

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**M.A.T. 1728 of 2022**

**State Bank of India & ors.  
VS.**

**Abhishek Choudhury & anr.**

With

**M.A.T. 64 of 2023**

**State Bank of India & ors.  
VS.**

**Abhishek Choudhury & anr.**

For the Appellants : Mr. Subrata Kumar Sinha, Advocate

For the Respondent No.1/  
Private respondent : Mr. Soumya Majumdar, Advocate  
Mr. Biswaroop Biswas, Advocate  
Mr. Prabir Rej, Advocate  
Mr. Pranab Kumar Das, Advocate  
Ms. Nupur Chaudhuri, Advocate

For the Union of India : Mr. Arun Bandyopadhyay, Advocate

Heard on : 12.09.2024

Judgment on : 12.09.2024

**DEBANGSU BASAK, J.:-**

1. Appeal is directed against the order dated December 12, 2022 in WPA  
22356 of 2022.

2. By the impugned order, learned Single Judge, allowed the writ petition and directed the authorities to consider the representation of the writ petitioner/private respondent dated January 29, 2021 in terms of the Service Rules and Guidelines of the appellants on reversion policy after taking into consideration the report of the medical board dated February 28, 2022.

3. Learned advocate appearing for the appellants submits that, private respondent was working as an Assistant with the appellants. He participated in the selection process for promotion to the post of Assistant Manager. He was granted promotion to the post of Assistant Manager on probation. During the probationary period, private respondent absented himself from his duties. He stopped attending the branch on and from January 5, 2021 after reporting for duty on January 4, 2021.

4. Learned advocate appearing for the appellants submits that, the Service Rules of the employees of the appellants are governed by the provisions of the State Bank of India Officers' Service Rules, 1992 so far as the cadre of private respondent at which he was promoted. He refers to Rule 16(3) thereof. He submits that, it is at the discretion of the management whether or not to revert a promotee to the original cadre. He also refers to the policy of the appellants which is embodied in the reversion policy. According to him, reversion is at the discretion of the management since, the management is required to maintain the discipline amongst its employees. He refers to large strength of employees of the appellants. He submits that, in the event, Rule

16(3) is read to mean that, an employee is entitled to apply for reversion, then, there will be a human resource nightmare for the appellants. Any person will apply for reversion under umpteen number of circumstances and the management would be in a quandary to address all of the issues.

5. Learned advocate appearing for the appellants submits that, the service conditions of the private respondent allows the management to declare an employee as voluntarily vacated his post. In this regard, he refers to Rule 40(3) of the Service Rules of 1992. He submits that, first notice in terms of Rule 40(3) of the Service Rules of 1992 was issued on June 16, 2022 since, the private respondent was absenting himself unauthorizedly since January 5, 2021. He refers to the second notice issued on September 19, 2022. He submits that, the second notice dated September 19, 2022 contains the order of voluntary vacation of service so far as private respondent is concerned. Such notice was received by the private respondent on September 21, 2022. The writ petition was affirmed on September 23, 2022.

6. Learned advocate appearing for the appellants draws the attention of the Court to the prayers made in the writ petition. He submits that, none of the notices dated June 16, 2022 or September 19, 2022 were challenged by the private respondent despite he being aware of the same.

7. Learned advocate appearing for the private respondent refers to the list dates. He submits that, the appellants are bound by its own policy decision guidelines as also service rules framed by it. He refers to the Rule 16(3) of the

Rules of 1992 as also the reversion policy as appearing in the handbook of the appellants. He submits that, both Rule 16(3) of the Rules of 1992 as also the reversion policy of the appellants permits an application to be made by the employee concerned for the purpose of reversion. He submits that, in fact the policy lays down an elaborate procedure to be followed when an employee applies for reversion.

8. Learned advocate appearing for the private respondent submits that, the private respondent followed the procedure laid down in terms of the reversion policy. He submits that, there is no endorsement at the level of the Circle Chief General Manager for the Chief General Manager (HR) at the Corporate Sector, Mumbai to take a decision on the subject. Therefore, he submits that, the decision taken of not allowing the application of reversion is arbitrary. Consequently, he submits that, learned Single Judge did not err in directing the appellants to reconsider the application for reversion.

9. Relying upon **(1979) 1 Supreme Court Cases 590 (G. T. Lad & ors. Vs. Chemical and Fibres of India Limited)**, learned advocate appearing for the private respondent submits that, absence from duty *ipso facto* does not mean the respondent abandoned service. Absence from duty was purely temporary and could be condoned.

10. We considered the rival contentions of the parties.

11. We find that, the private respondent joined the services of the appellants in the clerical post on December 31, 2012. Private respondent

participated in a selection process for promotion. Being successful therein, he was promoted to Junior Manager Grade Scale-I in April 2020. Private respondent was transferred to Bataspur Branch as Service Manager on July 28, 2020.

12. It is the claim of the private respondent that, he fell sick in November 2020 and that, he applied for and obtained leave till January 4, 2021.

13. Private respondent made a representation dated January 29, 2021 for reversion to the post of clerical cadre. A medical board was constituted to examine the physical condition of the private respondent on January 13, 2022. Medical test was conducted. Medical Board submitted a report dated February 28, 2022 with the following conclusion:

*“HE IS RECOMMENDED TO INVOLVE IN LESS STRESSFUL WORK.”*

14. By a letter dated April 26, 2021 private respondent submitted another application for reversion of service to clerical grade. He prayed for two months leave extension by a letter dated May 18, 2022.

15. The representation of the private respondent for reversion to the clerical post was rejected on May 30, 2022. Thereafter, appellants invoked provisions of Rule 40(3) of the Service Rules of 1992 as against the private respondent. First notice under Rule 40(3) was issued to the private respondent on June 16, 2022. Thereafter, on the private respondent not joining the services, in terms of the first notice dated June 16, 2022, appellants issued an

order holding that, private respondent voluntarily vacated service with effect from July 20, 2022 by a writing dated September 19, 2022.

16. The writing dated September 19, 2022 was received by the private respondent on September 21, 2022. Writ petition of the private respondent was affirmed on September 23, 2022. Prayers of such writ petition are as follows:-

*“a) A Writ of and/or in the nature of Mandamus do issue directing the respondents to forthwith rescind/cancel and/or withdraw the impugned order of rejection of application of the petitioner for reversion of his service to clerical grade on medical ground which has been passed by the competent authority and communicated to the petitioner by the Regional Manager, Regional Business Office – IV, Durgapur, Respondent no.5 vide letter under Reference No.RBO(IV)DGP/GEN/144 Dated 30.5.2022 which is Annexure –“P-6” to the instant writ petition;*

*b) A Writ of and/or in the nature of Mandamus do issue directing the respondents to forthwith approve the application of the petitioner for reversion of his service to clerical grade from promotional post of Service Manager on medical ground and permits the petitioner to resume his duty to the said post of Clerical Grade;*

c) A Writ of and/or in the nature of Mandamus do issue directing the respondents not to take any step for voluntary vacation of service of the petitioner due to unauthorized absence from duty;

d) A Writ of and/or in the nature of Mandamus do issue directing the respondents to grant medical leave to the petitioner from 05.01.2021 till date of resumption of service to the clerical cadre;

e) A Writ or and/or in the nature of Certiorari do issue directing the respondent nos.2 to 8 to transmit and produce all relevant documents of the case before This Hon'ble Court so that conscionable justice to be rendered to the petitioner;

f) Rule NISI in terms of the prayers (a), (b), (c), (d) and (e) above and make the Rule absolute if no sufficient causes are shown;

g) Interim order restraining the respondents and their men and agents not to take any step for termination of service of the petitioner on the ground of unauthorized absence from duty till disposal of the instant writ petition;

h) Ad-interim order in terms of prayer (g) above till hearing of the instant writ petition

i) To pass such other order or orders and/or further order/orders as to Your

*Lordships may deem fit and proper for the ends of justice.”*

17. Decision taken by the appellants under Rule 40(3) of the Rules of 1992 as contained in the writing dated September 19, 2022 received by the private respondent on September 21, 2022 was not challenged in the writ petition filed by the private respondent.

18. The inevitable conclusion is that, the private respondent accepted the decision of the appellants in terms of Rule 40(3) of the Rules of 1992 as embodied in the letter dated September 19, 2022 by not challenging the same in his writ petition. The private respondent allowed such decision to attain finality despite being aware of the same prior to filing of the writ petition.

19. Learned Single Judge by the impugned order directed reconsideration of the application for reversion made by the private respondent. Since the decision of the appellants that, the private respondent voluntarily vacated his service with effect from July 15, 2022 was not to under challenge, directing the reconsideration of an application for reversion, in respect of a person who was no longer in the employment of the appellants, on the date of passing of the impugned order, was not required.

20. In view of the decision of the appellants as embodied in the writing dated September 19, 2022 not being under challenge, we are not minded to enter into the arena as to the interpretation of Rule 16(3) of the Rules of 1992 as propounded by both the parties.

21. Similarly, the ratio laid down in ***G. T. Lad & ors. Vs. Chemical and Fibres of India Limited (supra)*** is not attracted in view of the conduct of the private respondent.

22. In such circumstances, the impugned order dated December 12, 2022 is set aside.

23. MAT 1728 of 2022 stood disposed of by the co-ordinate Bench. Department will record its disposal.

24. MAT 64 of 2023 is **allowed** without any order as to costs.

**(Debangsu Basak, J.)**

25. I agree.

**(Md. Shabbar Rashidi, J.)**

CHC