

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 3100/2023
CM(7377/2023)

1. Shafakat (Aged: 40 years) ...Petitioner(s)
D/o Syed Bashir Ahmad
W/o Ishfaq Ahmad Mir
R/o Lal Nagar Chanapora.
2. Renu Sharma (Aged: 37 years)
W/o Vikas Sharma
R/o A2 1701 CASA Green 1 Greater Noida,
West Delhi.
3. Shewta Gupta (Aged: 35 years)
W/o Shiv Mahajan
R/o Q No. 148 Sarwal Colony, Jammu.
4. Saba Javid (Aged: 36 years)
W/o Sadat Shaheen
R/o Bindina Budgam.
5. Shalika Sambyal (Aged: 38 years)
W/o Rajesh Singh Jasrotia
R/o Ward No. 6, Hira Nagar, Kathua.
6. Zeenat Ajaz (Aged: 35 years)
W/o Syed Mudasir Ahmad
R/o SDA Colony, Bemina Srinagar.

Through: Mr. Jahangir Ahmad Ganai, Advocate with
Ms. Mehnaz Rather, Advocate.

Vs.

1. Jammu and Kashmir Bank through its ...Respondent(s)
Chairman, J&K Bank Corporate
Headquarters, Maulana Azad Road,
Srinagar, J&K.
2. President-HR, Human Resources
Development Division, J&K Bank Corporate
Headquarters, Maulana Azad Road,
Srinagar, J&K.
3. General Manager-HR, Human Resources
Development Division, J&K Bank Corporate

Headquarters, Maulana Azad Road,
Srinagar, J&K.

Through: Mr. Adil Asimi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT (ORAL)

01. The petitioners six in number, have been working as Banking Associates in the respondent Bank for the last more than seven years. They are aggrieved of and have called in question the decision of the respondent Bank in treating the period of maternity leave availed of by the petitioners as "Break in Service", as result whereof, they have been declared ineligible to participate in the process of promotion to the level of Assistant Manager Cadre under "Seniority-cum-Normal/Screening Channel" notified by the Bank vide Circular ID 15876 dated 21st September, 2023.

02. The petitioners, as is claimed by them in the petition, were appointed as Banking Associates in the year 2013 on contractual basis for a period of two years. On completion of their contractual term, the Petitioners 1 to 4 were regularized with effect from 17th December 2015, while as Petitioners 5 and 6 were so regularized with effect from 1st January 2016 and 5th January 2016 respectively. It is submitted that during the period of probation, the petitioners applied for grant of maternity leave. The competent authority in the respondent Bank accorded sanction to the grant of maternity leave in favour of the petitioners as admissible in terms of the Jammu and Kashmir Bank Limited Officer Service Rules, 2000 as were applicable at the relevant point of time. The petitioners were, however, informed that the grant of maternity leave would result in extension of the period of probation and that upon successful completion of probation followed by confirmation, they would rank junior to their batchmates by such leave period.

03. It is pleaded that consequent upon successful completion of mandatory six months' probation, the batchmates of the petitioners were confirmed in the service of the respondent Bank vide Circular ID 7791 dated 25th November, 2016. However, on account of having availed maternity leave while being on probation, the probation in the case of the petitioners got

extended by quantum of such leave. The services of the petitioners were thus confirmed vide order dated 19th January, 2017 with effect from 1st January, 2017.

04. The respondent Bank with a view to initiating the process of promotion from Banking Associates to the Assistant Manager Cadre, invited the eligible Banking Associates to submit their willingness through People System, as per the schedule notified vide Circular ID 15876 dated 21st September, 2023.

05. Insofar as “Seniority-cum-Normal/Screening Channel” is concerned, it is provided that the Banking Associates should have seven years regular service. For other channel viz. “Fast Track cum Merit Channel”, the eligibility prescribed is three years as on 31st March, 2023. The petitioners having seven years’ service to their credit, submitted their willingness through People System for consideration under “Seniority-cum-Normal /Screening Channel”, but the same was not accepted by the Bank and instead the petitioners were shown eligible only under “Fast Track cum Merit Channel”.

06. The petitioners claim that when they were denied the right of consideration for promotion under “Seniority-cum-Normal/Screening Channel”, they approached the office of Respondent No. 3 and were informed orally that the period of maternity availed by them, while being on probation, has been considered as ‘Break in Service’ and, therefore, they do not possess the requisite seven years of service to be considered in the aforesaid channel. Aggrieved, the petitioners have filed the instant petition. The decision of the respondent Bank not to count the period of maternity leave availed during the probation towards the actual length of service, is assailed by the petitioners *inter alia* on the following grounds:

- a. That the impugned decision of the respondent Bank is illegal, arbitrary, discriminatory and violates Article 14 and 16 of the Constitution of India. It is argued that the decision of the respondent Bank in treating the period of maternity leave duly sanctioned by the competent authority as ‘Break in Service’, subjects the petitioners to hostile

discrimination on the basis of sex and, therefore, cannot be countenanced on the touchstone of principle of equality envisaged under Article 14 and 16 of the Constitution of India; and

- b. That the J&K Bank Officers Service Manual, 2000 does not provide for such break in service nor can it be said that a person on leave duly sanctioned by the competent authority, shall be deemed out of service. It is thus argued that in absence of any such specific rule, it is not competent for the respondent Bank to take out the period of maternity leave from counting the service of petitioners as Banking Associates, for the purpose of considering them for promotion to the Assistant Manager Cadre under the “Seniority-cum-Normal/Screening Channel.”

07. The writ petition is contested by the respondent Bank. In the reply affidavit filed by the Bank, a strong reliance is placed on Rule 4(1) , 5(1) and 5(2) of the Policy for Promotion of Workmen (Banking Associates, Assistant Banking Associates and Banking Attendants). It is submitted by the learned counsel appearing for the respondent Bank that in terms of Rule 5 (1) and 5(2), seven years of service that is required of a Banking Associate for consideration for promotion through “Seniority-cum-Normal/Screening Channel” is actual regular service rendered while being in active service of the Bank. It is thus argued that the period spent by the petitioners on maternity leave cannot be construed to be regular service in BAS cadre and, therefore, is required to be excluded from computing seven years regular service required for consideration under the “Seniority-cum-Normal/Screening Channel” during probation.

08. Having heard the learned counsel for the parties and perused the material on record including the Officers Service Manual (OSM), 2000 read with Policy for Promotion of Workmen (Banking Associates, Assistant Banking Associates and Banking Attendants), I am of the considered opinion that the decision of the respondent Bank impugned in this petition, is totally

arbitrary, discriminatory and violates Article 14 and 16 of the Constitution of India. The impugned decision of the respondent Bank is not even backed by the OSM 2000 read with the Rules of Promotion, as these were applicable at the relevant point of time. It is not in dispute that the petitioners herein having been appointed as Banking Associates in the year 2015-16, have to their credit more than seven years regular service. It is also a fact that all the petitioners while being on probation availed maternity leave of different durations and accordingly their period of probation was extended by such quantum of leave, as provided in the order of their appointment as Banking Associate on regular basis. Be that as it may, the fact remains that the petitioners are now in the service of the respondent Bank since the year 2015 and 2016 and, therefore, have rendered more than seven years of service. The question that begs determination in this petition is, *“Whether the period of maternity leave availed by the petitioners during probation, could be excluded from reckoning seven years actual service for the purposes of eligibility to seek consideration for promotion to Assistant Manager Cadre under “Seniority-cum-Normal/Screening Channel.”*

09. As is the case set up by the respondent Bank in the reply affidavit, the promotion of Banking Associates to Assistant Manager Cadre is governed by the Policy for Promotion of Workmen promulgated by the Bank, immediately after the approval accorded by the Board of Directors, on 13th July, 2022. The eligibility and qualification for promotion from Banking Associate to the Assistant General Manager Cadre (JMGS-I) Officer Cadre, is laid down in Paragraph 4.1 of the Policy, which reads thus:

“4.1 Eligibility & Qualification for promotion from Banking Associate to (JMGS-1) officer Cadre:

a) Under Seniority cum Selectivity channel:

Banking Associates appointed after qualifying IBPS examination, having completed Seven (7) years of regular service or more as on 31st of March of the preceding financial year, shall be eligible for promotion to JMGS-I under seniority cum selectivity channel.

However, Banking associates who are graduates, but are appointed in the services of the bank either on compassionate grounds or by virtue of being promoted from sub-ordinate cadre and have completed 7 years of service in the general cadre of Banking Associates, shall mandatorily have to go through an eligibility screening written test (objective type)* for participation in the promotion process under seniority cum selectivity channel.

*Minimum qualifying marks in written eligibility screening test for participating in the interview shall be 40% for General candidates & 35% for reserved category candidates.

b) Under Fast Track/Merit channel:

All Banking Associates who have successfully completed Three (3) years of regular services as on 31st March of the preceding financial year, shall be eligible for participation in the promotion process under Fast Track/Merit Channel.

An employee shall be eligible to participate in promotion process under Fast Track/Merit Channel up to a maximum of three times.

10. From reading of Paragraph 4.1, it transpires that there are two channels for promotion from Banking Associates (JMGS-I) Officer Cadre, provided by the Bank viz.

- a. Seniority cum Selectivity Channel
- b. Fast Track/Merit Channel

11. Insofar as Seniority-cum-Selectivity Channel is concerned, the Banking Associates who are graduates and have completed seven years of service in the General Cadre of Banking Associates, are eligible for participation in the promotion process. However, under Fast Track/Merit Channel, a Banking Associate who has successfully completed three years of

service on regular basis as on 31st March of the preceding financial year, shall be eligible for participation in the promotion process.

12. The petitioners are claiming their right to participate in the promotion process under Seniority cum Selectivity Channel. A plain reading of Clause 'a' of Paragraph 4.1 reproduced above, leaves no manner of doubt that the petitioners have completed seven years of service in the General Cadre of Banking Associates, notwithstanding the petitioners having availed maternity leave of different durations during probation. Needless to say that any employee including an employee of the J&K Bank while availing leave of any kind duly sanctioned by the competent authority, shall always be deemed to be in service. Availing of leave of whatever kind including maternity leave by the women employees, does not result either in break of service or reduction of total service rendered by such employee by a quantum of leave availed. There appears to be a clear fallacy in understanding the provision contained in Paragraph 4.1 of the Policy.

13. True it is that Paragraph 5.2 of the Promotion Policy which deals with the promotion from Banking Associate Cadre to JMGS-I Officer Cadre, prescribes seven years residency to be eligible to participate in Seniority cum Selectivity Channel. The residency is not defined in the paragraph but is indicated to be the actual length of regular service in the Banking Associate Service Cadre.

14. Before proceeding further, it would be appropriate to set out Paragraph 5.2 of the Policy as well hereinbelow:

5.2. Promotions from the Banking Associate Cadre.

The vacancies in JMG Scale-I shall be filled up by promotion from Banking Associate cadre through Seniority cum Selectivity Channel and Merit/Fast Track Channel in the ratio of 3:1. The employees in the Banking Associate cadre will have the option to apply for promotion under only one channel in an annual promotion cycle.

Highlights of the two channels are as under:-

Particulars	Seniority-cum-	Merit/Fast	Track
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	Selectivity Channel	Channel
Distribution of Vacancies	75%	25%
Residency (actual length of regular service in BAS-Cadre)	7 years	3 years
Selection Parameters	Max. Marks	Max. Marks
• APAR	30	30
• Interview/Potential	60	60
• Written Test (Online)*	NA	Qualifying Only
• Addl. Qualifications (Post-Graduation/ JAIB/ CAIB/ CA/ ICWA/CS, Phd./M. Phil/MBA B&F)	10	10
Total	100	100

*Note: Minimum qualifying marks in written test for promotions in fast track/merit channel shall be 40% for General candidates & 35% for reserved category candidates.

15. From reading of Paragraph of 5.2 in particular, the term “Residency”, it become abundantly clear that what is required of a Banking Associate to be eligible to participate in the Seniority cum Selectivity Channel, is *inter alia* seven years residency i.e. actual length of regular service. Paragraph 5.2 is required to be read along with Paragraph 4.1 which is also reproduced hereinabove. A conjoint reading of the two would bring out clearly that what is required of a Banking Associates to possess, is seven years regular service. It is not the case of the respondent Bank that the petitioners do not possess seven years regular service, however, it is argued on behalf of the respondent Bank that while reckoning seven years service, the respondent Bank is entitled in law to deduct the period of maternity leave, if any, availed by a Banking Associate during probation. I am not impressed with the argument raised on behalf of the respondent Bank. As is already clarified hereinabove that availing of leave of whatever kind due including maternity leave by an employee of the Bank, whether during probation or otherwise, does not result in break in service. A person on leave duly sanctioned by the competent authority shall be deemed to be in actual regular service of the Bank. Residency i.e. actual length of regular service does not mean the only such service during which an employee is on active duty. If this argument of the learned counsel for the Bank is accepted, it would mean that the period of leave of whatever kind availed by an employee after the period of probation, shall also be deductible while reckoning seven years of service. Admittedly, the Bank is not deducting such period from computation of seven years of service of an employee for the purpose of allowing him/her

to participate in the promotion process under Seniority cum Selectivity Channel.

16. Viewed from any angle, the decision of the respondent Bank to deduct or take out the period of leave availed by an employee during probation while reckoning seven years of service required of a Banking Associate to participate in the promotion process under Seniority cum Selectivity Channel, is totally illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India. That apart, the Policy for Promotion of Workmen approved by the Board of Directors on 13th July 2022, also does not lay down any such condition. It is thus wrong to contend that the respondent Bank is entitled in law to deduct the period of leave availed by a Banking Associate during his/her probation under Paragraph 4.1 read with Paragraph 5.2 of the Policy for Promotion of Workmen (Banking Associates, Assistant Banking Associates and Banking Attendants).

17. For the reasons given above, I find merit in this petition and same is accordingly allowed and the respondent Bank is directed to treat the period of maternity leave availed by the petitioners during probation, as actual regular service in the BAS cadre. The petitioners having more than seven years actual service to their credit, are, therefore, entitled to participate in the promotion process for JMGS Scale-I Officers Cadre under Seniority cum Selectivity Channel. The respondent Bank is, therefore, directed to accord them consideration accordingly.

18. Writ petition **disposed** of along with connected CM(s) in the manner as indicated above.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

13.12.2023

“Hamid”

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| i. | Whether the Judgement is Reportable? | Yes/No |
| ii. | Whether the Judgment is Speaking? | Yes/No |