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

+ **LPA 718/2015 & C.M. Appl.No. 23835/2015**

STATE BANK OF INDIA & ANR. Appellants

Through: Ms. Maninder Acharya, ASG with
Mr.Rajiv Kapur, Mr. Akshit Kapur and Mr. Viplav
Acharya, Advocates

Versus

DHARMENDRA PRASAD SINGH & ORS. Respondents

Through: Mr. Saket Sikri, Mr. Ajay Pal Singh
& Ms. K.Gayatri, Advocates for Respondent Nos.1
to 3.

Mrs. Suparna Srivastava, Ms. Sanjna Dua &
Ms. Nehul Sharma, Advocates for Respondent
No.4

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
06.12.2018

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1. The present appeal is directed against an order dated 11th September, 2015 passed by the learned Single Judge in Review Petition No.301/2015 in WP(C) No. 4061/2013.

2. The background to the filing of the present appeal by the State Bank of India (SBI) and its Chairman (Appellant Nos.1 & 2) is that Respondent Nos. 1, 2 & 3 herein filed Writ Petition (C) No. 4061/2013 in this Court praying

that their services as Officers Marketing and Recovery (OMR) (S-1) should be regularised retrospectively from the date that OMR (Rural) were regularised i.e. 2nd August, 2010.

3. Respondent Nos.1 to 3 were claiming benefit on the basis of a policy dated 20th July, 2010, further modified by a circular dated 18th August, 2010 of the SBI. The Respondent Nos.1 to 3 also sought all other consequential and service benefits from the date of such regularisation i.e. 2nd August, 2010.

4. When the writ petition came up for hearing first before the learned Single Judge of this Court, a detailed judgment was delivered in the said writ petition on 9th February, 2015 holding that the relief claimed was not capable of being granted in view of the judgment of the Supreme Court in *Secretary, State of Karnataka v. Uma Devi (2006) 4 SCC 1*. In the process the learned Single Judge held that the stand of the SBI that it had regularised the OMRs (Rural) as a one-time measure “had no legs to stand up” and that the Court could not enforce “a negative equality i.e Article 14 of the Constitution of India cannot be invoked to perpetuate an illegality”. According to the learned Single Judge, the policy dated 20th July, 2010 of the SBI was a ‘illegal policy’ and once the policy was illegal, the Petitioners (i.e. Respondents 1 to 3 herein) could not claim benefit of the said policy.

5. At the same time, the learned Single Judge clarified that the regularisation of the services of OMR (Rural) made by the SBI pursuant to the policy dated 20th July, 2010 was not being struck down as even the Writ Petitioners

in that petition i.e. Respondent Nos.1 to 3 herein had not claimed that relief. The writ petition was dismissed with the directions that the judgment should be placed before the Secretaries of the Ministries of Finance and Law and also be placed before the Board of Directors of SBI.

6. Being aggrieved by the above judgment, the SBI appealed against it in LPA No. 260/2015. By the judgment dated 30th April, 2015, the Division Bench of this Court disagreed with the learned Single Judge that the policy of SBI dated 20th July, 2010 was illegal. It was noted that “the factual controversy between the parties has neither been noted nor adjudicated upon by the learned Single Judge.” The Division Bench observed “we do not comment upon the merits of the controversy between the parties for the reason the grievance of the appellant bank is to the directions issued in the impugned order that since law declared by the Constitution Bench of the Supreme Court in *Uma Devi’s* case has been brazenly breached by the Board of the State Bank of India the Secretaries to the Ministry of Finance and Law be sent a copy of the judgment and that the same shall also be placed before the Board of Directors of the Bank.” Consequently, the Division Bench set aside the judgment dated 9th February, 2015 in so far as it declared the policy dated 20th July, 2010 of the SBI to be in violation of the law declared by the Constitution Bench of the Supreme Court in *Uma Devi’s* case and to the extent that it required a copy of the decision to be sent to the Secretaries, Ministries of Finance and Law and Board of Directors of SBI.

7. In effect therefore, a Division Bench, without entering into the merits of

the controversy set aside the impugned order of the learned Single Judge dated 9th February, 2015 of the Court. It must be noted here that this order of the Division Bench dated 30th April, 2015 attained finality with Respondent Nos.1 to 3 not questioning that order further.

8. However, anxious that their case on merits had not yet received consideration either at the hands of the learned Single Judge (as noted by the Division Bench), or the Division Bench, Respondent Nos.1 to 3 considered it appropriate to file a review petition before the learned Single Judge. This Review Petition No.301/2015 was for the limited purpose of persuading the learned Single Judge to adjudicate the merits of the writ petition.

9. However, the learned Single Judge has, instead of deciding the merits of the writ petition again discussed the law as explained by the Supreme Court in *Uma Devi's* case and issued what can be best described as extraordinary directions in para 12 of the impugned order dated 11th September 2015 which reads as under:

“12. Let this file be placed before Hon'ble the Chief Justice for constitution of the Full Bench for answering the questions as stated above and since the Full Bench will be deciding the validity of the ratio laid down by the Division Bench of this Court in the judgment dated 30.4.2015 in LPA No. 260/2015, Hon'ble the Chief Justice may kindly be pleased to constitute the Full Bench having Hon'ble Judges who are not the Hon'ble Judges who constituted the Benches which passed the judgments dated 30.4.2015 and 9.2.2015. Pursuant to the orders of Hon'ble the Chief Justice, let the file of this writ petition be placed before the Full Bench of this Court on 30th October, 2015.”

10. This Court views this as a case of '*res-ipsa loquitur*' where nothing

more needs to be said on the legal untenability of the above directions. This is what persuaded this Court when this appeal was heard on 29th October, 2015 to stay the above directions.

11. It hardly needs any emphasis that in a judicial system where the hierarchies are clearly demarcated and when the orders of the Division Bench are binding on the learned Single Judges, the above directions can simply not be sustained in law. On the short ground of the requirement of maintaining judicial discipline, the impugned judgment dated 11th September 2015 of the learned Single Judge in Review Petition No. 301 of 2015, including the above directions, is hereby set aside.

12. The consequence of this order will be that the original grievance of Respondent Nos.1 to 3 in the writ petition before this Court will still require to be addressed. Counsel for Respondent Nos.1 to 3 does not dispute the legal position that the judgment dated 30th April, 2015 of the Division Bench affirming the validity of the policy dated 20th July, 2010 of the SBI has attained finality. His only grievance is that their prayer for regularisation in terms of that policy should be still considered on merits. This appears to the Court to be a reasonable request.

13. Consequently, the Court directs that WP(C) 4061/2013 filed by Respondent Nos.1 to 3 will stand revived and shall be placed for hearing on merits before the Roster Bench on 18th December, 2018, subject to orders of Hon'ble the Chief Justice. The Roster Bench is requested to proceed with the hearing of the said writ petition on the existing pleadings.

14. The appeal is allowed in the above terms with no order as to costs. The application is disposed of.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 06, 2018
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