

SHER SINGH AND ORS.
v.
SURINDER KUMAR AND ORS.

A

JANUARY 21, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

B

Service Law :

Promotion—Field Supervisors—Selection from amongst Clerks—Appellants promoted on the basis of merit-cum-seniority—On challenge, High Court held that the entire selection was vitiated for not following the criterion of seniority-cum-merit—On appeal, Held, no error in the judgement of the 'High Court'—Fresh selection to be held—The criterion of seniority-cum-merit to be followed—The period for which appellants worked as Field Supervisors not to be counted for seniority.

C

D

The appellants and respondents 1 to 7 were the employees of the Himachal Gramin Bank. 30 posts of Field Supervisors were available with the Bank, of which 15 were to be filled up by promotion from amongst the clerks and 15 by direct recruitment. The appellants and some others were selected and promoted to the post of Field Supervisors. The selection was challenged on the ground that the criteria for making promotion was seniority-cum-merit but the Bank adopted the criteria of merit-cum-seniority. The writ petition was allowed by the Single Judge and upheld by the Division Bench. The selected candidates filed special leave petition in this Court. This Court granted leave to appeal in respect of appellants 10 to 15 and refused leave to appellants 1 to 9.

E

F

Dismissing the appeal, this Court

HELD : 1. Since the Bank had adopted the criterion of "Merit-cum-seniority" and "not seniority-cum-merit" in making selection and did not produce the original records despite several directions and opportunities, the High Court was right in holding that the entire selection was vitiated. There is no infirmity in the judgements passed by the High Court and the same are upheld. [297-G]

G

2. The Bank shall hold a fresh selection in accordance with the

H

A directions issued by the High Court within 5 months from the date of judgment. In view of the present litigation, the Bank has not made any promotion to the post of Field Supervisor so far. The Bank cannot, by this attitude, stagnate its employees. [298-D]

B 3. The appellants, who were promoted in 1987 and were amongst the 15 persons originally selected have been working on these posts under the interim orders of this Court but since the appeal is being dismissed, the period of 11 years for which they were working on the posts of Field Supervisor shall not be counted towards their seniority and if the respondents along with appellants or any of them are selected and promoted to the post of Field Supervisor in the fresh selection, they will retain their original seniority. [298-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7425 of 1994.

D From the Judgment and Order dated 14.1.94 of the Himachal Pradesh High Court in L.P.A. No. 1 of 1991.

M.R. Sharma, Ujjwal Banerjee and H.K. Puri for the Appellants.

Raju Ramachandran and Sanjay Karol for Ms. Meenakshi Arora for the Respondents.

E The Judgment of the Court was delivered by

F S. SAGHIR AHMAD, J. The appellants and respondents 1 to 7 are the employees of the Himachal Gramin Bank (for short, 'the Bank'). In May-June, 1986, 30 posts of Field Supervisors, 15 of which were to be filled up by promotion from amongst the Clerks and 15 by direct recruitment, became available. In February 1987, a selection was held, in which 15 persons including the present appellants were selected and promoted to the posts of Field Supervisors. This selection was challenged by respondents 1 to 7 by a Writ Petition in the High Court of Himachal Pradesh, which was allowed by the Single Judge on 10th December, 1990. This decision was upheld by the G Division Bench on 14th January, 1994. All persons including the present appellants filed S.L.P. No. 15559/1994 in this Court and the Court by its Order dated 10th November, 1994 granted leave only to appellants 10 to 15, while leave was refused to appellants No. 1 to 9.

H 2. We have heard learned counsel of the parties, except the counsel for

the Bank, who did not appear. A

3. It is not disputed that the criterion for making promotion from the post of Clerk to that of Field Supervisor was seniority-cum-merit. On a consideration of the facts placed before the High Court, the Single Judge as also the Division Bench came to the conclusion that, while making selection, the Bank did not follow this criterion and instead, it made promotion on the basis of merit-cum-seniority which vitiated the selection. B

4. It may be pointed out that, before the learned Single Judge as also before the Division Bench, the Bank, in spite of directions of the Court, did not produce the original records relating to the selection in question. The learned Single Judge in its judgment has, in this regard, observed as under:- C

“Before concluding the present case I must place on record that despite specific direction dated 11.10.1990 to the H.P. Gramin Bank, the proceedings of the Departmental Promotion Committee were not placed before this Court. The learned counsel for the Bank, Sh. M.L. Sharma took time twice on 19.10.1990 and 26.10.1990, to comply with the directions of the Court but failed. Ultimately, on 1.11.1990, he showed his inability to show to this Court the proceedings of the Departmental Promotion Committee, as the General Manager of the H.P. Gramin Bank did not hand over the same to him despite assurances. In these circumstances, I am constrained to conclude that the respondent-bank has failed to show to this Court that it has followed a fair and just method of selection for promotion to the post of Field Supervisor. Such a non-cooperating attitude of a public body which is expected to be a model employer, militates against the fair adjudication of the issues raised before the Court. It is advisable a litigant party and more so, if the litigant party is the Government or a Public Body, to avoid any secrecy and put its record beyond the slightest pale of controversy to enable the Court to decide the points in issue.” D E F

5. Since the Bank had adopted the criteria of “merit-cum-seniority” and not “seniority-cum-merit” in making selection in question and did not produce the original records despite several directions and opportunities, the High Court was right in holding that the entire selection was vitiated. There is not infirmity in the judgments passed by the High Court and the same are upheld. G

6. The operative part of the judgment passed by the learned Single H

A Judge is quoted below:-

B “ In the result, the petitioners succeed on the first point that the promotion of respondent Nos. 2 and 16 to the posts of Field Supervisors is bad for the reason that the H.P. Gramin Bank arbitrarily followed the criterion of selection ‘merit-cum-seniority’ instead of ‘seniority-cum-merit’ applicable to the post . As the petitioners succeed on the first point, I need not decide the second point raised by them that the promotions were bad because the constitution of the Departmental Promotion Committee was defective due to the participation of the unauthorised person. Therefore, the promotion of respondent Nos. 2 to 16 to the posts of Field Supervisor made on 26.6.1987 in pursuance to the selection made by the Departmental Promotion Committee on 6.2.1987 is set aside. The Himachal Pradesh Gramin Bank is directed to make fresh promotion to the posts of Field Supervisor in accordance with law”.

D 7. We are informed that, in view of the present litigation, the Bank has not made any promotion to the post of Field Supervisors so far. The Bank cannot, by this attitude, stagnate its employees. We, therefore, direct while dismissing the appeal that the Bank shall hold a fresh selection in accordance with the directions issued by the High Court within 5 months from today.

E 8. The appellants, who were promoted in 1987 and were amongst the 15 persons originally selected have been working on these posts under the interim orders of this court but since the appeal is being dismissed, the period of 11 years for which they were working on the posts of Field Supervisors shall not be counted towards their seniority and if the respondents along with appellants or any of them are selected and promoted to the post of Field Supervisor in the fresh selection, they will retain their original seniority.

F 9. The appeal is disposed of in the manner indicated above without any order as to costs.

S.V.K.

Appeal disposed of.