

CASE NO.:
Appeal (civil) 6387-88 of 2003

PETITIONER:

RESPONDENT:
A.K. Soumini
State Bank of Travancore & Anr.

Vs.

DATE OF JUDGMENT: 04/09/2003

BENCH:
AUGUST 14, 2003.

JUDGMENT:
J U D G M E N T

[Arising out of S. L. P. (C) Nos.10038-10039 OF 2000]

RAJENDRA BABU, J.:

Leave granted.

The appellant, having initially succeeded partially before a learned Single Judge but lost before a Division Bench of the Kerala High Court in W.A. No.1378 and 1103 of 1998 has filed the above appeals. The appellant was appointed as clerk/typist in the service of the respondent-bank on 28.2.1972. She undertook written test for promotion to officer â\200\223 Junior Management Grade (Group A & B) on 20.7.80. Having come out successful, as per the procedure required she appeared for an interview on 27.11.80 and though according to her claim she fared well she was not included in the final list of 180 employees selected for promotion. The appellant filed O.P. No.1323 of 1981 challenging her non-selection for promotion, questioning also incidentally the provision in the promotion policy which required the candidates to get at least a minimum of 6½ qualifying marks, in the interview. The learned Single Judge, by his order dated 1.8.83 held that such predominance cannot be given to the interview by stipulating for a minimum qualifying marks of 6½ to be secured in the interview and allowed the petition in the following terms:

"In moulding relief in this case, I think it would be unjust at this distance of time to quash the whole selections. Persons who have not approached the court in time would not be entitle to any relief and therefore interest of justice would be served if I direct that the petitioner also be selected if the aggregate total marks she has obtained both in the written and oral tests exceeds that of any one who is now selected. It has to be proceeded on the basis that there is no qualifying minimum marks fixed for the interview. In the matter of seniority among those selected etc. the petitioner on the basis of this order should be given consequential benefits if she is selected. Order accordingly. Original petition is allowed as above. There will be no order as to costs."

On appeal by the bank, the Division Bench also seems to have affirmed the same by its judgment dated 29.11.83, and the same was said to have been reported also in I.L.R. 1984(1) Ker.135.

Thereupon, the Bank pursued the matter further before this Court in C.A. No.1056 of 1984, and this Court by an order dated 5.8.93 while following the earlier decisions upholding the provisions prescribing minimum marks for interview in a selection, held that the requirement of 6½ marks for qualifying in the viva voce, as prescribed in the promotion policy of the Bank cannot be held to be invalid and the judgment of the High Court taking the contrary view, cannot be upheld. At the same time, keeping in view the lapse of time due to the pendency

of the appeal in this Court and the fact that the appellant herein also did not appear in subsequent tests held as follows:

"We, however, cannot lose sight of the fact that in view of the decision of the High Court in her favour whereby it has been directed that the respondent should be treated as selected if the aggregate total marks both in written and oral tests exceed that of anyone who is now selected, the respondent did not appear in subsequent tests. She should not be made to suffer on account of the pendency of the appeal in this Court for more than 10 years. We, therefore, consider it appropriate in the interest of justice to direct that the decision of this Court reversing the view of the High Court with regard to the validity of requirement of minimum marks for qualifying in viva-voce should not operate to the prejudice of the respondent and she should be given the benefit of the decision of the High Court. Before we part with this case it may also be mentioned that the learned counsel for the respondent has pointed out that the requirement of 33 marks for viva-voce is not in consonance with the norms laid down by this Court for the marks to be prescribed for viva-voce and for written test in a selection. Since we have not disturbed the decisions of the High Court in so far as the respondent is concerned we do not propose to go into this question. It is left to the Bank, if so advised, to take necessary steps and review its promotion policy in the light of the decision of this Court.

The appeal is allowed and the judgment of the High Court quashing that requirement of the minimum marks for qualifying in viva-voce in the promotion policy of the Bank, is set aside subject to the direction that in so far as the respondent is concerned she would be given the benefit of the judgment of the High Court. No order as to costs."

The Bank promoted the appellant to the cadre of JMG-I, with retrospective effect from 30.12.80, and her seniority also seems to have been fixed, accordingly, while at the same time fixing notionally and revising her pay scales as on 5.8.93 at Rs.3900/-, indicating also that the annual increment will fall due on 1.2.94 and thereafter on the first of February every year. But, the appellant wanted also arrears of salary, for all such period and seeking such relief filed O.P.No.9673 of 1994. A learned Single Judge by his order dated 30.3.98 held that she would be entitled to get the full salary from 1980 onwards and further observed, "Therefore, while calculating and disbursing the salary due to the petitioner for the above period, allowances must be made in the salary which the petitioner drew after getting the promotion in 1980." The Bank was directed to pass orders in this regard within one month from the date of receipt of the copy of the order.

Aggrieved the Bank filed W.A. No.1378 of 1998. The appellant, aggrieved by non-award of interest on the arrears directed to be paid, filed W.A.No.1103 of 1998. The Division Bench allowed the appeal filed by the Bank and dismissed the appeal filed by the appellant, observing that the case on hand is one to which, the principles of "no work, no pay" can be legitimately pressed into service and the employer-Bank was justified in declining to pay the full salary for the period in respect of which notional promotion and revision of pay scales was also made. Hence, this appeal.

The respective learned senior counsel on either side, reiterated the stand taken before the High Court. On a careful consideration of the entire materials on record including the earlier decision of this Court in the very matter between parties, we are unable to approve the reasoning of the learned Single Judge, which is the sheet anchor of the submission for the appellant before us, besides placing reliance upon the decisions reported in Union of India & Another vs P.Sathikumarana Nair & Others [1997(10) SCC 663] and State Bank of India & Others vs T.J. Paul [1999 (4) SCC 759]. Even on a cursory glance of the decision in 1997 (10) SCC 663(supra) it could be seen no principle of law for any

guidance or to operate as any precedent seem to be laid down therein and relief was granted for the reason that there was no valid justification to deny a particular scale to a few only based on geographical location of the institutions in which they served and therefore it has no relevance at all to the issue raised in this case. The decision in 1999 (4) SCC 759 (supra) dealt with a case of penalty of removal imposed on the employee concerned and on such punishment being found to be ultra vires, the powers of the authority and the court remitting the case for consideration of the appellate Authority for imposition of any punishment lesser than the loss of job. This case cannot be of any assistance to the issue raised in this case.

In State of Haryana & Others vs O.P. Gupta & Others [1996(7) SCC 533], this Court had an occasion to deal with a claim for arrears, in a case where in adjudicating a dispute relating to seniority this Court directed the department concerned to prepare a fresh seniority list strictly in accordance with rules ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary as well, this Court rejected the claim applying the principle of 'No work, No pay' and set aside the orders of the High Court, countenancing such claims, to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions this Court followed the earlier decisions reported in Paluru Ramakrishnaiah vs Union of India [1989(2) SCC 541] and Virender Kumar, G.M., N. Rlys. vs Avinash Chandra Chadha [1990(3) SCC 472].

So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for a candidate to secure at least a minimum eligibility mark of 6½ at the interview and the learned Single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though, the Division Bench also affirmed the same, this Court overruled the said decision and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non-promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is far fetched and can have no basis in law. The Division Bench, in our view, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference.

The appeals, in the light of the above conclusions, fail and shall stand dismissed. No costs.