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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 3954 of 1998@@
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Pramod K. Srivastav & Ors. ...Appellant (s)

Versus

Dwarika Rai & Ors. ...Respondent(s)

With

[C.A. No.3955/98]

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These two appeals are directed against one and the same judgment of the Division bench of Allahabad High Court disposing of writ petition No. 4053/96. The question for consideration before the High Court was that with effect from what date the respondents could be directed to be appointed as Area Managers.

From the narration of facts it transpires that in the year 1987 a process of selection started in accordance with the guidelines issued by NABARD. Though the selection process reached a particular stage, but had not been finalised inasmuch as the recommendations of the Committee did not have the approval of the Board of Directors of the Bank. According ...2/-

to Mr. Ramachandran, the learned senior counsel appearing for the Bank, the question of approval by the Board did not arise as one of the Members of the Board of Directors put in an objection, that the process of selection stood vitiated as ineligible candidates were being considered, and further the aggrieved employees also approached the Allahabad High Court by filing a writ petition. Be that as it may, it is not disputed before us that in the year 1987, the Board of Directors of the Bank had not approved the so called selection alleged to have been made. Consequently, the right of the respondents, if any, was at an inchoate stage. It may be stated that these respondents also had filed a writ petition before the High Court of Allahabad, but the High Court dismissed the same being of the opinion that it was pre-mature. The process of selection, which was at an intermediary stage, was finally recalled and in the year 1996 a fresh selection process emanated in respect of the posts that were available at that point of time, in accordance with the new guidelines. It also transpires that in the new process of selection, the respondents were also selected and had been promoted w.e.f. 1996. The respondents, however, approached the High Court again claiming relief that direction

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should be given to the Bank Authorities to consider the question of earlier selection which had reached a particular stage and then declare those who were selected and appoint them retrospectively w.e.f. 1987.

By the impugned judgment the aforesaid relief sought for has been granted, inasmuch as the Court called upon the Bank Authorities to declare the result of the selection held in 1987 for 13 vacancies and give the selected candidates their due seniority in accordance with such selection. It is this direction of the High Court which is under challenge in the aforesaid two appeals.

Mr. Garg, the learned counsel appearing for the private appellant and Mr. Ramachandran, the learned senior counsel appearing for the Bank, contended that the High Court was in error in issuing the impugned direction inasmuch as the so called selection process in the year 1987 had not reached any finality and the Board of Directors of the Bank had never approved of any selection that had been made by the selecting body. It is also further contended that even if a selection would have been made, the Bank was not under any obligation to fill up the vacancies available at that point of time and; in

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the case in hand the respondents having approached the High Court on an earlier occasion and the High Court having dismissed their application as being pre-mature, the impugned direction of the High Court cannot be sustained in law. Mr. Singh, the learned counsel appearing for the respondents, on the other hand, submitted with vehemence that for no fault of the respondents, the selection that had started in the year 1987 should have been given a decent burial and a fresh selection should have been made by the Bank by clubbing all the posts available in the year 1996. It is no doubt true, he submits, that the process of selection had not been finalised as there had been no approval of the Board of Directors of the Bank, but an employee who was duly qualified, had appeared in the interview and stood selected, must be held to have a right so far as the posts available, and departmental inaction on the part of the Bank justifies the Court for issuing a mandamus to the authorities to fill up those 13 posts in accordance with the selection already made, though it had not been finally approved by the Bank.

Having examined the relevant instructions issued by the NABARD for completing the process of selection and

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appointment to the different posts in the Bank and having considered the sequence of events that has taken place in the case in hand, the conclusion is irresistible that, though a process of selection had started in the year 1987 for filling up the 13 vacancies in the Bank as Area Managers but the same had not been finalised and the Board of Directors of the Bank had not approved the so called selection that is stated to have been made by the Selection Committee. We are not examining the correctness of the rival submissions with regard to the eligibility of the respondents at that point of time as, in our view, it is not necessary to delve into that

question in the case in hand. Suffice it to say that the earlier process of selection not having been finalised and the Board of Directors of the Bank not having approved any selection alleged to have been made, question of any right flowing from the so called selection would not arise which could be enforced by issuance of a writ of mandamus. That apart, the Bank itself in the year 1996 started a fresh process of selection in respect of the posts available at that point of time including the 13 posts which fell vacant in the year 1989 after withdrawing the selection stated to have been made earlier, and then in accordance with the guidelines issued by NABARD, has selected the persons entitled to be ...6/-

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promoted and the respondents also were selected and had been promoted w.e.f. 1996. The employer-Bank on its own having withdrawn the earlier selection process which had started in the year 1987, the High Court could not have issued a mandamus to declare the result of the selection held in the year 1987 in respect of the 13 vacancies. The aforesaid direction, in our considered opinion, is wholly unjustified and could not have been given by the High Court in exercise of its power under Article 226 of the Constitution of India. In this view of the matter, the impugned judgment of the High Court is set aside and these appeals are allowed accordingly.

The application for impleadment stands rejected.

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(G.B. PATTANAIAK)@@
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New Delhi;

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(DORAISWAMY RAJU)@@
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November 07, 2001.

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Item No. 104 Court No. 3 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 3954 of 1998@@
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Pramod K. Srivastav & Ors. ...Appellant (s)

Versus

Dwarika Rai & Ors. ...Respondent(s)

(With office report)

With

[C.A. No.3955/98]

Date : 07/11/2001 This petition(s)/appeal(s) was/were called
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner/(s) Mr. D.K. Garg, Adv.
Appellant(s)

Mr.Raju Ramachandran, Sr. Adv.
Mr. O P Gaggar, Adv.

For Respondent(s)

Mr. T N Singh, Adv.
Mr. V K Singh, Adv.
Mr. S K Singh, Adv.

UPON hearing counsel, the Court passed the following
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The appeals are allowed in terms of the signed order.
The application for impleadment stands rejected.

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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)