

(1997) 10 BOM CK 0069

In the Bombay High Court

Case No : O.O.C.J. Writ Petition No. 1374 of 1995 with W.P. No. 1260 of 1997

Maharashtra State Co-operative Bank Ltd. and Another

APPELLANT

Vs

V.S.S. Hirurkar, Member, Industrial Court, Bombay and Others

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Citation : (1997) 10 BOM CK 0069

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : P. Ramaswamy, for the Appellant; C.P. Deogirikar, for the Respondent

Judgement

Lodha, J.—These two writ petitions are directed against the judgment dated 28.4.1995 passed by Industrial Court, Bombay, and arise between the same parties and, therefore, have been heard together and are disposed of by this common judgment.

2. Writ Petition No. 1374 of 1995 is at the instance of the Maharashtra State Co-operative Bank Ltd. ("the employer") aggrieved by the judgment dated 28.4.1995 passed by the Industrial Court, Bombay, to the extent the direction has been granted to it to pay arrears of wages and give all consequential benefits to the complainants covered under the complaints from the date of the filing of the complaints while writ petition No. 1260 of 1997 has been filed by five complainants ("the employees") dissatisfied by the judgment dated 28.4.1997 whereby it denied the benefits of wages, seniority, etc., to the complainants on the post of Junior. Officers/Grade Officer II from 9.3.1985 and only granted reliefs from the date of the filing of the complaints.

3. The employer is a Co-operative Bank registered under the Co-operative Societies Act having its registered office at Bombay and branches in Bombay and Nagpur and regional offices all over the State of Maharashtra. The complainants are the employees employed by the employer bank. The Co-operative Bank

Employees' Union ("the Union") is an approved and representative union under the Bombay Industrial Relations Act for the co-operative banking industry for the Greater Bombay local area. The employees filed five separate complaints before the Industrial Court, Maharashtra at Bombay against the employer under Sec. 28 read with items 5, 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). The said complaints filed by the employees were registered as Complaint (ULP) No. 1198, 1194, 1318, 1360 and 1326 of 1989. The facts of all the complaints are identical except that in one of the complaints filed by Mr. Baxi the grievance relates to the promotion from Junior Officer to Grade II Officer and common evidence was also led. According to complainants they were employed in the employer bank. The clerk employees were eligible to be promoted to the post of junior officer in the cadre of junior officers in the month of March 1984 and they were found to be eligible by the employer for promotion as junior officer. The employer on 10.3.1984 promoted the employees on the post of junior officers but camouflaged the same by ordering them to officiate on the post of junior officers, and it was directed that they would be entitled to draw officiating allowances as per rules framed by the employer. According to the employees, the standing orders settled by the employer do not contemplate officiating appointment. By virtue of the settlement between the employer and the union in the month of November 1982 the eligibility criterion was fixed for promotion of the clerks to the post of junior officers and other posts. The said settlement/award lays down the formulae taking into account the marks obtained by the clerk in respect of confidential report, seniority and the qualification of the promotees. Under the said policy of promotion of the clerks to the post of junior officers the ceiling was also put in respect of the quantum of the posts to be filled out of the eligible candidates from those who were post graduates, graduates and SSCs. The employees stated in the complaint that while they were working as officiating junior officers from 10.3.1984 to 14.8.1989 they discharged their duties efficiently and to the satisfaction of the employer and there were no adverse reports or remarks about their functioning nor was there any adverse remark or report communicated to them. It is further case of the employees that according to the settlement/award, if the employee is promoted to higher post and he works on probation for a period of one year, after the expiry of probation period the promotee is entitled to be confirmed in regular grade in the higher post. The employees claim that since they finished probation period on 9.3.85, in accordance with the agreement/award, they were entitled to be confirmed in the grade of junior officers together with the benefits of the said post. By the order dated 14.8.1989 the employer reverted the employees from the post of junior officer to the post of clerk on the purported ground that the officiating arrangement was withdrawn. The reversion of the employees compelled them to file the complaints against the employer under the MRTU & PULP Act. The employees pleaded in the complaint that the order of reversion dated 14.8.1989 was per se illegal and contrary to the agreement/award of the year 1982 and the promotion policy prescribed thereunder. The employees stated that while they

were working as officiating junior officers, on 3.10.1987 the employer promoted 43 employees working in clerical grade to the post of junior officers in the regular grade, but the employees were continued as officiating Junior Officers and were merely paid officiating allowance. Again on 3.8.1989, the employer promoted 8 clerks to the post of junior officer. Thereafter by the order dated 14.8.1989 the employer promoted 39 clerks temporarily to the post of junior officer. According to the employee these 39 clerks who were temporarily promoted to the post of junior officers have also been confirmed but the employees were not confirmed and rather they were reverted. The said act was totally malafide and in breach of the settlement, agreement and award. The employees also stated in the complaint that on 11.7.1986 and 10.8.1986 the employer and the union entered into agreements/settlements but the said settlements were only prospective in nature and the settlement/agreement of November 1982 held the field till the new settlement was arrived at and in accordance with that settlement of November 1982 the employee stood confirmed on the post of junior officer with effect from 10.3.1985 on completion of one year of probation on the post of junior officer from 10.3.1984. The malafides of the employer were also sought to be pleaded by the employee by stating in the complaint that 11 persons who were promoted as officiating junior officers along with the employees on 10.3.1984 were absorbed in regular grade of junior officers by virtue of the order dated 3.10.1987 but the present employees and two others were deprived of their legitimate right of promotion by camouflaging their promotion on officiating post. It was thus prayed by the employees in the complaints that the employer was engaged in unfair labour practice enumerated under Items 5, 6 and 9 of Schedule IV of MRTU & PULP Act and that the employer be directed to cease and desist from committing unfair labour practice under these items and it be declared that the employees stand absorbed in the regular grade of junior officer from 10.3.1985 with consequential reliefs such as salary, bonus and other perquisites and seniority. The employees also prayed that the employer be restrained from giving effect to the order of reversion dated 14.8.1989.

4. The employer contested the complaints filed by the employees and denied that it has indulged in any unfair labour practice under item 5, item 6 or item 9 of Schedule IV of the MRTU & PULP Act. The employer in the written statement stated that it was covered by the Bombay Industrial Relations Act and the Co-operative Bank Employees Union is the representative union under the said Act. The Maharashtra State Co-operative Bank Employees' Union, Nagpur represents the employees at Nagpur and the Bank Karmachari Sangh represents the employees at Pune. After negotiations and discussions the employer reached the settlement with the union in respect of norms of promotion of the employees. The agreement was reached between the union and the employer on 4.11.1982 which was converted into an award on 5.11.1982 in Reference (IC) No. 7 of 1981 by the Industrial Court. The promotion policy incorporated in the said settlement/award includes interalia promotion of clerical staff to the post of junior officers. According to the employer, in its employment officiating arrangement is in vogue

for the last several years and for that officiating allowance is being paid. The payment of officiating allowance is included in the 1958 award between the employer and the union and the said officiating allowance scheme under the award of 1958 continues to be in force till date. The employer stated in the written statement that the Maharashtra State Cooperative Bank Employees' Union Nagpur filed Complaint (ULP) No. 194 of 1981 before the Industrial Court, Nagpur and obtained an ex parte injunction against the promotions in 1981. After the agreement of 1982 was signed with the Bombay Union, the Nagpur Union filed a Complaint (ULP) No. 16 of 1983 before the Labour Court at Nagpur and obtained an ex parte injunction restraining the Bank from enforcing the said promotion policy of 1982. The Labour Court vacated the ex-parte injunction on 5.4.1983. The Union was aggrieved by the order of the Labour Court vacating the ex parte injunction and preferred appeal before the Industrial Court and in the meanwhile they raised dispute in respect of promotion policy before the conciliator at Nagpur. The Nagpur Union also moved the Industrial Court by filing reference against the promotion policy. At the same time, according to the employer, the Bombay Union also raised a dispute in respect of promotion policy before conciliator at Bombay and ultimately both the Bombay Union and the Nagpur Union signed a separate settlement regarding new promotion policy amending the existing one on 11.7.1986. The case of the employer is that due to various injunctions obtained by various unions at different places, the employer was restrained from implementing the award/agreement dated 4.11.1982 till 1986 but since in the meanwhile the exigencies of the work necessitated appointment of certain junior officers, the Bank appointed the employees to officiate as junior officers at different places vide order dated 10.3.1984. The employees who were asked to officiate as junior officers were paid officiating allowance. The employer pleaded in the written statement that after 1986 they had announced the programme of written test for giving promotion to the employees as per the norms of new promotion policy but the Bank Karmachari Sangh, Pune filed a complaint before the Industrial Court, Pune and obtained ad-interim stay order restraining the employer to promote employees on the basis of the result of the written test. The ad interim stay order passed by the Industrial Court was vacated by this Court on 1.10.1987 and on vacation of all injunctions and stay orders the employer proceeded to consider giving employees promotion to the posts of junior officers in accordance with the agreement dated 11.7.1986 on the basis of seniority, educational qualification and confidential reports and promotions were given by the order dated 3.10.87. Thereafter on 5.3.1988 the employer again promoted the employees in accordance with the promotion policy contained in the agreement dated 11.7.1986. A couple of employees were promoted as junior officers again on 11.3.1988. Thereafter on 10.6.1988, 27.7.1989, 3.8.1989 and 10.8.1989 certain number of employees were promoted to the post of junior officers. The employer sought to justify its action by submitting that since the complainants and few others were appointed under the old scheme i.e. under the agreement/award of November 1982 on officiating basis the said officiating orders were withdrawn by the order dated 14.8.1989

since it had promoted persons in accordance with the promotion policy contained in the agreement dated 11.7.1986. According to the employer, since there were certain posts of direct recruits which remained vacant and as the union desired that vacant posts should be temporarily filled up as per the norms laid down in the promotion policy, by the order dated 14.8.1989 certain employees were temporarily promoted as junior officers. According to the employer, the complainants/employees were not squarely covered by the promotion policy contained in the agreements of 1986 and 1988, they could not be regularly promoted and continued to act on officiating basis. The employer thus submitted that it has not indulged in any unfair labour practice and the complainants are not entitled to any reliefs. An application was made by the complainants before the Industrial Court to grant permission to lead evidence in one complaint and the said evidence be treated as evidence in all cases. The said request was acceded to and accordingly the evidence was led in Complaint (ULP) No. 1198 of 1989 and the said evidence has been considered as evidence in all complaints.

5. It may be observed that during the pendency of complaints all the employees complainants were promoted by the employer in the years 1990/91.

6. The Industrial Court after recording evidence and hearing the learned counsel for the parties held that the employer has indulged in unfair labour practice for not regularly promoting the employees in the year 1984 but since by then promotion was accorded, no relief with regard thereto was granted but as regards the difference of wages, the Industrial Court held that the complainants/employees are entitled to difference of wages and benefits of promotion from the date of filing of the complaint and accordingly directed the employer to pay arrears of wages and give all consequential benefits to all the complainants covered under the complaints from the date of filing of the complaints.

7. Mr. Ramaswamy, the learned counsel appearing for the employer urged that the Industrial Court did not apply its mind to the facts of the case properly and except summing up the arguments of both sides did not reach any firm conclusion after analysing the case of both sides. According to him, the facts on record clearly establish that no unfair labour practice was committed by the employer under any of the items, particularly items 5, 6 and 9 of Schedule IV of the MRTU & PULP Act as alleged. Mr. Ramaswamy would urge that the employer has strictly implemented the settlements between the employer and the union and such settlements bind the complainants employees as well. He contended that asking the employee to work on officiating basis was not inconsistent with the standing orders and upon employees discharging duties on officiating basis, they were paid officiating allowance under the Award of 1958. Mr. Ramaswamy strenuously urged that by asking the complainants employees to officiate the work of junior officers, no right of promotion came to be conferred on them and that the order dated 10.3.1984 was in fact the order asking the employees to work on officiating basis and was not a camouflaged order depriving the employees of their legitimate right to promotion. In support of his contentions

Mr. Ramaswamy relied upon Director, Institute of Management Development, U.P. v. Pushpa Srivastava, 1992 2 CLR 647, State of Orissa & Anr. v. Prari Mohan Misra (Dr.) 1995 1 CLR 385 and State of Haryana Vs. R.K. Aggarwal, .

8. Mr. Deogirakar, the learned counsel appearing for employees complainants on the other hand urged that the complaints employees were scanned and screened in accordance with the promotion policy incorporated in award/settlement of November 1982 for their promotion by the employer and thereafter the order dated 10.3.1984 was issued. The said order of 10.3.1984 was in fact the order promoting the complainants employees to the post of junior officers. According to him, the complainants employees could not have been asked to officiate on higher post because there was no provision for officiation in the standing orders. The learned counsel for the employees urged that in accordance with the settlement/award of November 1982 an employee remains on probation on promotional post for one year and on completion of one year of probation, the employee stands automatically confirmed on promoted post and by not according confirmation to the employees complainants on the promoted post, with effect from 10.3.1985, the employer indulged in unfair labour practices. He would also submit that at the time the order dated 10.3.1984 was issued, there was no injunction or stay order restraining the employer from promoting the employees from clerical cadre to the cadre of junior officers and, therefore, there was no exigency as has been sought to be made out by the employer to ask the clerks to officiate on the posts of junior officers. The learned counsel for the employees complainants also submitted that in years 1987, 1988 and 1989 lots many clerks were promoted on the post of junior officers but the complainants employees were continued on officiating basis and later on by the illegal order dated 14.8.1989 the complainants employees were reverted. He submitted that the Industrial Court did not commit any error in holding that the employer indulged in unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act but his grievance is that the Industrial Court was not justified in not giving the benefits of promotion to the complainants employees from 10.3.1985 and restricting it from the date of the filing of the complaint. In support of his contentions Mr. Deogirakar relied on Maharashtra Small Scale Ind. Dev. Corporation Ltd., & Ors. v. The Industrial Court, Maharashtra Nagpur & Ors. 1990 1 CLR 711, Maharashtra State Co-op. Cotton Growers" Marketing Federation Ltd. Vs. Shripati Pandurang Khade and Others, and Shri Gagaram Atmaram Vishwasrao v. The National Textile Corpn. (SN) Ltd., & others, 1996 (1) ALL MR 375.

9. On 4.11.1982 a settlement was arrived at between the employer and the union which ultimately was converted in award. The said settlement/award provided the policy for promotion of the clerks to junior officers. The relevant clauses relating to the promotion of the clerks to the post of junior officers in the settlement dated 4.11.1982 (award dated 5.11.1982) are as follows :

"(C) FOR PROMOTION TO THE CLERKS AS JUNIOR OFFICERS

1. The ratio of number of Junior Officers promoted from the Clerical Grade to the directly recruited Junior Officers shall be 65:35. This Bank being a federal society, it is necessary that 15 per cent of the vacancies to be filled in should be reserved for candidates from district central co-operative banks/co-operative sugar factories/co-operative spinning mills/other co-operative societies. And 35 per cent of the vacancies to be filled in by direct recruitment.

2. The Clerks having the following educational qualifications and service are eligible to apply for promotion as Junior Officer :

a) M.A. (Economics)/M.Com./M.Sc. (Agri.)/M.B.A. of a recognised University and five years confirmed service in the Bank as Clerk.

OR

b) B.A. (Economics)/B.Com./B.Sc. (Agri) of a recognised University or post-graduation in subjects other than (a) above and eight years confirmed service as Clerk.

OR

c) Graduation of recognised University in subjects other than those mentioned in (b) above and ten years confirmed service in the Bank as Clerk.

OR

d) Candidates who do not possess educational qualifications as per (a), (b), (c) above but who are S.S.C. (XI Std.) or equivalent examination and who have completed both parts of C.A.I.I.B. or G.D.C & A. and have 12 years confirmed service in the Bank as Clerks.

OR

e) Clerks not eligible to apply under (a), (b), (c), (d) above may apply, provided that they have passed S.S.C. (X Std.) and that they have rendered minimum fifteen years confirmed service in the Bank as a Clerk.

3) The candidates should have obtained at least 70 per cent of marks of "A" Grade consecutively for the last three years till the date of notification of vacancies to be filled in and there should be no serious adverse remarks against the candidate in the same period of consecutive three years.

4) The following items will be considered for decision regarding promotion :

i) Confidential Reports. 30ii) Seniority as Clerk 30iii) Educational Qualifications 30 ----- 90 ----- Following will be the percentage of the posts to be filled by promotion.

1) Post Graduates. 25%2) Graduates. 45%3) S.S.C. 30

5) Marks as per 4(i) will be determined as follows :

i) If the candidates has secured more than 70 per cent of marks (minimum "A" Grade) for the last three consecutive years and if such marks are 100 consecutively, then under this sub-rule the candidate will secure 30 marks. The marks will be determined as per this formula.

ii) Marks as per 4(ii) above in respect of seniority as Clerk will be 2 for each year of confirmed service rendered by the candidate as Clerk. For example if the candidate has rendered six years of confirmed service as Clerk he will secure 12 marks, for 7 years 14 marks, for 10 years 20 marks. The maximum marks will be 30.

iii) Marks as per 4(iii) above for educational qualifications which shall be maximum 20, shall be as under :-

Marks a) Graduate in Commerce,

Agriculture or Economics. 6b) Graduate in other subjects 4c) Double Graduate . 2 (Addl.) d) Post Graduate (Commerce)/Agriculture/

Economics/M.B.A. 4 (Addl.) e) Post-graduation in other 2 (Addl.) subjects

f) C.A.I.I.B. Part-I. 2g) C.A.I.I.B. Part-I & II 5h) G.D.C. & A Part-I 1i) G.D.C. & A Part-I & II 3"

10. The employer issued the order on 10.3.1984 directing the employees in clerical grade to officiate in junior officers grade with immediate effect till further orders. The order dated 10.3.1984 was apparently issued when the settlement/award of the year 1982 prescribing the promotion policy and norms for promotion of clerks to junior officers post was in vogue. The employer has sought to justify the order dated 10.3.1984 directing the employees mentioned therein to officiate on the post of junior officers grade on the ground that because of certain injunction and restraint order/orders passed by Labour Court/Industrial Court, the employer could not have promoted the clerks on the post of junior officers on regular basis and in view of the exigencies, various clerks were directed to officiate in junior officers grade. The question, therefore, is whether there is any merit in the justification sought to be placed by the employer that due to certain restraint/stay orders passed by Labour Court/Industrial Court the employer was not in a position to promote clerks to the post of the junior officers in accordance with the settlement/award of year 1982. The employer says that the Maharashtra Co-operative Bank Employees" Union at Nagpur filed a complaint under the MRTU & PULP Act being Complaint (ULP) No. 194 of 1981 before the Industrial Court at Nagpur and obtained an ex-parte injunction restraining the employer from promoting any body until the final disposal of the complaint and though the said complaint opposed the promotions granted to the employees who did not resort to strike in the year 1981 still the omnibus order stayed the entire promotions. However, from the available material it is not seen that on 10.3.1984 there was any stay or injunction order restraining the employer from promoting clerks to the post of junior officers or other higher

posts. As regards the complaint filed by the Maharashtra State Co-operative Bank Employees' Union at, Nagpur being Complaint (ULP) No. 16 of 1983 before the Labour Court at Nagpur, it would be seen that in the said complaint the ex-parte injunction granted by the Labour Court was vacated by the Labour Court on 5.4.1983. The Union did file the appeal against the said order but it is not borne out from the available material that there was any injunction or stay order restraining the promotion of clerks to the post of junior officers or further higher posts. As a matter of fact, there was absolutely no order of stay or injunction restraining the employer from promoting clerks to the post of junior officers when the order dated 10.3.1984 came to be issued by the employer directing the employees mentioned therein to officiate on the post of junior officers. Thus, the stand of the employer that due to stay/restraint and injunction order/orders passed by the Labour Court/Industrial Court the employer could not proceed with regular promotions and due to exigencies asked various clerks to officiate in junior officers grade is wholly misconceived. Rather during the course of arguments, Mr. Ramaswamy, the learned Counsel for the employer placed before me the details of exercise which was undertaken by the employer before passing the order of 10.3.1984 and from the said details of exercise it is clearly revealed that before passing the order on 10.3.1984 directing various clerks to officiate on the post of junior officers, the exercise appears to have been undertaken in accordance with the promotion policy incorporated in the agreement/award of the year 1982. The employer took into consideration all norms of the formulae prescribed in the settlement/award of the year 1982 for promotion of clerks to junior officers. The employer appears to have considered case of each of the concerned employees keeping in mind their seniority, qualification, confidential report and the marks awarded to each of the employees on the basis of the formulae given in the promotion policy and then issued the order directing the concerned clerks to officiate on junior officers. The manner in which the exercise was undertaken before issuance of the order dated 10.3.1983 shows that the concerned employees complainants were considered for promotion in accordance with the promotion policy and norms prescribed in the settlement/award of the year 1982. Therefore, the order dated 10.3.1984 was in fact an order promoting the complainants employees to junior officers grade but the said order was given colour as if these employees have been asked to officiate on the post of junior officers. When the cases of the employees have been considered in accordance with the promotion policy of the year 1982 as is seen from the documents produced by Mr. Ramaswamy during the course of arguments and the employees having been found fit for promotion after they were accorded marks considering their qualification, seniority and confidential report, asking such employees to officiate on the post of junior officer was clearly in contravention of the settlement/award of the year 1982 and clearly an unfair labour practice and rightly held to be so by the Industrial Court. Moreover, it would be seen that in the years 1987, 1988 and 1989 large number of employees in clerical grade were promoted on the post of junior officers, though under the settlements of the year 1986 and 1988, yet the complainants employees were continued on officiating

basis and then in the year 1989 by the order dated 14.8.1989 the complainants employees were reverted on the post of the clerk in the garb that the order of officiation was withdrawn. The action of the employer, therefore, was clearly malafide and amounted to unfair labour practice and the Industrial Court in the facts and circumstances cannot be said to have erred in holding that the employer indulged in unfair labour practice. It is true that officiation of an employee on higher post does not confer any right on him for promotion to the higher post but so far as the facts of the present case are concerned, it is clear that the order dated 10.3.1984 was in fact an order of promotion of complainants employees from the post of clerks to junior officers but camouflaged as an order of officiation. According to the policy norms prescribed under the settlement/award of the year 1982 it would be seen that three items, namely, confidential reports, seniority and education qualifications were required to be considered. Each of the items namely, confidential reports, seniority as clerks and educational qualifications has 30 marks. The promotion policy also provides the method for determination of marks in each of the items namely, confidential reports, seniority as clerk and educational qualifications. The statement shown by Mr. Ramaswamy does show that each of the complainants has been accorded marks applying the formulae prescribed under the policy and on the basis of marks obtained the order dated 10.3.1984 was issued. Clearly, therefore, the order dated 10.3.1984 was issued when the complainants employees were found fit for promotion to the post of junior officers. But despite the fact that they were found fit for promotion, the employer camouflaged the order by directing these complainants employees to officiate on the post of junior officer.

11. The judgments relied upon by Mr. Ramaswamy do not apply in the facts and circumstances of the case. In *Director, Institute of Management Development, U. P. v. Pushpa Srivastava*, 1992 2 CLR 647, the Apex Court held that where the appointment is contractual and by efflux of time it comes to an end, the employee cannot have any right to continue in the post and, therefore, the employee was not entitled to regularisation. In the facts and circumstances of the present case it is found that the complainants employees were in fact found duly fit for promotion in accordance with the promotion policy and norms incorporated in the agreement dated 4.11.1982 and despite the fact that they were found fit for promotion, instead of issuing order of promotion, the employer issued the order directing such employees to officiate on the post of junior officer. The true nature of the order dated 10.3.1984, if seen properly, would clearly reveal that it was in fact an order of promotion and not an order of ad-hoc appointment as has been sought to be made out by the employer.

12. In *State of Orissa & Anr. v. Prari Mohan Misra (Dr.)* 1995 1 CLR 385 the Apex Court held that mere prolonged continuous ad hoc service does not ripen into a regular service to claim permanent or substantive status. The Apex Court observed thus :-

"4. Admittedly, there is no order communicated to the respondent appointing him in a substantive capacity as Director. The only order passed in his favour was of July 22, 1972. That order clearly shows that he would continue temporarily until further orders in terms of the order of appointment made on ad hoc basis on August 12, 1971. In other words, mere prolonged continuous ad hoc service does not ripen into a regular service to claim permanent or substantive status. He would remain to be on ad hoc basis until further orders. Since the Government had taken policy decision to appoint an I.A.S., he was rightly reverted to the post of Joint Director. Accordingly, we hold that his reversion is perfectly legal and valid. However, the stark facts remain that he continued in the post of Director and discharged his duties as Director from August 12, 1971. In these circumstances, as a mark of good gesture but not as a precedent, the appellants are directed to give him pensionary benefits computing his pay as if he voluntarily retired as a Director from December 16, 1977. All the proceedings now stand concluded. The T.A. stands dismissed. The appeal is disposed of accordingly. No costs."

13. The facts and circumstances of the present case do not attract the aforesaid observations.

14. In State of Haryana Vs. R.K. Aggarwal, the Apex Court held thus :

5. From the orders which we have referred to above relating to the respondent being asked to hold the current duty charge first, as Chief Engineer and thereafter as Engineer-in-Chief, it is clear that substantive promotion was not given to the respondent during the impugned periods because of pending litigation relating to the inter-se seniority of the various officers concerned. No substantive promotion could be given until the question of inter-se seniority was finally decided. That is why even the order of 8th of November, 1994 giving promotion and pay-scale of Chief Engineer to the respondent mentions that it is subject to the representations received from various officers with regard to their seniority which are required to be disposed of as per the directions of this Court. The same is the position with regard to the respondent being given current duty charge as Engineer or as Engineer-in-Chief. In view of the clear terms of the concerned orders the respondent cannot claim substantive promotion either as Chief Engineer or as Engineer-in-Chief during the impugned relevant periods.

6. The respondent has relied upon a decision of this Court in the case of Smt. P. Grover Vs. State of Haryana and Another, . In that case the appellant was promoted as an acting District Education Officer but the order of promotion contained a super-added condition that she would continue to draw her salary on her existing scale of pay as a teacher. This Court held that in the counter-affidavit filed on behalf of the Govt. of Haryana no rational explanation was offered for denying the pay of District Education Officer to the appellant after she was promoted to act as a District Education Officer. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post, the same should be given from the date she was promoted to

the post. This judgment will not apply to the facts of the present case. In the present case there is a rational explanation for not granting promotion to the Respondent during the impugned periods. This was because the litigation was pending in relation to the inter-se seniority of various concerned officers. It was, therefore, not clear who would be ultimately promoted. It was only pursuant to the directions of this Court that the promotion was given to the respondent first as Chief Engineer and thereafter as Engineer-in-Chief the latter also being subject to a condition relating to the determination of seniority by the department pursuant to the directions of this Court. There was, therefore, a valid reason for not effecting the promotion of the respondent during the material period. In each of the posts of Chief Engineer and Engineer-in-Chief the respondent has been given his promotion from a subsequent date as the orders of promotion clearly show.

7. In these circumstances, during the impugned period when no promotion had been given to the respondent, he cannot claim the salary of the promotional post. The impugned order of the High Court is, therefore, set aside. The appeal is allowed and the writ petition is dismissed. In the circumstances, we make no order as to costs."

15. The aforesaid observation too have no application to the facts and circumstances of the present case because as already held the order dated 10.3.1984 was in fact an order of promotion by the employer but camouflaged as an order directing the employees to officiate as junior officers with the purpose and intention to deprive the said employees from legitimate monetary benefits of the promotional post by only awarding them officiating allowance.

16. The Industrial Court held that the employees complainants are entitled to wages, monetary benefits and all consequential benefits from the date of filing of the complaints. In the writ petition filed at the instance of the employees the grievance is that such benefits ought to have been with effect from 10.3.1985 and not from the date of the filing of the complaint.

17. In the agreement dated 4.11.1982 (award dated 5.11.1982) in clause 9 it is provided that the period of probation as per the promotion policy shall be one year from the date of promotion. If during the period of probation work, conduct of the promotee is not satisfactory he will stand reverted. As has been held above, the order dated 10.3.1984 was in fact the order of promotion of the complainants employees to the post of junior officers though the order was given colour as if they were to officiate on the post of junior officers and, therefore, the order dated 10.3.1984 has to be treated as an order of promotion of such employees on probation of one year. There is no dispute that these employees complainants worked as junior officers though on officiating basis as has been termed by the employer for the period from 10.3.1984 to 14.8.1989. No material was placed by the employer before the Industrial Court that during the period of one year from the date of 10.3.1984, the work, conduct, etc., of the employees complainants, were not satisfactory. The fact is that the complainant employees

continued though on officiating basis as junior officers for a period of 5 1/2 years. The order of reversion came to be passed on 14.8.1989 on the purported ground of withdrawal of officiation which palpably was erroneous. However, since there is no material available on record showing the work, conduct, etc., of the employees complainants during the period of one year from 10.3.1984, it would be in the interest of justice if the employer considers the service record of each of the employees complainants pertaining to their work, conduct, etc., for the period of one year from 10.3.1984 in accordance with agreement dated 4.11.1982 (award dated 5.11.1982) and pass appropriate order if during that period their work, conduct, etc., is found satisfactory and give all consequential benefits.

18. In the result, the writ petition filed by the employer, namely, Writ Petition No. 1374 of 1995 is dismissed. The writ petition filed by the employees complainants, namely, Writ Petition No. 1260 of 1997 is partly allowed. The employer Maharashtra State Co-operative Bank Limited is directed to consider the work, conduct, etc., of all the employees complainants during the period of one year from 10.3.1984 and if their work is found satisfactory, to pass appropriate orders of their confirmation on the promotion post on the satisfactory completion of one year from 10.3.1984 and other monetary and consequential benefits. However such order shall not be prejudicial to the employees who were promoted by the employer on the post of junior officers/officer Grade II in the years 1986, 1987 and 1988, prior to the filing of the complaints by the complainants-employees. No costs.