

PETITIONER:
STATE BANK OF INDIA & ORS.

Vs.

RESPONDENT:
MOHD. MYNUDDIN

DATE OF JUDGMENT 17/07/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 1889 1987 SCR (3) 532
1987 SCC (4) 486 JT 1987 (3) 89
1987 SCALE (2) 53

ACT:

Service Law--Practice & Procedure:

Selection Post--Promotion on merit--Decision of Selection Committee to prevail unless vitiated by mala fides or bias. Seniority and satisfactory Service not relevant.

Constitution of India, Articles 226 & 32: Service Matters--Promotion--Powers of the Court--Court can direct consideration of the case--Cannot direct promotion.

HEADNOTE:

The respondent holding a Middle Management Grade Scale II post in the appellant Bank was found not fit for promotion to Grade Scale III by the Selection Committee in the year 1979 and superseded. His case was again considered in the years 1980, 1981 and 1983 but denied promotion. He filed a writ petition in the High Court in 1984 for the issue of a direction to the management to promote him to the higher post with effect from 1979 with the assertion that he was fully eligible for such promotion.

The Single Judge noticed that in respondent's confidential reports for the years 1977-78, 1979-80 and 1980-81 it had been recorded that his service was 'satisfactory' and that there were no adverse remarks against him. He, therefore, took the view that there was nothing which disentitled the respondent to promotion and that the action of the management in not promoting him was arbitrary, and accordingly issued a direction to the appellants to promote the respondent with effect from 1.8.1979 when his batch mates were promoted. The Division Bench dismissed the appeal filed by the appellants.

In this appeal by special leave it was contended for the appellants that the promotion to Middle Management Grade Scale III posts depended not merely upon the eligibility but on merit and such promotion was accorded only after a proper evaluation by the Selection Committee of the service records, performance appraisal and potentiality of the officer concerned to assume higher responsibilities, that the mere

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absence of adverse remarks did not entitle an employee to promotion to the next higher grade automatically when promotion was by selection. that after applying the relevant

tests laid down by the management for promotion to the Middle Management Grade Scale III it was found from time to time that the respondent was not entitled to be promoted, and that in any event the High Court was not right in issuing a direction to the management to promote the respondent to the higher post particularly in the absence of any plea of mala fides.

Allowing the appeal,

HELD: The High Court was not right in directing the appellants to promote the respondent to the Middle Management Grade Scale III with effect from 1979. [538C]

If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. This is because the Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post which is to be filled up by selection. The duties of such posts may need skills of different kinds—scientific, technical, financial, industrial, commercial, administrative, educational etc. The evaluation of the abilities should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post. [536E-H]

Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise. [536C-E; H; 537A]

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State of Mysore and Anr. v. Syed Mohmood and ors., [1968]3 S.C.R. 363, applied.

In the instant case at all relevant times the case of the promotion of respondent has been considered in accordance with law by the selection committee constituted by the appellant Bank and it did not find him fit for promotion on all such occasions. There is no allegation of bias or mala fides urged against the members of the selection committee or the management. The appellants, therefore, cannot be said to have committed any error in not promoting the respondent. [538B-C]

The appellants are directed to consider the case of the respondent for promotion within four months from the date of the judgment. and if found fit to promote him forthwith. [538E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1387 of

1987.

From the Judgment and Order dated 25.9.1986 of the Andhra Pradesh High Court in C.W. Appeal No. 1027 of 1986.

A.K. Sen, K. Srinivasamurthy and Kailash Vasdev for the Appellants.

M.K. Ramamurthi and M.A. Krishna Murthy, for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The State Bank of India and two of its officers have filed this appeal by special leave against the judgment of a Division Bench of the High Court of Andhra Pradesh in Writ Appeal No. 1027 of 1986 dated 25.9.1986 affirming the judgment dated 28.3.1986 of the learned Single Judge in Writ Petition No. 5133 of 1984 issuing a direction to the appellants to promote the respondent, Mohd. Mynuddin to the Middle Management Grade Scale III.

The respondent who was holding the post of the Manager, S.I.B. Division, State Bank of India, Vijayawada (Andhra Pradesh) which was a post in Middle Management Grade Scale II filed the above writ petition before the High Court in the year 1984 complaining that he had been wrongly denied promotion to the Middle Management Grade Scale III along with some others who belonged to his batch

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without any reasonable ground, even though he was fully eligible for such promotion. On the above basis he prayed for the issue of a direction to the management to promote him to the higher post with effect from 1979. According to the appellants his case was not considered in the year 1979 on account of inadequacy of material regarding his eligibility but when it was brought to the notice of the management that he had necessary eligibility for the post, his case was considered in 1982 for the vacancies of 1980 and 1981 but he was not selected. Again his case for promotion was considered on 13.8.1983. Then again he was found not fit for promotion and, therefore, he was not promoted.

The main contention of the respondent before the High Court was that since there were no adverse remarks in any of his confidential reports, he should have been promoted to the higher post. The learned Single Judge noticed that in the confidential reports relating to the respondent it had been recorded that his service was 'satisfactory' in the years 1977-78, 1979-80 and 1980-81 and that there were no adverse remarks against the respondent. The learned Single Judge, therefore, found that on the material placed before the Court there was nothing which disentitled the respondent to the promotion in question and that the action of the management in not promoting him was arbitrary. The learned Single Judge accordingly allowed the writ petition and issued a direction to the appellants to promote the respondent to the post of Middle Management Grade Scale III with effect from 1.8.1979 when his batch mates were promoted and that he should be given all consequential benefits. Aggrieved by the judgment of the learned Single Judge the appellants filed an appeal before the Division Bench of the High Court which, as stated earlier, dismissed the appeal affirming the judgment of the learned Single Judge by its order dated 25.9. against which this appeal by special leave is filed.

It is admitted that the posts in the Middle Management Grade Scale III in the State Bank of India are posts to which appointments are made by selection. The State Bank of India stated before the High Court that the promotion to Middle Management Grade Scale III posts depended not merely upon the eligibility but on merit and such promotion was

accorded only after a proper evaluation of the service records, performance appraisal and potentiality of the officer concerned to assume higher responsibilities. The evaluation was done by the Selection Committee, which was expected to go into several aspects including the merits and demerits or all the candidates who were eligible. It was further pleaded that the mere absence of adverse remarks did not entitle an employee to promotion to the next higher

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grade automatically when promotion was by selection. It was further pleaded that after applying the relevant tests laid down by several circulars issued by the Management embodying the guidelines in respect of the selection of officers for promotion to the Middle Management Grade Scale III it was found from time to time that the respondent was not entitled to be promoted. It was further pleaded before us that in any event the High Court was not right in issuing a direction to the management to promote the respondent to the higher post particularly in the absence of any plea of mala fides. The learned counsel for the appellants, however, has very fairly stated that even now the management is willing to consider the case of the respondent for promotion on a proper appraisal of the relevant material by the Selection Committee.

Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the officer concerned on the basis of the relevant materials. If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds--scientific, technical, financial, industrial, commercial, administrative, educational etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become nowadays very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post, to be nominated by the employer. Of course, the process of selection adopted by them should always be

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honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstance other considerations will arise. The nature of the writ that can be issued in cases like the one before us has been considered by this Court in the State of Mysore and Anr. v. Syed Mahmood and Ors., [

1968] 3 S.C.R. 363. In that case rule 43(b) of the Mysore State Civil Services General Recruitment Rules, 1957 required promotion to be made by selection on the basis of seniority-cum-merit, that is seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion. While making selections for promotions to the posts of senior statistical assistants from the cadre of junior statistical assistants, the State Government did not consider the case of the respondents therein who were junior statistical assistants, and published a list promoting persons ranking below them in point of seniority. The respondents therein filed writ petition before the High Court. The High Court while refusing to quash the seniority list directed the appellant-State to promote the respondents as from the dates on which their juniors were promoted and treat their promotion as effective from that date. In the appeal filed against the judgment of the High Court this Court observed that while making selections for promotion to the posts of senior statistical assistants from the cadre of junior statistical assistants, in 1959, the State Government was under a duty to consider whether having regard to their seniority and fitness they should be promoted. Since the promotions were irregularly made the respondents therein were entitled to ask the State Government to reconsider their case. In the circumstances, this Court observed, that the High Court could only issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness, the respondents should have been promoted on the relevant dates when officers junior to them were promoted and that instead of issuing such a writ the High Court had wrongly issued a writ directing the State Government to promote them with retrospective effect. This Court further observed that the High Court ought not to have issued such a writ without giving the State Government an opportunity in the first instance to consider their fitness for promotion in 1959. The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the Court should not ordinarily issue a writ to the Government or the statutory authority to promote an officer straightaway. The principle enunciated in the above decision 538

is equally applicable to the case on hand.

It is seen that the Selection Committee constituted by the State Bank of India has considered the case of the respondent for promotion to the vacancies of the years 1980 and 1981 and for the subsequent period from time to time. The Selection Committee did not find the respondent fit for promotion on all such occasions. There is no allegation of bias or mala fides urged against the members of the Selection Committee or the management. On the material placed before us we hold that at all relevant times the case of the promotion of respondent has been considered in accordance with law. No other contention is urged before us. On the facts and in the circumstances of the case we do not find any error committed by the appellants. The High Court was not, therefore, right in directing the appellants to promote the respondent with effect from 1979. As mentioned earlier, the learned counsel for the appellants has submitted that the Selection Committee constituted by the appellants would again consider the case of the respondent for promotion on a

proper appraisal of the relevant material.

In the circumstances, we feel that the direction issued by the High Court should be set aside and we accordingly do so. The appellants are, however, directed to consider the case of the respondent for promotion within four months from today and if on an assessment of the relevant material the State Bank of India finds that the respondent is fit to be promoted, he shall be promoted forthwith.

This appeal is accordingly disposed of. There will, however be no order as to costs.

P.S.S.
allowed.
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Appeal

JUDIS