

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7299 OF 2010

Motilal Prasad & Ors. .. Appellant(s)

Versus

Gorakh Nath Singh & Ors. .. Respondent(s)

O R D E R

Heard learned Counsel for the parties.

The parties before this Court were, at the relevant time, serving as Clerks in Respondent No.5, Siwan Kshetriya Gramin Bank (known as Uttar Bihar Gramin Bank). It is not disputed that 21 persons had been recruited together. For promotions to the next Post i.e. Officer Scale (I) it had been prescribed by Respondent No.5 that attainment of a minimum aggregate of 65% was necessary for promotion. The Appellants have received 65% and above whereas the Respondent-Employees have failed to attain this prescribed minimum standard. As amongst the Appellants, having attained the Bench Mark of 65% they have been promoted as per their Seniority in the initial Merit List drawn up at the time of recruitment to the Post of Clerk. It is contended by Learned Senior Counsel for the Appellants that

therefore, the Selection has been carried out in compliance with the decision of this Court in B.V. Sivaiah & Ors. vs. K. Addanki Babu & Ors. reported in (1998) 6 SCC 720. Paras 17 and 18 have been relied on by both the Learned Counsel for the contesting employees and are hence reproduced.

"17. On behalf of the promoted officers, it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service, seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion what is required to be considered is the inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the selected list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to the such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service.

18. We thus arrive at the conclusion that the criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. 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."

The Respondent-Employees having not attained the Bench Mark cannot now challenge the procedure adopted by Respondent No.5 Bank. It is contended that there is a finding, in this regard, in favour of the Respondents. However, it is well established that having participated in the selection process, it is no longer available to the unsuccessful candidates to assail the correctness of the procedure that was declared in advance and then adhered to.

In the Impugned Order it is evident to us that the learned Division Bench was of the mistaken impression that the Appellants had been selected solely on the strength of marks allotted to them in the Interview. The selection therefore, did not find favour with the Division Bench which delivered the Impugned Order. This is, however, not the position. As already stated each of the three Appellants had crossed the Bench Mark of 65% which included marks received in the Interview, but more importantly, in the Assessment

Reports for the three preceding years whereas none of the other Respondent-Employees had done so. For this reason, the Impugned Order is not correct and is set aside.

It has further been contended by Learned Counsel for the Respondent-Employees that they have received 45% marks in their Personal Assessments which corresponds to a "good" appraisal. Therefore their merit cannot be questioned and being senior to the Appellants they should have been promoted. This, however, was not the criteria set down by Respondent No.5 Bank. This allotment of marking in respect of the Personal Assessments had been prescribed only for the purpose of the total marks which the employees may earn, in regard to their having attained the qualifying Bench Marks of 65%. The argument is rejected.

However, another question has been raised by the Learned Counsel for the Respondent-Employees i.e. that since all the 21 persons had been recruited to the Post of Clerk on the same date, and the Seniority List had been drawn up according to their respective individual merit at that time, the zone of consideration for the four available posts should have been restricted to 12 persons only. If this were to be followed then the

Respondents would have had to be considered for promotion to Officer Scale (I). This point has not been considered in the Impugned Order and, therefore, the matter requires to be remanded back for consideration by the High Court, restricted to this contention only. Mr. Amrendra Sharan, Learned Senior Counsel appearing for the Appellants states that there was no specification that the zone of consideration of three candidates for each available post would be adhered to in this case. We clarify that the parties are free to raise all contentions and arguments on this issue.

Status-quo prevailing before passing of the Impugned Order shall continue; we clarify that the Appellants will continue to discharge their duties till such time the Judgment is delivered by the Division Bench of the High Court consequent on this Remand.

All I.As. stand disposed of accordingly.

Mr. Ashish Wad submits that the Representation praying for granting the same benefits to the contesting Respondents as are being given to the persons juniors to them, shall be decided expeditiously, in accordance with law.

The Appeal is disposed of with the above  
observation.

.....J.  
[ VIKRAMAJIT SEN ]

.....J.  
[ C. NAGAPPAN ]

NEW DELHI,  
FEBRUARY 10, 2015.

ITEM NO.102

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.7299/2010

MOTILAL PRASAD &amp; ORS.

Appellant(s)

VERSUS

GORAKH NATH SINGH &amp; ORS.

Respondent(s)

(with appln. (s) for adducing additional documents/evidence on record and urging subsequent facts)

Date : 10/02/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s)

Mr. A. Sharan, Sr.Adv.

Mr. Abhishek A., Adv.

Mr. Aditya Narayan Singh, Adv.

Mr. Samir Ali Khan, Adv.

For Respondent(s)

Mr. Akhilesh Kumar Pandey, Adv.

Ms. Swati Chandra, Adv.

Ms. Anjul Dwivedi, Adv.

Mr. Ashish Wad, Adv.

Ms. Kanika Bhawaja, Adv.

Ms. Jayashree Wad, Adv. for

M/s. J. S. Wad &amp; Co., Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeal is disposed of in terms of the signed order.

(USHA BHARDWAJ)

AR-CUM-PS

(SAROJ SAINI)

COURT MASTER

Signed order is placed on the file.