



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8546 OF 2019

PETITIONERS

- : 1 Shailesh s/o Shiwalal Pardhi,
Aged about 38 years, Occupation –
Service / Peon, (District Legal
Services Authority, Gondia), tah. and
District – Gondia.
- 2 Ku. Padma d/o Homraj Kumbhare,
Aged about 30 years, Occupation –
Service / Peon, (In the Court of 2nd
Joint Civil Judge, Junior Division
Gondia), Tah. and District – Gondia.
- 3 Nitin s/o Ramesh Chindhalore,
Aged about 38 years, Occupation –
Service / Peon, (In the Court of 5th
Joint Civil Judge, Junior Division,
Gondia), Tah. and District – Gondia.
- 4 Ramesh s/o Udaram Khedkar,
Aged about 43 years, Occupation –
Service / Peon, (In the court of Joint
Civil Judge, Junior Division, Tirora),
Tah. Tirora, District – Gondia.
- 5 Mukesh s/o Hiranman Bondre,
Aged about 35 years, Occupation –
Service / Peon, (In the Court of 3rd
Joint Civil Judge, Junior Division,
Gondia), Tah. and District – Gondia.
- 6 Mahadeo s/o Dudhram Kewat,
Aged about 40 years, Occupation –
Service / Peon, (In the Court of Civil
Judge, Senior Division, Gondia), Tah.

and District – Gondia.

- 7 Smt. Laxmi w/o Aniruddha Kanoje,
Aged about 32 years, Occupation –
Service / Peon, (In the Court of
District Court, Gondia), Tah. and
District – Gondia.
- 8 Raisul s/o Ashok Maladhare,
Aged about 32 years, Occupation –
Service / Peon, (In the Court of
District Judge-1, Gondia), tah. and
District – Gondia.

..VERSUS..

- RESPONDENTS** : 1 The Hon'ble Principal District and
Sessions Judge, Gondia, Tah. and
District – Gondia.
- 2 Ajay Kumar s/o Premlal Jambhulkar,
Aged about 41 years, Occupation –
Service/Peon, (In the Court of Chief
Judicial Magistrate, Gondia), Tah.
and District – Gondia.
 - 3 Amit s/o Suhashrao Kukade,
Aged about 34 years, Occupation –
Service/Peon, (In the Court of
District & Sessions Judge, Gondia),
Tah. and District – Gondia.
 - 4 Amar s/o Vishnu Bhandare,
Aged about 41 years, Occupation –
Service / Peon, (In the Court of
Principal District & Sessions Judge,
Gondia), Tah. and District – Gondia.

Shri Ishwarchandra N. Choudhari, Advocate for Petitioners.

Shri Abhay Sambre, Advocate for Respondent No.1.

Shri Pradeep S. Kshirsagar, Advocate for Respondent Nos.2 to 4.

CORAM : A. S. CHANDURKAR AND
ABHAY J. MANTRI, JJ.
RESERVED ON : 2nd NOVEMBER, 2023.
PRONOUNCED ON : 7th NOVEMBER, 2023.

JUDGMENT : (PER : ABHAY J. MANTRI, J.)

. Heard. **Rule.** Rule made returnable forthwith.

2. The challenge raised in this petition is to the Selection list of Bailiffs dated 20.12.2019 as well as Office Order bearing No. B-4(1)/1112/2019 dated 31.12.2019 issued by respondent No.1 – then Principal District and Sessions Judge, Gondia to the extent of selection and appointment of respondent Nos.2 to 4 on the post of Bailiff by promotion.

3. The petitioners are working on the establishment of a District Court, Gondia, on the post of Peon. Respondent No.1 is the Principal District and Sessions Judge / Appointing Authority.

4. The Petitioners contended that *vide* Notice bearing No.777 of 2019 dated 04.09.2019, the applications were invited for the post of Bailiff on the establishment of a District Court, Gondia on promotion. The last date for submission of the

application was 21.09.2019. The employees, who possessed three years of service and the requisite eligibility criteria for the post of Bailiff as mentioned in the said Notice, can apply for the same. The said Notice was published for five vacant posts of Bailiff to be filled as per Paragraphs 577(3) and 578 of the Civil Manual from Class-IV employees.

5. On 07.12.2019, a Memorandum/Notice was published for conducting the written examination. On 13.12.2019, the Advisory Committee of District and Sessions Court, Gondia held a meeting to decide the criteria for grant of promotions for the post of Bailiff as per Paragraph 580 of the Civil Manual. Accordingly, the minutes of the Advisory Committee were prepared. In the said meeting, the Committee had unanimously decided to fill the said post abide by the judgment in the case of Rajendra Kumar Srivastava & Ors. vs. Samyut Kshetriya Gramin Bank & Ors., reported in AIR 2010 SC 699 as per the principle of 'seniority-cum-merit' basis. It was also unanimously resolved that the benchmark should be fixed at 60 out of 100 with a condition that the candidates must obtain a minimum of 8

marks in the written examination and those candidates will be considered for promotion.

6. Accordingly, on 13.12.2019 written test was conducted, and finally *vide* meeting dated 20.12.2019, the Advisory Committee prepared the chart of total marks obtained by the candidates including the marks of the written examination, and selected six candidates who had secured the highest marks amongst the eligible candidates. In pursuance of the said minutes, respondent No.1 has passed the Office Order and issued an appointment order to six employees as a Bailiff. Being aggrieved by the said order, the petitioners have made representation to respondent No.1 for reconsideration of the selection process/order of promotion to the employees as per seniority-cum-merit basis and justice should be given to them. However, respondent No.1 has not considered their representation and therefore, the petitioners have filed this petition challenging the said order of the promotion of respondent Nos.2 to 4 as Bailiff.

7. Respondent No.1 by filing an affidavit-in-reply as well as an additional affidavit-in-reply opposes the petition on the ground that respondent No.1 by following due process of law conducted the selection process of promotion of Bailiff as per Paragraphs 577 (3) and 580 of the Civil Manual and selected the candidates who had obtained highest marks. It is submitted that during the selection process, no illegality has been committed and therefore, he has prayed for dismissal of the petition. Respondents Nos.2 to 4 support the reply filed by Respondent No.1 and they have also prayed for dismissal of the petition.

8. After hearing the learned counsels for the parties, on 25.10.2023, we had indicated that there was no merit in the writ petition and the writ petition came to be dismissed. However, on further perusal of the material on record, it is noticed that the provisions of Paragraphs 578 and 580 of the Civil Manual have not been properly followed by respondent No.1 with the Advisory Committee while effecting the promotions. Besides, at the time of the hearing, the learned counsel for the petitioners had not made emphasis on the said points but only contended

that the employees i.e. Respondents Nos.2 to 4 who were junior to them in the service and had not completed three years of their services on the date of publication of the notice dated 04.09.2019, to apply on the said post, had been selected and therefore issuance of the appointment order to respondent Nos.2 to 4 was illegal as they were not eligible for the selection of the post of Bailiff on promotion. The learned counsel for the petitioners failed to point out the minutes of the meeting and criteria fixed in the meeting during the argument and therefore, after hearing the parties on 25.10.2023, we had indicated that the petition was dismissed. However, considering the minutes of the meeting and provisions of the Civil Manual, the matter was again listed for reconsideration on 30.10.2023, and heard the learned counsels for both the parties on the aspect of Paragraph Nos.578 and 580 of the Civil Manual. On 02.11.2023, the matter was closed for passing the order.

9. Having heard the learned counsel for the parties and having perused the record, a short but two crucial questions arise for our consideration:

i) Whether the learned Principal District Judge with Advisory Committee was justified in non-observing the principle of '*seniority-cum-merit*' as well as the law laid down by the Hon'ble Supreme Court in the case of *Rajendra Kumar Srivastava & Ors. vs. Samyut Kshetriya Gramin Bank & Ors?*

ii) Whether the learned Principal District Judge justified in ignoring the selection and appointment of the candidates who had achieved the benchmark with a minimum of 8 marks in the written examination in the merit list instead of the Junior candidates who had obtained the highest marks?

10. During the argument, it transpired that in the minutes of the meeting dated 13.12.2019, the Advisory Committee had decided to abide by the judgment in the case of *Rajendra Kumar* (supra) to consider the promotion to the post of Bailiff, on the principle of '*seniority-cum-merit*' as per the Paragraph 580 of the Civil Manual and therefore, it would be proper to peruse the said judgment.

11. Perused the judgment in the case of Rajendra Kumar (supra), wherein the Hon'ble Supreme Court after considering the various judgments has held that *“the concept of promotion by seniority-cum-merit is different from the principle of “seniority” and principle of “merit-cum-seniority”, where the promotion is on the basis of seniority alone, merit will not play any part at all, while the principle of seniority-cum-merit laid greater emphasis on seniority and less on merit. Likewise, the principle of merit-cum-seniority laid greater emphasis on merit and ability, with seniority playing a less significant role.”*

It is further observed that the *“standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade to a process of assessment of a **specified minimum necessary merit** and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of **seniority**.”* It is further observed that *“the Competent Authority can prescribe minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post. There is no hard and fast rule as to how the*

minimum merit is to be ascertained.”

(emphasis supplied.)

12. We would like to reproduce the relevant provisions of Paragraph 580 of the Civil Manual as under :

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

(i)

(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)

(c)

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

13. Bare perusal of Paragraph 580 of the Civil Manual, it seems that the vacancies are to be filled by promotion for the post of Bailiff as per the principle of ‘seniority-cum-merit’ i.e. eligibility. Thus, in view of the law laid down in the case of Rajendra Kumar (supra) as well as Paragraph 580 of the Civil Manual, it would be proper to consider the facts in the present case.

14. It is pertinent to note that the basic facts of the matter are not much more disputed. The petitioners have only disputed that on the date of issuance of Notice dated 04.09.2019, respondent Nos.3 and 4 have not completed three years of their services and therefore, they were not eligible to apply for the said post. However, considering the fact that the date for filling the application was up to 21.09.2019, and as per the record it appears that the respondent Nos.3 and 4 have completed three years of their services prior to 09.09.2019. Moreover, the Advisory Committee after considering the said facts unanimously permitted them to participate in the process and therefore, we do not find substance in the said contentions of the petitioners in that regard. Except that the rest of the facts are not disputed by the petitioners.

15. On perusal of the record, it is seen that *vide* Notice dated 04.09.2019, respondent No.1 has invited applications from Class --IV employees to fill up the five vacant posts of the Bailiff as per Paragraphs 577 and 578 of the Civil Manual. It is pertinent to note that as per Clause *ii(a) of Paragraph 580*, the

vacancies are to be filled by promotion by considering thrice the number of eligible employees according to their seniority. If as per the Notice, respondent No.1 was intended to fill up five vacancies of Bailiff, then as per the said rule, respondent No.1 has to call applications of 15 number of eligible employees according to their seniority for the post of Bailiff. However, the record shows that 19 employees had appeared for written examination and they have been considered for the post of Bailiff. The record does not show that respondent No.1 issued a Notice or any Memorandum to fill the six vacant posts of Bailiff, but the minutes of the meeting dated 20.12.2019 as well as the Office Order issued by respondent No.1 denotes that the Advisory Committee had selected and promoted six employees as Bailiff and given them order of appointment. The said act of the Committee appears contrary to Paragraph 580 of the Civil Manual. No reason has been recorded in the minutes of the meeting dated 13.12.2019 or 20.12.2019 as to how the Committee selected six employees for the post of Bailiff when the Notice was issued to fill up five vacancies of bailiff.

16. It was incumbent on the Committee to assign a reason for selecting six Bailiffs instead of five as per the Notice. Likewise, if the Committee has selected six employees as Bailiff, in that case also, it was binding on them to call 18 eligible employees according to their seniority but the record reflects that 19 employees appeared for the written examination as well as the Committee had considered the record of 19 employees during the process of selection to the post of Bailiff. Thus, it appears that the Committee without following the procedure mandated under Paragraph 580 of the Civil Manual conducted the process of selection.

17. Secondly, it is evident that *vide* meeting dated 13.12.2019, the Committee had unanimously resolved that the benchmark should be fixed at 60 out of 100 with a condition that the candidates must obtain a minimum of 8 marks in the written examination as well as the Committee had decided to abide by the judgment in the case of Rajendra Kumar (supra) so far as the principle of '*seniority-cum-merit*' in case of promotion to the post of Bailiffs. The said resolution of the minutes itself shows

that the Committee had unanimously agreed to fill up the vacancies for the post of Bailiffs on the basis of seniority-cum-merit with a benchmark of 60 out of 100. Thus, in view of the minutes of the meeting as well as the law laid down by the Hon'ble Supreme Court in the case of Rajendra Kumar (supra), it was obligatory for the Committee to select and appoint the employees who had secured minimum benchmark with a condition of 8 marks in the written examination.

18. In view of the aforesaid discussion and on perusal of the minutes of the meeting dated 20.12.2019 of the Advisory Committee along with the mark sheet, it appears that the candidates at serial Nos.1, 2, 4, 6, 7, and 9 have obtained minimum qualifying marks as per the seniority and criteria stipulated by the Committee *vide* minutes of the meeting dated 13.12.2019 for the promotion to the post of Bailiff. Therefore, as per the law laid down in the case of Rajendra Kumar (supra), the Committee had to select these six candidates on the basis of seniority-cum-merit principle. However, the minutes of the meeting show that despite obtaining the benchmark of 60 out of

100 with a minimum of 8 marks in writing by these candidates, the Committee has failed to select them for the post of Bailiff. However, the Committee has selected the candidates at serial Nos. 2, 4, 12, 14, 15, and 19 on the grounds that they have obtained the highest marks amongst the eligible candidates. It is pertinent to note that the Advisory Committee ignored the law laid down in the case of Rajendra Kumar (supra) as well as the provisions of Paragraph 580 of the Civil Manual and erred in selecting these candidates contrary to the principle of '*seniority-cum-merit*' and thereby the Advisory Committee violated the mandate of the principle of '*seniority-cum-merit*'. It further appears that the candidate selected at serial No.6 was not even eligible to appear for the post of Bailiff as he was at serial No.19 of the seniority list.

19. Furthermore, it reveals that despite the fact that respondents Nos.2, 3, and 4 are at serial Nos.12, 14, and 15 in the seniority list, they have been selected and appointed as bailiffs by the Committee. When admittedly as per the mark sheet, the candidates at serial Nos.1, 2, 4, 6, 7, and 9 are senior to them as

well as obtained the minimum qualifying marks and therefore as per settled principle of law if the process was conducted on the basis of '*seniority-cum-merit*', in that case, they are entitled to promotion strictly in order to seniority. However, the Advisory Committee ignored the principle of '*seniority-cum-merit*' as well as the law laid down in the case of *Rajendra Kumar* (supra) passed the resolution contrary to the settled principle of law, and on the basis of said resolution, respondent No.1 appointed those six candidates on the post of Bailiff.

20. Perused the judgments in *K. Samantaray vs. National Insurance Co. Ltd.*, reported in *(2004) 9 SCC 286*, and *SGT Chaman Lal vs. Union of India and Ors.*, reported in *2017 AIR (SC) 3533* relied upon by the learned counsel for the respondent No.1, wherein the facts were different than the case at hand. Therefore, the observations made in the said Authorities are not helpful for respondent No.1 in support of his contention. Furthermore, the Hon'ble Supreme Court in the case of *Rajendra Kumar* (supra) has considered the judgment in *K. Samantaray* (supra) and thereafter held that the principle of '*seniority-cum-*

merit' laid greater emphasis on seniority and less on merit and therefore, the candidates who are found to possess the minimum necessary merit was eligible to promotion strictly in the order of seniority. Besides, in the case of SGT Chaman Lal (supra), the candidate had not fulfilled the criteria of medical fitness and therefore, he was not selected. Thus, the observations made in the cases of K. Samantaray (supra) and SGT Chaman Lal (supra) are not helpful for respondent No.1 in support of his contentions.

21. To sum up the above discussion, it appears that respondent No.1 had not followed the principle of “*seniority-cum-merit*” as laid down in the case of Rajendra Kumar (supra) and violated the same while selecting respondent Nos.2, 3 and 4 as well as one candidate at serial No.19 instead of the candidates at serial Nos.1, 2, 4, 6, 7 and 9, who have obtained the benchmark as well as minimum 8 marks in written examination. Therefore, they are eligible to be appointed for the post of Bailiff. Thus, it appears that respondent No.1 with the Advisory Committee has erred in selecting the candidates who had obtained the highest marks instead of those who are eligible as

per seniority. Hence, the decision of the Advisory Committee appears arbitrary, unreasonable, and in violation of the principle of seniority-cum-merit. It further reveals that the candidates at serial Nos.2 and 4 have achieved the benchmark and are eligible to be appointed for the post of Bailiff and therefore, passing of the Office Order by the Principal District and Sessions Judge in that regard is just and proper. However, the appointment order of the rest of the four candidates who are junior to the candidates up to serial No.9 are not eligible to be appointed for the post of Bailiff. Therefore, the Office Order dated 20.12.2019 (Annexure P-5) issued by respondent No.1 to the extent of selection of respondent Nos.2 to 4 along with one C. S. Chouragade is bad in law and improper. In pursuance of the said selection, passing of the Office Order dated 31.12.2019 issued by respondent No.1 promoting respondent Nos.2 to 4 and one C. S. Chouragade is arbitrary and violates the principle of '*seniority-cum-merit*' and therefore, the said order is liable to be set aside. Accordingly, we answer both the questions in the negative.

22. For the aforesaid reasons, we pass the following order :

- a) The writ petition is partly allowed.
- b) Office orders dated 20.12.2019 and 31.12.2019 issued by respondent No.1 – the then Principal District and Sessions Judge, Gondia, are partly set aside to the extent of selection and appointment of respondent Nos.2 to 4 and one C. S. Chouragade to the post of Bailiff.
- c) Respondent No.1 is directed to select and appoint/promote the candidates who have achieved the benchmark with a minimum of 8 marks in the written examination as per their seniority in the said list, to the post of Bailiff.

23. Accordingly, the Rule is made partly in the above terms. No costs.

(ABHAY J. MANTRI, J.) (A. S. CHANDURKAR, J.)