



2024:JKLHC-SGR:303

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 15.03.2024

Pronounced on : 26.07.2024

Case:- **WP(C) No. 74/2024**

Javeed Ahmad Sheikh and others

.....Petitioners

Through: Mr. Azhar-ul-Amin, Advocate with
Mr. Mubashir Masood, Advocate

Vs

Jammu & Kashmir Bank Limited and others

..... Respondents

Through: Mr. Shafqat Nazir, Advocate with
Mr. Younis Hameed, Advocate

Case:- **WP(C) No. 130/2024**

Mir Sumeera and others

Through: Mr. Owais Shafi, Advocate

Vs

Jammu & Kashmir Bank Limited and others

..... Respondents

Through: Mr. Shafqat Nazir, Advocate with
Mr. Younis Hameed, Advocate

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

**WP(C) No. 74/2024**

01. A Roman philosopher Lucretius's quote "***One man's food is another man's poison,***" is a very serving one to introduce as to what is the issue involved in the present writ petition filed by fifty petitioners feeling similarly aggrieved that they, as a sub-class in the context of their service, have been subjected uninformed to a promotion related test meant for another sub-class of employees contrary to the promotion policy itself admitting of differential promotion test to the said two sub-classes thereby rendering them discriminated and purportedly denied of promotion prospect under seniority cum selectivity channel.

02. The facts of the present case are hardly admitting of any dispute/denial as the controversy zooms on "**Policy for Promotion of Workmen (Banking Associates, Assistant Banking Associates and Banking Attendants)**", (hereinafter to be referred in short as "***the Policy***").

03. The petitioners are Banking Associates on the regular establishment of the respondent No.1-Jammu & Kashmir Bank Limited (hereinafter to be referred in short as "***the Bank***"). Next level of promotion for a Banking Associate in the respondent No. 1-the Bank is an Assistant Manager (Cadre) also known as JMGS-1 (Officer Cadre).



04. The establishment of the respondent No. 1- the Bank came forward with an exercise for promotion captioned as “**Career progression of Banking Associates for the position of Assistant Manager Cadre**”, by virtue of communication No. JKB/Rectt/2023-792 dated 21.09.2023 inviting the Banking Associates fulfilling the criteria to be eligible for the Career Progression from Banking Associates to Assistant Manager (Cadre) and, accordingly, invited all the eligible Banking Associates, except ineligible under service rules and/or under investigation in FIR No. 10/2019 and FIR No. 01/2020 Anti-Corruption Bureau, Jammu, to submit their respective willingness in the prescribed manner and thereupon to wait for the dates for online test of eligible candidates under Fast-track and Screening Channel to be notified separately to be then followed by interview dates for promotion upon culmination of online test under Fast-track and Screening Channel. It is with respect to the purported screening test which came to be slapped upon the petitioners that left them aggrieved to be in the present writ petition as under the guise of screening test they came to be made to suffer written test not meant for them .

05. Before coming to the precipitating situation resulting in cause of action leading the petitioners to petition this court with the present writ petition, the Policy prescribed by the respondent No. 1-



the Bank governing the promotion process related with the petitioners, and of course with other two classes of Banking Associates, needs to be referred for the sake of drawing its understanding. A copy of the Policy is accompanying the writ petition.

06. The Policy is in its version 2.0. The Policy originated on 23.10.2019 and came to be renewed on 23.10.2021 followed by a review on 26.02.2022 before getting final approval by the Board of Directors of the respondent No. 1 – the Bank on 13.07.2022, coming into effect w.e.f. 01.04.2022 started with promotion process for the year 2022-23 and onwards so as to come to hold the field.

07. The Policy is in two (2) parts i.e. Part-1 and Part-2 set in number of clauses.

08. Part-1 of the Policy deals with the “**Procedure for promotion for Banking Associates to JMGS-1 (Officer Cadre)**” and it is with this part that the subject matter of the present writ petition is related with.

09. Clause 4 of the Policy provides for eligibility and qualification and is reproduced hereunder:-

- “4. Eligibility and Qualification:** This policy being broader in scope covers the promotions of:
- i.** Banking Associate Cadre to JMG Scale –I (officer cadre).



- ii. Assistant Banking Associate Cadre to Banking Associate Cadre.
- iii. Banking Attendant Cadre to Assistant Banking Associate Cadre.”

10. Clause 4.1 provides for eligibility & qualification for promotion from Banking Associate to (JMGS-1) Officer Cadre and the same is also reproduced hereunder:-

“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-1 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 and 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 upto a maximum of three times.

11. Part-1 which is meant for promotion for Banking Associate to Officer Cadre (JMGS-1), is spread in clause 5 sub-claused into 1 to 5 and the same is also reproduced hereunder for facility of reference:-

“5. Part-I Promotion of Banking Associate to Officer Cadre (JMGS-1)

5.1 Selection process for filling vacancies in JMG Scale-1

The vacancies in JMG Scale -1 shall be filled as under:

- a) By promotions from Banking Associate cadre – **80%**
- b) By Direct Recruitment – **20%**

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 ration 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-Selectivity channel	Merit/ Fast Track 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.**

5.3 Direct Recruitment

The procedure for filling of vacancies in officer (JMGS-1) cadre through direct recruitment is covered under Recruitment policy of the Bank.

5.4 Selection parameters

The selection parameters to be considered for promotion from Banking Associate Cadre to JMG Scale-I are defined below:

5.4.1 APAR:

The Annual Performance Assessment Reports (APAR) marks for the immediate preceding 3 years shall be considered for the purpose of awarding marks for promotion, as indicated at Para 5.2.

5.4.2 Potential/Interview:

The candidates, 1.5 times the number of vacancies available, will be called for interview* in order of their seniority as per the seniority list published by the bank. The departmental promotion committee (DPC) shall be nominated by the MD & CEO for conducting the interviews of the eligible candidates.

***Note: Under Seniority cum Selectivity Channel the eligible pool for interview shall be created on the basis of Seniority & under Fast Track Channel it shall be on the basis of merit obtained in the written test. (In case of a tie between the candidates in written**



examination, senior most candidate will be considered to be called for interviews).

5.4.3 Written Test: (Fast Track Channel)

Written test shall be conducted through IBPS Mumbai or other reputed external agency which conducts online examinations for different employers in the banking industry. The written test (objective type) of 100 marks shall be based on:

Banking Awareness :	25 Marks
Clerical Aptitude :	25 Marks
Computer Literacy :	25 Marks
English Comprehension :	25 Marks

Willingness shall be sought from all the eligible Banking Associates to appear for the written test. However, only those candidates who conform to the prescribed norms shall be eligible to appear in the written test.

MD & CEO shall be authorized to designate the agency to conduct the online examination.

Higher / Professional Qualification

02 Marks

02 Marks

02 Marks

02 Marks

02 Marks

02 Marks *

(B&F) as on additional post-graduation.

Marks for additional qualifications are subject to a maximum of 10 marks.

5.5 Eligibility Pool

5.5.1 The Board of Directors shall be the sole authority for approving any deviation of the parameters, set in this policy.



- 5.5.2** For Promotion from Banking Associate to officer cadre (JMGS-1), under fast track/merit channel, there shall be no bar on number of eligible candidates to be called for written examination.
- 5.5.3** For appearing in the promotion process through any of the channels the residual service should not be less than 6 months as on date of notification.
- 5.5.4** An employee who has not been selected for promotion to the next higher cadre under seniority cum selectivity channel three times, shall not be eligible for participation in promotion process for next annual promotion cycle, subsequent to which, the employee shall again be allowed to participate in the following Promotion cycles.”

12. Since the Policy is relating in terms of its Part-1 exclusively to promotion of the Banking Associates, as such, Banking Associates ought to have been a single class for the purpose of promotion in the routine course of things, but the respondent No. 1 – the Bank chose to split said single class of Banking Associates for the purpose of promotion into two sub-classes.

13. One of two such sub-classes, and that comparatively being a large class, is the which is to undergo promotion process under **Seniority-cum-Selectivity** channel whereas other sub-class of Banking Associates, being a small class, for whom avenues for promotion is created under **Fast Track/Merit Channel** as is provided under clause 4.1.



14. Going by the very branding of the two sub-classes of the Banking Associates, it is obviously meant that one sub-class of Banking Associates is the one whose promotion is to follow seniority principle competing for selection within themselves on their respective merit in the said circle, whereas other sub-class of the Banking Associate is the one which by seniority principle is to stand no chance of promotion to the Assistant Manager (Cadre) being short of seven(7) years but more than three(3) years of service, and, therefore, a small share of posts i.e. 25% carved out for non-seniority placed Banking Associates who are fresh recruits having completed three (3) years of regular service on 31st March of the preceding year.

15. First sub-class of Banking Associates eligible for consideration for promotion under Seniority-cum-Selectivity channel is further sub-classed into the ones who are Banking Associates having completed seven (7) years or more of regular service and whose original appointments are with qualification of IBPS examination and the other sub-class is that of those Banking Associates who came to be appointed without IBPS examination qualification, by the modes of appointment as prescribed in their respective cases or who came to be promoted to be appointed as



Banking Associates from the subordinate cadre not meant to qualify IBPS examination to earn promotion as Banking Associates.

16. The petitioners are the ones who fall in the second subclass of Banking Associates under Seniority-cum-Selectivity channel as some of the petitioners are directly appointed Banking Associates without being required to qualify IBPS examination at the relevant point of time of their respective appointment and whereas some of the petitioners are the Banking Associates having arisen from the ranks.

17. For the petitioners, as non-IBPS Banking Associates, bearing their respective places in the combined seniority list of Banking Associates (IBPS & non-IBPS) to be considered for promotion, a mandatory eligibility screening written test (objective type) for participation in promotion process under Seniority-cum-Selectivity channel is prescribed in which a non-IBPS Banking Associate is required to get 40% marks under General category and 35% marks under Reserved category as minimum qualifying marks to be eligible to join the pool of IBPS Banking Associates above seven years of service to be considered for promotion and thereafter on the assessment of the comparative/inter se merit on the parameters as prescribed under clause 5.2, the promotion is to be accorded notwithstanding the seniority position amongst the entire



pool of the Banking Associates under Seniority-cum-Selectivity channel.

18. Thus, a Banking Associate, be it IBPS or non-IBPS, is required to have seven(7) years or more of regular service by reference to 31st March of the preceding year to be a first requirement for promotion consideration under Seniority-cum-Selectivity channel and further for non-IBPS Banking Associates qualifying eligibility screening written test (objective type) is an additional requirement upon qualifying which all non-IBPS Banking Associates with more than seven(7) years of service are then to be in the pool of the Banking Associates IBPS with seven(7) plus years of service to be considered for promotion. In this pool, it is the comparative merit prescribed under selection parameters under clause 5.2 which is to drive the final promotion by selection and not by seniority and that is how Seniority-cum-Selectivity channel has earned its name for the Banking Associates having more than seven (7) years of service.

19. Insofar as the Banking Associates having completed three years of service, be it IBPS or non-IBPS and who on the basis of the seniority are not eligible to join 75% pool of Banking Associates covered under Seniority-cum-Selectivity channel, are afforded an opportunity of jump/leap promotion upon their participation in a



qualifying examination and thereupon to be comparatively assessed on merits on the selection parameters as provided under clause 5.2

20. Thus, it is as clear as sky that non-IBPS Banking Associates with seven (7) years plus regular service aiming for promotion and Banking Associates, be it IBPS or non-IBPS, having less than seven(7) years of service but more than three years of service as Banking Associates not eligible for competing under Seniority-cum-Selectivity channel of promotion are constituting two different species under genus Banking Associates. It is here where the opening quote of **Roman philosopher Lucretius** that **“One man’s food is another man’s poison,”** has come into play when Banking Associates of two species have been subjected to undergo same/common written test for qualification to be in the pool of Banking Associates for promotion wherein the petitioners have failed and have been left to feel duped by the fact that the test meant for Banking Associates under Fast Track/Merit channel came to be imposed upon them leaving them non-successful and, accordingly, seeing the prospect of being ousted from lifetime opportunity of promotion on the basis of their respective seniority and denying them opportunity of competing on the strength of the parameters as prescribed under clause 5.2.



21. In the writ petition, the petitioners have averred that they came to be issued call letters individually for “Eligibility Screening Test,” whereas Banking Associates availing “Fast-track Channel” promotion were called on “People’s System” and the syllabus for the written test was also put on the “People’s System.” The petitioners aver that they legitimately expected eligibility screening test for them to be quite distinct from the written test meant to be conducted by IBPS, Mumbai for the Fast-Track Channel Banking Associate aspirants but the petitioners came to be taken by surprise and caught in no man’s land when they too were subjected to face the same written test conducted by IBPS, Mumbai thereby bringing them under the same umbrella in terms of test taking with those of Fast-Track Channel Banking Associates and that set in the failure for the petitioners in the test so taken.

22. The respondent No. 1, joined by its officials as co-respondents, came up with its reply/objections to the writ petition, maintaining preliminary objection about the maintainability of the writ petition on account of no violation of any right, constitutional or statutory, of the petitioners and also reading estoppel against the petitioners to challenge the procedure/policy of the respondent No. 1- the Bank through the medium of the writ petition which policy is said to be based on intelligible differentia.



23. On the factual side in their reply/objections, the respondents assert that written test was conducted in conformity with the promotion policy framed by the respondent No. 1 – the Bank for promotion of Banking Associates to the Officers Cadre-I (JMGS Grade-1) and, therefore, there is no occasion for the petitioners to agitate any grievance. The respondents in their reply have asserted that the petitioners cannot seek a screening test of their choice and that screening examination is supposed to be on a set pattern of IBPS, Mumbai.

24. Before proceeding further, this Court for the sake of perspective, deems it needful to juxtapose para 14 of the writ petition and reply to para 14 from the respondents' end.

<u>Para 14 of the writ petition:-</u>		<u>Reply to para 14 of the writ petition by the respondents:-</u>	
14.	The on-line screening test and written examination for screening channel and fast tract channel respectively was scheduled to be held on 04-12-2023 at 12.30pm. The Petitioners were issued call letters individually for eligibility screening test and 3 TM category (fast track) was called on people's system and the syllabus for the written test was also put on the people's system. The Petitioners legitimately expected eligibility screening test for them quite distinct from the written test conducted by IBPS Mumbai for fast tract channel, however, to their shock and surprise the Petitioners were subjected to the	11.	That in reply to para 14, it is submitted that the call letters are not material to the issue raised in the writ petition. It is submitted that it is admitted by the writ petitioners that they fall in the category of Banking Associates who have not passed the IBPS examination due to nature of their appointment in the respondent bank and thus fall in the category of Banking Associates who as per proviso to the rule 4.1(a) were required to mandatory undergo through the eligibility screening test (Objective type) for promotion process under seniority cum selectivity channel by scoring the minimum qualifying marks of 40% in general category and 35% in the reserved category. The screening test did not carry any scoring marks and was meant only with the purpose to ensure all



<p>same written test conducted by IBPS Mumbai. Thus, the Petitioners, though distinct and unequal from 3” category were treated equally that caused gross violence to equality clause enshrined under article 14 of the Constitution of India. A sample call letter issued to the Petitioners for screening channel and circular dated 04-12-2023 is attached herewith as Annexure-IV & V.</p>	<p>the candidates who appear in the seniority cum selectivity channel have IBPS exam qualified before being inducted in the officer’s cadre. It is submitted that writ petitioners cannot seek of their choice and the screening examination has to be set pattern of IBPS. The writ petitioners are a different class in themselves on the basis of the reasoning set in proviso rule 4 (a) and thus have not been treated at par with the Banking Associates who appeared in fast track/merit channel whose eligibility criteria was different than that of writ petitioners. It is submitted that there has been no violation of article 14 of Constitution of India and thus cannot seek indulgence of this court on matters which was purely matter of policy.</p>
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25. Mr. Azhar-ul-Amin, learned counsel for the petitioners while arguing has summarized his submissions in the following manner:-

- a. The petitioners became eligible for promotion consideration from “Banking Associate” to the Officers’ Cadre Scale I (JMG Scale I) in the year 2019 onwards under the old promotion policy with then prescribed eligibility of 5 years’ service as Banking Associate. In the old policy there was only one class of “Banking Associate” to be promoted to Scale I (JMG Scale I) based on “seniority cum merit rule” However, since the petitioners became due for promotion, the exercise of promoting Banking Associates got deferred for no apparent reason. The assessment of vacancies was a year wise process. However, in the interregnum, the new promotion policy was envisaged and finally approved by the Board on 13-07-2022 and promotion process was set in motion vide



Circular ID No.15876 of September 21, 2023 in terms of this new Policy. All the year wise vacancies were clubbed.

- b.** Under the said new Policy eligibility for promotion of Banking Associates to Scale I (JMG Scale I) was increased from five years to seven years and Banking Associates with 7 years were sub-classified into Banking Associates (IBPS qualified) and Banking Associates (without IBPS). Banking Associates (IBPS qualified) would directly go to interview (as in the old policy) while as Banking Associates (without IBPS) would undergo some eligibility screening written test (objective type).
- c.** It is specifically provided under the Policy (5.4.2) that pool of eligibility for this class would be created on the basis of seniority, and it was called “Seniority cum selectivity channel”.
- d.** The Policy for the first time introduced another channel for promotion called Fast Track/ Merit Channel. Banking Associate with 3 years of service is made eligible and no classification on the basis of IBPS/Non IBPS is made therein as was done in Seniority cum Selectivity channel. Pool of eligibility for this class is to be created on the basis of merit obtained in a written test to be conducted by IBPS Mumbai. (Rule 5.4.2).
- e.** The Policy further clarifies under Rule 5.4.3 that the said written test is meant for Fast Track Channel only and provides for the name of Institution to conduct the said test. The Rule also provides for the scheme of examination.



- f.** The petitioners having 7 years or more service as Banking Associates (without IBPS) applied within the cutoff date for selection and consequent promotion in response to the advertisement.
- g.** Call letters for Banking Associates (without IBPS) were served individually for eligibility screening test while as call letters for fast-track channel for conduct of merit test to be conducted by IBPS Mumbai was put on “People’s System” to be downloaded by the concerned candidates.
- h.** The Policy envisages two pools of eligibility for promotion; one of 7 years Banking Associates to be made/prepared on the basis of seniority and the second of 3 years to be made prepared on the basis of written merit test to be conducted by IBPS Mumbai.
- i.** The Policy vividly recognizes and envisages two distinct treatments in terms of making pool of eligibility. In the former, seniority is the guiding factor and in the later the merit obtained in the test prescribed under rule 5.4.3. In the context and text of the Policy, the two treatments must be qualitatively different. The test prescribed for screening of the Banking Associates with 7 years’ experience must be qualitatively different than the test to judge merit of the 3 years’ Banking Associates lest the distinction in the quantity of service i.e. 7 years and 3 years gets obliterated which falls foul of Art. 14 of the Constitution of India. The two distinct classes must not, therefore, be subjected to qualitatively same test as has been done in the case.



- j.** The classification but similar treatment are both admitted by the respondent- the Bank in their written response to the writ petition but in oral argument the respondent No. 1-the Bank's counsel say that it is the Policy that envisages similar test for both the classes and having not challenged the Policy, the petitioners are estopped to challenge the action of the bank. The formative interpretation of the promotion policy, approved on 13-07-2022 by the respondent No. 1 -Bank, in a very narrow compass, thus, falls for consideration and interpretation always belongs to the Court. The interpretation on the Policy placed by the counsel of the respondent- the Bank viz prescription of qualitatively same test to two different classes of employees, is far too offensive to the Policy itself and on top of that to the very concept of Art. 14 & 16 of the Constitution of India, hence, liable to be avoided. An interpretation that advances equality is to be adopted.
- k.** From the front page of the Policy, the Policy originated on 23-10-2019, but no promotions took place under the said Policy till date. The petitioners, in terms of the old policy, were eligible after putting in 5 years of service as confirmed Banking Associates based on their seniority. The process of promotion was in fact initiated vide circular dated 07-06-2018. Some of the petitioners were eligible for promotion to JMG Scale on 30-06-2018 (cutoff date for eligibility fixed in the circular). The petitioners were denied promotion all these years for no plausible reason. The petitioners cannot and should not be subjected to the new Policy that got implemented in the year 2022.



- 1.** The whole process of selection has been conducted in shrouded mystery with no transparency at all. Number of posts were not advertised, ratio between Banking Associates (without IBPS) and Banking Associates (with IBPS) in “Seniority cum selectivity channel” is not prescribed; ratio between Ladakh, Jammu and Kashmir and rest of India is not prescribed. Empirical data submitted by the respondent No. 1-Bank on asking of the Court shows only 18 candidates from Banking Associates (without IBPS) from “Seniority cum Selectivity Channel have been called for interview as a result of recalcitrant test from Kashmir and Ladakh and none from Jammu. Assuming without admitting, respondents are not motivated by a spite or ill will yet the acts of omission or commission especially treating the petitioners equal with fast-track channel Banking Associates and not maintaining the ratio and not advertising the number of vacancies is wrongfully done. The petitioners are wrongfully made to sit and pass the test not meant for them. The act of omission and commission is done willfully without any lawful excuse or probable cause. This surely amounts to “Malice in Law”.
- m.** Fundamentally, the eligibility for promotion of Banking Associate is 7 years of regular service as Banking Associates, however, a relaxation is carved out for Banking Associates with 3 years of such service but subject to passing of a merit test. Absent such relaxation, the Banking Associates with 3 years’ service are ineligible. It stares in the face of equality, if both, eligible and ineligible, are treated alike. To be precise, subjecting Banking Associates with 7 years’ service to such a



test, the test meant for making ineligible candidates (Banking Associates with 3 years' service) by way of relaxation, as eligible, militates against any reasonableness. This is what Respondent Bank has precisely done.

- n.** Short of naming it as shortlisting test, the eligibility screening written test (objective type) prescribed under Rule 4.1 for Banking Associates (without IBPS) in “Seniority cum selectivity channel” for all purposes and intents is a short-listing test. It goes without saying that short listing, though permissible, is permissible only in a situation where number of candidates is unduly larger than the number of vacancies. It is made permissible by the courts only for administrative convenience of the selection body. The most quintessential curb on such power is that the procedure followed in such shortlisting must be fair and reasonable within the meaning of Art. 14 of the Constitution of India. The data submitted by the respondent No. 1- the Bank shows that number of candidates especially in the category of Banking Associates (without IBPS) in “Seniority cum Selectivity Channel” is far less than the number of available vacancies. The necessary corollary that follows is that any test, much less the merit test, was not the requirement of the Policy for Banking Associates (without IBPS) in “Seniority cum Selectivity Channel” in the attendant facts of the case.
- o.** The Court, while deciding the case, may also take into consideration the conduct of the of the respondent No. 1- the Bank in dealing with the orders of the court



particularly interim order dated 16-01-2024 wherein the respondent No. 1 - the Bank was directed to interview the petitioners as interim measure so that they are not non-suited. The respondent No. 1 - Bank, however, declined to observe the order and have refused to interview the petitioners. The interview exercise has already been completed and the order of this court has been observed in outrageous breach. The petitioners, in case the Court finds merit in their case are vulnerable to reasonable likelihood of bias in further process of selection as they stand singled out bunch/unit. It goes without saying that bias in all forms is an anathema in our constitutional scheme governed by rule of law.

- p.** The seriousness with which the response to the writ petition is submitted also falls for the consideration of the court. The refutation as to the Bank being an instrumentality of State is prominently made by the respondent Bank in the response/reply, however, in some other proceedings before this Hon'ble Court, the Bank has taken a categorical approach that the Bank is instrumentality of State within the meaning of article 12 of the Constitution of India. Order dated 29-06-2020 passed in WP(C) No. 913/2020 titled Abhishek Gupta and ors v/s Jammu and Kashmir Bank, be taken note of.
- q.** The argument that the petitioners cannot challenge the procedure after participating in the selection process is also fallacious. This rule is subject to well-known caveat that the procedure must be advertised and followed and must pass the test of reasonableness, non-arbitrariness and fairness. It must not be offensive to fundamental



rights. Be that as it may, the petitioners are not challenging the procedure, advertised, and followed, but the wrong working of procedure advertised and/or not followed. The procedure advertised i.e. policy is followed in breach and in a manner that offends article 14 of the Constitution of India.

- r.** Since the vacancies of all these 5 years got clubbed and are sought to be filled without maintaining the year wise quota, the process is violative of far too well settled proposition of law set out by the Apex Court in Suraj Prakash Gupta's case.

26. On the other hand, Mr. Shafqat Nazir, learned counsel for the respondents have come up expounding his submissions in written form as under:-

Petitioners are estopped in challenging the selection process:

- a)** It is a settled law that when a candidate appears in an examination without objection and subsequently finds himself unsuccessful, any challenge to selection process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated, He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable.
- b)** In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, the respondents competed for the post of Physiotherapist and participated in the written



examination held in pursuance of advertisement notification and later threw challenge to legality of the process. The Hon'ble Supreme Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection.

The Hon'ble Supreme Court has held that it is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome."

- c)** In Chandigarh Administration v. Jasmine Kaur, (2014) 10 SCC 521, the Hon'ble Supreme Court has held that "a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non selection."

The aforesaid dictum of law was reiterated in detail by the Hon'ble Supreme Court in the case of Ashok Kumar v. State of Bihar, (2017) 4 SCC 357, which has been followed by this Hon'ble Court in the case of Fatima Rahim v. State of J&K, 2020 (5) JIKJ CHC) 241.

- d)** In the instant case, the examination in question was held on 16.12.2023 and result thereof was declared on 04.01.2024. The petitioners did not challenge the



selection process or for that matter the nature of written test immediately but waited for declaration of result thereof. After finding themselves unsuccessful, subsequently challenged the selection process (in which they participated without any demur) by way of instant petition which was filed only on 12.01.2024 and registered on 15.01.2024.

- e) Thus, in light of aforesaid position of law the petitioners are precluded and estopped from challenging the selection process in question. The respondents have committed no incurable illegality in conducting the said selection process and the petitioners are, without challenging the promotion policy, merely contending alleged discrimination meted out to them which is not borne by facts. Moreover, the Promotion Policy in question providing for 'written test' through IBPS for non IBPS seven years plus candidates was all along in public domain and thus in the knowledge of the petitioners, however, no objections were filed thereto.

No discrimination with any employee:

- f) The petitioners are primarily challenging the selection process in question on the ground that they have been discriminated against those candidates falling under Merit/Fast Track channel. In para 14 of the lead writ petition, the petitioners voice their grievance in terms that they are "distinct and unequal" class from the Merit/Fast Track channel and therefore cannot be subjected to same test as envisaged for latter. This argument is fallacious to the core. Both the petitioners as well as employees falling under Merit/Fast Track



channel are part of the same class i.e. “Banking Associates,” with the only difference that the Promotion Policy has provided two channels for eligible Banking Associates for promotion to Officers’ Cadre based on length of qualifying service. Merely because the petitioners have longer service than those in Merit/Fast Track channel does not make them a different “class” for the purpose of Article 14 when in fact both sets of employees are holding the same post with same pay scale and job responsibilities. Thus in the instant cases, as alleged the apples have not been treated same as oranges because there are only apples in the basket though of varying in sizes. The bigger apples have already been given their due share under the Promotion Policy by giving them a lion’s share in promotional posts (75%) having regard to their size (read seniority), now the bigger apples cannot further contend that they should be put to different process in their transition to cider stage, which if permitted, may undoubtedly subject other employees to discrimination. Moreover, the petitioners are erroneously pitching themselves against the candidates under the Fast track channel. The petitioners are competing in their own channel against separate 537 vacancies forming 75% of the total number vacancies (i.e.716). The intention of the respondent Bank in framing the Promotion Policy in question and subjecting the candidates to written test is to have a homogeneous pool of candidates available for the purpose of interview and consequent promotion. The respondent Bank, being a financial institution, balancing the loss to income ratio, cannot afford to



handover the managerial positions to non-meritorious candidates, as the petitioners are, and thus risk financial losses.

- g)** In the case of *Md. Usman v. State of Andhra Pradesh*, AIR 1971 SC 1801, Rule 5 of Andhra Pradesh Registration Subordinate Service Special Rules, was challenged for putting together two unequal classes i.e. Upper Division Clerks (UDC) and Lower Division Clerks (CLDC) through same recruitment process to post of Grade-II Sub-registrars. However, the Hon'ble Supreme Court upheld the vires of impugned rule on the basis of rationale underlying the same. In the case in hand, the candidates are not falling under two different "classes" as highlighted above and moreover there is no inter se competition between employees falling under two aforementioned channels. Thus, the question of discrimination does not arise at all.

Seniority not a determining factor in selection:

- h)** In para 14, 18 and 19 of the lead writ petition the petitioners contend that by subjecting them to same test as that for the Merit/Fast Track channel, the junior employees would steal march over them. This argument is fallacious on many counts. Firstly, there is no inter se competition between employees falling under two aforementioned channels both having separate share of promotional posts (75%: 25%) as noted above. Secondly, the petitioners being incumbents of same post as those falling under Merit/Fast Track channel are holding, the petitioners cannot seek a different and less onerous test than those employees falling under Merit/Fast Track



channel. In the case of B.V. Sivaiah v. K. Addanki Babu, AIR 1998 SC 2565, the Hon'ble Supreme Court conclusively held that seniority is not the sole determining factor in promotional process and merit should prevail when other considerations are same.

The relevant part of judgment is reproduced below:

“In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are inter se seniority and comparative merit of employees who are eligible for promotion. In Sart Ram Sharma v. State of Rajasthan & Ors., 1968 (1) SCR 111, this court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotion to be made entirely on grounds of seniority and that if a post falls vacant it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones, an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand lays stress on meritorious performance irrespective of seniority and even a person, though junior but much more meritorious performance irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for Promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of



seniority cum-merit' and 'merit-cum-seniority' which take into account seniority as well as merit seek to achieve such a balance.

The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule SC) of the Indian Administrative Service Indian Police Service (Appointment by promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew. J. in Union of India v. Mohan Lal Capoor & Ors., 1974 (1) SCR 797, has said: "..... for inclusion in the 'list, merit and suitability in all respects should be the governing consideration and that seniority should play a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm seniority would tilt the scale."

- i) In the instant case, the candidates falling under Seniority cum Selectivity channel, having already been given 75% share of promotional posts, cannot contend that they are entitled to a 'watered down' test for promotion and not a test of same or similar stoutness as envisaged for the Fast Track channel.

Promotion Policy prescribes same written test for both channels but with different implications:



- j)** It is an admitted fact that the Promotion policy of the respondent Bank envisages written tests for both channels. It is further clear that the Policy nowhere provides that the written test for the Seniority cum Selectivity channel shall be different than that for the Fast Track cum Merit channel. However, the Policy does make a distinction regarding as to how the candidates from two said channels are to be shortlisted for interview.
- k)** In case of Seniority cum Selectivity channel, the candidates are to merely score prescribed qualifying marks (40% or 35%, as the case may be) and would then be screened for interview on the basis of their “seniority” and not the marks scored in written test; this is why the Policy refers to this test as “screening written test”. On the other hand, in case of Fast Track cum Merit channel, the Policy avoids the word ‘screening’ and only uses words ‘written test’ because candidates falling under this channel are shortlisted for interview on the basis of “merit” scored in the written test and not on the basis of seniority.
- l)** Thus, for Seniority cum Selectivity channel, the written test has only “screening” purpose and then seniority comes into play for short-listing for interview, whereas in case of Fast Track cum merit channel, the marks scored by candidates in said written test determine who from the said channel would get shortlisted for interview. This fine but important distinction requires to be appreciated by this Court and the contrary argument that the Promotion Policy



envisages two different tests (or that there should be two such different tests) deserves to be rejected. If for the sake of argument it is accepted that candidates falling under two aforementioned channels form two different classes, even then the requirements of Article 14 are met as absolutely similar treatment is not given to both the channels since in case of Seniority cum Selectivity channel the written test is merely for screening purpose whereas for the Fast Track cum Merit channel the written test takes into account the actual marks scored by the candidates for the purpose of short listing for interview.

- m)** In other words, the same written test serves two different functions and such candidates falling under the two channels are not given absolutely similar treatment as contented by the petitioners. The respondent Bank has already submitted a chart explaining the aforementioned position indicating that while all the candidates from Seniority cum Selectivity channel have been called for interview after securing the 40% or 35% marks, as the case may be, the short listing of candidates for interview as regards the Merit/Fast Track channel has been done on the basis of merit in the written test in the ration of 1:1.5. That being the reason that not all those candidates from Merit/Fast track channel who have qualified the written test by 40% or 35% marks, as the case may be, have been called for interview and the cut off for same has gone as high as 61 points.

No interference by Courts in Selection Criteria:



- n)** One of the foundational principles in service, as enunciated by the Hon'ble Supreme Court in a number of cases, is that the Courts adopt an approach of restraint and shall not interfere in the selection criteria or for that matter shall not second guess the feasibility and nature of selection tests for public posts. The position of law in this regard has been reiterated by the Hon'ble Supreme Court in the recent case of Tajvir Singh Sodhi v. State of J&K, 2023 (4) JKJ (SC) 19: AIR 2023 SC 2014, holding that:

“Courts in India generally avoid interfering in the selection process of public employment, recognizing the importance of maintaining the autonomy and integrity of the selection process.”

In Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan, AIR 1990 SC 434, the Hon'ble Supreme Court clarified the scope of judicial review of a selection process holding that the Courts shall not exercise its power of judicial review to upset or alter a selection process on the mere asking of a litigant, and the same can be resorted to only on limited grounds such as illegality or patent material irregularity in the selection process.

- o)** In the instant case, the petitioners do not contend that the respondents have committed any illegality or patent material irregularity in the conduct of selection process. In fact, the selection process has been scrupulously conducted in conformity with the Promotion Policy in vogue which has, admittedly, not been challenged by the petitioners. The petitioners having failed in the written test are now crying foul that they have been discriminated by being subjected to same test as for



those employees falling under Fast track channel. It has been already clarified hereinabove as to how the allegation of discrimination is not substantiated by facts and in law. Moreover, the petitioners cannot seek an examination of their choice or at any rate a different test from those who are in essence similarly circumstanced with the petitioners. Further, the Courts too are obliged (in view of position of law noted above) not to enter into the arena of prescribing what a selection test for a particular set of employees should be like, as the same would plainly be akin to judicial law-making which the Constitution and the law does not endorse.

No vested right to seek promotion when the vacancies arise:

- p) The petitioners have finally contended that they were eligible for promotion in 2019 and therefore they should be considered for promotion under old Policy and not under the Promotion Policy presently in vogue as the respondent Bank allegedly did not make promotions when the vacancies arose. This contention of the petitioners is incongruous and untenable. Firstly, clause 3 of the Promotion Policy merely obliges the respondent Bank to “assess” the vacancies before the beginning of each financial year and does not mandate that promotion should also be undertaken every year. Secondly, it is settled law that the employees have no vested right to seek promotion under rules existing at the time when the vacancies arose. In the case of *Deepak Aggarwal v. State of U.P.*, (2011)6 SCC 725, the Hon’ble Supreme Court held as follows:



“It is by now a settled Proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the ‘rules in force’ on the date the consideration took place. There is no rule of universal or absolute application & that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates.”

Similarly, this Hon’ble Court in the case of Vishal Vikram Singh Rathore v. State, SWP No. 681/201, decided on 08.08.2018, has held as follows:

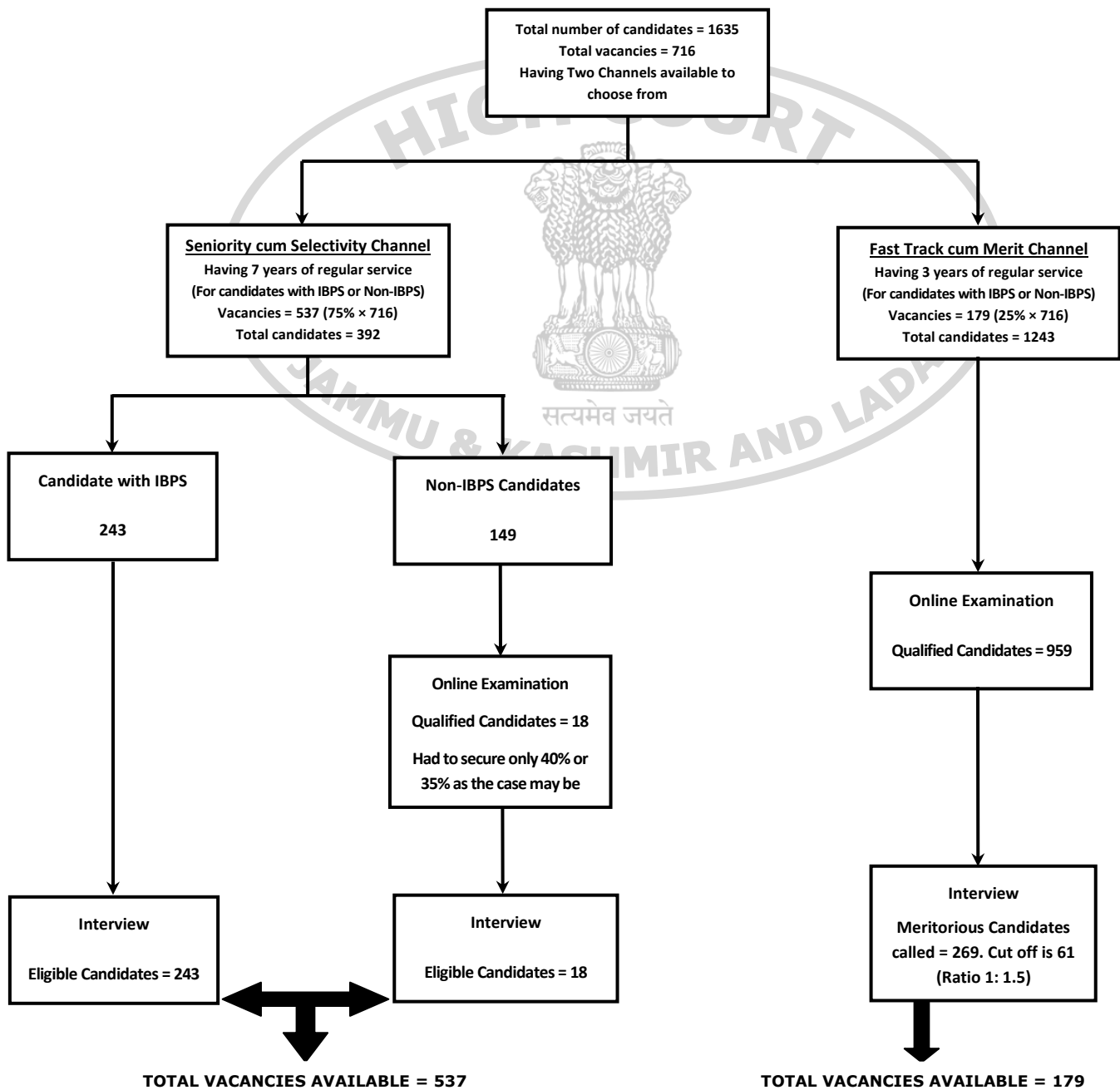
“11. It is trite law that a candidate has no right to insist that the vacancy in the Government service should be (filled up immediately on its becoming available. The employer is well within its right to decide the time when such vacancy(s) available with it is required to be filled up. The Government by way of a policy decision can even freeze the vacancy(s) and direct that no recruitment shall be made for a specified period.”

- q) Thus, in view of the aforesaid position of law, the contention of petitioners that they should be or should have been considered for promotion under old policy is without any merit and is liable to be rejected. Moreover, it requires to be pointed out that the respondent Bank has not purposefully delaying making of promotions to Officer’s cadre. In fact the present policy of promotion was promulgated in 2019 itself but it had to pass through various mandatory phases before it could have come into force, for example review in 2021, review by HR Committee in February 2022 and approval of Board of Directors in July 2022. Thus, there was no



“dereliction” on part of respondents as contended by petitioners. Further, post August 2019 and in view of COVID-19 pandemic in 2020-21, the process of finalization of the Promotion Policy faced a roadblock.

27. Before proceeding further, a data statement of promotion exercise undertaken by the respondent No. 1 – the Bank is set out herein next so as to have a perspective as to how many posts and contenders are involved in the fray:





28. Keeping in perspective the aforesaid facts and circumstances and the submissions of the respective sides, this Court, when evaluates the grievance of the petitioners and the response thereto of the respondent No. 1 – the Bank, comes face to face with an admitted state of fact that the petitioners, as non-IBPS Banking Associates with seven (7) plus years of service and the Banking Associates with three (3) plus years of service came to be subjected to same rigorous written test meant for Fast-Track/Merit Channel without any shade of difference and that being so can it still be held that the petitioners cannot be heard to say that they have been subjected to an unfair and arbitrary treatment or that the respondents should be heard to prevail that the petitioners cannot crib about the nature of the written test subjected upon them by the respondent No. 1 – the Bank as being an employer in its discretion.

29. This Court is led to envision a scenario that if a fitness test designed and meant for a runner is to be applied for checking the fitness of a walker, then would that fitness test suffered by a walker disqualify him from being considered in a competition for selection meant for co-walkers who were not subjected to said fitness test meant for the runners for their qualification for participation in a walkers' competition and the obvious answer to come with respect to the said question is No. A walker cannot be tested on a fitness



test meant for a runner and, therefore, disqualification cannot be ascribed to him so as to unfit him to join a group of walkers with whom he is supposed to compete in a competition for promotion to next level.

30. The respondent No. 1 – the Bank itself is the author of the Policy and it cannot apply it by tweaking its text and context. If the situation was so easy to be figured out as the respondent No.1-the Bank is meaning to showcase in its reply and written submissions that for a non-IBPS Banking Associate with seven (7) plus years of service to earn promotion to next level he or she is to clear a common written test competing along with Banking Associate with three (3) plus years of service under Fast-Track/Merit test regime, then the Policy itself would have come up with no distinction and just by one rule serving the two ends would have sufficed the purpose but the Policy is not so worded meaning and recommending.

31. There is an apparent inherent fallacy in the stand of the respondent No. 1 – the Bank. The respondent No. 1 – the Bank's stand is that by same common written test, non-IBPS Banking Associates with seven (7) plus years of service and Banking Associate with three (3) plus years of service under the Policy are to qualify by earning base level percentage to earn entry in the



respective pools under two different channels. If that is to be so, then a non-IBPS Banking Associate with seven (7) years plus of service upon qualifying the same very written test would have his/her both hands full in terms of his/her promotion aspect as he/she can figure in the Seniority-cum-Selectivity channel and simultaneously under Fast-Track/Merit channel and thereby would be eating away the prospect of his/her colleague Banking Associate with three (3) plus years service having qualified the same written test in the sense that in the Fast-Track/Merit channel, APAR is also of 30 marks, Interview/Potential is of 60 marks, Additional Qualification is also of 10 marks as is for Seniority-cum-Selectivity channel appraisal. A non-IBPS Banking Associate with seven (7) plus years of service having qualified the common written test as meant for Fast-Track/Merit channel would have an edge in terms of his/her appraisal under the three heads as prescribed for assessment, with seniority of seven(7) plus years of service being an added advantage/edge over a qualifying Banking Associate with three (3) plus years of service under Fast Track/Merit channel. The Policy surely does not mean to debar a non IBPS Banking Associate with 7 plus years of service from availing a chance or opportunity in appearing under Fast Track/Merit channel. Clause 4.1(b) provides eligibility and qualification for promotion of Banking Associate under Fast Track/Merit channel and that eligibility is all Banking



Associates having completed three years of regular service as on 31st March of the preceding financial year for participation in the promotion process under Fast Track/Merit channel.

32. Minimum qualifying written test marks under Fast Track/Merit channel in terms of clause 5.2 is 40% and 35% for general and reserved category respectively and same percentage is for non IBPS Banking Associates with seven (7) years plus regular service under clause 4.1(a) of Seniority-cum-Selectivity channel. Now if the respondent No.1-the Bank is allowed to have its say, as is vehemently desired by it in its reply and written submissions, then common written test undertaken and qualified by a non-IBPS Banking Associate with seven(7) years plus regular service by earning base line percentage age would open door for his/her promotion under Fast Track/Merit channel and then what for he/she would opt to stay in larger competitive field of Seniority cum Selectivity channel promotion as he/she would have a switch over choice. Thus, the lens with which the respondent No. 1 – the Bank is seeing its own promotion Policy is more refracting then reflecting.

33. Surely the aforesaid situation is not the end objective of the Promotion Policy which clearly conceives and envisages that non-IBPS Banking Associates with seven (7) plus years regular service to be deserving a helping hand in their upward progression subject



to their qualifying a moderately framed screening written test commensurating with their status and background as non-IBPS Banking Associate but respecting their seniority and non IBPS handicap for earning them an entitlement to be considered for promotion under Seniority-cum-Selectivity Channel. Thus, rejection is not an essence of the Promotion Policy for non-IBPS Banking Associates with seven (7) years of service by a common written test meant for Fast-Track/Merit channel but the appraisalment is the catch-word of the Promotion Policy for non-IBPS with seven (7) plus years of service by giving them a screening written test under Seniority-cum-Selectivity channel which may or may not by an In – house conducted screening written test.

34. The respondent No. 1 – the Bank has gone squarely wrong in subjecting the petitioners to an unfair, arbitrary and discriminatory treatment by making them to suffer a written test not meant for them thereby condemning them as failure and loser in terms of their respective promotion claims and prospects under the Seniority-cum-Selectivity Channel. This court finds the respondent No.1-the Bank caught on wrong foot in dealing with the non IBPS Banking Associates with seven(7) plus years of service availing promotion opportunity under Seniority cum Selectivity channel. The respondent No.1-the Bank has not come forward with



any decision from its end being placed on the file of this writ petition to show by which decision at its end the common written test for Fast Track/Merit channel Banking Associates and non IBPS Banking Associates came to be ordered and carried out.

35. The understanding of the Court with respect to the essence of the Promotion Policy in the light of the aforesaid is strengthened by clause 5.2 tabulated statement which is reproduced herein again as under:-

Particulars	Seniority-cum-Selectivity channel	Merit/ Fast Track 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/JAIIB/CAIIB/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.**

36. The very fact that with respect to the Seniority-cum-Selectivity Channel, Written Test (online) is mentioned to be not



applicable with which the petitioners are related to whereas with respect to Merit/Fast Track Channel the expression “qualifying only,” is emphasizing the essence of the written test being a real fire test to qualify for jump promotion and obviously the said fire test is not meant to be a walkover for Fast-Track/Merit channel Banking Associates aspiring for promotion by jumping the queue ahead of their senior Banking Associates, IBPS or non-IBPS, with seven (7) plus years of service.

37. Thus, the respondent No. 1 – the Bank cannot be heard to say that Seniority-cum-Selectivity Channel and Fast-Track/Merit channel are prone to the same written test for earning the qualification for consideration for promotion though under the respective two channels.

38. Clause 5.4.2 further strengthens the understanding on this aspect that the merit obtained in the written test by a Banking Associate with 3 plus years of service aspiring for Fast-Track/Merit channel promotion is the determining basis for the entry of a Banking Associate aspirant in the pool of consideration under Fast-Track/Merit channel, whereas it is not so in the case of non-IBPS Banking Associates with seven (7) plus years of service under the Seniority-cum-Selectivity Channel in the context of screening written test (objective type) meant for them to be undertaken.



39. Clause 4.1 very distinctly uses word “an eligibility screening written test (objective type),” whereas clause 5.2 in its table with respect to written test (online) makes the same to be not applicable to Seniority-cum-Selectivity Channel but meant for Fast-Track/Merit channel. Thus, what is written test (online) for Fast-Track/Merit channel Banking Associates with three (3) plus years of service is not to be an eligibility screening written test (objective type) for non-IBPS Banking Associates with seven (7) plus years of service under Seniority-cum-Selectivity Channel. The respondent No. 1- the Bank is creating a false equivalence and illusion by its stand in the case thereby denouncing the petitioners.

40. This Court has reproduced hereinbefore para 14 of the writ petition and the reply thereto by the respondent No. 1's end which read between the line clearly carries an admission on the part of the respondent No. 1 – the Bank that the petitioners were caught unaware about the nature of the written test to which they were being subjected to which if the petitioners would have been made known/apprised earlier by the respondent No. 1 – the Bank that non-IBPS Banking Associates with seven (7) plus years of service figuring in Seniority-cum-Selectivity channel for promotion purposes are to bear the same written test as meant for Banking Associates with 3 plus years of service under Fast-Track/Merit



channel then the petitioners surely would have the option of non-participating in the said process in exercise of their legitimate right of objection. Therefore, it cannot lie in the mouth of the respondent No. 1 – the Bank that the petitioners cannot agitate after having participated in the process. The respondent No.1-the Bank by its stand seems to play ducks and drakes with the petitioners.

41. It seems that the decision/act on the part of the respondent No. 1 – the Bank in subjecting the petitioners to bear a common written test as meant for Fast-Track/Merit channel Banking Associates was pre-motivated with a step-motherly mindset toward non-IBPS Banking Associates with seven (7) plus years of service so as to ensure that as many as less non-IBPS Banking Associates with seven (7) plus years of service can make it to the pool of Seniority-cum-Selectivity channel for the purposes of promotion competing with IBPS Banking Associates with seven (7) plus years of service. This fact is exposed from the fact that promotional posts available are large in number and the total number of Banking Associates, IBPS and non-IBPS, with seven(7) years service is less in number meaning thereby even without any test qualification non-IBPS Banking Associates with seven years service could be accommodated in promotion for next post and still leaving posts



unfilled which fact is gatherable from data statement set out hereinbefore.

42. In fact, the petitioners or for that matter all non-IBPS Banking Associates with seven(7) plus years of service, came to suffer a double discrimination, one being tested on a different test not meant for them and other being to maximize the promotion of IBPS Banking Associates to the higher post thereby leaving non-IBPS Banking Associates with seven(7) plus years of service to stay non-promoted and keep on serving the respondent No. 1 – the Bank at the same level of their post without any progression just bidding time for their retirement to be self-weeded out without any promotion.

43. The submissions made by Mr. Shafqat Nazir, learned counsel for the respondents as reproduced hereinbefore and citations in support need not be dealt by this Court individually as all the submissions can be answered with a one liner that the effort on the part of the respondents in particular the respondent No. 1 – the Bank is to square the circle by imposing a contorted interpretation on the relevant clauses of the Policy pertaining to and meaning a different treatment reserved for non-IBPS Banking Associates with seven(7) plus years of service under Seniority-cum-Selectivity channel and the Banking Associates with 3 plus years of



service under Fast-Track/Merit channel. The standpoint of the respondent No.1-the Bank is self defeating which can be called out by posing a scenario to the respondent No.1-the Bank that instead of non IBPS Banking Associates with seven (7) plus years of service under Seniority cum Selectivity promotion channel being given the actually intended eligibility screening written test (objective type) as per clause 4.1(a), if it would have been the Banking Associates with three (3) plus years of service availing Fast-Track/Merit promotion channel asking for appearing same level of screening written test (objective type) and not the one as mandated by clause 5.2, then would the respondent No.1-the Bank have extended them the courtesy of treating them at par with non IBPS Banking Associates under Seniority cum Selectivity channel in the matter of taking the same screening written test. This court can hazard a quickened and safe guess that the respondent No.1- the Bank would have come up and will always come up with No to Banking Associates with three(3) plus years of service.

44. This court would be just adding pages to the judgment in the event of dealing point-wise with the submissions of the learned counsel for the petitioners as the same cannot avail to puncture the very Promotion Policy self authored by none else than the respondent No. 1 – the Bank. The respondent No. 1 – the Bank is



acting against the very sensitivity of the Promotion Policy by losing sight and sense of the basis of clause 4.1(a) of the Policy in the context of non-IBPS Banking Associates with seven (7) plus years of service aspiring for promotions under Seniority-cum-Selectivity Channel. Once clause 4.1(a) of the Policy has bestowed a class status to non IBPS Banking Associates in the context of their promotion progression in contrast to IBPS Banking Associates with seven (7) plus years of service under Seniority cum Selectivity channel promotion and Banking Associates above three (3) years of service under Fast Track/Merit channel promotion then by subjecting non IBPS Banking Associates to a common written test meant for Fast Track/Merit channel Banking Associates with three years plus service is nothing but treating unequals as equals which in every sense of understanding of facts of the case is violative of facets of article 14 of the Constitution of India. In the case of **U.P. Power Corporation Ltd. Vs Ayodhya Prasad Mishra & Anr., (2009 AIR SC 296)** the Hon'ble Supreme Court of India in its judgment at para 37 in a single line statement has captured the essence and sensitivity of article 14 of the Constitution of India, "***It is well settled that equals cannot be treated unequally. But it is equally well settled that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the***



Constitution.” In the case U.P. Power Corporation Ltd. Vs Ayodhya Prasad Mishra & Anr. (supra), for the promotion purposes to the post of Superintendent Engineer, the Executive Engineers were categorized in category I, II and III for the sake of preference but the employer U.P. Power Corporation Ltd., by following its self interpretation, understanding and application of the Regulations related to categorization and by adhering to past practice in the name of consistency had diluted the categorization thereby benefitting category II placed Executive Engineers by claim of their seniority above the Executive Engineers in category I only to suffer judgment against its action by the High Court of Allahabad and confirmed by the Hon’ble Supreme Court of India. This judgment extends a support to the case of the petitioners as understood by this court in the manner set out.

45. Article 14 of the Constitution of India envisions and enshrines equality concept intensively, extensively and attentively. Article 14 envisages fairness and equality in the matter of conduct by the State and its authorities, which the respondent No. 1 – the Bank is under article 12 of the Constitution of India. Article 14 of the Constitution of India is found squarely violated in the present case which renders the action of the respondent No. 1 – the Bank illegal *qua* the petitioners and, therefore, this Court is left



with no other option but to hold the selection process under Seniority cum Selectivity channel with respect to non-IBPS Banking Associates, as are the petitioners, conducted by the respondent No. 1- the Bank as illegal and arbitrary and consequently warranting a direction unto the respondent No. 1 – the Bank to consider conducting a fresh eligibility screening test (objective type) as envisaged by clause 4.1(a) of the Policy with respect to non-IBPS Banking Associates with seven (7) years plus of service for the purpose of their participation in the promotion process under the Seniority-cum-Selectivity Channel and thereupon consider the promotion of non-IBPS Banking Associates with seven (7) years plus service who are able to qualify the said written screening eligibility test by having 40%-35% marks for General/ Reserved Category as the case may be.

46. This court can not countenance with the expectation of the writ petitioners for a direction unto the respondent No.1-the Bank to afford promotion to the petitioners by dint of their seniority under Seniority cum Selectivity channel without going through the process of screening written text envisaged under clause 4.1(a) of the Policy as for that the petitioners ought to have thrown a challenge to the requirement of screening written test (objective type) for the petitioners to suffer which is not the case. The Policy in its version



2.0 came into picture upon its approval by the Board of Directors of the respondent No.1-the Bank on 13/07/2022 and the petitioners ought not to have waited for their appearance and purported failure in the common written test conducted under the new Policy to come alive to a realization that they are not to be governed by the Policy in currency but under the old Policy governing the promotions.

47. Thus, in view of the aforesaid facts and circumstances and the reasoning applied thereto, by holding the action of the respondent No.1-the Bank in subjecting non IBPS Banking Associates eligible for consideration under Seniority cum Selectivity promotion channel, to a qualifying written test not meant for them under the Policy, as illegal, arbitrary and discriminatory, this Court directs the respondent No.1-the Bank to consider the petitioners and similarly placed non IBPS Banking Associates with seven (7) plus years of service for promotion as per assessment envisaged under clause 5.2 to the next post with or without subjecting them to a screening written test (objective type) at its discretion given the fact of number of available promotion posts more and the total number of Banking Associates , IBPS and non-IBPS, less.

WP(C) No. 130/2024



48. This writ petition is similarly placed as is writ petition No. 74/2024 so the judgment in writ petition WP(C) No. 74/2024 is to apply on all fours to the writ petition WP(C) No. 130/2024.

**(RAHUL BHARTI)
JUDGE**

SRINAGAR
26.07.2024
Muneesh

Whether the order is speaking : Yes

Whether the order is reportable : Yes

