

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1450 OF 2002

Shivji Sakharam Juvekar ...Petitioner
vs.
State Bank of India ...Respondent

Mr.K.P.Anilkumar for the Petitioner
Mr.Harihar Bhav a/w Ms Rupa Bhav and Ms Divya
Menon and Mr.C.D.Lonkar I/b Bhav and Company for
the respondent

CORAM : A.S.OKA AND SANDEEP K. SHINDE,JJ.
DATE ON WHICH JUDGMENT IS RESERVED:DECEMBER 18, 2018
DATE ON WHICH JUDGMENT IS PRONOUNCED:MARCH 1, 2019

JUDGMENT: (PER A.S.OKA, J.)

1 The petitioner who was working as driver with the respondent-State Bank of India has filed this petition under Article 226 of the Constitution of India for himself and on behalf of 48 similarly placed employees of the State Bank of India. The case of the petitioner and others in short is that he himself and 48 others whose name appears in Exhibit-A (for short "the petitioner and others") have been deprived of benefit of career progression by way of promotion or by upgradation of pay scale. The respondent-State Bank of India has been constituted under the State Bank of India Act, 1955. It is a State within the meaning of Article 12 and thus is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

2 The case of the petitioner and others is that they being the Drivers are class-IV employees of the said bank. It is pointed out that there are various other categories of employees of the bank who are employees appointed for doing miscellaneous work like maintenance of Air Conditioners, maintenance of electrical appliances, sweeping etc. The contention of the petitioner and others is that other employees belonging to Class-IV are entitled to various benefits such as time bound promotion. It is pointed out that the petitioner and others are also having duty for eight hours on par with other Class-IV employees but they are deprived of benefit of upgradation or promotion. It is pointed out that though the duty hours of the petitioner and others are restricted eight hours, every day they are required to work 12 to 15 hours without getting adequate compensation for the additional time spent on duty.

3 The case made out by the petitioner and others is that they have completed more than 10 years in service. They have never been given any upgradation. In service jurisprudence, it is a matter of right for the employees to have career progression. It is contended that the respondent-State Bank of India has indulged in discrimination as a result of which a grave prejudice is caused to the petitioner and others. The petitioner and others are relying upon several representations made

from time to time, the copies of which have been annexed as Exhibit-B (collectively). The petitioner is relying upon the Judgment and Order dated 2nd July 1996 passed by a Division Bench of this Court in Writ Petition No.43 of 1993 (R.A.More and others vs. State Bank of India and others) It is submitted that the petitioners in the said Writ Petition were also similarly placed in the sense that the said bank did not provide any career progression to them. It is contended that the Division Bench directed the respondent-State Bank of India to frame the scheme/procedure for career upgradation of the petitioner.

4 The first prayer in this petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the respondent-State Bank of India to immediately frame the Rules and Regulations for career upgradation of the petitioner and others. The second prayer is for issuing a writ of mandamus enjoining the respondent-Bank to give to the petitioner and others benefits which were extended to similarly placed employees (electrical maintenance staff). The third and last substantive prayer is for issuing a writ of mandamus enjoining the respondent-bank to give overtime benefit to the petitioner and others.

5 The respondent-Bank has filed an affidavit-in-reply of Shri Nagendra Kumar Malviya, the Assistant General Manager. It is contended in the affidavit

that the workmen staff in the respondent-Bank is governed by Sastry Award, Desai Award and the Bipartite Settlements signed between the Bank and All India SBI Staff Federation, a recognised union of workmen staff. The contention of the respondent bank is that the Drivers and other categories belonging to subordinate categories have pay scale of Rs.4060/- to Rs.7060/- plus Dearness Allowance plus House Rent Allowance etc. It is contended that considering the nature of work performed by the staff, they are given special allowance as set out in Annexure-A to the affidavit which ranges from Rs.140/- to Rs.1450/- per month. It is contended that the Drivers employed by the respondent-Bank are paid special allowance of Rs.932/- from the date of joining the service.

6 It is pointed out in the affidavit-in-reply that a Committee was formed to examine the policy for career progression of employees in the respondent-Bank. Based on the recommendation of the said Committee, a policy was formulated. In terms of the said policy, settlement was entered into with Staff Federation on 12th April 1999 which was circulated to all branches. The settlement dated 12th April 1999 was subsequently modified by a settlement dated 22nd July 2003. As regards the career progression, in paragraphs V to VIII to the reply, it is stated thus:

"V. I say that in regard to subordinate

staff, it was decided that all full-time employees in the subordinate cadre with 15 completed years of service and not drawing any special allowance or drawing an allowance less than Rs.474/- per month will be appointed to higher positions within the subordinate cadre such as Head Messenger, Head Armed Guard, Head Sweeper etc and paid a special allowance of Rs.474/- per month.

VI. I say that further completion of 23 years of full-time service within the cadre as on 1st April every year, the members of all categories of subordinate staff will be appointed to positions such as Senior Head Messenger, Senior Head Armed Guard, Senior Head Sweeper etc and paid a special allowance of Rs.932/- per month.

VII. I submit that the drivers to which category the petitioners belong are already in receipt of a special pay of Rs.932/- per month from the date of their joining and as such draw a special allowance equivalent to the allowance paid to other employees after they have put in 23 years of service.

VIII. I say and submit that the drivers can also become Head Driver in terms of the Bank's guidelines and draw a special allowance of Rs.991/- per month from the date

of their appointment as Head Driver. The Head Drivers are appointed at those places where the strength of drivers is more than three. I say that Additional Head Drivers may be appointed if the strength is 20 or more ensuring that there should not be more than one Head Driver for each group subject to a maximum of three Drivers at an establishment."

7 In paragraph 7 of the reply, it is stated that the Drivers employed by the respondent are eligible for promotion to clerical cadre subject to they acquiring educational qualification of VIII standard. In such a case the Driver must be working for eight years and must pass selection procedure. The case of the Drivers is considered for promotion to Clerical Cadre after 5 years of service if they pass matriculation examination. It is contended that the petitioner is eligible for promotion as per the rules.

8 There is an additional affidavit in reply filed by the respondent-bank. The additional reply is of Shri Siddharth Trivedi, the Assistant General Manager (O.A.D.). It is contended that the petitioner and others belong to category of workmen who are covered by the provisions of Industrial Dispute Act, 1957 therefore, they have an efficacious remedy under the statute. A reliance placed on a letter dated 21st December 2009 issued to the

petitioner offering him appointment as Head Driver/Head Messenger and by a letter dated 1st January 2010, the petitioner accepted the same. Reliance is placed on review promotion policy dated 6th May 2008 which is annexed to the affidavit which includes a policy for grant of promotion for subordinate to clerical cadre.

9 There is one more affidavit filed by the respondent-Bank of Shri Mahendra Singh Raghuvanshi, Assistant General Manager. It is dated 18th July 2018 in which a similar objection is raised regarding the availability of a remedy based on applicability is under the Industrial Dispute Act, 1947. Reliance is placed on page 86 of H.R. Handbook volume-II. Relevant portion of the said Handbook reads thus:

"On completion of 15 years in the cadre, the drivers cum messenger will be promoted as "Senior Drivers" and will be paid special pay as admissible."

"On completion of 23 years of service in the cadre, the driver cum messenger will be promoted as "Senior Head Driver" and will be paid special pay as admissible."

10 The learned counsel for the petitioner has taken us through the averments made in the petition, the annexure to the petition and affidavits in reply. He submitted that the petitioner and others

though they have completed 10 to 15 years of service are even denied benefit of promotion or career progression. He pointed out various grievances made in the petition and urged that the benefit of career progression should be extended to the petitioner and others. The learned counsel for the respondent-bank has invited our attention to various affidavits and submitted that benefit of career progression is available to the petitioner and others and in fact the petitioner has been promoted in the year 2010.

11 The learned counsel for the petitioner relied upon the decision of the Apex Court in the case of Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar and others¹ and the Council of Scientific Industrial Research and another vs. K.G.S.Bhatt and another².

12 We have given careful consideration to the submissions. We have perused the pleadings on record as well as the documents produced along with the pleadings.

13 We have perused the decisions of the Apex Court relied upon by the petitioner. In the case of Raghu Prasad Singh, the Apex Court held that reasonable promotional opportunities should be made available in every wing of public service. In absence of promotional prospects, the service is bound to de-

1 AIR 1988 SC 1033

2 AIR 1989 SC 1972

generate and stagnation kills the desire to serve properly. In the case of the Council for Scientific Research (supra), it was held that when a public or a private organization recruits a person, he must be given an opportunity to make advancement in the career.

14 In the affidavits filed by the respondent-Bank and in particular a copy of HR Handbook of the respondent, it is stated that on completion of 15 years in the cadre of Drivers/Messengers the employees will be promoted as Senior Drivers and will be paid special pay as admissible. It is stated that on completion of 23 years of service in the cadre, the Drivers/Messengers will be promoted as Senior Head Drivers and will be paid special pay as admissible. A statement on oath to that effect is made in paragraph 4 of the affidavit of Shri Mahendra Singh Raghuvanshi dated 18th July 2018. Thus, the policy of grant of career progression is in place. As regards overtime, a stand taken in the additional affidavit and in particular affidavit dated 20th November 2013 that the Drivers are entitled to special allowance upto Rs.1480/- per month from the date of joining. This takes care of the grievance of non payment of remuneration for overtime.

15 As far as the petitioner is concerned, on 21st December 2009, he has been appointed as a Head Driver/Head Messenger and he has accepted the said

appointment. However, from the affidavit it is not clear whether other 48 persons whose names appear in the Exhibit-A were considered for promotion in terms of what is stated in the HR Handbook which is quoted in paragraph 4 of the affidavit of Shri Mahendra Singh Raghuvanshi, Assistant General Manager. There cases will have to be considered for grant of promotion.

16 Hence, a very limited relief deserves to be granted in this petition and we dispose of the petition by passing the following order:

(I) We accept the statements made on oath by the respondent-Bank in all the three affidavits filed on record as the statements and assurances of the respondent-State Bank of India;

(II) We direct the respondent-State Bank of India to consider the cases of the persons whose names appear at Exhibit-A for grant of promotion in terms of the policy incorporated on page 86 of HR Hand Book of staff members and in terms of what is stated in paragraph 4 of the affidavit of Mr.M.Raghu dated 18th July 2018;

(III) If their cases are already considered, necessary decision taken shall be communicated to the said persons;

(IV) If their cases are yet to be considered in terms of the aforesaid policy, the same shall be considered within a period of three months from the date on which this order is uploaded. The decision

taken shall be communicated to the concerned staff members;

(V) Rule is made partly absolute on above terms with no order as to costs.

(SANDEEP K. SHINDE,J.)

(A.S.OKA,J.)