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

% **Date of decision: 6th January, 2021.**

\+ **LPA 257/2020 & CM APPL. 29331/2020 (of the appellant for directions).**

SAVITA GUPTA ..... **Appellant**

Through: Ms. Tamali Wad & Ms. Aayushi Singhal, Advocates along with appellant.

versus

INDIA POST PAYMENTS BANK LIMITED (IPPB BOARD) ..... **Respondent**

Through: Mr. Rajesh Kr. Gautam, Mr. Anant Gautam & Mr. Nipun Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment dated 4th August, 2020 of the Single Judge, in W.P.(C) No.3113/2020 filed by the appellant, to the extent the same declares the appellant as 'a probationer' and denies back wages to the petitioner for the period she remained out of service.

2. Although in an appeal there is no need for duplication of pleadings and without leave of Court, no additional facts or factual pleas can be urged, however, in the instant case, when the appeal was entertained it was ordered that pleadings be completed in the present appeal. Pursuant thereto, counter affidavit and rejoinder have been filed.

3. We have heard the counsel for the appellant and the counsel for the

respondent Bank.

4. The writ petition, from which this appeal arises, was filed by the appellant impugning the letter dated 27th March, 2020 of the respondent Bank whereby the service/employment of the appellant with the respondent Bank at the post of General Manager (Finance) was terminated on the ground of the appellant not meeting the mandatory eligibility criteria of having minimum three years experience in heading the Finance and Accounting Department of a Bank or one level below the Head of Finance and Accounting Department in a Bank. The Single Judge, vide the impugned judgment, has (i) set aside the letter/order dated 27th March, 2020 of termination of services of the appellant, for the reason of the same being *ex-facie* stigmatic; (ii) directed the respondent Bank to reinstate the appellant with immediate effect; (iii) left it open to the respondent Bank to take any further action as it may deem fit in accordance with law and further making it clear that "in view of findings above with regard to the status of appellant as probationer, appellant will be reinstated as a probationer from the date of her termination"; and, (iv) directed that the period for which the appellant remained out of service would be counted as period spent on duty, for all purposes, but held the appellant not entitled to back wages but directed the respondent Bank to pay the rent of the premises taken on rent by the appellant as a part of her service condition.

5. In view of the order aforesaid in the writ petition from which this appeal arises, we have at the outset enquired from the counsel for the respondent Bank, (i) whether the respondent Bank has also appealed against the subject order/judgment; and, (ii) whether the respondent Bank has, after the impugned judgment/order, taken any steps vis-a-vis the appellant.

6. The counsel for the respondent Bank states that the respondent Bank has accepted the judgment and not appealed against the same. It is further informed that the Managing Director of the respondent Bank has joined recently and the decision with respect to the appellant, pursuant to the impugned judgment/order, is yet to be taken.

7. We may at the outset only notice that the counsel for the respondent Bank, with respect to the challenge to the judgment of the Single Judge, insofar as denying back wages to the appellant, has fairly stated that the respondent Bank leaves the same to the discretion of the Court.

8. At this stage, the factual controversy which is not in dispute may be taken note of.

9. The respondent Bank issued a letter dated 16th December, 2016 to the appellant, offering to the appellant the post of General Manager (Finance) in the respondent Bank. The said letter, besides other terms and conditions contained therein, in Clause 3 titled "Probation and Confirmation" thereof provided as under:-

> ***"3. Probation and Confirmation:***
> *You shall be placed on probation for a period of one year, during which your performance will be monitored with a view to determining your suitability for confirmation as envisaged and expected for the post you have been employed at. The period of probation may be extended as deemed fit and as per the discretion of the Competent Authority. You shall be issued a formal letter of confirmation on satisfactory completion of probationary period or the extended period of probation, as the case may be. You will be deemed to be on probation until so confirmed in writing"*

10. In pursuance to the aforesaid letter, the appellant joined the respondent Bank on 1st March, 2017.

11. The Service Rules of the respondent Bank, in Rule 6 titled "Probation and Confirmation" thereof, *inter alia* provides as under:-

> *"**6. Probation and confirmation**: Unless otherwise provided in the terms of appointment or any other agreement or award, the following rules shall govern the probation and confirmation of an Officer:*
>
> *6.1. All Officers on first appointment in the service of the Bank on the basis of an open selection, including Officers appointed to a higher grade, shall be placed on probation for a period of one year, during which their performance will be monitored with a view to determining their suitability for confirmation against the permanent post.*
>
> *6.2. The following categories of Officers shall be exempted from the requirement of probation:*
>
> *6.2.1. Officers of Government and Semi-Government Organisations who join initially on deputation/ Foreign Service for a period prior to their permanent absorption in the service of the Bank.*
>
> *6.2.2. Officers of Government and Semi-Government organizations who are entitled to retain lien in the previous posts as per rules of the said organizations, provided they surrender their lien on the service of the previous employer. Provided that where an Officer chooses to retain lien on the service of the previous organization he/ she may do so subject to the condition that the Bank shall bear no liability whatsoever on that account.*
>
> *6.2.3. An Officer who is on deputation/ Foreign Service or an Officer who retains lien on the service of the previous employer shall be deemed to be*

confirmed as a permanent Officer with effect from the date he/she surrenders his/her lien on the service of the previous employer. Other Officers who are exempted from probation under these rules shall be deemed to be confirmed as permanent Officers with effect from the date of joining the service of the Bank.

6.3. The period of probation may be extended at the discretion of the Competent Authority, but will not be extended by more than one year save for exceptional reasons to be recorded in writing.

6.4. Unless exempted under these rules, every Officer appointed in the Bank's service will be issued a formal order of confirmation on satisfactory completion of probationary period or the extended period of probation, as may be applicable. The Officer will be deemed to be on probation until so confirmed in writing.

6.5. An order relating to confirmation or extension of probation will normally be communicated within one month from the date of completion of the probationary period or extended period of probation. Non-compliance with this stipulation will not, however, result in automatic confirmation of the Officer.

6.6. An Officer shall be confirmed in the service of the Bank, if, in the opinion of the Competent Authority, the Officer has satisfactorily completed the training in any institution to which the Officer may have been deputed for training, and the in-service training in the Bank.

6.7. If during the probationary period or extended period of probation, the performance, progress and general conduct of the Officer are not found satisfactory or up to the standard required for the post, his/ her services *are liable to be terminated at any time by giving such notice or payment of emoluments in lieu thereof without assigning any reason provided hereinafter. In case of a promotee from the Bank's service, he/she may be reverted to the grade from which he/she was promoted."*

12. Finding no provision, neither in the Letter of Appointment nor in the Service Rules, of automatic/deemed confirmation, we have enquired from the counsel for the appellant, whether the appellant was confirmed at any time prior to the termination.

13. The counsel for the appellant states that, (i) there is no letter of confirmation; at the relevant time none of the employees of the respondent Bank had been confirmed; and (ii) the Recruitment Advisory Committee of the Board of Directors of the respondent Bank, on 18th March, 2019 resolved as under:-

"1.<u>Approval on change in Confirmation Process</u>

The committee was appraised about nature and types of verifications done for regular IPPB employees. The committee was informed that many IPPB employees are due for confirmation. Significant delay is observed in most of confirmation cases where verification could not happen on time due to interdependency at various levels. This may hamper morale and performance of employees.

Post the Discussion Committee members passed the following resolution:

RESOLVED THAT *Committee members of the Bank be and is approved the proposal to change the confirmation process as below*

> *a) All employees who have completed one year in service are proposed to be confirmed subject to satisfactory performance.*
>
> *b) This confirmation is subject to completion of due verification process. Confirmation of employee will be reversed in case of any adverse remarks or findings are observed in verification reports and suitable action may be taken as appropriate."*

14. It is not the case of either party that the aforesaid Resolution of the Recruitment Advisory Committee of the Board of Directors, if required to be ratified, was not ratified by the Board of Directors of the respondent Bank. Both counsels have relied thereon.

15. The respondent Bank, on 13th September, 2019 sought clarification from the appellant with regard to her scale in the previous employment *vis-a-vis* the Public Sector Banks (PSBs) and work experience. It was *inter alia* stated therein that, (i) in the advertisement for recruitment pursuant to which the appellant had applied, the eligibility for the post for which the appellant applied and had been recruited was that "The candidate should at least be working in scale-VI of a PSB or equivalent scale in a Private Bank or similar level in any other organisation" and that the applicant should have minimum 18 years of experience of which a minimum three years was required to be of heading a Finance and Accounting Department of a Bank or one level below the Head of a Finance and Accounting Department in a Bank; (ii) the appellant, in her application for recruitment had confirmed that she fulfilled the said requirements; (iii) on the basis of the said representations and documents furnished, the appellant had been offered the subject post; and, (iv) during the process of verification, it had transpired

that the appellant was not drawing Pay Scale VI of a PSB or equivalent scale and which was a mandatory requirement for eligibility, and, the experience certificate produced by the appellant also did not conclusively state the petitioner fulfilled experience requirement of minimum three years as heading a Finance and Accounting Department of a bank or one level below the Head of Finance and Accounting Department in a Bank, as also required. Clarification was thus sought from the appellant and the appellant was asked to also furnish documentary evidence of possessing minimum three years of experience heading a Finance and Accounting Department of a Bank or one level below the Head of Finance and Accounting Department in a Bank. The appellant was also informed that if no reply was received from the appellant within seven days, the matter will be placed before the Competent Authority, without clarification of the appellant.

16. The appellant, vide her response to the aforesaid letter of the respondent Bank, while expressing shock and surprise, *inter alia* stated that, (i) her eligibility was considered at the time of scrutiny of applications for recruitment/appointment, at the time of interview and prior to issue of offer of appointment; therefore there was no question of the appellant being not eligible; (ii) if any clarification was required, it should be obtained from the personnel who had conducted the said scrutiny and selected the appellant; (iii) the appellant had made honest and correct disclosures in her application and it was for the respondent Bank to carry out a due diligence; (iv) the period of probation was one year and her appointment should have been confirmed and on this ground alone, the letter seeking clarification from her should be withdrawn; (v) if the appellant was not eligible, she should not have been interviewed and appointed and she could not have

been appointed merely on the basis of her own assessment and opinion of her eligibility; and, (vi) the clarifications sought were an afterthought and to malign the petitioner and affect her career.

17. As aforesaid, the respondent Bank thereafter, vide letter dated 27th March, 2020, impugning which the writ petition from which this appeal arises was filed, terminated the services of the appellant with the respondent Bank stating:

> *"You were offered the post of General Manager (Finance) vide offer letter dated December, 16, 2016 and you subsequently joined the services of the Bank on March 01, 2017.*
>
> *In pursuance of the terms and conditions stated in clause 5(a) of your offer letter dated December 16, 2016, as per the direction of the Board, your services from the Bank are terminated with immediate effect for the reason of not meeting the mandatory eligibility criteria of having minimum 3 years of experience heading a finance and accounting department of a Bank or one level below the head of a finance and accounting department in a Bank.*
>
> *You shall be paid one month's emoluments in lieu of one month's notice period as per clause 5(a) of your offer letter dated December 16, 2016.*
>
> *This is being issued under the directions of the Competent Authority."*

18. The appellant filed the writ petition from which this appeal arises, *inter alia* pleading that, (i) the appellant had not been served with any show cause notice before issuance of termination letter dated 27th March, 2020; (ii) the termination was in violation of principles of natural justice since the appellant was not given reasonable opportunity to represent her case and to adduce evidence; (iii) the respondent Bank had failed to abide with clauses

6.3 and 6.5 of the Service Rules; and, (iv) "....... although the probation period has expired in March 2018 however no letter has been issued to the petitioner thereby intimating about extension of probation period....", and seeking declaration that her termination vide letter dated 27th March, 2020 was *non est* for non-compliance of procedure and seeking reinstatement in service.

19. The Single Judge, in the impugned order/judgment has noted that it was *inter alia* the contention of the appellant, that (i) at the time of termination the appellant was no longer a probationer as her services stood confirmed prior thereto because in the recruitment advertisement it was not provided that there would be probation period and probation clause was inserted for the first time in the offer letter; (ii) alternatively, that the appellant became due for confirmation on 1st March, 2018 and though Clause 6.3 of the Service Rules entitled the respondent Bank to extend the period of probation but for maximum one year only in exceptional circumstances and for reasons to be recorded in writing; no reasons in writing for extending the probation period had been shown and thus the appellant even if appointed on probation stood confirmed and mere non-issuance of the confirmation letter was of no avail; (iii) the Recruitment Advisory Committee of the respondent Bank in the meeting held on 18th March, 2019 approved confirmation of all employees who had completed one year in service; (iv) since the appellant was a confirmed employee, Clause 5(a) of the offer letter could not have been invoked to terminate the services; (v) without prejudice to the aforesaid, even assuming that the appellant was a probationer, her services could not have been terminated without an inquiry; and, (vi) the order of termination, even if as a

probationer, was punitive.

20. The Single Judge, in the impugned order/judgment, found/observed/held that, (i) the first issue which arose for consideration was, whether the appellant continued to be a probationer or she was a confirmed employee in terms of the Resolution dated 18th March, 2019 of the Recruitment Advisory Committee of the Board of Directors of the respondent Bank; (ii) it was settled law that probation does not end automatically at the end of period of probation unless the Rules expressly provide so; even where a maximum period is provided beyond which probation cannot be extended and the probationer continues in the said status beyond the said period, he does not get confirmed unless the Rules provide so; (iii) in law there is no deemed confirmation of a probationer unless expressly provided by a Rule; (iv) the Rules of the respondent Bank, on the contrary provided for an officer to be deemed to be on probation, unless confirmed in writing; (v) the second issue for consideration was, whether the termination order was a termination simpliciter or it was punitive and stigmatic, requiring an inquiry; (vi) the termination of the appellant was not a termination simpliciter because, as had come on record, the trigger for the action against the appellant was a complaint alleging irregularity in the recruitment of the appellant; (vii) the termination of the services of the appellant was founded on serious allegations of irregular recruitment of the appellant, CAG Audit, queries raised by the Department of Posts, investigation by the Chief Vigilance Officer and alleged misrepresentation and suppression by the appellant; (viii) the appellant, admittedly was not subjected to an inquiry nor given a chance to defend herself; (ix) the order of termination was punitive and in the absence of a

regular inquiry, deserved to be set aside; (x) the respondent Bank for terminating the services of the appellant had also relied upon a letter received from IDBI but no opportunity had been given to the appellant to meet the same; and, (xi) the termination order being *ex-facie* stigmatic, was liable to be set aside.

21. As aforesaid, in this appeal, the challenge by the appellant is twofold, firstly to the finding of the Single Judge, that the status of the appellant till her termination vide letter dated 27th March, 2020 was of a probationer and, secondly qua the denial of back wages.

22. With respect to denial of back wages, the counsel for the appellant has argued that no reason has been given therefor and since the termination had been held to be illegal and has been set aside, axiomatically, back wages should have followed.

23. We have considered the aforesaid contention. Though undoubtedly the Single Judge has not given any reason for denial of back wages but from the factum of the Single Judge having directed the respondent Bank to pay the lease rental of the residence of the appellant and which was a part of the emoluments of the appellant, it is evident that the Single Judge, while denying the back wages, has balanced the equities. It thus cannot be said that the denial of back wages is in toto or without any basis. In our understanding of the law, grant of back wages in entirety for the period for which the employee had admittedly not done any work for the employer, does not automatically follow an order of setting aside of termination and of reinstatement.

24. Though ordinarily the said discretion exercised by the Single Judge, in the matter of back wages is not interfereable in exercise of jurisdiction

under Section 10 of the Delhi High Court Act, 1966 and/or the Letters Patent of this Court, unless found to have been exercised perversely, and which we do not find in the present case, but since we are told that the back wages concerned are for a period of about four months only i.e. for the period 27th March, 2020 to 10th August, 2020 when the appellant was reinstated, we are inclined to allow the said claim of the appellant.

25. That brings us to the question on which arguments for over one and a half hours were addressed by the counsel for the appellant i.e. whether the Single Judge erred in holding the status of the appellant to be as a probationer only. The counsel for the appellant, in this context has argued, that (i) once the Selection Committee constituted for recruitment had found the appellant to be eligible, her eligibility could not be questioned; the Selection Committee comprised of highly experienced senior officials of the banking industry; (ii) in the advertisement pursuant to which the appellant had applied for recruitment, there was no provision for probation and could not have been introduced as an afterthought in the offer of appointment; (iii) since no letter of extension of probation, as required to be issued under the Service Rules, was issued, the appellant was deemed to be confirmed; (iv) circulars/office memorandums issued by the Department of Personnel & Training (DoPT) of the Ministry of Personnel, Public Grievances and Pensions of Government of India on the subject of probation and confirmation, had also not been followed; (v) the termination of the services of the appellant was a fruit of a poisonous tree (because of owing it's initiation to an anonymous/pseudonymous complaint which, as per DoPT circulars was not entertainable) and thus once the termination was set aside, the appellant automatically stood confirmed; (vi) once no

merit was found in the reason for which services of the appellant were terminated as a probationer, it automatically followed that the appellant is to be confirmed; (vii) the respondent Bank, for some reason is inimical to the appellant and if the liberty as granted by the Single Judge to the respondent Bank to take any further action it deems fit in accordance with law is allowed to stand, the same will be misused by the respondent Bank to harass the appellant; and, (viii) though no declaration was sought by the appellant in the writ petition from which this appeal arises, of the appellant having been confirmed but the said question directly arose for adjudication and has been wrongly decided by the Single Judge.

26. Per contra the counsel for the respondent Bank has argued, that (i) in the writ petition as filed, there were no allegations of *mala fide* in the matter of termination of the services of the appellant and allegations of *mala fide* were made as an afterthought, for the first time in the rejoinder to the counter affidavit of the respondent Bank and to which the respondent Bank had no opportunity to respond and the Single Judge has not, for this reason considered the allegations of *mala fide* made in the rejoinder and the appellant cannot be permitted to argue the same now; (ii) that the Single Judge, in the impugned judgment has referred to plethora of case law including to the judgment of three Judge Bench of the Supreme Court in ***High Court of Madhya Pradesh through Registrar Vs. Satyanarayan Jhavar*** 2001 (7) SCC 161 and the recent judgment of the Supreme Court in ***Durgabai Deshmukh Memorial Sr. Sec. School Vs. J.A.J. Vasu Sena*** (2019) 17 SCC 157 to hold that there is no deemed confirmation in service jurisprudence; and, (iii) the respondent Bank had made enquiry with respect to eligibility of the appellant from IDBI with which the appellant was

earlier employed and has acted on the basis of the reply of IDBI; however since the appellant was not given an opportunity to respond to the said reply, the Single Judge though finding the appellant to be having the status of a probationer, has held that since reason was given in the termination letter, the termination was stigmatic.

27. The counsel for the appellant, in rejoinder has argued, that (i) as per the Resolution dated 18th March, 2019 of the Recruitment Advisory Committee of the Board of Directors of the respondent Bank also, the decision on confirmation was subject to satisfactory performance and completion of due verification process; and, (ii) from all the Annual Performance Appraisal Reports of 'outstanding' of the appellant, it is evident that performance of the appellant has been satisfactory and verification cannot be with respect to qualifications for appointment with respect whereto the respondent Bank had satisfied itself at the time of issuing offer of appointment.

28. No merit is found in any of the contentions aforesaid of the counsel for the appellant.

29. The Single Judge has taken pains to support her reasoning by a plethora of judgments and no dent even has been made by the counsel for the appellant thereon. Once the counsel for the appellant also admits that there is no document of confirmation of services of the appellant, in the absence of any provision in her letter of appointment and/or in the Service Rules, of deemed confirmation, the status of the appellant continued, as on probation, and the mistake of the respondent Bank in, while terminating the probation of the appellant, imputing reasons, cannot become a ground for the appellant to gain confirmation, which, in the absence of a contract or

Rules, cannot be but by an overt act of confirmation. It is significant that the Single Judge was not required to, and has not returned any findings with respect to the eligibility of the appellant for the post for which she applied and was recruited. It is for this reason only that the Single Judge, while setting aside termination for the reason of having been made done without inquiry, has left it open to the respondent Bank, if so desires, to, in accordance with law proceed to determine the eligibility of the appellant.

30. As far as the argument, of the counsel for the appellant, of the eligibility of the appellant for recruitment having been determined before issuing letter of appointment to her and the respondent Bank being not entitled to go into it again at the time of confirmation, is concerned, suffice it is to refer to Clause 13 titled "Disclaimer" of the recruitment advertisement pursuant to which the appellant applied, to the effect that "In case it is detected at any stage of recruitment that a candidate does not fulfill the eligibility norms and/or that he/she has furnished any incorrect/false information or has suppressed any material fact(s), his/her candidature will stand cancelled. If any of these shortcomings is/are detected even after appointment, his/her services are liable to be terminated" . The appellant having applied on the said condition, cannot be heard to contend to the contrary.

31. We may also add/observe that appointment to any post, particularly a public post as of General Manager (Finance) in the respondent Bank, dealing with public monies, and the incumbent wherein is trusted with safety and security monies in the saving and current accounts of public at large, without fulfilling the conditions prescribed for eligibility to the said post, is illegal and liable to be set aside/quashed at any time and the

incumbent thereto cannot take the pleas, as are being taken by the appellant, of the respondent Bank being estopped from verifying her eligibility because of having at the time of issuance of offer of appointment to the appellant having considered the appellant eligible. Even if before issuing of the offer of appointment, eligibility of the appellant for the post was considered and even if by a Selection Committee of senior experienced officers of the banking industry, if the same is erroneous, the same will not bind the respondent Bank and the respondent Bank will remain entitled to annul the said appointment on the said ground. Public interest does not permit a person not eligible for such a post, to continue on the said post.

32. The conduct of the appellant of, notwithstanding clarification having been sought from her, instead of furnishing the said clarification, blaming the members of the Selection Committee who had found her eligible and offered appointment to her, does not inspire confidence and left the respondent Bank with no option but to presume that the appellant had no other explanation/clarification to give and to terminate her employment. Inspite thereof the Single Judge has granted opportunity to the appellant.

33. As far as the argument, of the counsel for the appellant of the advertisement for recruitment not referring to any probation and the provision for probation having been added as an afterthought in the offer of appointment, is concerned (a) the advertisement referred to the Service Rules, which provide for probation; (b) the appellant claiming to have earlier served IDBI at a senior position, was not a novice at the time of applying and before applying is deemed to have satisfied herself; and, (c) the appellant did not protest to the condition of probation even if not found in the recruitment advertisement and inserted for the first time in the offer

of appointment and accepted the same and now cannot be heard to complain.

34. No merit is found in any of the other arguments either of the counsel for the appellant. The reliance on the circulars/memorandum of DoPT is made for the first time in the appeal and inspite of being asked to show, how the same are applicable to the respondent Bank, no answer has been forthcoming. No explanation is offered also to, how the same will overrule the express Service Rules to the contrary. Similarly the argument of termination being the 'fruit of a poisonous tree' is made without the same having any application to the controversy. Not only is the argument of an anonymous complaint being not actionable is made without any basis/provision therefor in the respondent Bank and referring again to the DoPT circulars for whose application to the respondent Bank there is no explanation but even otherwise once an explanation had been sought from the appellant and which the appellant chose not to give, the appellant cannot hide behind such pleas.

35. The argument of the appellant having been confirmed pursuant to the Resolution dated 18th March, 2019 of the Recruitment Advisory Committee of the Board of Directors of the respondent Bank, is also by misreading the said Resolution. Vide the said Resolution, the employees of the respondent Bank were not confirmed but were "proposed to be confirmed subject to satisfactory performance" and "subject to completion of due verification process" with confirmation being 'reversed in case of any adverse remarks or findings are observed in verification reports" and suitable action being resolved to be taken otherwise. The appellant failed in the verification process and for which reason she was not confirmed.

36. The only other argument of the appellant having been deemed to be confirmed because of her period of probation being not extended, is also contrary to the Service Rules and against the law as dealt in detail in the judgment of the Single Judge.

37. Thus the appeal, to the extent impugning the order of the Single Judge holding the appellant to be a probationer, is dismissed.

38. Resultantly, the appeal is only partly allowed, directing the respondent Bank to, within eight weeks, pay to the appellant the back wages for the period the services of the appellant remained terminated i.e from 27th March, 2020 to 10th August, 2020. If the back wages are not paid within the said time, they shall also incur interest after eight weeks, at 7% per annum.

The appeal is disposed of.

RAJIV SAHAI ENDLAW, J

SANJEEV NARULA, J

JANUARY 6, 2021
'pp'..