

GAHC010263642018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8230/2018

BADAL DAS

S/O- SRI JITENDRA DAS, R/O- VILL- NEW BONGAIGAON, BIDYAPITH HIGH SCHOOL, WARD NO. 01, P.O. NEW BONGAIGAON, P.S. NEW BONGAIGAON, DIST- BONGAIGAON- 783385, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. BY THE COMM. AND SECY., MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DEPTT. OF PERSONNEL AND TRAINING), NEW DELHI

2:THE UCO BANK

A GOVT. UNDERTAKING

REP. BY THE GENERAL MANAGER

H.O. 10

B.T.M. SARANI

(BRABOURNE ROAD)

KOLKATA- 700001

WEST BANGAL

3:THE ASSTT. GENERAL MANAGER

HUMAN RESOURCE MANAGEMENT

UCO BANK H.O.

4TH FLOOR

10 BTM SARANI

KOLKATA- 700001

4:THE ZONAL MANAGER

UCO BANK

MANIRAM DEWAN ROAD

SILPUKHURI

GHY- 3

5:THE CHIEF OFFICER
UCO BANK
MANIRAM DEWAN ROAD
SILPUKHURI
GHY-3

6:THE DY. GENERAL MANAGER
UCO BANK
MANIRAM DEWAN ROAD
SILPUKHURI
GHY-

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. N. N. B. Choudhury. Advocate.

For the Respondents : Mr. P. C. Goswami, Advocate.

Date of Hearing : 26.02.2024

Date of Judgement : 26.02.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. N. N. B. Choudhury, learned counsel for the petitioner. Also heard Mr. P. C. Goswami, learned counsel appearing on behalf of the respondent Bank.
2. The grievance of the petitioner is that in terms of the policy of the Bank, he ought to have been promoted to the clerical grade under the "first

channel” instead he has been promoted through the “Second channel” and such promotion disentitles him from certain financial benefits.

3. The background fact of the present case is that the petitioner was recruited initially to the post of Armed Guard. The petitioner’s candidature was sponsored by the District Sainik Board, Kokrajhar and in terms of a policy decision, a sainik who has rendered 15 years of service in armed forces, is treated to be a graduate. Accordingly, the petitioner claims that he ought to have been treated as Graduate for the purpose of consideration for his case to the next higher post of clerk and ought to have been promoted through the first channel however, same has not been done. Though, he has been promoted, the said promotion was through the Second channel.
4. A perusal of the recruitment policy of the bank, which is a part of the record reflects that there are three channels for promotions. The first channel mandates that a subordinate staff including full time Sweepers, who have obtained a valid degree in any discipline from a recognized University shall be considered for promotion to the clerical cadre without any test or interview, however, subject to the condition that the incumbent shall acquire qualification of a valid degree in any discipline from a recognized University after his recruitment in the Bank. The second channel provides that a subordinate staff other than Graduate including matriculate full time sweepers, who have put a minimum period of five year continuous service, would be eligible to participate in the selection process to be conducted by the Bank/reputed external agencies through an All India Written Test. The third channel is on the basis of seniority and that is for

the under graduate.

5. Yet another channel is a Special Channel for Ex-Servicemen. In terms of the said policy, the Ex-Servicemen recruited/re-employed against reserved posts in subordinate cadres, shall be entitled for weightage for the period of service rendered by them in the defence services subject to rendering at least three years of actual service in the Bank from the date of recruitment/reemployment.
6. A perusal of the policy as regards the first channel, the prescription can be summarized as follows:-
 - I. The incumbent must be a Member of Subordinate staff including full time Sweepers.
 - II. The incumbent have obtained a valid degree in any discipline from a recognized University.
 - III. Such acquisition of qualification must be after recruitment in the bank services.
 - IV. If the aforesaid qualification/prescriptions are satisfied then, can be promoted to the clerical cadre without any test or interview.
7. Thus in the considered opinion of this Court, a special class has been created by the Bank under its policy of promotion, consisting of those Subordinate staff including full time sweeper who has obtained a degree from a recognized University after recruitment to the Bank's service.
8. In the case in hand, though there is no dispute on the propositions and

the argument advanced by Mr. N. N. B. Choudhury, learned counsel for the petitioner that the degree of the petitioner in terms of the certificate [Annexure-III] and in terms of extant policy is to be treated as a valid degree, however, the prescription of acquisition of said degree after entering into the Bank service is not satisfied by the petitioner inasmuch as in case of promotion through first channel, the prescription is something different i.e. acquisition of a degree after entering into the service.

9. Though Mr. Choudhury, learned counsel for the petitioner has urged that such policy itself violates the Article 14 of the Constitution of India and there should not be any classification of person obtaining a degree prior to entering into the service and obtaining a degree after entering into the service and that there should not be any discrimination in fixing scale of pay on the basis of time of acquisition of degree, this Court is not inclined to endeavour into that issue in absence of any challenge to the policy. The issue is kept open to be decided in an appropriate case when such policy is under challenged.
10. The promotion order [Annexure-X] is abundantly clear that the petitioner has been promoted through the second channel which prescribes a promotion through an All India Test conducted by the Bank and the eligibility prescribed is the persons other than graduate including the matriculate full time sweepers.
11. Though such prescription is for other than graduates and the petitioner has participated in the selection and thus promoted, such fact will not lead to a conclusion that the petitioner is not a graduate inasmuch as in terms of Annexure-III, he is treated to be graduate by virtue of his service rendered

in Armed Forces.

12. Accordingly, this Court finds no fault in promoting the petitioner under the second channel.
13. The second contention raised in this writ petition is as regards fixation of scale of the petitioner at entry point inasmuch as it is the case of the petitioner that the salary of the petitioner ought to have been fixed at the entry level on the basis of last salary drawn + DA in the Armed Forces. However, according to the petitioner, the respondent has wrongly fixed the scale of pay of the petitioner and thus, deprived him of the rightful due.
14. The policy of the bank itself prescribes that pay fixation of an Ex-Servicemen would be through protection of pay + DA drawn by him at the time of release from the armed forces. Such proposition is not being disputed by the Bank inasmuch as such policy is being annexed in their additional affidavit.
15. That being the position, the grievance of the petitioner that his salary was not fixed in terms of the aforesaid guideline for pay fixation issued by the Bank itself, in the considered opinion of this Court, Bank should consider the case of the petitioner in terms of the aforesaid guideline.
16. Accordingly, it is provided that the petitioner shall be at liberty to file a detail representation before the competent authority raising such dispute of incorrect fixation of scale of pay in terms of guideline of pay fixation of Ex-Servicemen and on such representation being filed, the competent authority i.e. the Bank shall consider such representation and do the needful in terms of the extant guideline of pay fixation of Ex-Servicemen. In

the event, it is determined that the fixation of scale of pay as regards the petitioner was wrong, the consequential benefits be given to him. Such exercise be carried out within a period of 6 (six) weeks from the date of receipt of the representation to be filed by the petitioner along with a copy of this order.

17. With the aforesaid, this writ petition stands disposed of.

JUDGE

Comparing Assistant