01.08.2024
Sl. No. 03
Ct. No. 23
Srimanta

WPA/16267/2024

Arijit Biswas
-Vs.-
Paschim Banga Gramin Bank & Ors.

Mr. Indranath Mitra
…for the petitioner.
Mr. Baidurya Ghosal,
Mr. Saikat Mukherjee,
Ms. Anupama Biswas
…for the respondent nos. 1 to 6.
Mr. Dipanjan Datta,
Mr. Subhajit Chowdhury
…for the respondent nos. 7 to 10.

The petitioner has challenged the promotional exercise undertaken by his employer, Paschim Banga Gramin Bank (in short, PBGB), the respondent no. 1 in terms of the notification dated 19th February, 2023. The petitioner was entitled to be considered for promotion to the post of Officer Middle Management, a Grade Scale IV post wherein the number of approved vacancies as per the said notification was 20(twenty). Petitioner says that as per the provisions of Rule 5(5) of the Regional Rural Banks (Appointment and Promotion of Officers and Employees) Rules, 2017. The minimum years of service for promotion to the Group – 'A' post shall be reckoned as on the first day of April of the year in which the vacancy is expected to arise or has actually arisen. The petitioner had the qualifying years of service i.e., 4 years as on 1st April, 2023 as he joined as a direct recruit in scale III post on 28th May, 2018. The petitioner says that the PBGB prepared a list of candidates eligible for being considered for promotion to scale IV. In the list the petitioner's name was included. However, the names of the respondent nos. 7, 8, 9 and 10 have been included though they did not have the qualifying years of service as on 1st April, 2023 being the year on which the vacancies for promotion arose. The said respondents, according to the petitioner, therefor, could not have been considered for promotion. The petitioner says that these respondents have, in fact, been promoted which is *de hors* the rules and their promotional order should be set aside. The petitioner points out to the cut off date of the eligibility criteria in the notification dated 19th December, 2023 and submits that the same is 1st April, 2024 which could not have been in terms of the 2017 Rules and in particular for the provisions laid under Rule 5(5) of the said Rules.

On behalf of the Bank it is contended that the petitioner after having participated in the promotional process and on being unsuccessful has challenged the same. The petitioner's challenge should not, therefor, be entertained. It is further submitted by the Bank that the promotion against serial no. 5 of the notification dated 19th December, 2023 is on merit and as such seniority or the qualifying years of service has no relevance. The petitioner, therefor, also has no case on merit.

On behalf of the private respondents it is submitted that the vacancies were expected to arise after 1st April, 2024 and as such the cut off date of the eligibility criteria was 1st April, 2024. It is further submitted that the respondent nos. 7, 8, 9 and 10 did have four years of qualifying service on the date when the advertisement was published and as such none of them could be said to be not eligible for promotion in terms of the said advertisement. The petitioner has no case on merit and the writ petition therefor, according to the private respondents, should be dismissed. It is also submitted by the private respondents that the Bank is not obliged under the said Rules to conduct the promotional exercise every year and as such the date of 1st April of the year in which the vacancy arises for computing the qualifying years of service is not mandatory.

After hearing the parties and considering the materials-on-record I find substance in the argument of the petitioner. On a conjoined reading of Rule 5(5) of the 2017 Rules with the notification dated 19th December, 2023, I find that the notification is in variance with the Rules. The contention of the respondents that vacancies were expected to arise on or after 1st April, 2024 cannot be accepted simply because the vacancies were approved for creation and filling up in the 118th meeting of the Board of PBGB held on 28th November, 2023 that is in 2023. The notification dated 19th December, 2023 is a result of such meeting. Even in the notification it is clearly stated as "number of approved vacancies". Thus, the vacancies to be filled up through promotional avenue in terms of the notification dated 19th December, 2023 admittedly arose in the year 2023. If the vacancies have arisen in the year 2023 then the cut off date for the qualifying years of service in terms of Rule 5(5) of the 2017 Rules has to be reckoned as on 1st April, 2023 and not on 1st April, 2024 as mentioned in the notification. Even looking into the matter from a different angle the qualifying years of service has to be one on the date or a date prior to the advertisement being published. The Rules specifies that the qualifying service has to be as on 1st of April of a particular year in which the vacancies are expected to arise or have actually arisen. The vacancies have actually arisen in the year 2023. Even if the respondent nos. 7, 8, 9 and 10 had served the Bank in scale III post for four years on the date of advertisement then also as per the Rules, the cut off date had to be 1st April, 2023. So, the said respondents as on 1st April, 2023 did not have the qualifying years of service. It is also well settled principle of law that if the Statute provides for a particular thing to be done in a particular manner the same has to be done in such manner or otherwise not as held in ***Emperor –Vs.- Nazir Ahmed*** reported in ***1936 Privy Council 41*** which has been consistently followed even by the Hon'ble Supreme Court. The Bank by publishing a notification for promotion stating therein that the cut off date for the eligibility criteria will be a posterior date from the date of advertisement has acted contrary to the provisions of 2017 Rules. The question, therefor, is not just the disqualification of the respondent nos. 7, 8, 9 and 10 but whether the advertisement/notification dated 19th December, 2023 is in accordance with the 2017 Rules. The answer to this question is in the negative as the advertisement for the discussions as made hereinabove has to be held clearly contrary to the provisions of 2017 Rules. The issue that the petitioner after having participated in the promotional process and on being unsuccessful has challenged the same is also of no importance in this case as the whole process is vitiated being not in accordance with the provisions of 2017 Rules. The petitioner in such a case is entitled to challenge even after participation therein.

In the aforesaid facts and circumstances, the notification/advertisement dated 19th December, 2023 issued by PBGB which appears as Annexure – P/8 at page 68 of the writ petition is required to be set aside and/or quashed. However, as the challenge is thrown in respect of Officer Middle Management (Scale-IV) and the other categories are not before the Court, the notification dated 19th December, 2022 only in respect of Serial No. 5 that is Officer Middle Management (Scale-IV) is set aside and / or quashed. All steps taken pursuant to and/or in terms of the said notification/advertisement dated 19th December, 2023 for the promotion to fill up the declared vacancies Officer Middle Management (Scale-IV) post are also set aside and/or quashed. The respondent Bank shall make fresh publication and undertake the exercise of promotion in respect of the posts declared in the said notification for Officer Middle Management (Scale-IV), afresh. It is made clear that no equity shall be bestowed on the candidates who have been promoted in terms of the notification/advertisement dated 19th December, 2023 to the vacant post of Officer Middle Management (Scale-IV).

Nothing further remains to be adjudicated in this writ petition. The writ petition is accordingly disposed of.

(Arindam Mukherjee, J.)