

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.472 of 1998

Date of Decision:28.08.2017

Hardayal Sidhu

... Petitioner

Vs.

UCO Bank and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. P.S. Bajwa, Advocate for the petitioner.

Mr. Vinod Kataria, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has sought for the following relief:

“a) a writ in the nature of certiorari may kindly be issued in favour of the petitioner and against the respondents quashing the impugned select list, (Annexure P-4) and the promotions made by respondents No.1 to 3 of the persons on the select list as well quashing Note (3) to Clause 3.6.1 of the promotion policy.

b) issue a writ in the nature of mandamus in favour of the petitioner and against the respondents directing respondents Nos.1 to 3 to promote the petitioner to the Junior Management Grade Scale-I.

c) issue any other appropriate writ, order of direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case.”

Petitioner was appointed as a Clerk-cum-Assistant Cashier on 9.8.1983. He has passed prescribed departmental examination including B.A. Examination. In the month of November 1996, respondents proceeded to fill up the post of Junior Management Grade Scale I pursuant to the promotion policy settlement for workman staff. Petitioner has secured 18

marks in the written examination and over all he has secured 53 marks with reference to a), b) and c) i) ii) iii) iv) of 3.6.1 of the Promotion Policy to the post of Junior Management Grade Scale I. The petitioner submitted that respondents prepared merit-cum-seniority (Annexure P-4). Whereas name of the petitioner has not been incorporated. Even though persons who have over all secured less than 53 marks, their names have been incorporated. In other words, respondents have prepared the merit-cum-seniority with reference to Note 3) of 3.6.1 of the Promotion Policy. It was submitted that question of operating Note 3) inter se ranking with reference to the written test and those persons rank within the number equivalent to three times the vacancies would be taken into consideration for the purpose of promotion. It is further submitted that selection to the post of Junior Management Grade Scale I is only with reference to the marks secured with reference to 3.6.1 of the Promotion Policy. Had they prescribed interview marks in addition to written test, question of operating Note 3) would arise. Therefore, note 3 is redundant in the process of promotion to the post of Junior Management Grade Scale I with reference to merit-cum-seniority. It was further submitted that petitioner has secured over all 53 marks. Whereas the person who has secured over all 36.50 marks, his name has been incorporated and such person was promoted. Whereas name of the petitioner has not been considered. Therefore, it was submitted that note 3) cannot operate where policy relating to promotion do not prescribe method of interview. It was further submitted that number of vacancies have not been notified so also respondents have not placed on record how the note 3) has been operated for the purpose of promotion to the post of Junior Management Grade Scale I so as to find out on what basis three times vacancies declared for

promotion channel is taken into consideration. The respondents have not placed on record relevant material relating to operation of Note 2) and 3). Consequently, the petitioner is entitled to consider his name for promotion to the post of Junior Management Grade Scale I pursuant to the notification issued in the year 1996.

Per contra, learned counsel for the respondents submitted that Promotion Policy Settlement for Workman Staff was settled among the respondent and the petitioners-Union. Therefore, once the settlement is arrived, the same cannot be questioned with reference to Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 (for short “the Act”). In other words, promotion policy settlement for workman is binding on the petitioner. Consequently, petitioner cannot challenge Note 3) of 3.6.1. of the Promotion Policy. It was further submitted that petitioner was aware of Note 3). Therefore, he cannot turn around and challenge Note 3) after participating in the process of promotion. In support of this contention, learned counsel for the respondents relied on the following decisions: (i) **K.A. Nagamani v. Indian Airlines and others**; AIR 2009 SC 3240; **Ashok Kumar and others v. State of Bihar and others**; AIR 2016 SC 5069; **Ajaib Singh and others v. State of Punjab and others**; 2016 (4) SLR 583 and **B. Kavitha v. State of Andhra Pradesh and others**; 2016 (7) SLR 558.

It was further submitted that during pendency of this petition, petitioner was subjected to promotion for Junior Management Grade Scale I in the year 2001 and he has been promoted on 20.02.2001. In view of the said development, petition do not survive for consideration.

Heard learned counsel for the parties.

Preliminary objection that petitioner cannot challenge

promotion policy like note 3) with reference to Section 2(p) and Section 18 (1) of the Act, cannot be accepted for the reasons that if note 3) of promotion policy is contrary to Article 14 of the Constitution in that event Section 2(p) and Section 18(1) of the Act would not be a hurdle.

Respondents proceeded to fill up the post of Junior Management Grade Scale I with reference to Promotion Policy Settlement for Workman. The relevant part is 3.6.1 which reads as under:

“3.6.1 Merit-cum-Seniority Channel:

Under Merit-cum-Seniority Channel, there will be assessment of 100 marks distributed in the following manner:

a) Written test to be conducted by the Institute of banking Personnel Selection (IBPS) (model questions/Syllabus will be given before the test. 55 marks

b) Service (2 marks for each completed year of service as assessed vide para 3.4.3 above with a maximum of 25 marks) ... 25 marks

c) Educational Qualification ... 20 marks

i) Graduation from a recognized University ... 6

ii) Post-graduate/Double Graduate from a recognised university ... 3

iii) CAIIB Examination of India

Institute of Bankers

Part I ... 3

Part II ... 6

iv) Honours Graduate/Graduate/Post Graduate from recognised University having 50% marks or more in the aggregate 2

NOTE:1) Applications will be invited from eligible clerical staff to appear for the written test. Only those who conform to the prescribed norms shall be eligible for appear for the written test.

2) Pass marks in the written test to be conducted by (IBPS) will be 35% (for SC/ST candidates 30%).

3) Candidates who pass the test will be ranked on the basis of marks obtained in the written test and those who shall rank within the number equivalent to three times the vacancies declared for this channel will be considered for promotion on the basis of aggregate marks secured in the written test, service and qualification. The candidates who secure the same number of marks in the aggregate shall be ranked on the basis of inter-se seniority. The candidates securing rank on the basis of aggregate marks as above within the number of vacancies set apart for this channel would be empanelled and declared promoted.”

Perusal of the method of promotion to the post of Junior Management Grade Scale I, it is crystal clear that over all 100 marks is prescribed; Written marks-55 and other marks which have been mentioned in para b), c) i), ii), iii) and iv) respectively. Reading of note 3) it is evident that shortlisting method is prescribed that persons who have secured marks in the written test and those who shall rank within the number of equivalent to three times the vacancies declared for this channel will be considered for promotion on the basis of aggregate marks secured in the written test, service and qualification. Further the candidates securing rank on the basis of aggregate marks as above within the number of vacancies set apart for this channel would be empanelled and declared promoted. The respondents have failed to furnish the material relating to number of vacancies to be filled up and so also number of merit-cum-seniority list prepared with reference to more candidates so as to how the note 3) has been operated. In the absence of material, petitioner's merit cannot be assessed, even though, he has secured aggregate of 53 marks. Whereas the person who has aggregate 36 marks his name has been incorporated in the merit-cum-seniority. In the absence of notified number of vacancies and method how

note 3) has been operated, petitioner cannot be denied the benefit of promotion, even though, he has secured aggregate 53 marks. If note 3) is hurdle for the petitioner with reference to marks secured in the written test i.e. 18 marks and person who has secured 23.50 marks in written test and aggregate of 36.50 marks, the above principal of mode cannot be adopted/adhered for the reasons that process of interview method is not prescribed for the post of Junior Management Grade Scale I. In other words, it is based on the marks secured in the written test and other conditions. Therefore, question of short listing mode do not arise. The respondents relying on the various decisions to the extent that petitioner having participated in the process of promotion mode, he cannot turn around and challenge Note 3 of 3.6.1 of Promotion Policy is accepted with reference to the decision of the Supreme Court. Still the respondents have not made available the record how they proceeded with reference to Note 3) of 3.6.1 of Promotion Policy. Petition is pending consideration since 1998, they must have kept the record intact. Only in the written statement, they are contending that petitioner is not within the zone of consideration with reference to Note 3). However, relevant material has not been placed on record to the extent that how many vacancies were notified and how they have calculated three times vacancies in the absence of material. Despite giving ample opportunity to produce records, respondents failed to provide the records and today it was submitted that records are not available. Therefore, inference is drawn that petitioner has secured over all 53 marks and person with over all 36.50 marks name has been empanelled and promoted. Hence, petitioner is entitled to promotion from 1996-97 with reference to the merit-cum-seniority list notified on 19.8.1997 (Annexure P-

4).

Accordingly, respondents are hereby directed to incorporate the petitioner's name in the merit-cum-seniority list at appropriate place and promote him to the post of Junior Management Grade Scale I from the date when his juniors were promoted. Since the petitioner has been promoted to the post of Junior Management Grade Scale I on 20.2.2001, therefore, petitioner is entitled to only monetary benefit from the month of August 1997 to 20.2.2001. In other words, he is entitled to difference of salary for the aforesaid period. The same shall be calculated and disbursed within a period of three months from today.

Petition stands disposed of accordingly.

28.08.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No