

Kuldeep Singh And Others vs Punjab And Sind Bank And Other on 4 August, 1989

Equivalent citations: AIR1989SC1877, [1989(59)FLR367], JT1989(3)SC285, 1989LABLC1951, (1989)IILLJ457SC, 1989(2)SCALE164, 1989SUPP(2)SCC230, 1989(2)UJ556(SC), AIR 1989 SUPREME COURT 1877, 1989 LAB. I. C. 1951, 1989 SCC (SUPP) 2 230, (1989) 3 JT 285 (SC), (1994) 4 JT 628 (SC), 1994 SCC (SUPP) 3 109, 1994 UPSTJ 20 290, AIRONLINE 1989 SC 7, (1989) 15 ALL LR 748, 1989 SCC (SUPP) 230, 1991 SCC (L&S) 942, (1989) 2 LAB LN 961, (1991) 17 ATC 200, (1989) 3 JT 285

Bench: B.C. Ray, S. Ratnavel Pandian

ORDER

Ray, J.

1. The petitioners who are employees of the Punjab & Sind Bank being employed as Clerks made the aforesaid application No. 32750 of 1986 in Special Leave Petition No. 13708 of 1984 praying for a direction on the respondent Bank to promote the petitioners to the Junior Management Grade (Scale 1) immediately. There was also a further prayer for a direction on the bank not to hold any test for promotion of clerks to officer cadre till all the applicants are promoted.

2. The petitioners filed a writ petition before the High Court of Punjab & Haryana for quashing the promotion of respondent Nos. 3 to 22 and for directing respondent Nos. 1 and 2 to promote the petitioners and respondent Nos. 23 to 40 to Junior Management Grade (Scale I). The said writ petition was dismissed by the High Court by its judgment and order dated 31st August, 1984. A Special Leave Petition No. 13708 of 1984 was filed by the petitioners in this Court against the said judgment and order. this Court by order dated February 10, 1986 made the following order :

In view of the averment made in paragraph 3 of the counter-affidavit filed on behalf of the Punjab and Sind Bank Ltd., admitting the existence of the settlement dated January 31, 1983 the Bank has accepted the principle of maintaining the ratio as between the promotees and direct recruits in the matter of promotion to the Joint Management Cadre, Scale I, learned Counsel for the petitioners does not press the other points. We trust the Bank will adhere to the terms of settlement and maintain the ratio as agreed upon, unless it is substituted by bilateral agreement or in due process of law.

The Special leave petition is disposed of accordingly.

3. It is necessary to mention in this connection that the procedure for promotion of clerical staff to officer cadre has been laid down in the circular dated July 31, 1979 issued by the Personnel Department of the Bank. There was a written test held by the Bank and the candidates who passed the written test were called for interview in September, 1982. Those who obtained qualifying marks in interview were entitled to be empanelled in accordance with the procedure laid down in the said circular. The respondent Bank, however, did not declare the result till the end of January, 1983 and as a result no panel was formed till January, 1983 according to the provisions of the said circular. At that time the petitioners who were not empanelled were entitled to be promoted to half the number of vacancies and the remaining half of the vacancies were to be filled up by direct recruitment. However, the delay in empanelling the successful candidates and the meagre number of vacancies reserved for promotees gave rise to discontentment among the clerical staff of the Bank. Ultimately, a meeting was held on January 31, 1983 between the management of the Bank and the respondentatives of the All India Punjab & Sind Bank Employees Federation. A settlement was reached and the management agreed to declare the results by February 28, 1983. The relevant portion of the settlement is mentioned hereunder :

After discussions at length it was agreed that hence-forth vacancies of officers cadre in JMGC-I will be filled in as under :

75% by internal promotions. 25% by direct recruitment.

4. Pursuant to the said settlement the Bank drew up a panel of 603 candidates on March 18, 1983. According to the circular, this panel was to remain in force for a period of six months i.e. the life of the panel would expire on September 17, 1983. The Bank promoted 284 candidates out of the panel to the post of Junior Management Grade (Scale I) during the life time of the panel. The Bank also recruited 290 candidates to the Junior Management Grade (Scale I) which is much in excess of the quota for direct recruitment i.e. 25% of the total vacancies. According to the quota, the Bank could recruit 290 candidates only if there were 870 vacancies. The life of the panel was extended by three and a half month i.e. upto December 31, 1983 and 34 more candidates were promoted out of the panel. The petitioners who were in the panel were not promoted. Therefore, they moved the High Court.

5. The Bank did not abide by the statement made by them in this Court and as such the petitioners submitted a joint representation on March 24, 1986 exhorting the Bank to promote the petitioners. The Bank sent a reply to the representation denying the existence of vacancies and contending that the settlement is prospective in application. The bank further stated that it has no retrospective effect. The petitioners thereafter made the instant application for the necessary direction as stated hereinbefore.

6. An affidavit in counter has been filed on behalf of respondent Nos. 1 and 2 by Manjit Singh, Chief Manager (Personnel) of respondent No. 1. In para 1 of the said affidavit it has been stated that the Bank had determined that the man power requirement in the officer cadre for the years 1982 and 1983 would be 556 officers. Out of these, 50% i.e. 278 posts had to be filled up through internal promotion while 278 were to be recruited from outside through the Banking Service Recruitment

Board. It has further been stated in para 2 of the said affidavit that the Bank had, however, recruited 290 officers through the Banking Service Recruitment Board instead of the actual requirement of 278. The Banking Service Recruitment Board by a letter dated November 11, 1982 forwarded to the Bank a list of 290 officers who were selected by the Board for recruitment in the respondent Bank.

7. The Bank, however, tried to confuse the actual number of vacancies available in 1982 & 1983 for being filled up by the direct recruits and the promotees and as such it is not necessary to refer to the other portions of the affidavit. It has also been stated in the said affidavit that the criteria of 75% from internal promotion and 25% by direct recruitment was applicable to the future vacancies on promotion and not to the cases in which process for selection from outside and promotion within the internal candidates had already been finalised.

8. An affidavit in reply sworn by Paramjeet Singh, one of the petitioners has been filed. It has been expressly stated in the said affidavit that according to the settlement arrived at between the parties hence-forth the vacancies in the Junior Management Grade (Scale I) would be filled up in the following ratio :

75% by internal promotion; and 25% by direct recruitment.

9. It has also been stated that the Management recruited 290 officers to Junior Management Grade (Scale I). As the quota meant for direct recruitment is only 25% the 290 vacancies could be filled up by direct recruitment only if there were 870 vacancies available as 75% of the vacancies are meant for promotees. Thus, the Bank encroached upon the petitioners' right to be promoted against 75% of the vacancies by direct recruitment against the vacancies meant for internally promoted candidates.

10. It has been denied that the petitioners were not promoted for lack of vacancies in 1982 & 1983. It has also been stated that in view of the orders of this Court, the petitioners are entitled to be promoted against the vacancies which were in existence on February 10, 1986.

11. On September 22, 1987 an order was by this Court whereby the Bank was directed to file a further affidavit giving detailed particulars of the manner in which it seeks to implement the terms of the settlement dated January 31, 1983 laying down the mode of filling up the posts in the cadre of Junior Management Grade (Scale I). A counter affidavit on behalf of the respondent No. 1, sworn by Manjit Singh, Chief Manager (Personnel) was filed. In para 8 of the said affidavit, it has been stated that the reference to proportion of 75% and 25% only is an attempt to confuse the issue because as a matter of fact, the main issue raised in the petition in the High Court, was not regarding proportion as between direct recruits and promotees, but the promotion of respondents Nos. 3 to 22 in the petition in the High Court, although in order of merit they were far above the petitiones, on the ground that the life of panel had expired. It has been further stated that from the settlement it would be clear that the criteria adopted therein is applicable to the future cases of promotion and not to the cases, in which the process for selection from outside and promotion within the internal candidates had already been finalised. It has also been stated that the percentage agreed upon was to apply only to future vacancies that may arise and not the vacancies declared earlier for the years 1982 and 1983.

12. this Court by order dated March 14, 1989 gave a direction to the respondents to state clearly what are the available vacancies up-to-date for being filled up by the above formula of 75% and 25% envisaged in the settlement. The Bank was further directed to give the exact figures of available vacancies up-to-date under the heads mentioned therein. The Bank though filed an affidavit through its Senior Manager (Personnel), Tejinder Singh did not make a clear statement as to what are the available vacancies on the relevant date to be filled up according to the quota envisaged in the settlement made between the parties in January, 1983. This had been done in order to confuse the issue and to prevent the Court to have the actual picture about the available vacancies at the relevant time.

13. It appears from the averments made in the counter-affidavit on behalf of the respondents Nos. I and 2 that in the relevant year 290 candidates were directly recruited to the Junior Management Grade (Scale I) and 318 candidates were promoted from the cadre to the said scale. There is no dispute that in accordance with the order of this Court dated February 10, 1986 in Special Leave Petition (Civil) No. 13708 of 1984, the vacancies in the Junior Management Grade (Scale I) have to be filled in by the promotees and direct recruits in the proportion of 75% and 25% respectively. So when 290 candidates have been recruited directly to the said post of Junior Management Grade (Scale I), three times of that number i.e. 870 has to be filled up by promotion but only about 318 candidates were promoted. As such it is incumbent on the respondent Bank to fill up the remaining quota by promotion in the vacancies that are at present available and also vacancies which will occur hereafter. Unless and until the said panel of 603 candidates is exhausted by promoting them to the post of Junior Management Grade (Scale I), the Bank cannot be permitted to hold fresh tests and interview for selecting candidates for empanelling them for filling up the available vacancies. The ends of justice and fair play in the facts and circumstances of the case demand that Bank is under an obligation to comply with the terms of the settlement as per order of this Court and to promote the employees of the Bank whose names are included in the panel. Unless and until all the employees in the panel are promoted in terms of the settlement referred to herein-before the Bank is not entitled to hold fresh tests or make fresh panel for the post of Junior Management Grade (Scale I).

14. In the premises aforesaid, the Civil Miscellaneous Petition is allowed and respondent Bank is directed to promote the petitioners as well as others in the panel to the Junior Management Grade (Scale I) as early as possible in the available vacancies as well as vacancies that will occur till all the empanelled candidates are promoted. The Bank is further directed not to hold any test for promotion of Clerks to Officers Cadre till all the applicants as well as others in the panel are promoted to Junior Management Grade Scale I). The application is thus, allowed with costs quantified at Rs. 6000/-. Civil Miscellaneous Petition No. 24994 of 1988 filed by the Respondent No. 1 for directions is also disposed of by this order.