

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9/3/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.252 of 2020

Union Bank of India
Rep. by its General Manager (HR)
No.239, Vidhan Bhawan Marg,
Nariman Point, Mumbai - 21.

...Appellant/3rd Respondent

Vs

1. All India Union Bank Officer Staff Association,
rep by its General Secretary,
AIBOA House, II Floor,
No.109, Angappan Naicken Street,
Chennai - 600 001.

2. Gaurav Goyal,
Manager (Marketing),
Dream House, Sai Enclave,
Bhandari Farm, ChadayalNayabad,
Gas Godam Road, Haldwani 263 139.

...1st & 2nd Respondents/Petitioners

3. Government of India,
rep by its Secretary,
Department of Financial Services,
Ministry of Finance, Jeevan-Deep,
Parliament Street, New Delhi 110 001.

...3rd Respondent/1st Respondent

4. The Chief Labour Commissioner (Conciliation),
Headquarters, Government of India,
Ministry of Labour and Employment,
Office of the Chief Labour Commissioner (Conciliation),
New Delhi.

..4th Respondent/2nd Respondent

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.820 of 2020 dated 6/2/2020.

Prayer in W.P.No.820 of 2020 : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration to declare that the specialist officers who have been promoted on 1.9.2017 as being qualified for promotion process conducted pursuant to Circular No. 7057 7058 7059 7060 dated 21.11.2019 issued by the 3rd respondent Bank by rectifying the deemed date of promotion as 1.4.2017 for Specialist Officers as well and to consider by holding common written examination for both Generalist and Specialist Officers ignoring the written test hold on 22.12.2019 and to consider and promote the Specialist Officers as well on same basis as that of Generalist Officers.

For appellant ... Mr.Vijay Narayan
Senior Counsel
for M/s.Edward James

For respondents ... Mr.N.G.R.Prasad
for M/s.Row and Reddy
for respondents 1 and 2

J U D G M E N T

SUBRAMONIUM PRASAD, J

The Union Bank of India has filed this appeal challenging the order dated 06.02.2020, in WP.No.820 of 2020, passed by the learned Single Judge by which the learned Single Judge has allowed the writ petition and directed the appellant to promote the officers belonging to the Specialist category who were promoted in 2017 - 2018, to participate in the promotion process and for which purpose respondent bank has been directed to hold a common written examination for the specialist category and general category once again for all the eligible candidates and then proceed with the promotion process.

2. The respondent bank has two categories of officers (a) Generalist officers and (b) Specialist Officers. The recruitment for these two categories officers is different and they have their own promotional channels, but at one stage, these channels merge with each other and the officers belonging to specialist category are also promoted to take an examination along with the officer of the general category for further promotion.

3. As per the promotional policy for officers which was issued on 20.11.2019, the common cut-off date for determining eligibility as well as completed years of service will be as on 1st of April of the financial year. The common cut-off date is taken into account for reckoning the minimum length of satisfactory service prescribed for promotion from one grade/scale to another for determining weightage of promotions on various parameters, deciding the eligibility of officers for participation in the promotion process.

4. In the year, the Specialist grade officers came to the common pool on 01.09.2017 much after 1st April 2017 because of which they are not eligible to be considered for taking the examination for the vacancies arising in April 2020, since they would complete three years only after 01.04.2020, i.e. after the cut-off date. There are roughly about five officers in the petitioner's union who are going to be affected because of the delay on the part of the appellant bank in giving promotion to these officers after 1st April 2017. The petitioner association therefore moved the High Court for a Writ of declaration to declare that the Specialist Officers, who have been promoted on 01.09.2017, as being qualified for the promotion process conducted pursuant to circular No.7057, 7058, 7059, 7060 dated 21.11.2019, issued by the 3rd respondent Bank by making the date of promotion as 01.04.2017 for Specialist Officers as well and to consider by holding common written examination for both Generalist and Specialist Officers ignoring the written test held on 22.12.2019 and to consider and promote the Specialist officers as well on same basis as that of Generalist Officers.

5. The learned Single Judge found that despite the fact that the bank had the power to relax conditions, they did not choose to relax the common cut-off date for the specialist officers who had been promoted after 01.04.2017 for no fault of others. The learned Single Judge was of an opinion that the reason for delay cannot be attributed to the specialist officers could not be put against those officers and therefore, they cannot be deprived of the right to be considered for the promotion in the year 2020.

6. The learned Single Judge felt that about 177 officers belonging to the specialist category of the employees will not be able to take examination and get promoted to the next level. The learned Single Judge held that the representation had been given by these officers which was done at an earlier stage i.e. in the year 2017 itself was ought to have been considered and necessary orders should have been passed as if they had been granted promotion on 01.04.2017 itself. The learned Single Judge held that since the delay in completing the promotion process cannot be attributed to these officers and it will be unfair to completely deny the opportunity of promotion for nearly 177 officers belonging to the Specialist category and therefore, in the interest of justice, they must

be considered for promotion during the present promotion process by considering the fact that they were eligible for earlier promotion on 01.04.2017 and therefore, they are also eligible for the present promotion as on 01.04.2020. The bank has filed the instant writ appeal challenging the order.

7. Heard Shri. Vijay Narayan, learned Advocate General for the appellant bank and Mr.N.G.R.Prasad for the writ petitioner respondent.

8. The learned Advocate General would state that the impugned order would create a lot of problems in the present year. He would state that there is a proposal of merger of various banks including the appellant bank and inter se seniority of the officers have to be done. He would state that if the order of the learned Single Judge is given effect to, then a fresh examination has to be conducted once again to the entire merger which has been proposed to be done for providing financial stability in the country will break down. The learned Advocate General would state that these officers would be eligible to take examination for the next year in view of the cut-off date given in the policy. He would state that the specialist grade officers are to blame for the delay. He could state that, way back in the year 2014 itself, the policy circular for promotion was challenged by way of a writ petition, because in the year 2011 - 2012, the persons in the specialist grade who had joined later than 1st April 2011 and approached the High Court in the year 2014 that despite the fact that cut-off date for those years was 01.07.2011 and they had joined service between 02.07.2011 to 04.07.2011, they would not be eligible to take part in examination since the cut-off date for completing three years was 01.07.2014. The officers were allowed to take examination by order dated 28.11.2014. This had a cascading effect for subsequent years also, because of which for the year 2017-2018, there was a delay in promoting specialist grade officer. The specialist officer were promoted only on 1st September 2017. He would state that the bank cannot be blamed for the delay. He would also state that looking at the peculiar circumstances of this year, five seats for the members of the petitioner's association who approached the Court can be set apart and examination can be conducted for these five persons so that they can be made eligible to take the examination.

9. On the other hand, Mr.N.G.R.Prasad , the learned counsel for the writ petitioner respondent would state that the bank cannot take advantage of their own wrongs. He would rely on Clause 1.4 which gives the power of relaxation and extend that bank ought to have relaxed the cut-off date for the officers of specialist category or deem them to have been promoted on 01.04.2017. Mr.N.G.R.Prasad would also rely on the

minutes of meeting conducted on 08.04.2008, where the issue regarding the initiation of promotion process was discussed and it was decided that the initiation for the promotion process for the specialist officers for all categories should be simultaneous with the promotion process of the general officers. He would state that even in the year 2014, in a meeting held between the management and the bank federation, a specific issue was raised and it was agreed upon that to start the process after general banking and specialist segment simultaneously and that care would be taken for conducting the promotion process for the year 2014 - 2015. He would state that after such initiative having been done, the bank ought to have adhere to their commitment.

10. Mr.N.G.R.Prasad, learned counsel for the writ petitioner would argue that the issue regarding the delay in promoting the officers of the specialist branch in the year 2017 and a plea to relax the promotion process was being constantly made. Request by a letter dated 26.11.2019, was sent by the writ petitioner union for such purpose. He would also state that similar request have been made by the majority union, but to no avail. It is also to be remembered that for the year 2018-2019 and 2019-2020 such relaxation has been given to the officers for 2018-2019 and 2019-2020 have been treated as if they were promoted in April 2018 and 2019 respectively.

11. The material on record discloses that it should have been the banks endeavour to ensure that the promotion process for the specialist officers and the general officers are initiated simultaneously. As stated by Mr.N.G.R.Prasad, learned counsel for the writ petitioner, way back in the year 2008, in a meeting between officer's federation and the management, the specific issue was raised and answered. Issue 25 of the minutes of the meeting held at Kolkata on 08.04.2008, and the management's stand reads as under:-

I.R.Issues	Management's Stand
25. Initiate the promotion process for specialized officers in all categories & complete the same simultaneously with the present promotion process for General officers	The process will be conducted simultaneously with the General Officers.

12. Similar issue was raised in subsequent meetings. In the meeting held on 26.02.2014, between the management and the association, the same issue was raised and answered as under:-

Issues	Reply
6. We request for simultaneous commencement of promotion process of General Banking Officers and Specialist officers so that time gap in seniority channel (on conversion of specialist officers to General Banking cadre) should be zero	It is always the endeavour of the management to start the process for General Banking and specialized segment simultaneously. Request of the federation will be taken care of while conducting promotion processes for the year 2014-15.

13. The power of relaxation in the promotion policy is given in para 1.4, which reads as under:-

"1.4 The eligibility criteria in terms of minimum years of service as spelt out in this policy can be relaxed only with the prior approval of the Board of Directors, in case the number of eligible officers is less than 3 times the number of posts in the next higher Grade/scale. However the minimum experience required (in years) normally and required minimum length of service in a scale is given below:-

Sr .No	Scale	Promotion Channel	Minimum Experience required (in years)	Minimum length of service .
1	I to II	Normal / Seniority	5	NA
		Merit / Fast	3	NA
2	II to III	Normal/ Seniority	5	NA
		Merit / Fast	3	NA
3	III to IV	Merit / Fast	3	NA
4	IV to V	Merit	3	12
5	V to VI	Merit	3	15
6	VI to VII	Merit	3	18

In case of officer joins at the scale higher than scale I, the minimum service required would be reckoned from the level at which he enters the service e.g. if the officer enters at Scale II the minimum length of service for promotion from scale IV to V will be 9 years instead of 12 years. However, requirement of minimum length of service for promotion to scale V, VI & VII may be linked with relaxation, if any, given by the Board in respect of minimum experience for eligibility criteria. In other words, relaxation if any, given by the Board in minimum years of experience, the same relaxation will be applicable for minimum length of service also."

14. The same policy also states that there is a common cut-off date and para 1.1 reads as under:-

"Vacancies in the respective Grades/Scales shall be identified and circulated every year, covering the period from 1st April to 31st March, of the same financial year. The identification of vacancies would take into account the wastages, new activities, etc. for the whole year. The promotion process will be conducted and finalised as far as possible, by the end of the financial year, to fill up the identified vacancies, if any, on all India basis.

Common Cut-off date:

Common cut-off date for determining eligibility as well as completed years of service will be as on 1st of April of the financial year (April-March) in which the vacancies arise."

15. There is no justification on part of the bank to have delayed the process for promotion to specialist grade to 01.09.2017. The policy and the administrative decisions clearly obligate the Bank to carry out a simultaneous process of promotion from both streams that has been clearly violated resulting in a discriminatory treatment. Due to their delay, the entire specialist grade has been deprived of being eligible to take part in the examination for the purpose of promotion for the year 2020. The fact that on earlier occasions also there were such delays and such delays were not questioned cannot be a basis to deprive the petitioners legitimate right to be considered for promotion. It is well settled that Article 14 casts a duty on the State to ensure equality of law and equal protection of laws.

The State cannot plead waiver of Article 14 by a citizen. Similarly, the Bank cannot plead waiver on the part of the writ petitioners. The learned Advocate General is therefore not correct while submitting that the petitioner's association ought not to have canvassed this issue looking into its past conduct. In any event as stated earlier, this issue was being contested and the petitioner's association as on 26.11.2019 has given a specific letter narrating that orders had been passed granting three months relaxation in the previous year and which should again be exercised in the case of this batch as they should have been promoted with effect from 1.4.2017, because the delay cannot be attributed to them and that they should not be deprived, as being eligible on the cut-off date for promotion to the vacancies which arises on 01.04.2020.

16. The material on record also shows that the majority association had also raised this issue by a letter dated 18.12.2019, wherein a plea was made to include the officers in the specialist grade who have to be promoted after 01.04.2017, to be included in the panel for being eligible to be appointed for vacancies arising on 01.04.2020.

17. The learned Single Judge has failed to appreciate the peculiar circumstances which exist in this year namely, the merger of banks and the consequent fitment of officers from the banks which will be merging including the appellant bank. It would be impossible to conduct a fresh examination for these officers before 31.03.2020 which might have an effect of breaking down the entire merger process.

18. The learned Advocate General has given a concession only for the five representations of the petitioner's association who would be affected by their non-inclusion and that they can be considered for being eligible to be appointed on vacancies rises on 01.04.2020. On the other hand, Mr.N.G.R.Prasad would contend that 10 members would be affected. We do not find any infirmity in the order of the learned Single Judge, but we however modify the order of the learned Single Judge to the effect that such of the members of the petitioner's association who are entitled and who according to the bank belong to the specialist category and have been deprived of the chance to take examination may be permitted to take the examination and be considered for appointment for the vacancies arising on 01.04.2020 treating them to be eligible for promotion. The bank shall ensure that the order of the Court is complied with in letter and spirit without any further delay so as not to cause any disadvantage to the petitioner as against their counterparts. The order of

the learned Single Judge is modified and accordingly, the Writ Appeal is partly allowed. No Costs. Consequently, C.M.P.No.4228 of 2020 is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of India,
Department of Financial Services,
Ministry of Finance, Jeevan-Deep,
Parliament Street, New Delhi 110 001.
2. The Chief Labour Commissioner (Conciliation),
Headquarters, Government of India,
Ministry of Labour and Employment,
Office of the Chief Labour Commissioner (Conciliation),
New Delhi.

+1cc to M/s.Edward James, Advocate SR.No.20601

Writ Appeal No.252 of 2020

CP(CO)
GMY(19/03/2020)

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