioner was senior, still, the seniority was ignored. The respondents failed to consider clauses 577, 578, 579 and 580 of the Civil Manual while filling in the post of Bailiff. The learned advocate submits that the minutes of the meeting also does not disclose that the Committee considered the criterion as envisaged in clauses 577, 580 of the Civil Manual. The selection process was dehors the Rules. The seniority has to be given weightage. The criteria for promotion was seniority-cum merit. In the present case the seniority has not been considered. The capabilities of the persons to function as a Bailiff were not considered as is required in clause 578 of the Civil Manual. Appendix A of para 577(3) also prescribes that the recruitment to the post in a district Court shall be made by the District Judge strictly in the order of seniority from the list of candidates to be prepared.

4. As the selection process to the post of Bailiff by promotion was in ignorance of Rules and was deviating from the seniority, the same is bad in the law. The learned advocate relies on the judgment of the Apex Court in the case of **"Haryana State Warehousing Corporation and another Vs. Jagat Ram and another"** reported in **2011 AIR SCW 1444**.

5. Mr. Suryawanshi, the learned advocate for the respondents submits that all the aspects were considered by the Committee. Bench mark of 50% was fixed. The petitioner could not clear the bench mark of 50%, as such was rightly not considered. Subsequently, on 28.07.2016, the petitioner is promoted as Bailiff.

6. We have considered the submissions. Right to be promoted is not a fundamental right but to be considered for promotion is a right. Paragraph 578 prescribes the factors to be considered while making appointment as Bailiff. The same reads thus;

578. The bailiffs are concerned with service of various kinds of writs and processes etc., at distant places and are, therefore, required to travel over wide areas extensively. Therefore while selecting

candidates for appointment as bailiffs the selection should be made particularly with reference to the following aspects of personality:-

(i) He should possess the minimum educational qualification of not lower than a pass in the examination of Standard (VIIIth):

(ii) He should be physically fit, mentally alert and energetic:

(iii) He should be intelligent and matured in understanding and behaviour:

(iv) He should have sense of good behaviour and initiative so as to complete the procedural formalities in in performance of his duties in the shortest possible period or particularly within a specified time:

No one should, therefore, be selected who is lacking in any of these qualities.

7. The clause 580 further lays down the aspects to be considered in matters of promotion and confirmation by the District Judge. The same reads thus :

580. In the matter of promotions and confirmations, the District Judge should take into consideration the following principles:-

(i) All clerks who pass the Lower Standard Departmental Examination should be confirmed immediately in the existing vacancies. Such confirmation should not be deferred till the passing of the said examination by their seniors.

(Vide High Court Circular No. B-10135/50, dated the December, 1950).

[(ii)] (a) Whenever vacancies to be filled by promotion are available, the District Judge shall consider for promotion thrice the number of eligible employees according to their seniority.

(b) The District Judge may, if for reasons to be recorded in writing, he considered it to be so desirable, appoint a Committee to subject the employees within the Zone of consideration to an appropriate test, and may also consider the result of such test.

(c) While selecting an employee for promotion, the District Judge shall take into consideration:-

(i) The entire service record, and more particularly annual confidential reports for the previous 5 years;

(ii) Leave and punctuality record, for the previous 5 years;

(iii) Special reports called from the officers under whom the employees within zone of consideration are currently working;

(iv) Nature of duties of the promotional post vis-a-vis the abilities of employees within zone of consideration.

(d) In case promotions are not made according to seniority a minute indicating reasons for selection shall be recorded by the District Judge.

The seniority of Senior Clerks should be determined from the date of their appointment to that post i.e. the Senior Clerk and not reference to seniority in the cadre of Junior Clerk.]

(iii) If a clerk who is junior in service has passed

the Lower Standard Departmental Examination before a clerk who is senior in service, the clerk junior in service should be confirmed, if there is a permanent vacancy, in preference to the clerk senior in service who has not passed the examination.

8. The methodology of promotion is seniority cum merit. The Apex Court in the case of "**Haryana State Warehousing Corporation and another Vs. Jagat Ram and another**" has observed thus :

37. Thus it is the settled position that the criterion of seniority-cum-merit is different from the criterion of merit and also the criterion of merit-cum-seniority. Where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. Seniority-cum-merit means that, given the

minimum necessary merit required for efficiency of administration the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of a further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. 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 employees. 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 considered for promotion on the basis of seniority-cum-merit. The concept of “seniority-cum-merit” postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and subject to fulfilling the said requirement promotion is based on seniority. There is no further

assessment of the comparative merits of those who fulfill such requirement of minimum merit or satisfy the benchmark previously fixed. On the other hand, the principle of “merit-cum-seniority” puts greater emphasis on merit and ability and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal among the candidates considered for promotion.

9. The affidavit is filed by the respondents to the effect that benchmark of 50% was fixed. The methodology of marking was fixed. The petitioner could not secure 50% marks. As the petitioner could not secure the benchmark the petitioner was not considered for promotion. The seniority-cum-merit would require the petitioner to possess the minimum benchmark. To illustrate : The Benchmark is 50% - If A is senior and he gets 50% marks and B is junior to A, though gets 75% marks, A would be preferred for promotion.

10. In the present case even if petitioner is assumed to be senior, he failed to cross the benchmark. As such is rightly not considered. The

marking system applied is demonstrated in para 3 of the affidavit in reply. The details of the methodology of mark are given. The same read thus :

3. I say that as has been earlier stated, Advisory Committed by adopting resolution dated 12th January 2015, decided to allot 10 marks for ACRs of candidates, 5 marks to special report of candidate called from the judicial Officer under whom the concerned candidate was serving at the relevant time, 5 marks for leave availed by the candidate during last 5 years and 40 marks were allotted for oral interview. The Advisory Committee had unanimously resolved that 50% of marks will be treated as suitable for consideration for promotion and they will be selected in order of seniority.

I say that accordingly the oral interviews of 18 candidates were conducted by the Advisory Committee. I further say that out of 40 marks allotted for oral interview, each Advisory Committee member was to give marks out of 10. I say that the criteria's enumerated for promotion to the post of

bailiff, in para 578 of Civil Manual were assessed during oral interview by each member of Advisory Committee and accordingly marks were given by each Committee member.

4. I say that physical fitness, Mental alertness, Intelligence, Maturity of understanding, behaviour of the candidate were assessed by the Committee while conducting the oral interview of the candidates.

I say that however since petitioner could obtain 50% benchmark in the aggregate, he was not selected and therefore was not promoted on the post of bailiff at the relevant time.

5. I further say that it is necessary to mention here that in the next process of promotion to the post of bailiff, since the petitioner was found eligible and fulfilled all the criteria's mentioned in Para 578 of Civil Manual, the petitioner was granted promotion to the post of bailiff vide office order No. 607 dated 28th July 2016. The name of the petitioner in the said order appears at Sr. No. 13.

***Copy of the order dated 28th July 2016 is annexed
herewith and marked as Exhibit X-1.***

11. One of the aspects to be considered while appointing the person as a Bailiff is that he should be intelligent and matured in understanding and behaviour. To test the same 40 marks were given for oral interview. The ACRs were considered and benchmark of 50% was fixed. As the petitioner failed to cross the benchmark, is not considered at the relevant time.

12. In light of the above, no case for interference is made out. The Writ Petition is dismissed. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]