

Tejpal Sharma and Others

Vs

Anil Kumar Sinha and Others

Civil Appeal No. 2627 of 1998

(S. C. Agarwal, S. P. Bharucha, B. N. Kirpal JJ)

06.05.1998

ORDER

1. Special leave granted.

2. This appeal is directed against the judgment of the Madhya Pradesh High Court dated 4-7-1997 in LPA No. 120 of 1997 whereby the High Court has dismissed the letters patent appeal filed against the judgment of the learned Single Judge allowing the writ petition filed by Respondents 1 to 3 and setting aside the order dated 27-2-1993 regarding promotion of the appellants to the post of Senior Manager/Area Manager in Sarguja Kshetriya Gramin Bank (hereinafter referred to as "the Bank"). The Bank is a regional rural bank established under the provisions of the Regional Rural Banks Act, 1976. Promotion to the post of Senior Manager/Area Manager in the Bank is governed by the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 which prescribe that promotion to the said post shall be made on the basis of seniority-cum-merit.

3. The submission of the learned counsel for the appellants is that in the counter-affidavit that was filed on behalf of the Bank before the High Court, it was pointed out that the performance of the respondents, who were not selected, was not satisfactory and reference was made to the service record of the said respondents in support of the said submission. It is urged that neither the learned Single Judge while allowing the writ petition of the respondents nor the learned Judges on the Division Bench of the High Court while dealing with the letters patent appeal filed against the said judgment of the learned Single Judge have dealt with this aspect and have only followed the earlier judgment of the High Court in respect of other banks even though the facts in the present case were different from the facts in those cases.

4. We find merit in the aforesaid contention of the learned counsel. Neither the Division Bench of the High Court nor the learned Single Judge have taken note of the averments contained in the counter-affidavit filed on behalf of the Bank in reply to the writ petition wherein reference has been made to the service record of the respondents and it has been stated that they did not have a good record of service and were not found fit by the Selection Committee. In the circumstances, we are unable to uphold the impugned judgment of the Division Bench of the High Court.

5. The appeal is, therefore, allowed, the impugned judgment of the Division Bench of the High Court as well as that of the learned Single Judge are set aside and the writ petition filed by the respondents is remitted to the High Court for consideration on merits. The writ petition may be heard by a Division Bench of the High Court which shall decide the writ petition taking into consideration the averments contained in the counter-affidavit filed by the Bank in reply to the writ petition. No costs.