

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice V.M. Velumani

&

The Hon'ble Justice Rai Chattopadhyay

FMA No. 824 of 2013

Ashoke Kumar Mondal

Vs.

Bangiyo Gramin Bikash Bank & Ors.

For the appellant : Mr. Indranath Mitra,
: Mr. Neil Basu,
: Mr. Sankha Biswas.

For the respondent no.1/Bank : Mr. Baidurya Ghosal.

Hearing concluded on: 05/10/2023

Judgment on: 13/02/2024

Rai Chattopadhyay, J.

1. The appellant/writ petitioner is challenging in this appeal, the judgment of the Hon'ble Single Judge, dated 30/01/2009, in writ petition no. W.P.No. 7491 (W) of 2007.
2. The grievance of the appellant/writ petitioner in the said writ petition was relating to alleged illegal and arbitrary denial of his promotion. The factual background in a nut-shell may be narrated as herein below:-
3. The appellant/writ petitioner joined in service with Sagar Gramin Bank, which is now known as Bangiyo Gramin Bikash Bank (after

amalgamation with other regional rural banks), that is, respondent no.1. The date of his appointment in Sagar Gramin Bank, was on 08/07/1986.

4. By dint of a notification dated 21/02/2007 Sagar Gramin Bank was amalgamated with other four regional rural banks and was re-designated as Bangiyo Gramin Bikash Bank, i.e, respondent no. 1 in the said writ petition and in this appeal too.
5. The appellant/writ petitioner has stated that the '*Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988*', is the governing statute for the appellant as well as the private respondent, so far as the promotion of the appellant or the private respondent/respondent no. 3, is concerned. Vacancy was declared on 10/07/2006, for four posts, which were to be filled up by promotion from clerical grade. The result of the entire process has culminated into promotion of the respondent no. 3. Needless to say that appellant/writ petitioner had also participated in the process of promotion though could not successfully compete.
6. The appellant/writ petitioner has ventilated grievance that in spite of his being duly eligible for promotion to one of the four said vacancies as a Schedule Caste candidate, the respondent authority has acted illegally, arbitrarily and discriminatory to decline appellant's right for promotion to the said post. Instead, through an irregular process, which has been beyond the stipulations of the governing Rules of 1988, and thus irregular and illegal, respondent no. 3 has been promoted and posted in the concerned post.
7. For redress of such a grievance, the appellant/writ petitioner had moved the writ petition as mentioned above to pray for the relief of setting aside of the order of promotion granted to the respondent no. 3 to the post of 'Junior Managing Grade, Scale I', allegedly in supersession of the

appellant and for an order directing the respondent authorities to give promotion to the appellant.

8. The Hon'ble Single Bench by dint of its judgment dated 30/01/2009 has relegated the appellant to the Tribunal. The Court has found that

“ The very nature of the grievance sand the claim that the petitioner deserved to get promotion before such promotion could be given to respondent No.3 can perhaps be better appreciated by the tribunal. Thus, in tune with the submission of Mr. Sanyal, I would like to hold that the petitioner should rather approach the appropriate forum for redressal of his grievance in that regard. It is not that the writ application is not maintainable but maintainability and entertainability- are not synonymous. In the best interest of justice and for proper and effective appreciation of such grievances, it is better that the petitioner seeks redress before the tribunal”.

9. The appellant was not satisfied and hence the present appeal.

10. Mr. Mitra appearing for the appellant has very strenuously argued on various points involving his client's case. Firstly, he says that in terms of the respondent's own document, i.e, the 'Seniority List', as on 01/04/2006, the appellant appears to be senior than the respondent No. 3, both being candidates of Schedule Caste category. Mr. Mitra has very heavily relied on the relevant provisions in the Rules of 1988, which governs the promotion of the appellant as well as the respondent No. 3. He says that according to the said Rules, the promotion of the incumbent in that organisation is to be made on 'seniority-cum-merit' basis. For assessment as regards the merits part, Mr. Mitra submits, that several provisions have been made in the said Rules. By referring to the relevant portion of the Rules of 1988 he has submitted that the selection for promotion of a candidate shall be made on the basis of performance in the written test, interview and performance appraisal reports for preceding five years. He says that according to the said Rules the division of marks would be in a manner that 60 marks would be allotted

for written test, 20 marks for interview and 20 marks for performance appraisal reports. Thus, the merit of a candidate shall be assessed on a scale of 100 marks. He further refers to the Rule to say that the written test of 60 marks shall comprise in two parts, i.e, *Part 'A'* -- covering banking law and practice of banking and *Part 'B'* -- covering credit policy, credit managing including priority sector, economics and management. *Part 'A'* and *Part 'B'* would be of 30 marks each. Also that, to be called for an interview, a candidate must secure a minimum of 40% marks in each part of the written examination.

11. Thus, he has described the entire statutory provision relating to process of selection for the purpose of promotion.

12. The second contention of Mr. Mitra is that the appellant/writ petitioner has successfully qualified in the written test thereafter. Hence, he was called for interview. In the final merit list however, the respondent could secure a higher position than the appellant, on the basis of higher marks obtained by him. Mr. Mitra is ventilating grievance of his client that the respondent authority, while ultimately granting promotion, has erroneously depended on the final merit list only on a 100 marks scale. He says that thus the respondent authority has wilfully ignored the '*seniority cum merit*' principles for promotion, as has been provided in the said Rules. Hence, it has flouted the provision of the statute in this regard as enumerated in the 1988 Rules and that there is a glare violation of the principle of '*seniority-cum-merit*', for grant of promotion. Mr. Mitra has agitated that this is a gross arbitrary action done by the respondent authority without any application of mind and suffers from illegality.

13. Mr. Mitra thereafter submitted that the acceptable mode of application of the principle as laid down as the foundation of the policy for promotion

to be given on the basis of '*seniority-cum-merit*', would be that after a candidate having qualified for the minimum bench mark prescribed for the purpose, then there would not be any scope to look at the inter se merit of the candidates on the basis of the result of examination but all of them having attained the minimum qualifying merit level, thereafter only the seniority of a candidate should be considered. He says that in this case the appellant/writ petitioner as well as respondent no. 3 both had qualified the minimum bench mark of merit by securing place for interview. He says further that after this the authority could not have lawfully relied on the marks obtained by them respectively and select the one with the higher marks. According to Mr. Mitra that would be violative of the provision enunciated in the said Rules itself for promotion on the basis of '*seniority-cum-merit*'. He says that once both of them have qualified minimum bench mark as regards the merit, then, only the seniority factor would have been considered. In that case the appellant would have been the right candidate for selection for promotion, as he is senior to the respondent no. 3.

14. On this Mr. Mirta has relied on the judgment reported in **(1998) 6 SCC 720 (B.V. Sivaiah & Ors. vs. K. Addanki Babu & Ors.)**. The Hon'ble Court in the said judgment has held that the selection process to be not in consonance with the principle of '*seniority-cum-merit*' as the Court found that selection was made on the basis of the marks assigned at interview.
15. The other judgment relied on the same point, that is, in order to follow the principle of '*seniority-cum-merit*', greater emphasis upon the seniority and less of that upon mark has to be bestowed – is **Samsul Haque & Ors. vs. Nadia Gramin Bank & Ors.** reported in **(2008) 3 Calcutta High Court Notes 1**.

- 16.** Mr. Mitra has stated that in spite of being fully aware of the statutory provision as above, the respondent bank has deliberately and wilfully violated the same which has fortified the glaring arbitrary action on their part in denying petitioner's right to promotion to the said vacant post. He has also emphasised that equals have been treated unequally by exercising discrimination by the respondent authority, in denying petitioner's legitimate claim to the senior post.
- 17.** He has further submitted that all these aspects have not been considered by the Hon'ble Single Bench and it has thus come to an erroneous finding that the appellant shall have adequate remedy not before this Court but before the Tribunal. He has insisted that an order directing setting aside of the impugned judgment as well as granting relief to the appellant as prayed for be passed.
- 18.** Mr. Ghosal, representing the respondent no.1/bank has raised strong objection to the contentions and prayers of the appellant, in this appeal.
- 19.** Mr. Ghosal has first stated that the entire selection process for the purpose of filling up of the vacant post by way of promotion has been done duly and strictly in terms of the governing statute and regulation, i.e, particularly the '*Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1988*'. He says that after inviting applications the authority had proceeded to hold written tests, followed by interview as well as performance appraisal of the employees. Thus, the merit of the employee was assessed. The result has revealed that the respondent no. 3 emerged to be the better meritorious candidate than the appellant having adequate seniority to be a fit candidate for the promotional post. As such he was promoted. Mr. Ghosal has emphasised that the selection process which is under challenge in this appeal as well as was before the Single Bench, would actually not spare

any reasonable ground for espousing any grievance against the same. He raises objection that the appellant has not been able to substantiate his claim of the selection procedure to have been tainted with any illegality or irregularity what so ever, with sufficient facts and materials.

20. Mr. Ghosal has further submitted that even if, for the argument's sake, the respondent accepts that the process of assessment of merit or the entire process of selection would suffer with illegality as alleged, determination of the same would involve numerous questions as regards the attending facts and circumstances, which can only be adjudicated by a civil Court, upon evidence and not by a Court of equity, in its writ jurisdiction. On the entire as above, Mr. Ghosal has supported the impugned judgment dated 30/01/2009 of the Hon'ble Single Judge. Mr. Ghosal supported the order of the Hon'ble Single Bench relegating appellant's case to the Tribunal as according to him that would be an appropriate forum for adjudication as regards the factual questions raised by the appellant.

21. The other point canvassed on behalf of the respondent is that of belated filing of the writ petition as well as the appeal by the appellant. It is submitted that the appellant/writ petitioner has raised from his slumber only after his retirement and receipt of the entire retrial benefit. It is submitted that the selection process was of the year 2006 after which on 20/02/2015, the appellant has also been promoted. After that on 31/08/2021, the appellant has retired from service. Mr. Ghosal has stated that in such view of the development of events, appellant's prayer would be infructuous as on date. He says that in 2015, the appellant has accepted promotion without lodging any protest. Therefore, now he would not be eligible to raise any grievance as regards a selection process, prior to the said date. By referring to a judgment of the Hon'ble

Supreme Court reported in **(1975) 1 SCC 152 (Sadasiva Swamy vs. State of T.N.)**, he says that the appellant should have raised his grievance within a due and reasonable time, in order to secure any relief whatsoever. At present the appellant's cause of action is futile. He has prayed for dismissal of the appeal.

22. The appellant/writ petitioner's grievance is specifically with regard to the fact that as he qualified in the written test and was at par with the respondent no. 3 at that point, having been called for the interview together, had reached the qualifying bench mark as regards the 'merit' part of the policy of '*seniority-cum-merit*'. That he should not have been further judged on marks obtained, but the 'seniority' factor should have been introduced at the said stage, by assessing the inter se seniority of the candidates.

23. It is a settled law and also envisaged in the judgments referred to by the appellant that to proceed on the basis of the policy of '*seniority-cum-merit*', the minimum necessary merit requisite has to be seen to have been achieved by the candidates, before everything else. At this juncture this Court reverts back to the relevant provisions of the concerned Rules of 1988, which are as follows:-

Sl No.		
j)	Selection process for promotion	The selection shall be on the basis of performance in the written test, interview and performance Appraisal Reports for proceeding five years as per the division of marks given below:
A)	Written test	60 marks.
B)	Interview	20 marks.
C)	Performance Appraisal Reports	20 marks.
	Total marks	100 marks.

A)	Written test (60 marks)	The candidates shall be required to appear for written test comprising of two parts viz. Part (A) covering Banking Law and Practice of Banking and Part (B) covering Credit Policy, Credit Management including Priority Sector, Economics and Management. 60 marks allotted to written test shall be further divided as under: Part 'A' 30 marks Part 'B' 30 marks A list of only those candidates, who secure a minimum of 40% marks in each part shall be prepared and such candidates shall be called for interview.
(B)	Interview (20 marks)	There shall be no minimum qualifying marks for the interview.
(C)	Performance appraisal reports (20 marks)	Performance Appraisal Reports for the preceding five years shall be considered for the purpose of awarding marks for promotion.
3)	a) Name of post	Scale I Officer
	b) Classification	Group 'A'
	c) Source of appointment	50% by direct recruitment through Banking Service Recruitment Board and 50% by promotion.
	d) Where promotion to be made on seniority basis or seniority-cum-merit basis	Promotions shall be made on the basis of seniority-cum-merit.
	e) eligibility	
A)	For Direct Recruits	
	i) Qualification and eligibility for direct recruits	i) Degree of recognised university in any discipline or its equivalent;
		(ii) Proficiency in local language as may be laid down by the board.
		iii) Part (A) covering Banking law and Practice of Banking and part (B) covering Credit Policy, Credit Management including priority Sector, Economics and Management. 60 marks allotted to written test shall be further divided as under:

		Part 'A' 30 marks Part 'B' 30 marks A list of only those candidates, who secure a minimum of 40% marks in each part shall be prepared and such candidates shall be called for interview.
(B)	Interview (20 marks)	There shall be no minimum qualifying marks for the interview.
(C)	Performance appraisal reports (20 marks)	Performance Appraisal Reports for the preceeding five years shall be considered for the purpose of awarding marks for promotion.

24. In the case of *B.V. Sivaiah (supra)*, the Supreme Court has held that,

“.....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.”

25. Another Supreme Court judgment of *K. Samantaray vs. National Insurance Co. Ltd.* reported in (2004) 9 SCC 286 may be referred to. In this judgment the Court has held that:

“the principles of seniority-cum-merit and merit-cum-seniority are conceptually different. For the former, greater emphasis is laid on seniority, though it is not the determinative factor, while in the latter, merit is the determinative factor.”

26. Therefore, it is seen that in case of application of the principle of ‘seniority-cum-merit’, seniority would not be the determinative factor, vis-à-vis the other case, where merit would be the determinative factor. As per the Rule of 1988, the process of assessment of merit does not conclude at the stage of completion of the written test but encompasses

two other stages also to follow up that. The stage of interview and the stage of assessment of performance appraisal report would also be there for finally assessing a candidate on a scale of 100 marks. The appellant/writ petitioner's claim, that after results of the written test and being called for the interview, he adequately and equally qualifies with any other candidate, like the respondent No. 3, appears to be not substantiable, in view of the provisions of the Rules, as mentioned above.

27. So far as the appellant's grievance of exercise of illegality or arbitrariness in his case is concerned, that also is not found to have any merit in view of the fact that the entire selection process do not suffer from any apparent flaw and perversity or gross non-application of prescribed rules or procedure. The arbitrary action, of an authority within the meaning of Article 12 of the Constitution of India, is definitely amenable to writ jurisdiction. For that, the petitioner has to have sufficient material to show the arbitrariness to have been actually exercised and to be not an illusory concept only. Mere pleading of arbitrariness having been exercised would not be of any help for the pleader thereof, in case he is not able to substantiate the same with sufficient facts, figures and materials.

28. Appellant's case is like that only. Though he has pleaded arbitrariness and illegal action on part of the respondent, he has been unable in this appeal to show that the selection process of 2006 by the respondent authority for promotion has suffered from any derogation from the provisions or standard, as prescribed under the statute. This Court is thus, unable to accept the submissions made on behalf of the appellant and appellant's prayer also.

29. This Court is also of the opinion that grievance, if any, of the appellant relating to the marks awarded etc. or the seniority list, would involve

determination of questions of fact, on the basis of relevant documents and evidence. This Court of equity cannot proceed to discharge duties of a fact finding civil Court/tribunal. In considered opinion of this Court, the appellant at best can make an endeavour before the fact finding forum, in case he has any dispute to be resolved. In exercise of writ jurisdiction, this Court find no tenable and cogent ground on which the judgment dated 30/01/2009 of the Hon'ble Single Judge as impugned in this appeal, can be faulted. Hence, the said impugned judgment dated 30/01/2009, in writ petition no. W.P.No. 7491 (W) of 2007, is affirmed.

30. In that event, the appeal should fail. Hence, FMA No. 824 of 2013 is dismissed along with all connected applications.

31. Urgent photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

I agree,

(Rai Chattopadhyay, J.)

(V.M. Velumani, J.)