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ARJUN SINGH RATHORE AND ORS.

v.

B.N. CHATURVEDI AND ORS.

OCTOBER 12, 2007

B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Service law—Recruitment process—Vacancies to be filled by promotion, occurring prior to the enforcement of amended Rules—Held: Would be filled under the Rules in operation when the vacancies had occurred—It would be governed by the original Rules-1988 Rules and not by the amended Rules-1998 Rules—Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988—Regional Rural Bank (Appointment and Promotion of Officers and other Employees) Rules, 1998.

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When the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 were in force, 15 posts became available for promotion under certain category, in the Bank. While the vacancies still existed, the Regional Rural Bank (Appointment and Promotion of Officers and other Employees) Rules, 1998 came into force and superseded the 1988 Rules. In view of the judgment of this Court in *State of Rajasthan v. R. Dayal & Ors.*, respondent-Bank directed that the ‘posts which fell vacant prior to the publication of the amended rules i.e. Rules 1998 would be governed by the Old Promotion Rules and not by the amended rules’. Appellants were promoted to Scale-II as per the 1988 Rules. Respondent Nos. 1 to 5 filed writ petition seeking direction that the promotion to the post of Scale-II Officers be held as per the 1998 Rules. Single Judge of High Court dismissed the writ petition. However, Division Bench allowed the writ petition. Hence the present appeal.

Allowing the appeal, the Court

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HELD: 1.1. The vacancies to be filled by promotion were to be

filled under the Rules which were in operation on the date when the vacancies had occurred. Therefore, the vacancies which had occurred prior to the enforcement of the Regional Rural Bank (Appointment and Promotion of Officers and other Employees) Rules, 1998 had to be filled in under the Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1988 and as per the procedure laid down therein. Thus, the judgment of the Single Judge of High Court is restored. [Para 6 and 7] [324-A, D-E]

State of Rajasthan v. R. Dayal & Ors., [1997] 10 SCC 419, relied on.

1.2. Pursuant to the order of Division Bench the exercise for promotion under the 1998 Rules had been carried out and all 15 appellants who appeared in the written examination had been declared successful. The result of 14 had been declared whereas the result of appellant No.3 had been kept in a sealed envelop as disciplinary enquiry was pending against him. The plea that appellant no 3 had been subjected to a charge-sheet dated 09.11.2005 on the basis of complaint dated 16.6.2005, that is long after the promotions had been made under the 1988 Rules in September 2000, and as such he too should be given the benefit of this judgment in so far as the promotion was concerned though subject to the outcome of the proceedings against him, is accepted. [Para 8] [324-F-H; 325-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4840 of 2007.

From the final Judgment and Order dated 18.8.2005 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (W) No. 818 of 2002.

M.R. Calla, Ranjeeta Rohatgi (for P.H. Parekh & Co.) for the Appellants.

Pramod B. Agarwala, Praveena Gautam and Raman Mishra for the Repondents.

The Judgment of the Court was delivered by

A **HARJIT SINGH BEDI, J.** 1. Leave granted.

B 2. This appeal is directed against the judgment and order of the Division Bench of the Rajasthan High Court dated 18th August 2005 setting aside the judgment of the learned Single Judge thereby allowing the writ petition filed by the respondents and further directing that promotion to the post of Scale-II Officers be held as per the Rules of 1998. The facts leading to the filing of the appeal are as under:

C 3. On 28th September 1988 the Department of Economic Affairs (Banking Division), Ministry of Finance, Government of India, after consultation with the National Bank for Agriculture and Rural Development and in exercise of the powers conferred by Section 29 of the Regional Rural Banks Act 1976 notified the Regional Rural Banks (Appointment and Promotion of Officers and others Employees) Rules, 1988 (hereinafter called the "Rules of 1988") which came into force w.e.f. D 28th September 1988. The second Schedule of these rules provided for the mode of appointment to different categories of officers. The appellants herein fell in category No. 6 whereas category No. 7 dealt with the appointment of Area Managers or Senior Managers by promotion of E officers from category No. 6 and inter-alia provided that all the vacancies were to be filled in by promotion from qualified and eligible persons working in the bank and that the mode of selection would be interview and assessment of performance reports for the preceding three years period. The Board of Directors of the respondent Kshetriya Gramin-Bank F adopted the Rules in a meeting held on 26th September 1988. It is the case of the appellants that by the first of April 1999, 15 posts in all had become available for promotion under category 7 as no appointments had, in fact, been made for several years. While the vacancies still existed the Regional Rural Bank (Appointment and Promotion of Officers and other employees) Rules 1998 (hereinafter called the "Rules of 1998") were G framed and published in the Official Gazette on 29th July 1998. The Board of Directors of the Kshetriya Bank adopted these rules and issued a Circular dated 15th May 1999 conveying the information that the Rules of 1988 had been superseded and that henceforth the Rules of 1998 alone would form the basis for promotion etc. The Bank of Baroda which H was the sponsoring Bank under the Regional Rural Banks Act of 1976

thereafter made an enquiry from the concerned quarters and on 15th October 1999 addressed a letter to the Regional Rural Banks that in view of the judgment of the Supreme Court in the case of *State of Rajasthan v. R. Dayal & Ors.*, “any post which had fallen vacant prior to the amendment of the Rules would be governed by the original rules and not by the amended rules” and in order to make matters more explicit repeated the directive by reiterating that the “posts which fell vacant prior to the publication of the amended rules i.e. Rules 1998 would be governed by the Old Promotion Rules and not by the amended rules.” A copy of the letter dated 15th October 1999 has been appended as Annexure P-1 to the appeal.

4. The respondent, Kshetriya-Bank thereupon issued a circular dated 13th June 2000 directing that all the vacancies which were available as on 31st March 1998 be filled in under the Rules of 1988. 15 persons, the appellants herein, were thereafter interviewed on 18th September 2000 and were found fit for promotion and the said list was also approved by the Board of Directors and all 15 appellants were accordingly promoted to Scale-II under order dated 18th September 2000. Respondent Nos. 1 to 5 herein however preferred a joint Writ Petition No. 3641/2000 in the High Court which was dismissed by the learned Single Judge on 25th September 2002 vide judgment appended as Annexure P-2. An appeal was thereafter taken to a Division Bench which reversed the order of the Single Judge thus allowing the Writ Petition and directing that the promotions and the circulars dated 13th June 2000 and 18th September 2000 respectively be quashed and further directing the Kshetriya Bank to make the promotions of Scale-II Officers as per the Rules of 1998. It is in this circumstance that the present special leave petition has been filed.

5. Notice was issued and all the respondents have been served. However, Respondent Nos. 6 and 7 alone have put in appearance and a reply has been filed by the Chairman of the respondent-Bank. We have accordingly heard the learned counsel who have appeared before us.

6. Mr. Calla, the learned senior counsel for appellants has argued that the matter was fully covered by the judgment of this Court in *State of Rajasthan v. R. Dayal*, [1997] 10 SCC 419 wherein it had been held

A that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in the case of *Y.V.Rangaiah v. J.Sreenivasa Rao*, [1983] 3 SCC 284 it was opined as under:

B “This Court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.”

D 7. The above legal position has not been seriously disputed by the learned counsel for respondent Nos. 6 & 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly.

F 8. There is another aspect of the matter which needs to be taken care of. It has been brought to our notice during the course of hearing that pursuant to the order of Division Bench the exercise for promotion under the Rules of 1998 had been carried out and that all 15 original respondents (present appellants) had appeared in the written examination and been declared successful but the result of 14 had been declared on 22nd November 2005 whereas the result of one, Ram Narayan Meena appellant No. 3 before us, had been kept in a sealed envelop as a disciplinary enquiry was pending against him. It has however been pointed out that Ram Narayan Meena had been subjected to a charge-sheet dated 09.11.2005 on the basis of a complaint dated 16th June 2005, that is long after the promotions had been made under the Rules of 1988, and as such he too should be given the benefit of this judgment in so far as

the promotion was concerned though subject to the outcome of the A
proceedings against him. We find merit in this plea as well. It needs to be
highlighted that the promotion under the Rules of 1988 had been made
way back in September 2000 i.e. long before the complaint had been
made against Ram Narayan Meena. We are therefore of the opinion that
he too should be given the benefit of this judgment subject to the outcome B
of the disciplinary proceedings. We accordingly allow the appeal in the
above terms. There will be no order as to costs.

N.J.

Appeal allowed.