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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 18th OF MARCH, 2024

WRIT PET. (SERVICE) No. 2787 of 2004

BETWEEN:-

**RAJENDRA KUMAR CHOURASIA S/O SHRI RAM
NARAYANJI CHOURASIA, AGED ABOUT 48 YEARS,
OCCUPATION: OFFICER SCALE 1 NARMADA
MALWA GRAMIN BANK NARSINGHPUR BRANCH
DISTRICT RAJGARH (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI SANJAY K. AGRAWAL - SENIOR ADVOCATE ASSISTED BY SHRI
S. BEOHAR - ADVOCATE)***

AND

- 1. NARMADA MALWA GRAMIN BANK THROUGH
ITS CHAIRMAN HEAD OFFICE BHOPAL NAKA
INDORE BHOPAL ROAD SEHORE DISTRICT
SEHORE (MADHYA PRADESH)**
- 2. CHAIRMAN CUM DISCIPLINARY AUTHORITY,
NARMADA MALWA GRAMIN BANK, HEAD
OFFICE BHOPAL NAKA, INDORE-BHOPAL ROAD,
(MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. AKASHMI TRIVEDI - ADVOCATE)

.....
*This petition coming on for orders this day, the court passed the
following:*

ORDER

This writ petition is filed by the petitioner being aggrieved of the order dated 23/06/2004 Annexure P-20 whereby some persons junior to the petitioner have been promoted from Scale-I to Scale-2.

Petitioner's case is that as per the stipulations contained in the Appointment and Promotion Rules of 1998 filed by the petitioners along with this petition as Annexure P-11 dated 25th November 1999, criteria for promotion to the post of Scale-II officer Group A is cent percent by promotion. It is mentioned in the rules itself that promotion will be made on the basis of seniority-cum-merit criteria.

It is submitted that though there is a provision for selection of candidates on the basis of a written examination, interview and evaluation of Annual Confidential Report or the appraisal report as the case may be for last five years but without prescribing the cut-off bench mark for such appraisal and without preparing a list of those persons who crossed the prescribed Bench Mark and then promote them on the basis of their seniority, respondents have adopted a procedure which is purely in realm of merit-cum-seniority as can be seen from the order Annexure P-12 dated 19/04/2004 wherein a note has been appended to Rule 8 providing for preparation of list of candidates who cleared the written examination and, thereafter, consolidating the marks obtained in the written examination, interview and the APR on the basis of which respondents prepared a list of candidates and filled the post as were available on the basis of that final list comprising marks of the written examination, interview and APR evaluation.

Petitioner's contention is that this is contrary to the law laid down by the Supreme court in **B.V. Sivaiah and others Vs. K. Addanki Babu and others (1998) 6 SCC 720**.

On the other hand, Ms. Akashmi Trivedi firstly submits that petitioner cannot challenge the seniority list of 1999 in the year 2004 and in support of her

contention places reliance on the judgment of the Supreme Court in **Shiba Shankar Mohapatra and others Vs. State of Orissa and others (2010) 12 SCC 471**.

Reliance is also placed on the judgment of the Supreme Court in **Vijay Kumar Kaul and others Vs. Union of India and others (2012) 7 SCC 610** to submit that petitioner has only impleaded one of the juniors namely M. S. Yadav as a party and has not impleaded all the juniors, therefore, that will affect the promotion order and petitioner was required to implead all the affected persons and, therefore, this petition is not maintainable.

After hearing learned counsel for the parties and going through the record, the first contention in regard to the seniority list of the year 1999 as contained in Annexure P-10, Shri Sanjay K. Agrawal submits that petitioner is not challenging the order dated 11/15.10.1999 rejecting his representation for placement in the seniority list and submits that infact as per the seniority list issued by the Department as contained in Annexure P-10 dated 18/10/2003, petitioner's name appears at Serial No. 19 and 20 whereas persons junior to him namely Shri Yadav whose name appears at Serial No. 29 has been given promotion to the Scale-II whereas they are admittedly junior to the petitioner.

Thus, he submits that he is not challenging the order Annexure P-9 and he is giving up his challenge to Annexure P-9, though it has been challenged in the writ petition.

In view of such facts that challenge to Annexure P-9, has been given up, the only issue which is to be decided is that whether respondents were entitled and authorized to change the criteria as provided in the recruitment rules, Annexure P-11, by changing the criteria from seniority-cum-merit to merit-cum-seniority.

Thus, in the light of the aforesaid challenge to the seniority list being given up by Shri Sanjay K. Agrawal, law laid down in the case of **Shiba Shankar Mohapatra** (supra) will have no application to the facts and circumstances of the present case.

As far as judgment in the case of **Vijay Kumar Kaul** (supra) is concerned, it deals with delay and latches in regard to seniority. In that case, the Hon'ble Supreme Court in para 36 has held that seniority cannot be altered at a belated stage and that too in a condition where the affected persons were neither arrayed as a party nor they were before the concerned Tribunal or the High Court. But that being not the case and one of the juniors promoted in preference to the petitioner has been made a party in the representative capacity, and the rule of law is that in case a petition for promotion succeeds on its own merits, then a person who is juniormost is required to be reverted, this judgment in the case of **Vijay Kumar Kaul** (supra) will also not assist the respondents Bank addressing this court through Ms. Akashmi Trivedi.

As far as law is concerned, firstly a reference to Annexure P-11 is necessary which are the Rules of 1998. Ms. Akashmi Trivedi is in agreement that in the Rules, the criteria for promotion for an officer belonging to Scale-I Grade-A is seniority-cum-merit and the post of Scale-II officer is to be filled cent percent by promotion.

Thus, when the criteria is seniority-cum-merit, then as the Hon'ble Supreme Court has held in the case of **B.V. Sivaiah** (supra), then seniority-cum-merit implies fulfilment of minimum prescribed standard of merit by candidates eligible for consideration and then making promotion out of them on the basis of their interse seniority irrespective of their comparative merit.

Thus, it is held that a Benchmark to determine the eligibility or minimum prescribed standard of merit may be prescribed by the employer and, thereafter all those who fulfil that Benchmark criteria are required to be given promotion on the basis of principle of seniority-cum-merit.

When this aspect and ratio of law is taken into consideration, then it is evident and admitted by Ms. Akashmi Trivedi that respondents have not prescribed the minimum standard to be attained by the various Scale-I officers who would have been shortlisted for interview and A.C.R. appraisal and, thereafter on fulfilling the minimum prescribed standard, a list of them should have been prepared on the basis of seniority-cum-merit.

Since that procedure has not been adopted and instead respondents Bank adhere to the provision of assessing the comparative merit by clubbing the marks secured by a candidate in the written examination, in interview and the marks given in the APR appraisal and then preparing a combined merit list and issuing order of promotion in the order of that merit being violative of the criteria of seniority-cum-merit, and that criteria could have been adopted only in case where the promotion would have been on the basis of merit-cum-seniority, this court has no hesitation to hold that the said procedure adopted by the Bank authorities being illegal and contrary to the ratio of the law laid down by the Supreme Court in the case of **B.V. Sivaiah** (supra) cannot be given a seal of approval.

Accordingly, respondents are directed to convene a review D.P.C. by prescribing a criteria in view of the law laid down by the Hon'ble Supreme Court in **B. V. Sivaiah** (supra) and then pass a fresh order of promotion in favour of those who fulfil the prescribed standard of merit by drawing a list of all those who fulfil the prescribed standard of merit in the order of their seniority

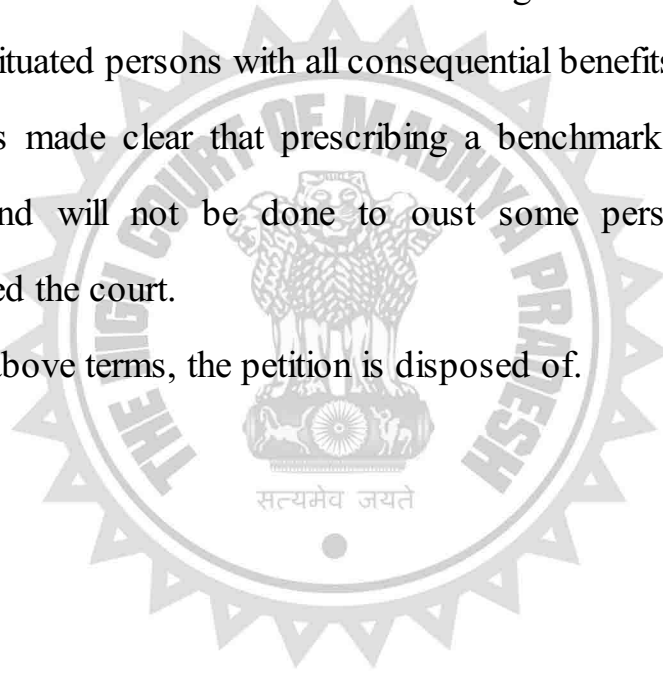
and assigning each of them against the seniority position to a post till list of posts is exhausted.

However, it is necessary to be clarified at this juncture that while doing so, the provision of reservation in promotion if applicable to the Bank for a particular category of candidates, be it S.C./S.T. or any other category shall be kept in mind.

This exercise be completed within thirty days from the date of receipt of certified copy of this order. If petitioners are found eligible, then benefit be extended from the same date when it was given to the private respondent or similarly situated persons with all consequential benefits.

It is made clear that prescribing a benchmark will be in a transparent manner and will not be done to oust some persons because they have approached the court.

In above terms, the petition is disposed of.



(VIVEK AGARWAL)
JUDGE