HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN

AND

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT APPEAL No.1142 OF 2018

JUDGMENT: (ORAL) (Per Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

We have heard learned counsel for the writ appellants in this writ appeal, which is filed against the order of the learned single Judge. A common order was issued by the learned single Judge. We have also heard learned counsel for the writ petitioners - respondent Nos.1 to 4.

2. The writ petitioners, while employed in the service of the appellants, were eligible for being considered for promotion in terms of the applicable rules issued by the Banking Division in the Department of Economic Affairs, Ministry of Finance, in exercise of the authority under the provisions of the Regional Rural Banks Act, 1976. We may call those rules as promotion rules, inasmuch as we are dealing with the consideration of cases for promotion. The rule of promotion, as described in Schedule - III to those rules, which deals with Rule 6, is that the promotion shall be made on the basis of seniority-cum-merit. The concept of seniority-cum-merit is operated through a modality of selection, which is also prescribed by those rules, whereby there is a written test, interview and performance appraisal, essentially to find out the minimum bench mark for consideration for application of seniority rule after evaluating the merit at that stage. This means that, merit is only for falling within the zone of consideration and thereafter the

seniority in the gradation list will operate as per the feeder category. There is no challenge to the statutory rules by the writ petitioners.

3. Hearing the learned counsel for the writ appellants and the learned counsel for the writ petitioners and also perusing the selection file, we see that written test was conducted, interview was conducted and performance appraisal reports were also considered. However, one intervening factor, which we noticed from the selection file, is that the merit was pegged at 60% to fall within the zone of consideration for applying the seniority rule. Comparing the data on which those decisions were taken, we see that the decision of the selection committee to peg the merit at 60% was taken after the written test and on the date of interview. Obviously, therefore, notwithstanding the judgments referred to by the learned single Judge and also the judgments of the Hon'ble Supreme Court referred to in the Full Bench decision of this Court, which was referred to in the impugned order of the learned single Judge, we cannot, but, take this as an exceptional situation where the selection was made on the basis of the bench mark as merit, which was fixed after the selection process has been commenced. The rules of the game had thus been articulated during the process of selection. This would have gone in favour or against some or more of the candidates. It is a decisive factor in such matters, particularly, when the zone of consideration has to be decided on the basis of evaluation of merit. We make this distinction bearing in mind the niceties in service jurisprudence on the concept of seniority-cum-fitness, on one hand, and seniority - cum - merit, on the other. Merit is an *intelligible differentia*, but the rule of

evaluating merit has to be fixed before such process of evaluation commenced. This is where the selection process in the case in hand becomes violative of the laws. We are, therefore, of the view that the decision taken to exclude the petitioners, who had admittedly cleared the written test, was against the law and even the manner in which the statutory prescriptions have to be interpreted.

4. For the aforesaid reasons, we affirm the final verdict of the learned single Judge, though for reasons, which are different than that are stated in the impugned order. In the light of these facts and peculiar circumstances of the case, while we sustain the order of the learned single Judge; which order has already been given effect to by the establishment even on the teeth of the Contempt of Courts Act; we cannot, but, clarify that the decision that we rendered herein rests exclusively on the contents of the file of selection committee and on the very peculiar circumstances of this case and is not to be taken as laying down any particular precedent or practice of law as applicable to the established procedure.

5. The writ appeal is dismissed accordingly. No order as to costs.

Miscellaneous Applications, if any pending, in the writ appeal, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

March 7, 2019.

MSR/PV