

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: February 05, 2015*
Judgment Delivered on: February 09, 2015

+ **LPA 898/2013**

RAJESH KUMAR Appellant
Represented by: Mr.Nagendra Rai, Sr.Advocate
instructed by Mr.Kripa Shankar
Prasad and Dr.Brahm Prasad,
Advocates

versus

STATE BANK OF INDIA THR
THE CHAIRMAN & ORS. Respondents
Represented by: Mr.Rajiv Kapur & Ms.Aparna
Iyer, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The appellant is aggrieved by the decision dated September 03, 2013 passed by the learned single Judge dismissing WP(C) No.2034/2013 filed by the appellant. The view taken by the learned Single Judge is that the appellant was estopped from claiming a right under the policy applicable to the Probationary Officers of the respondent bank pertaining to the written examination : '*Probationary Officers – 2009-10 Batch*', in view of the petitioner having accepted and thereafter taken a chance at the re-test conducted, and hence exercised a right under the letter dated May13, 2011.

2. To appreciate the legal issue arising, and on which the learned Single Judge has held against the appellant, relevant facts would be that the appellant submitted an application to the State Bank of India when an

advertisement was published inviting applications from eligible candidates to take the Probationary Officers' Examination : PO 2009-10 Batch. The appellant was successful at the selection process and was offered appointment as a Probationary Officer, informing him that he would be on probation for a period of two years. The letter of offer is dated April 28, 2009.

3. Clause 5 of the letter offering appointment, inter-alia, informed the appellant that apart from other conditions, one pre-requisite for confirmation, would be the petitioner successfully passing the Evaluation Test conducted by the bank during the period of probation.

4. The policy applicable to the Probationary Officers of the respondent bank pertaining to the written examination : '*Probationary Officers – 2009-10 Batch*', on the subject of successfully clearing the Evaluation Test, was :-

“(i) *The confirmation test shall be held after 21 months from the date of appointment of Probationary Officers (during the probation period).*

(ii) *There shall be a written examination, which would be of three and half hours duration and carry maximum marks of 200, to test the functional knowledge. The written examination will be in two parts Part A (Objective type) will be of one hour with 60 marks and Part B (Descriptive type) will be of 2½ hours with 140 marks (the detailed pattern of the question paper is enclosed as Annexure-I)*

(iii) *The Probationary Officers who marks 75% above in the written test will qualify for further process involving Group Discussion and interview which will be of 50 marks. The Probationary Officers who score 75% and above in the Group Discussion and Interview will be confirmed in MMGS-II.*

(iv) *The Probationary Officers who secure minimum marks of 50% (45% of SC/ST/PWD) but less than 75% in the written test will be confirmed in the Grade of JMGS-I.*

(v) *These Probationary Officers who secure minimum qualifying of 50% (45% for SC/ST/PWD) in the written test will be given two options as under:-*

OPTION-I

Candidate will be required to appear in another confirmation test on or before completion of 24th month of his/her probation and in the event of not qualifying in the re-test his/her services will be terminated with immediate effect and he/she will be paid one month's emoluments in lieu of one month's notice in terms of Rule 16(3)(a) of SBI officer's Service Rule read with the present policy of confirmation of Probationary officers as application hitherto.

OPTION-II

Candidate's probation will be extended by a further period of maximum one year in terms of two period of six months each (extending the total probation period to a maximum of 36 months) with the provision to appear in 02 more confirmation tests at 06 monthly intervals i.e. 02nd test in 27th month & amp; 03rd test in 33rd month of his/her probation respectively with the following conditions:-

In the event of :

- *Passing the proposed 02nd test after 27th month of probation candidate will be confirmed as JMGS-I on completion of 30th month of probation including extended period of probation of 06 months. The extended period of probation of six months will, however, not to be counted for service seniority.*
- *Failing in the 02nd test put passing the proposed 33rd test after 33rd month of his/her probation he/she will be confirmed as JMGS-I on completion of 36th month of probation including the extended period of probation of one year. The extended period of probation of one-year will, however, not be counted for service seniority.*
- *Failing in the proposed 03rd test administered in 33rd month of his/her probation, 04 increments in basic salary given to*

him/her on appointment, as Probationary Officer will be withdrawn and he/she will be absorbed as Officer JMGS-I on completion of 36th month of probation period including the extended period of probation of one year. The extended period of probation of one year will not be counted for service seniority.”

5. An Evaluation Test was held on February 27, 2011 i.e. after 21 months for the PO 2009-10 batch. The appellant could not clear the same. The period of probation being two years and the appellant not having cleared the Evaluation Test, vide letter dated May 13, 2011, the probation was extended by six months informing the petitioner as under:-

*“State Bank of India
Human Resources Department
13th Floor, Local Head Ch.
11, Sansad Marg
New Delhi – 110001*

*Date : 13.05.2011
Ref: HR/L&D/451*

*Shri Rajesh Kumar
PF No.5968739
Probationary Officer- 2009-10 batch
State Bank of India
Mainpuri Main Branch
Mainpuri*

Dear Sir,

PERIOD OF PROBATION/TRAINING

In terms of our letter No.HR/RC/23/30 dated 28.04.2009 you were offered appointment in the Bank as a Probationary Officer and placed on probation/training with effect from 15.05.2009. During the period of probation you were provided intensive on the job and classroom training. For the purpose of considering your case for confirmation in JMGS-I on completion of the probation/training period of two years, a confirmation test were

administered on the 27th February, 2011 to evaluate the extent to which you have been able to equip yourself for functioning as a junior officer of the Bank and whether you can be confirmed in the JMGS-I in terms of the offer of appointed letter.

2. We regret to note that you have not performed satisfactorily in the confirmation test and have not even secured the minimum qualifying marks for confirmation in JMGS-I. You have scored only 81.50 marks out of maximum score of 200 in the confirmation test. You have thus not found suitable for confirmation in Bank's service as an officer in JMGS-I.

3. As such, it has been decided to extend your probation for 6 months and to give you another chance to write a confirmation re-test. You have to appear for confirmation re-test, which will be scheduled in due course but within period of next 6 months.

In the said re-test you will have to score a minimum of 50% (45% for SC/ST/PWD) in order that you may be considered for confirmation on completion of extended period of probation. In case you fall to score 50% (45% for SC/ST/PWD) or more marks in the re-test the Bank will be constrained to terminate your services from the Bank, without any further notice, in terms of the said offer of appointment letter dated 28.04.2009, which may please be noted.

4. Please take the forthcoming re-test for confirmation in the Bank service seriously and in the mean time arrange to equip yourself with the job knowledge required to rectify the deficiencies. In order that you may have an idea as to where you need to layout special focus, we advise you to go through mark sheet of confirmation test.

5. This letter supersedes all the earlier communication except the offer of appointment letter.

6. Please sign on the duplicate of this letter as a token of acknowledgement and having noted in contents.

Yours faithfully,

Sd/-

General Manager (NW-III)

(Appointing Authority)”

6. The petitioner accepted the letter dated May 13, 2011, in respect of which letter, the learned Single Judge has applied estoppel against the appellant on the reasoning that he was bound by Clause 3 thereof.

7. On July 17, 2006, and as per Clause 3 of the letter dated May 13, 2011, the bank gave the appellant a chance to take the Confirmation Re-Test. The appellant took the same but could not clear the same.

8. As per the bank, it became entitled to proceed in view of the sub-para of Clause 3 of the letter dated May 13, 2011, which clearly indicated to the appellant that in case at the re-test he fails to secure the qualifying marks in order to be considered for conformation the bank would be constrained to terminate the service of the appellant.

9. But before the bank could do so, a letter dated August 11, 2011 was handed over by the appellant to the bank, in which he wrote as under:-

“Dear Sir,

Most humbly and respectfully I beg to state that myself Rajesh Kumar, PO 2009 batch want to resign on personal grounds. I am sending resignation letter by fax and one by Dak. Please waive three months’ salary in lieu of resignation.

Thanking you.”

10. As per the bank the same was accepted and acceptance was communicated to the appellant on August 12, 2011. Thereafter, services being dispensed with, the appellant filed the writ petition, predicating a right on the policy referred to by us in paragraph 4 above and urged that in view of option (1), the bank was obliged to give him another opportunity to sit at a Confirmation Test before 24 months of probation were over. It was pleaded that since the bank did not hold another Confirmation Test within

24 months and chose to extend probation for a period of six months, under option (2), he had a right to appear in two more Confirmation Tests at an interval of six months. Thus, as per the appellant his services could not be dispensed with after subjecting him for evaluation at the re-test.

11. In the writ petition the appellant laid a challenge to the letter dated August 11, 2011 written by him pleading that he was forced to write the letter under threat of service being terminated.

12. Though not pleaded in the writ petition, during arguments in the appeal, learned Senior Counsel for the appellant argued that the threat was the stigma of service being terminated on account of the appellant not successfully clearing the Evaluation Test during probation.

13. In the counter affidavit filed by the bank it was pleaded that since the appellant unequivocally accepted the letter dated May 13, 2011 which, vide Clause 3 thereof, indicated to the appellant that his probation was being extended for six months within which period only one chance to write a Confirmation Re-Test would be available to him, he cannot predicate a right under any policy for the reason estoppel would prevent him from doing so. Estoppel being, taking a chance in terms of the letter dated May 13, 2011 to take a Confirmation Re-test and if successful at the test, to be confirmed and if failed, to be discharged from service.

14. With reference to the controversy containing the letter of resignation addressed by the appellant on August 11, 2011 the bank relied upon an undated letter addressed by the appellant to the Chairman of the bank written in the month of May, 2012 in which the appellant wrote as under:-

“Sir,

I have to bring to your kind notice that I was appointed as Probationary Officer vide GM, HRD, SBI LHO New Delhi HR/RC23/30 dated 28.04.2009 and joined on 15th May 2009, in SBI Learning Centre, Ajmer. During the period of probation, after completion of satisfactory intensive on the job and class

room training to High Court Branch and Main Branch Nainital, Majid Moth Branch & Lajpat Nagar Branch, New Delhi I was transferred to Mainpuri Main Branch, Mainuri.

2. That in the light of the policy for confirmation as JMGS/MMGS-II for PO-2009-10, confirmation test was conducted on 27.02.2011 and I was communicated by your letter No. HR/A & D/45 13.05.2011 that I could not secure the qualifying marks, so my probation period was extended for six month and was directed to appear in another confirmation re-test within a period of six months.

3. That consequent upon AGM's letter no. 906 dated 07.07.2011 addressed to Manager, Main Branch, Mainpuri, I appeared in confirmation re-test on 17.07.2011.

4. That on 12.08.2011, I was informed by the LHO through Manager, Mainpuri Branch that I could not secure qualifying marks in confirmation re-test, so either I should resign from service or I would be terminated by the Bank & B.M. was also advised not to take work from me. Finding no alternative, I had to resign out of the fear of termination on 12.08.2011 which would have been serious stigma on my career.

5. That serial no 2 para – V (Option ii) of the policy circular for confirmation of PO-2009-10 batch stipulates that Pos who will not secure minimum qualifying marks of 50% in the written test, candidate's probation will be extended for a further period for one year in terms of 6 months each extending the total period of probation to a maximum of one year with the provision to appear in two more confirmation test, i.e. 2nd test in 27th month and 3rd test in 33rd month and in case of failing in the proposed 3rd test, 4 increments would be withdrawn and he/she would be absorbed as officer JMGS on completion of 36 months of probation of one year.

6. That in violation of the above provision, only probation period was extended for six months with permission to appear in 2nd test in 27th month instead of 3rd test in 33rd month and probation period of one year.

7. That I have crossed the eligible age of appointment and

no I am not eligible for fresh appointment.

8. *That during the period on the job training, I have discharged my duties to the full satisfaction of all the Branch Managers.*

In view of the facts stated above, you are requested to be kind enough to direct the CGM/GM SBI LHO New Delhi to extend the period of probation for the remaining period of another six months with permission to appear in 3rd test in 33rd months in the light of the provisions enunciated in Policy Circular with further permission to permit me to withdraw the resignation letter dated 12.08.2011 which was submitted finding no alternative and I also undertake to continue as officer in JMGS in case of any eventuality in 3rd re-test in future.

For this I shall be ever grateful to you.”

15. The impugned decision passed by the learned Single Judge has not dealt with the issue concerning the letter of resignation dated August 11, 2011 written by the appellant.

16. We have no formal letter terminating services of the petitioner on the ground that he did not successfully cleared the re-test for the reason in view of his letter dated August 11, 2011 offering to resign, the bank officers accepted the same and the cessation of relationship is on account of the appellant resigning.

17. If the appellant is found to have voluntarily submitted the letter dated August 11, 2011, that in our opinion would be the end of the matter. The appellant claims, and as pleaded in the writ petition, that the Senior Officers asked the appellant to resign under threat of service being terminated. The name of the officer who threatened the appellant has not been disclosed.

18. The letter addressed by the appellant to the Chairman of the bank which is undated but was received in the office of the Chairman in May

2012, contents whereof we have noted in paragraph 14 above was written by the appellant when he was in his house. Nobody could have dictated the contents of the letter of the appellant. In paragraph 4 of the letter the appellant has let the cat out of the bag. He himself has written that he submitted the resignation out of fear of his services being terminated which would have been a serious stigma on his career because the officers of the bank were treating it to be a case of the end of the career of the appellant with the bank in view of paragraph 3 of the letter dated May 13, 2011.

19. It is apparent that the appellant in his wisdom chose to voluntarily submitting a letter of resignation and have cessation of relationship with a counter communication from the bank informing him that his resignation was accepted so that for purposes of future employment the appellant could tell the prospective employer that he voluntarily resigned while still on probation with the State Bank of India. He did not want it in public knowledge that he could not successfully clear the Evaluation test during probation.

20. The appeal must fail on said count alone.

21. Alternatively, the plea of estoppel held against the appellant by the learned Single Judge also would entail a dismissal of the appeal for the reason when the bank, while extending appellant's probation for period of six months, put condition No.3 in the letter dated May 13, 2011. The appellant did not assert a right under option (2) of the policy applicable to the Probationary Officers of the respondent bank pertaining to the written examination : '*Probationary Officers – 2009-10 Batch*'.

22. The appellant voluntarily took the re-test held by the bank on July 17, 2011. The bank took the re-test in terms of the sub-para of Clause No.3 of the letter dated May 13, 2011. Having taken a chance and failed, the appellant cannot turn back and say that the bank proceeded illegally by

requiring the appellant to take the re-test.

23. While dismissing the appeal we would note that the learned Senior Counsel for the appellant tried to rake up a controversy of whether the appellant received the letter dated August 12, 2011 written by the bank accepting appellant's resignation and for which learned counsel relied upon the address on the envelop to urge that in the city of Patna, the scanty undescriptive address could not have resulted in the docket reaching the appellant.

24. No such controversy on facts was raised in the writ petition, which as noted above, proceeded on the line of argument that the appellant was compelled to submit the letter of resignation dated August 11, 2011, in respect of which we have already expressed our opinion hereinabove. We, therefore, do not delve into said controversial area of fact, but note the same for the purposes of record since an argument was advanced in relation thereto.

25. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 09, 2015
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