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HARIGOVIND YADAV

v.

REWA SIDHI GRAMIN BANK & ORS.

MAY 9, 2006

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[B.N. SRIKRISHNA AND R.V. RAVEENDRAN, JJ.]

*Service Law:*

*Regional Rural Banks (Appointment & Promotion of Officers and other Employees) Rules, 1988: Rules 5 and 10.*

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*Promotion policy—Seniority-cum-merit—Interview—Importance of—Weightage to be given—Clerk-cum-cashier—Appellant employee's juniors were promoted—But the appellant employee was not promoted—Promotion policy was based on the principle of seniority-cum-merit—Appellant employee filed writ petition challenging the promotion of his juniors—High Court held that the promotions had been made not on the basis of seniority-cum-merit but on the basis of merit-cum-seniority—Promotion of juniors quashed—On reconsideration the employee was still not promoted as he failed to secure the prescribed minimum marks in the interview—Correctness of—Held: Interviews can be held and assessment of performance can be made by the employer in connection with promotions—But that can be only to assess the minimum necessary merit—But where the procedure adopted, does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the Rule of 'seniority-cum-merit'—Promotion of Appellant employee's juniors set aside—However, with a view to doing complete justice employer directed to promote the employee prospectively and place him above his juniors—Constitution of India, 1950, Art. 142.*

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The appellant and the third respondent were working as clerk-cum-cashiers with the first respondent Bank. The appellant was at serial No. 9 and third respondent was at serial No. 10 in the seniority list of senior clerks-cum-cashiers. There was no dispute that the third respondent was junior to the appellant in the cadre of clerk-cum-cashier. The appellant's juniors were promoted as Field Supervisors. The appellant was not promoted.

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The appellant filed a writ petition before the High Court challenging

the promotion of his juniors on the ground that the respondent-Bank had failed to make promotions on the basis of seniority-cum-merit prescribed under the Regional Rural Banks (Appointment & Promotion of Officers and other Employees) Rules, 1988 and had made promotions on the basis of merit-cum-seniority contrary to the Rules.

The High Court held that the promotions had been made not on the basis of seniority-cum-merit but on the basis of merit-cum-seniority. Consequently, the promotion of the third respondent was quashed with a direction to the Bank to consider the case of the appellant for promotion to the post of Field Supervisor along with other eligible candidates.

As no action was taken in pursuance of the said decision, the appellant filed a contempt petition. The said petition was disposed of by the High Court recording the assurance of the Bank that the case of the appellant would be considered and appropriate orders would be passed within one month. However, appellant was not promoted.

The appellant, therefore, filed a fresh writ petition before the High Court. The High Court dismissed the writ petition holding that the appellant was not promoted, as he failed to secure the prescribed minimum marks in the interview. Hence the appeal.

Allowing the appeal, the Court

**HELD:** 1. Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But where the procedure adopted, does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the Rule of 'seniority-cum-merit'. This aspect of the matter has been completely lost sight of by the High Court. The respondent-Bank have proceeded on the basis that the appellant having failed to secure the minimum marks prescribed for interview, was rightly denied promotion, by ignoring the principle laid down by this Court in *SIVAIAH* in regard to seniority-cum-merit. At all events, as the promotion policy adopted by the Bank was held to be illegal in the earlier round of litigation, the Bank could not have adopted the same policy to again reject the appellant for promotion.

[129-G-H; 130-A]

A *Surinder Kumar*, [1998] 9 SCC 652 and *Comptroller and Auditor General of India v. K.S. Jagannathan*, [1986] 2 SCC 679, referred to.

*K. Samantaray v. National Insurance Co. Ltd.*, [2004] 9 SCC 286 and *Syndicate Bank SC & ST Employees Assn. v. Union of India*, [1990] Supp. SCC 350, held inapplicable.

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2. Having regard to the factual background of the case and having regard to the fact that even under the merit-cum-seniority basis adopted by the bank the appellant had secured high marks and he was denied promotion on the ground that he failed to secure minimum marks in the interview, there is no need to refer the matter for fresh consideration. With a view to doing complete justice, in exercise of the power of this Court under Article 142, the first respondent-bank is hereby directed to promote the appellant as a Field Supervisor from the date the third respondent was promoted as Field Supervisor and place him above the third respondent. However, he will be entitled to monetary benefits flowing from such promotion only prospectively, though the pay is to be re-fixed with reference to the retrospective date of promotion. [132-F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1153 of 2003.

E From the Judgment & Order dated 23.8.2001 of the High Court of Judicature at Jabalpur in L.P.A. No. 224/2000.

Vivek Tankha, S.S. Chauhan, S.P. Kale, H. Pathak and T. Mahipal for the Appellant.

F T.L. Viswanatha Iyer and T.G. Narayanan Nair for the Respondent.

The Judgment of the Court was delivered by

**RAVEENDRAN, J. :**

G The appellant and the third Respondent are working as clerk-cum-cashiers with the first respondent Bank (Rewa Sidhi Gramin Bank). The appellant is at serial No.9 and third respondent is at serial No.10 in the seniority list of senior clerks cum cashiers published on 31.7.1988. There is no dispute that the third respondent is junior to appellant in the cadre of clerk-cum-cashier.

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2. The promotions of employees of the first Respondent Bank (for short 'the Bank') are governed by the Regional Rural Banks (Appointment & Promotion of Officers and other employees) Rules, 1988 (for short 'rules') made by the Central Government in exercise of the power conferred by Section 29 read with section 17 of the Regional Rural Banks Act, 1976. Rule 5 provides that all vacancies shall be filled by deputation, promotion or by direct recruitment in accordance with the provisions contained in the second Schedule. Rule 10 requires the Board of Directors of each Regional Rural Bank to constitute from time to time Staff Selection Committees in the manner provided therein for the purpose of selecting candidates for appointment by direct recruitment or promotion to the posts referred to in the second Schedule. It also requires the Staff Selection Committee to follow the procedure as determined by the Board for selecting the candidates for appointment or promotion in accordance with the guidelines issued by the Central Government from time to time.

3. Entry 5 of the second Schedule to the Rules relates to Field Supervisors. It provides the source of recruitment as 50% by direct recruitment and 50% by promotion on the basis of seniority-cum-merit (from amongst confirmed senior clerk-cum-cashiers, junior clerk-cum-cashiers, or clerk-cum-typists, stenographers and steno typists with the prescribed minimum periods of service). For direct recruitment, the mode of selection is 'written test and interview'. The method prescribed for ascertaining the minimum necessary merit required for promotion by seniority-cum-merit is 'interviews and assessment of performance reports for the preceding 3 years'.

4. The promotions were made by the Bank in accordance with the promotion policy contained in the circular dated 2.2.1989. The circular stated the object of the promotion policy thus:

"The object of the policy which is based on the principle of Seniority-cum-merit is to provide motivation and ensure carrier movement for Bank Staff. Apart from seniority, merit based on performance coupled with weightage for placement/posting in comparatively inconvenient areas, will be the determining factors for promotion."

Chapter 3 of the said promotion policy dealing with promotions to the post of Field Supervisors is extracted below :

A "FROM SENIOR CLERK/CASHIER OR JUNIOR CLERK/CASHIER OR CLERK/TYPIST OR STENO/TYPIST TO FIELD SUPERVISOR.

B Promotion from Senior Clerk/Cashier or Junior Clerk/Cashier or Clerk/Typist or Steno/Typist to Field Supervisor subject to satisfaction of minimum period of service shall be, at present on the basis of assessment of his overall performance based on appraisal reports on him and his potentiality to shoulder higher responsibilities assessed in the interview duly supplemented by weightage for seniority placement/posting as detailed herein below :

C Percent weightage for various promotion criteria as mentioned above will be as follow :

Total Marks	Seniority	Posting at Rural Centres	Posting at difficult Centres	Performance	Interview
100	20	10	5	40	25

D 3.1 Seniority :

E Two marks for each completed year of service as Senior Clerk/Cashier and one mark for each completed year of service as Junior-Clerk/Cashier/Typist/Steno/Typist subject to a maximum of 20 marks.

F 3.2 Posting at rural centres.

Two marks for each completed year of service in rural centre with a maximum of 10 marks.

G 3.3 Posting at difficult centres.

One mark for each completed year of posting at difficult centre (difficult centres to be identified by the Chairman and approved by the Board) with a maximum of 5 marks.

H 3.4 Performance/Appraisal

Performance will be assessed through the appraisal reports annually received from his superiors in such form as may be specified by the Chairman from time to time. Marks will be awarded at the rate of 8 marks each for annual appraisal ratings for the appraisal of preceding 3 years period with the maximum of 24 marks and 16 marks for overall performance of the Staff (maximum 16 marks).

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Performance, on the basis as stated above, will be assessed by a Staff Selection Committee constituted by the Board for this purpose from time to time.

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3.5 Interview :

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(a) The Staff Selection Committee constituted by the Board for the purpose of promotion, will also work as Interview Committee.

(b) The Maximum marks for interview will be 25. By and large, the candidates who have been found eligible will be interviewed in respect of (1) Personality (2) Poise and Manner (3) Power of expression (4) Emotional Stability (5) Job Knowledge including knowledge of Banking (with reference to the functions/role of Regional Rural Banks) (6) General Knowledge (7) Initiative (8) Leadership quality (9) Potential and suitability and overall assessment.

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3.6. Candidates who have secured less than 40% marks in interview will not be considered for promotion and their names will not be included in the final merit list.

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3.7. The list of successful candidates in the order of total marks obtained will be placed by the Staff Selection Committee before the Board, duly recommended for consideration for appointments or promotion."

5. On 3.7.1991 the appellant's juniors were promoted as Field Supervisors. The appellant was not promoted. He therefore filed W.P. No.4485/1993 in the High Court of Madhya Pradesh, challenging the promotion of two of his juniors (third respondent herein and one V.P. Singh) on the ground that the Bank had failed to make promotions on the basis of seniority cum merit, prescribed under the Rules, and had made promotions

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A on the basis of merit cum seniority contrary to the rules. Appellant contended that the procedure whereby only 20 marks were allocated to seniority and 80 marks were allocated for other factors for the purpose of assessment, and promoting those who secured the highest marks on the basis of such assessment of overall performance, clearly demonstrated that the promotions were not on the basis of seniority cum merit.

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6. The Bank resisted the said petition by contending that the promotions were made on the basis of seniority cum merit and not on merit cum seniority, in accordance with the Promotion Policy dated 2.2.1989. It contended that the promotion policy took note of seniority also by earmarking 20 out of 100 marks for seniority and therefore the procedure adopted by the bank for promotions to the post of Field Supervisor should be considered as seniority cum merit. It was not disputed that the comparative merit of the candidates was assessed with reference to performance appraisal, interview, posting at rural/difficult centres and that the persons securing highest marks in the order of merit were recommended for consideration for promotion.

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7. A learned Single Judge of the Madhya Pradesh High Court allowed the Appellant's writ petition by order dated 13.10.1998 following the decision of this Court in *B.V. Sivaiah & Ors. v. K. Addanki Babu*, [1998] 6 SCC 720. He held that the promotions had been made not on the basis of seniority cum merit, but on the basis of merit-cum-seniority. Consequently, the promotion of third respondent herein and V.P. Singh were quashed with a direction to the Bank to consider the case of appellant for promotion to the post of Field Supervisor, along with other eligible candidates. The said order of the learned Single Judge was challenged by the third respondent and V. P. Singh in a Letters Patent Appeal which was dismissed on 2.12.1998. It is stated that the special leave petition filed against the decision in the Appeal was also dismissed.

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8. As no action was taken in pursuance of the said decision, the appellant filed a contempt petition on 31.1.1999. The said petition was disposed of by the High Court, on 10.5.1999, recording the assurance of the Bank that the case of the appellant will be considered and appropriate orders will be passed within one month. Thereafter the bank again passed an order of promotion dated 14.6.1999 promoting the third respondent to the post of Field Supervisor. Appellant was not promoted.

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9. The appellant, therefore, once again approached the Madhya Pradesh

High Court in W.P. No.2800/1999 challenging his non-promotion, contending that the bank has not made promotion on the basis of seniority cum merit. He contended that the Bank had failed to follow the decision of this Court in *SIVAIAH* and the decision in his own case. He contended that even under the basis of merit-cum-seniority adopted by the Bank, he was entitled to promotion on the total percentage of marks secured by him and he had been deliberately failed in the interview to deny him promotion. The appellant stated that he had secured the following marks in the assessment made for promotion :

Criteria	Total marks	Marks secured by appellant
Seniority	20	16
Posting at rural centres	10	10
Posting at difficult centres	5	3
Performance	40	24
Interview	25	9
<b>TOTAL</b>	<b>100</b>	<b>62</b>

10. The bank resisted the second petition also. It contended that the Departmental Promotion Committee had considered the case of the appellant and other eligible candidates in terms of the promotion policy contained in its circular dated 2.2.1989 by assessing appellant's performance and interviewing him. The Bank contended that, as per the promotion policy, the candidates who secure less than 40% of the 25 marks allocated for interview will not be considered for promotion; that only those who got 10 marks and above in the interview, were eligible for promotion; and that appellant who had secured only 9 marks in interview was thus not eligible for promotion.

11. A learned Single Judge of the MP High Court dismissed the appellant's writ petition (WP No. 2800/1999) by order dated 26.4.2000. He held that in *Sivaiah's* case (supra), this Court had accepted the fixation of minimum standard for assessing merit and a candidate who fails to fulfil the said minimum standard cannot be promoted. The learned Single Judge held that the appellant was not promoted, as he failed to secure the prescribed

A minimum for interview. The learned Single Judge was of the view that the method evolved for adjudging the minimum merit was in consonance with the principle of seniority-cum-merit, and the appellant having failed in interview for promotion, he was not entitled to any relief.

B 12. The appellant challenged the said order before the Division Bench which rejected the LPA by judgment dated 23.8.2001 affirming the decision of the learned Single Judge. It held that the criteria adopted by the employer by prescribing minimum qualifying marks for interview for determining the suitability of the candidate for promotion was just and reasonable and the appellant having failed to secure the minimum marks in the interview, was rightly not promoted. Both the single Judge and the Division Bench purported to follow the principle laid down in para 37 of the Judgment in *SIVAI AH* (supra). The said decision of the Division Bench of the High Court is challenged in this appeal by special leave.

D 13. As both parties have relied on the decision in *Sivai ah* (supra), we may start by referring to the relevant observations therein. The decision in *SIVAI AH* was a common judgment which considered the meaning of the criterion 'seniority-cum-merit' for promotion. The decision dealt with several distinct batches of cases relating to different Regional Rural Banks, which had different promotion policies, that is Rayalaseema Grameena Bank, Pinakini Grameena Bank, Bastar Kshetriya Gramin Bank, Rewa Sidhi Gramin Bank (respondent herein) and Chhindwara-Seoni Kshetriya Gramin Bank.

F The High Courts had taken the view that if "seniority-cum-merit" criterion is adopted for the purpose of promotion, then first the seniormost eligible employee has to be tested to find out whether he possesses the minimum required merit for holding the higher post and only if he is not found suitable or fit, his immediate junior may be tested for the purpose of promotion. The said view was assailed before this Court by the various regional rural banks as well as the promoted officers whose promotions had been set aside by G the impugned judgments of the High Court.

H This Court noted that in the matter of formulation of a policy for promotion to a higher post, the two competing principles which may be taken into account are *inter-se* seniority and comparative merit of employees who are

eligible for promotion. This Court observed :

“*In Sant Ram Sharma v. State of Rajasthan*, AIR (1967) SC 1910, this Court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotions to be made entirely on grounds of seniority and that if a post falls vacant, it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones. An official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of “seniority-cum-merit” and “merit-cum-seniority” which take into account seniority as well as merit seek to achieve such a balance.”

This Court also noted that while the principle ‘seniority-cum-merit’ lays greater emphasis on seniority, ‘merit-cum-seniority’ laid greater emphasis on merit and ability and seniority plays a less significant role, becoming relevant only when merit is approximately equal. After referring to several decisions bearing on the issue, this Court enunciated the following general principle in regard to promotions by seniority cum merit (at para 18) which is relied on by the Appellant :

“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

A minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.”

Thereafter, this Court took up the cases of each Bank separately. While dealing with the case relating to Chhindwara-Seoni Kshetriya Gramin Bank, this Court observed thus (in para 37) which is relied on by the Respondents:

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“During the course of hearing of the appeal, the learned counsel for the respondent-Bank has placed before us the relevant documents relating to the impugned selection and promotion. On a perusal of the said documents, we find that 50 marks out of the total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. In the circumstances, it cannot be said that the selection has not been made in accordance with the principle of “seniority-cum-merit”. We are, therefore, unable to uphold the impugned judgment of the High Court. The appeal has to be allowed and the impugned judgment of the High Court dated 7.2.1997 passed by the learned Single Judge of the High Court has to be set aside and the promotion of the appellant on the post of Area/Senior Manager under order dated 8.4.1993 has to be affirmed.”

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14. Before considering the effect of observations in para 37 of the decision in SIVAIAH, relating to Chhindwara-Seoni Kshetriya Gramin Bank, let us refer to what this Court held with reference to other Banks :

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- (i) Rayalaseema Grameena Bank had adopted a system of assessment where weightage to be given (total of 120 marks) was divided into seniority (34 marks), qualification (10 marks), interview (20 marks) and performance (56 marks). Only those officers who had secured the higher number of marks were ultimately promoted. On these facts, this Court held :

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“It is not a case where minimum qualifying marks are prescribed for assessment of performance and merit and those who secure the prescribed minimum qualifying marks are selected for promotion

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on the basis of seniority. In the circumstances, it must be held that the High Court has rightly come to the conclusion that the mode of selection that was in fact employed was contrary to the principle of "seniority-cum-merit" laid down in the Rules."

- (ii) Pinakini Grameena Bank had adopted a system of assessment where weightage to be given (total of 100 marks) was divided into seniority (55 marks), passing CAIIB (5 marks) performance (25 marks) and interview (15 marks). Only those who secured highest number of marks were promoted. This Court held :

"The said circular did not prescribed minimum qualifying marks for assessment of performance and merit on the basis of which an officer would be considered for being selected and, as pointed out by the High Court, the selection was made of only those officers who secured the highest number of marks amongst the eligible officers. In the circumstances, the High Court, in our view, has rightly held that this method of selection was contrary to the principle of "seniority-cum-merit" and it virtually amounts to the application of the principle of "merit-cum-seniority".

- (iii) Bastar Kshetriya Gramin Bank made selections on the basis of interview of all the eligible officers by the Staff Selection Committee and a select list of five persons was prepared and on that basis promotions were made. This Court held :

"It is not disputed that the selection was made on the basis of marks assigned on the basis of interview by the Selection Committee and those who secured the highest marks were selected. The selection process adopted for the purpose of promotion to the post of Area Managers/Senior Managers was thus not in consonance with the principle of "seniority-cum-merit" and the promotions were not made in accordance with the Rules."

15. Thereafter, this Court considered the case of the first Respondent Bank itself (in paras 33 to 35). There also the bank relied on the very same promotion policy contained in circular dated 2.2.1989 (with which we are concerned) for promotion to the post of Area/Senior Manager by seniority cum merit. The promotion policy provided that the promotion from the post of officer to Area/Senior Manager shall be on the basis of his overall

A performance based on appraisal reports and his potentiality shall be assessed in the interview, duly supplemented by weightage for job responsibility, placement, posting mobility etc. 100% weightage was divided into seniority (15 marks), job responsibility (12 marks), placement/posting mobility (8 marks), performance (40 marks) and interview (25 marks). As in the case of promotion to the post of Field Supervisors, the policy provided that the candidates who secure less than 40% of the marks allocated for interview, shall not be considered for promotion and the list of successful candidates in the order of total marks obtained will be placed by the Staff Selection Committee for consideration for promotion. The challenge to the promotion of Area/Senior Managers on the above basis was upheld by the learned Single Judge and confirmed in Appeal by the Division Bench. This Court dismissed the appeals on the following reasoning :

D “For the same reasons, civil appeals arising out of Special Leave Petition {C} Nos.19965-19966 of 1997 are also liable to be dismissed inasmuch as according to the promotion policy dated 2.2.1989, selection was made on the basis of the total number of marks obtained by the eligible candidates. The criterion of the promotion policy cannot be regarded as being in consonance with the principle of “seniority-cum-merit” as prescribed under the Rules.”

E 16. It is thus clear that this Court did not accept the promotion policy contained in circular dated 2.2.1989 as being in consonance with the principle of seniority-cum-merit. This Court held that the policy which did not prescribe a minimum standard for assessing merit and which promoted candidates on the basis of comparative merit, with reference to total marks obtained by the eligible candidates, followed the merit-cum-seniority principle. The decision in *SIVAIAH* relating to Area/Senior Managers of the first respondent bank was followed by the High Court in the case of appellant, in its judgment dated 13.10.1998 and it was held that the procedure adopted by the first respondent bank for promotion of third Respondent and V.P. Singh as per circular dated 2.2.1989 was contrary to the Rules which required promotions by seniority-cum-merit, and the bank was directed to redo the promotions by considering the case of appellant and other eligible candidates by adopting the criteria of seniority cum merit. That decision attained finality as the appeal and SLP were rejected. It may be stated that even prior to the decision in *SIVAIAH* relating to Area/Senior Managers of the first respondent

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bank, the same view had been expressed in the earlier judgment dated 9.10.1996 of the Division Bench of the Madhya Pradesh High Court in LPA No.151/1996 and connected cases and civil appeals arising out of SLP (c) Nos.17780-81/1997 filed against the said judgment dated 9.10.1996 had been dismissed. Therefore we have several rounds of litigation which had been fought up to this court where the High Court and this court have repeatedly and clearly held that the procedure prescribed, in the promotion policy circular dated 2.2.1989, is not in consonance with the principle of seniority-cum-merit prescribed for promotion under the Rules but amounted to following the principle of merit cum seniority and therefore vitiated. What is surprising is that, in spite of these decisions, the first respondent bank again adopted the very same procedure contained in the promotion policy of 2.2.1989 and again failed to promote the appellant by assigning him marks of 16 (20), 10 (10), 3(5), 24 (40) and 9 (25) and held that he was not eligible for promotion as he did not secure the minimum marks of 10 prescribed for interview. But, admittedly, there was no overall minimum and the procedure required assessment of comparative merit. This is not therefore a case of the appellant failing to secure the minimum necessary merit required for promotion but a case where the appellant's entitlement to promotion was sought to be assessed by adopting a procedure which allotted 20 marks for seniority, 40 marks for performance, 15 marks for posting at rural and difficult centres and 25 marks for interview. The bank has persisted in adopting the merit-cum-seniority procedure in spite of the decisions of this Court in several rounds of litigation referred to above. As the entire promotion procedure adopted by the bank as per its policy dated 2.2.1989 has stood rejected by the High Court and this court in *SIVAIAH* (supra) as also in the earlier round of litigation of Appellant, the promotion of third Respondent and non-promotion of appellant by adopting the very same procedure is liable to be interfered with. -

17. Interviews can be held and assessment of performance can be made by the Bank in connection with promotions. But that can be only to assess the minimum necessary merit. But where the procedure adopted, does not provide the minimum standard for promotion, but only the minimum standard for interview and does the selection with reference to comparative marks, it is contrary to the Rule of 'seniority-cum-merit'. This aspect of the matter has been completely lost sight of by the learned Single Judge and the Division Bench of the High Court in this round of litigation. As noticed above, they have proceeded on the basis that the appellant having failed to

A secure the minimum marks prescribed for interview, was rightly denied promotion, by ignoring the principle laid down by this court in *SIVAIAH* in regard to seniority-cum-merit. At all events, as the promotion policy adopted by the Bank was held to be illegal in the earlier round of litigation (W.P. No. 4485/1993 dated 13.10.1988), the Bank could not have adopted the same policy to again reject the Appellant for promotion. We may also note that B the law laid down in *SIVAIAH* was reiterated in *Sher Singh v. Surinder Kumar* [1998] 9 SCC 652 wherein this Court had occasion to consider a similar question relating to the promotion for the post of clerk to Field Supervisor in the case of another Gramin Bank. This Court held that as the criterion for making promotion from the post of clerk to that of Field C Supervisor was seniority-cum-merit but the Bank did not follow the criterion of seniority-cum-merit but made promotions on the basis of merit-cum-seniority, the promotion was vitiated and therefore invalid.

18. We will now deal with para 37 in *SIVAIAH* (supra) relied on by D the Respondents. Para 37 related to Chhindwara-Seoni Kshetriya Gramin Bank where the procedure adopted for promotion was different from the criteria that was adopted by the Rewa Sidhi Gramin Bank, first respondent herein. In the case of Chhindwara Seoni Kshetriya Bank, the assessment of minimum necessary merit was by interview. The candidate who secured a minimum of 50 out of 100 marks in the interview, was selected for promotion E on the basis of seniority. It was thus found to be a case where minimum standard was prescribed for assessing the merit of the candidates and those who qualified by securing the minimum marks (50%) were promoted strictly as per seniority. Thus, it was in consonance with the principle of seniority-cum-merit. Therefore, the observations in para 37 of *SIVAIAH* are of no F assistance to Respondents. As we have already noticed, in this case, the procedure is not one of ascertaining the minimum necessary merit and then promoting the candidates with the minimum merit in accordance with seniority, but assessing the comparative merit by drawing up a merit list, the assessment being with reference to marks secured for seniority, performance, G postings at rural/difficult places and interview. The fact that the appellant had failed to secure the minimum marks in interview, is not relevant as the entire procedure adopted by the bank (of which interview is a part) is found to be vitiated and not in consonance with the principle of seniority cum merit.

H 19. In this view of the matter, we do not propose to go into the contention of the appellant that though he had secured very high percentages

(overall 62%), with the intention of deliberately denying him promotion, he had been failed in interview by giving him 9 marks as against the minimum of 10 for interview.

20. The learned counsel for the Bank placed reliance on the decision of this Court in *K. Samantaray v. National Insurance Co. Ltd.*, [2004] 9 SCC 286, where this Court following the earlier decision in *Syndicate Bank SC & ST Employees Assn. v. Union of India*, [1990] Supp. SCC 350, reiterated that apart from the recognized methods of seniority-cum-merit and merit-cum-seniority, there can also be a third method, that is a hybrid mode of promotion. This Court observed :

“While laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter of weightage to be given in respect of merit and seniority separately so long as policy is not colourable exercise of power, nor has the effect of violating any statutory scope of interference and other relatable matters.”

But in that case promotions were not governed by any statutory Rules, but by a promotion policy. The above observations made with reference to such a policy, which wholly occupied the field insofar as promotion is concerned, are not relevant where the statutory Rules require promotion by seniority-cum-merit.

21. The next question that arises for consideration is the relief to be granted. The appellant was first considered for promotion during 1991 and was not promoted, by wrongly adopting the principle of merit-cum-seniority. The said procedure was found to be erroneous by the Single Judge, Division Bench and by this court. The Bank was directed to consider the case of Appellant for promotion on the basis of seniority-cum-merit. Thereafter, in the contempt proceedings initiated by the appellant, the Bank undertook to comply with the order directing consideration of the appellant's case by the procedure of seniority cum merit. But the Bank, again by adopting the merit-cum-seniority method, failed to promote the appellant and promoted third respondent. The procedure adopted by the Bank had been found to be faulty on three occasions by this Court and the High Court, one of which was in the case of Appellant himself. The appellant had been denied promotion for more than 16 years by repeatedly adopting such an erroneous procedure. In the circumstances, we do not think it necessary to drive the appellant once

A again to face the process of selection for promotion. This Court in *Comptroller and Auditor General of India v. K.S. Jagannathan*, [1986] 2 SCC 679 observed thus :

B “There is thus no doubt that the High Courts in India exercising their  
 C jurisdiction under Article 226 have the power to issue a writ of  
 D mandamus or a writ in the nature of mandamus or to pass orders  
 E and given necessary directions where the government or a public  
 authority has failed to exercise or has wrongly exercised the  
 discretion conferred upon it by a statute or a rule or a policy decision  
 of the government or has exercised such discretion mala fide or on  
 irrelevant considerations or by ignoring the relevant considerations  
 and materials or in such a manner as to frustrate the object of  
 conferring such discretion or the policy for implementing which  
 such discretion has been conferred. In all such cases and in any  
 other fit and proper case a High Court can, in the exercise of its  
 jurisdiction under Article 226, issue a writ of mandamus or a writ  
 in the nature of mandamus or pass orders and given directions to  
 compel the performance in a proper and lawful manner of the  
 discretion conferred upon the government or a public authority, and  
 in a proper case, in order to prevent injustice resulting to the  
 concerned parties, the court may itself pass an order or give  
 directions which the government or the public authority should have  
 passed or given had it properly and lawfully exercised its discretion.”

F Having regard to the factual background of the case, and having regard to  
 G the fact that even under the merit cum seniority basis adopted by the bank  
 the appellant had secured high marks and he was denied promotion on the  
 ground that he failed to secure minimum marks in the interview, there is no  
 need to refer the matter for fresh consideration. With a view to do complete  
 justice, in exercise of our power under Article 142 we hereby direct the first  
 respondent bank to promote the appellant as a Field Supervisor, from the date  
 the third defendant was promoted as Field Supervisor and place him above  
 the third Respondent. However, he will be entitled to monetary benefits  
 flowing from such promotion only prospectively, though the pay is to be  
 refixed with reference to the retrospective date of promotion.

22. This appeal is allowed accordingly.

H V.S.S.

Appeal allowed.