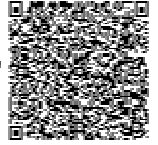


2025:PHHC:025008-DB

LPA-1839-2017 (O&M)
Date of Decision: 20.02.2025

UCO Bank

..Appellant

Vs.

Hardayal Sidhu and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. V.K. Kataria, Advocate for the appellant.

Mr. P.S. Bajwa, Advocate for the respondents.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Heard learned counsel at length for the respective parties.
2. The challenge in this appeal is to the judgment passed by the learned Single Judge dated 28.08.2017, whereby it allowed the writ petition preferred by the writ petitioner in the year 1998, challenging the promotion granted to the respondents.
3. Learned counsel appearing for the appellant-bank submits that the judgment passed by the learned Single Judge is against the law and facts and contrary to the settled principles of statutory interpretation as well as the Promotion Policy Settlement for Workman Staff and is, therefore, unsustainable in the eyes of law.
4. The Promotion Policy Settlement was arrived at between the recognized unions and the management of the bank, which came into force in

1988 and officers were to be promoted from clerical cadre under merit-cum-seniority channel based on marks obtained by the candidate in the written test. As per Clause 3.6.1 Note-3 of the Settlement, the candidates who passed the test would be ranked on the basis of marks obtained in the written test. On the basis of said ranking list, those shall rank within three times of the number of vacancies declared by the bank, cannot be considered for promotion and merit would be prepared on the basis of aggregate marks of such candidates secured in written test, service and qualification. Candidates who secured same number of marks, would be ranked on the basis of their inter se seniority and they would be empanelled and declared promoted. It is submitted that the list of successful candidates was finalized accordingly. It is his submission that as the writ petitioners could not fall within the ambit of three times the number of vacancies, on the basis of their written marks, they were ousted from consideration for promotion. It is an admitted position that the marks obtained by the writ petitioners were 18 or less out of the maximum 55 marks in the interview. It is submitted that although the total aggregate marks of the writ petitioners were higher (which included written test, service and qualification), they could not be promoted as they did not fall within the zone of consideration for promotion.

5. Learned counsel submits that the writ petitioner having appeared in the written examination and knowing fully well that he has fallen beyond the three times number, has challenged the said Note-3 appended to Rule 3.6.1 of the Promotion Policy, which he could not have done as after he had participated in the selection process, he could not have turned around and challenged the conditions laid down for promotion. Learned counsel points

out that the judgments were cited with regard to the said aspect before the learned Single Judge and has also taken us through the said judgments to submit that a person cannot be allowed to challenge conditions through which a candidate participates for promotion process after he has found himself to be ousted under those conditions.

6. Learned counsel for the appellant has taken this Court to the judgment passed by the learned Single Judge to point out that while the learned Single Judge has made certain observations relating to the Note, Note-3 has not been struck down, in spite thereto, the writ petitioner has been directed to be placed appropriately in the select list and to promote him to the post of Junior Management Grade Scale-I from the date his juniors were promoted and to give him all consequential benefits.

7. Learned counsel submits that the writ petitioner had been subsequently promoted on 20.02.2001 as Junior Management Grade Scale-I, he, therefore, would not be entitled to claim his promotion from an earlier date under the same policy.

8. Per contra, learned counsel for the writ petitioner supports the judgment passed by the learned Single Judge and submits that since the writ petitioner secured much higher marks than the candidates who have been placed in the select list and the operation of Note-3 results in arbitrariness and deprives a higher meritorious person from selection. It is his submission that the writ petitioner had secured 53 marks while the persons with 36.5 marks have been selected. The writ petitioner had passed the written examination and thereafter there was no occasion to keep him out of zone for

consideration for promotion and oust him although his aggregate marks were much higher.

9. Learned counsel has also invited our attention to the observations made by the learned Single Judge, wherein, he says if Note-3 is a hurdle for the writ petitioner with reference to marks obtained in the written test and persons who secured aggregate less marks, the principle of mode cannot be adopted/adhered for the reasons that process of interview method is not prescribed for the post of Junior Management Grade Scale-I. The learned Single Judge has, thus, observed that the question of short listing mode does not arise.

10. We have carefully considered the submissions.

11. It would be apposite to quote the process and mode of selection laid down in the promotion policy.

“3.6.1 Merit-cum-Seniority Channel:

Under Merit-cum-Seniority Channel, there will be assessment of 100 marks distributed in the following manner:

a) Written test to be conducted by the Institute of banking Personnel Selection (IBPS) (model questions/Syllabus will be given before the test.

.... 55 marks

b) Service (2 marks for each completed year of service as assessed vide para 3.4.3 above with a maximum of 25 marks)

... 25 marks

c) Educational Qualification .

.. 20 marks

i) Graduation from a recognized University

... 6 Marks

ii) Post-graduate/Double Graduate from a recognized university

.

.. 3 Marks

*iii) CAIIB Examination of India Institute of Bankers**Part I .. 3**Part II ... 6**iv) Honours Graduate/Graduate/Post Graduate from recognized University having 50% marks or more in the aggregate*

.... 2

*NOTE:1) Applications will be invited from eligible clerical staff to appear for the written test. Only those who conform to the prescribed norms shall be eligible for appear for the written test.**2) Pass marks in the written test to be conducted by (IBPS) will be 35% (for SC/ST candidates 30%).**3) Candidates who pass the test will be ranked on the basis of marks obtained in the written test and those who shall rank within the number equivalent to three times the vacancies declared for this channel will be considered for promotion on the basis of aggregate marks secured in the written test, service and qualification. The candidates who secure the same number of marks in the aggregate shall be ranked on the basis of inter-se seniority. The candidates securing rank on the basis of aggregate marks as above within the number of vacancies set apart for this channel would be empanelled and declared promoted.*

12. It is apparent that the Promotion Policy prescribed different methods for selection of merit-cum-seniority channel and seniority channel. The method for merit-cum-seniority channel requires a candidate to pass a written test which has overall maximum 55 marks. Not only that, after the marks are obtained by a candidate, for further consideration of his candidature, he must fall in the rank within the number equivalent to three times the vacancy.

13. It is an admitted position that the writ petitioner did not fall within three times the vacancies and, therefore, he was ousted from consideration of the second stage namely counting the aggregate. A candidate who secures more marks in written test but may not secure adequate marks in service and qualification, would still be placed in the panel, however, if a person does not fall within three times of the vacancies i.e. in the ranking list, he may secure higher marks in service as well as educational qualification, but would be ousted. Such a criteria which has been adopted is to select meritorious candidates and merit is assessed singly on the basis of written test. The observations of the learned Single Judge that as there is no interview, the criteria of Note-3 would be only a screening, is wholly unfounded. In our opinion, it is to assess the merit that the written test has been conducted and even if a candidate may have secured minimum marks but he must fall within the rank for the purpose of promotion. On the other hand, the seniority channel does not require a candidate to pass a written test. Notionally weightage is given for qualifications under the seniority channel. In our opinion, there has been an error in only considering the criteria of merit-cum-seniority to include the writ petitioner who did not fall within the ranking list. We also notice that the judgments which were cited before the learned Single Judge were not examined. It is settled law that once a person participates with open eyes in a particular selection that may be for direct recruitment or promotion, he cannot be allowed to turn around and challenge the said conditions after he finds that he has failed to perform and get the relevant result. Principle of approbate and reprobate would, therefore, apply in such circumstances. The law has been settled as has been cited by the

learned counsel before the learned Single Judge and we too would briefly refer to the said judgments.

14. In **K.A. Nagamani vs. Indian Airlines and others (2009) 5 SCC 515**, the Hon'ble Apex Court held as under:-

“6. Yet another aspect of the matter: That the appellant admittedly had participated in the similar selection process for erstwhile grade 15 and 16, Manager (Maintenance/Systems) and Senior Manager (Maintenance/Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all other eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question. The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

In Madan Lal & Ors. Vs. State of J & K & Ors. [(1995) 3 SCC 486], the Apex Court observed: "It is now well settled that if a candidate takes a calculated chance and appears at the interview, then,

32 only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair: Therefore, the result of the interview test on merits cannot be successfully challenged by a

candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful."

15. In **Ashok Kumar and others vs. State of Bihar and others (2017) 1 SCC (LS) 822**, the Hon'ble Apex Court held as under:-

"The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppels would operate."

16. In **Tajvir Singh Sodhi and others vs The State of Jammu & Kashmir and others 2023 (5) Scale 379**, the Hon'ble Apex Court held as under:-

"13.1. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in

light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.”

17. In Krishna Rai vs. Banaras Hindu University 2022 (3) SCT 244 SC, the Hon’ble Supreme Court has held as under:-

“22. However, the Division Bench fell in error in applying the principle of estoppel that the appellants having appeared in the interview and being unsuccessful proceeded to challenge the same and on that ground alone, allowed the appeals, set aside the judgment of the learned Single Judge. The Division Bench having approved the reasoning of the learned Single Judge, ought not to have interfered in the judgment of the learned Single Judge on a technical plea. The Division Bench ought to have considered that the appellants were Class-IV employees working from 1977 onwards and expecting from them to have raised serious objection or protest at the stage of interview and understanding the principles of changing the Rules of the game, was too farfetched, unreasonable and unwarranted.”

18. We also notice that the concerned writ petitioner participated in the selection process again and was selected in 2001 after the earlier selection was over. In the new selection which was conducted the same Promotion Policy was invoked and, therefore, he has shown his acquiescence in

participating in the selection process. The said aspect was not considered by the learned Single Judge.

19. In view thereto, we are unable to accept the view taken by the learned Single Judge and we accordingly allow the appeal and set aside the judgment dated 28.08.2017.

20. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

20.02.2025
rajesh

- | | | |
|-------------------------------|---|--------|
| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |