

PRAGJYOTISH GAONLIA BANK & ANR.

v.

BRIJLAL DAS

Civil Appeal No. 977 of 2009

FEBRUARY 13, 2009

**[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]**

*Service Law – Reservation – For promotion – Candidate of schedule caste – Finding place in selection List, but not coming within number of available vacancies – Held: not entitled for promotion – Automatic promotion as per concession provided in the Circular issued by NABARD, can be given to SC/ST candidate only when he comes within the number of available vacancies, and not when he finds place in Selection List for the same – Circular dated 9.11.1994 issued by National Bank for Agriculture and Rural Development.*

The question for consideration before this Court was whether respondent No.1, belonging to Scheduled Caste employed with the appellant-Bank as officer Scale I, was entitled to be promoted as Officer Scale II, even if he did not come within the purview of available vacancies for the post.

Allowing the appeal, the Court

**HELD:** 1.1 The provision relating to reservation posts, contained in the Circular dated 10<sup>th</sup> June, 1997, has been wrongly interpreted by the Division Bench of the High Court. The said condition is in the nature of a concession as was contemplated in the circular dated 9<sup>th</sup> November, 1994, issued by NABARD in order to give an opportunity to a Scheduled Caste or Scheduled Tribe candidate to be automatically appointed, if he came within the number of vacancies available. It was a concession to enable such a candidate to avoid the process of

A selection, which all the other candidates were required to undergo. [Para 16] [ 306-G, H; 307-A, B]

B 1.2 Respondent No.1 was at Serial No.39 in the Selection List and did not, therefore, come within the number of available vacancies i.e 17 and, consequently, he had to compete with all the other candidates for being selected for one of the vacancies. The High Court's understanding that as a Scheduled Caste candidate, the petitioner, was entitled to be considered for one of the vacancies, is, therefore, erroneous since the provision relating to the aforesaid concession does not contemplate such a right in favour of a Scheduled Caste or Scheduled Tribe candidate.[Para 17] [ 307-D, E]

D *National Federation of S.B.I. v. Union of India* (1995) 3 SCC 532– relied on.

#### Case Law Refernece

(1995) 3 SCC 532 Relied on Para 17

E CIVILAPPELLATE JURISDICTION : Civil Appeal No. 977 of 2009

From the final Judgement and Order dated 29.6.2006 of the Gauhati High Court in Writ Appeal No. 518 of 2002

F Dhruv Mehta, Yashrah Singh Deora, Mohit Abraham and T.S. Sabarish (for M/s. K.L. Mehta & Co.), for the Appellants.

Manish Goswami (for M/s. Map & Co.), for the Respondent.

The Judgement of the Court was delivered by.

G **ALTAMAS KABIR, J.**

1. Leave granted.

H 2. The appellant Bank, which is a rural bank and is governed by the circulars issued from time to time by the

National Bank for Agriculture and Rural Development (hereinafter referred to as 'NABARD'), has challenged the decision of the Division Bench of the Gauhati High Court, allowing Writ Appeal No. 518 of 2002, and directing the appellant Bank to issue necessary orders for giving effect of promotion to the respondent No.1, Brijlal Dass, to the Officer Scale II Grade from the date his juniors in the Grade of Officers Scale I i.e. respondent Nos. 17, 18 and 19, were promoted to the Officers Scale II.

3. In 1997 the appellant Bank categorised 17 additional Scale I branches as additional Scale II branches. The Bank, therefore, proposed to promote 17 Officers of the Scale I Grade to the Grade of Officers Scale II and issued a Circular to that effect on 10.6.2007. As per the eligibility criteria, all officers, who had put in minimum service of 8 years in the Officers' cadre as on 31.12.1996, were eligible to appear for an interview for internal promotion. The total number of candidates would be restricted to 4 four times the number of vacancies. It was decided by the Bank that such promotion would be on the basis of merit-cum-seniority, and that out of a maximum of 150 marks 40 marks were set apart for the number of years in service. The remaining 110 marks were allocated towards performance at the work place and in the interview, indicating that the selection procedure was to be on the basis of merit-cum-seniority.

4. The case of the appellant Bank is that no reservation had been provided for Scheduled Castes and Scheduled Tribes candidates in the matter of promotion by selection from Scale I to Scale II and from Scale II to Scale III posts in Regional Rural Banks, and that candidates were generally subjected to interview /written tests. However, in order to provide some benefit to Scheduled Castes and Scheduled Tribes candidates a concession was included in the Circular dated 10.6.1997 which was in keeping with certain conditions which had been provided by the Circular dated 9.11.1994 issued by NABARD and also certain other Government Circulars. The said concession is set out hereinbelow :

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A "Reservation Posts:-

The scheduled castes and scheduled tribes Officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up would be included in the list provided they are not considered unfit for promotion."

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C 5. In terms of the said concession, officers belonging to Scheduled Castes and Scheduled Tribes, falling within the number of vacancies from the list drawn up on the basis of seniority, would be promoted to the Officers Scale II Grade automatically, provided they were not unfit for promotion.

D 6. At this stage it may be indicated that since 17 vacancies were available, 68 candidates were called for interviews for filling up the said 17 vacancies. The respondent No.1 did not fall within the first 17 names in the aforesaid list but was placed at S.No.39 as per his seniority. As a result, though, he was called for interview, he was not automatically selected for promotion to the Scale II grade.

E 7. The respondent No.1 and one Shri Nagendra Chander Dass, both of whom figured in the list of 68 eligible candidates and were within the zone of consideration, were called for the interview but were not found fit for promotion. They, accordingly, filed Civil Writ Petition No.1601 of 1998 for quashing the abovementioned Circular dated 15.9.1997 issued by the Bank on the basis whereof the successful candidates have been promoted and also prayed that since both of them belong to the Scheduled Caste community they should have been appointed against the reserved posts and that the reservation policy followed by the Bank was contrary to the reservation policy followed by the Government of Assam.

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G 8. The learned single Judge disposed of the writ petition on 17.7.2002, without expressing any opinion with regard to Nagender Chander Dass as he had been promoted in the month  
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of February 2000, after he succeeded in the promotion test held on 15.2.2000 during the pendency of the writ petition. While disposing of the writ petition the learned single Judge while taking note of the fact that the respondent No.1 had been punished in a disciplinary proceeding erroneously noted the dates when the punishment was imposed and when it came to an end. Instead of indicating that the punishment awarded to the respondent No.1 whereby 5 increments had been stopped w.e.f. 1992 and ending in 1997 the learned single Judge observed that the punishment had been imposed in 1995 and it came to an end in the year 2000. The importance of the said error would be evident from the fact that whereas the punishment of respondent NO.1 came to an end in March 1997, the Departmental Promotion Committee meeting was held on 15.9.1997 and on that date the learned single Judge found that respondent No.1 was eligible for promotion since the period of punishment was already over, and directed that the respondent No.1's promotion should be considered by the bank along with other eligible candidates as and when the next promotion was considered by the authorities. This lapse on the part of the single Judge was used to his advantage by the respondent in preferring an appeal before the Division Bench of the Gauhati High Court. The Division Bench without going into the question of eligibility, apart from the aforesaid error in noting the dates relating to the punishment order of 2001 set aside the order of the single Judge dismissing the writ petition and allowed the writ appeal with direction to appoint the respondent No.1 in the Officers' Scale Grade II from the date his juniors in the cadre of Officers Scale I had been promoted to the higher scale.

9. The Bank has filed the present appeal against the aforesaid order of the Division Bench and has in particular challenged the direction given to the Bank to promote the respondent No.1 to the Officers Grade Scale-II.

10. Appearing for the appellant Bank, Mr. Dhruv Mehta, submitted that the Division Bench of the High Court had decided the appeal on an erroneous understanding of the issue involved. Mr. Mehta submitted that without applying its mind to the facts

A of the case, the Division Bench simply repeated the findings of  
the learned single Judge. The Division Bench lost sight of the  
fact that first of all the question of eligibility for being considered  
for promotion had to be cleared before clearing the cases of  
the candidates who had been called for the interview could be  
B taken up for consideration. Mr. Mehta emphasised the fact that  
no reservation was provided for in respect of the 17 vacancies  
and only a concession had been made which is reflected in the  
circular dated 15.9.1997 issued by the bank for making the  
promotions in the vacancies to the post of Officer Scale II. The  
C relevant portion of the circular dated 10.6.1997 regarding  
reservation posts has been extracted hereinbefore and  
according to Mr. Mehta the same was not for the purpose of  
reservation of posts as such, but for providing a benefit or  
concession to a Scheduled Castes or Scheduled Tribes  
candidate in the matter of promotion subject to eligibility. Mr.  
D Mehta submitted that the respondent No.1 and Shri Nagendra  
Chander Dass were within the seniority which brought them into  
the zone of consideration and enabled them to appear in the  
interview, but on the strength of their performance they were not  
considered eligible to fill up any of the vacant 17 posts. Mr. Mehta  
E urged that had they been of sufficient seniority they would have  
been included in respect of one of the 17 vacancies which would  
have entailed them to be automatically included within the  
available number of vacancies for automatic appointment. Mr.  
Mehta urged that this was the extent of reservation as was  
contemplated in the Bank's circular dated 10.6.1997. In other  
F words, it was not the post which was sought to be reserved but  
any of the available post could have been filled in by a Scheduled  
Castes or Scheduled Tribes candidate if he was found eligible  
according to the norms. Having been placed at the 39<sup>th</sup> position  
in the list of candidates who were to be interviewed for the vacant  
G 17 posts, the respondent No.1 was duly interviewed but he did  
not clear the requisite number of marks which would have made  
him eligible for being automatically promoted and appointed.

11. Mr. Mehta urged that this point had been completely  
misunderstood or overlooked by the Division Bench while  
H allowing the writ appeal and also directing the bank to give

appointment to the respondent No.1. It was submitted that the same was contrary to the Policy of the appellant and, if followed could have serious consequences not only for the respondent No.1 herein, but also for all those who had already been appointed against the vacancies in question. A

12. Referring to a three-Judge Bench decision of this Court in National Federation of S.B.I. v. Union of India [1995] 3 SCC 532] Mr. Mehta submitted that the provisions similar to that of the Circular dated 10.6.1997 had fallen for consideration and the same had been very lucidly explained to mean that the list of eligible candidates for consideration for filling up the vacancies is but another name for 'the zone of consideration' referred to in the circular of the bank dated 10.6.1997, where as those candidates who came within the preferred requisite vacancies would be automatically given the benefit of promotion without any further process of selection. In other words, if the Scheduled Caste or Scheduled Tribe candidates, on the basis of the marks awarded came within the first 17 vacancies he would not be subjected to any further selection process but would be automatically granted promotion which would not be the case with candidate from the general category. The respondent No.1 having been placed at serial no. 39 was entitled to be called for interview, but Mr. Mehta submitted that the said concession in the Circular dated 10.6.1997 would not apply to him since he was not within the first 17 candidates which would have entitled him to automatic selection. Mr. Mehta urged that the direction given by the Division Bench of the High Court was contrary to the concession contained in the Circular dated 10.6.1997 and was liable to be set aside, having regard to the fact that Regional Rural Banks were governed by the Regional Rural Banks Act, 1976, and the circulars issued by NABARD and not by the State Government. Furthermore, having once submitted to the selection process and having proved unsuccessful the respondent No.1 was not entitled to challenge the selection process as was held by this Court in the case of G.N. Nayak v. Goa University and others [(2002) 3SCC 712]. B  
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13. On the other hand, it was urged by Mr. Manish H

A Goswamy, learned advocate for the respondent, that the claim of the appellant Bank was erroneous and the matter had been considered by the Division Bench in its correct perspective and did not warrant any interference. It was urged that the question of reservation had been categorically included in the circular dated 10.6.1997 issued by the Bank in order to provide for reservation and by not following the said directions, the appellant Bank had erred in negating the claim of the respondent No.1.

C 14. Mr. Goswamy submitted that the provisions for promotion, as engrafted in the Circular dated 10.6.1997, was to benefit candidates from Scheduled Castes and Scheduled Tribes coming within the zone of consideration and was not confined only to candidates who came within the number of vacancies.

D 15. Replying to Mr. Mehta's contentions, Mr. Goswamy submitted that the respondent was the lone Scheduled Caste candidate amongst all the candidates and since no roster was maintained and no post was reserved within the 17 vacancies available, at least one post out of the 17 vacancies should have been reserved for a Scheduled Caste candidate, in view of the fact that at least 7 per cent of the vacancies was required to be kept reserved according to the reservation policy of the State Government. It was also pointed out that even if the Assam Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Service and Posts) Act, 1978, was held not apply to the Regional Rural Development Banks which are governed by NABARD and Central Government circulars, in view of the policy of reservation indicated both in the NABARD Circular dated 9.11.94 and the Bank's Circular dated 10.6.1997, the Respondent No.1 was entitled to be appointed against one of the 17 vacancies.

G 16. Having carefully considered the submissions made on behalf of the respective parties, we are inclined to agree with Mr. Mehta that the provision relating to reservation posts, extracted hereinabove, contained in the Circular dated 10<sup>th</sup> June, 1997, has been wrongly interpreted by the Division Bench of the High Court. The said condition is in the nature of a

concession as was contemplated in the circular dated 9<sup>th</sup> November, 1994, issued by NABARD in order to give an opportunity to a Scheduled Caste or Scheduled Tribe candidate to be automatically appointed, if he came within the number of vacancies available. It was a concession to enable such a candidate to avoid the process of selection, which all the other candidates were required to undergo.

17. The said provision has been very elaborately explained by the Three-Judge Bench of this Court in National Federation of S.B.I. v. Union of India (supra). As has been explained in the said judgment, the zone of consideration is the list of selected candidates chosen in order of seniority to be considered for the purpose of filling up the available vacancies and merely by coming within the zone of consideration a Scheduled Caste or Scheduled Tribe candidate would not be entitled to automatic selection. The concession relating to reservation does not mean that any of the vacant posts were required to be kept reserved for such Scheduled Caste or Scheduled Tribe candidate. It is only when such a candidate came within the number of vacancies that such a concession would be applicable to him/her for appointment without going through the selection process. In the instant case, the Respondent No.1 was at Serial No.39 and did not, therefore, come within the number of available vacancies and, consequently, he had to compete with all the other candidates for being selected for one of the vacancies. The High Court's understanding that as a Scheduled Caste candidate, the petitioner, was entitled to be considered for one of the vacancies, is, therefore, erroneous since the provision relating to the aforesaid concession does not contemplate such a right in favour of a Scheduled Caste or Scheduled Tribe candidate.

18. The appeal filed on behalf of the Bank must, therefore, succeed and is allowed. The judgments of both the learned Single Judge as well as the Division Bench of the High Court are set aside.

19. There will, however, be no order as to costs.

K.K.T.

Appeal allowed.