

(2012) 12 DEL CK 0238

In the Delhi High Court

Case No : Writ Petition (C) 5267 of 2011 and CM No. 10682 of 2011

Onkar Prasad Jaiswal

APPELLANT

Vs

State Bank of India and Ors

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2012) 12 DEL CK 0238

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Tara V. Ganju and Ms. Etti Sharma, in W.P. C 5267/2011 and CM No. 10682/2011, W.P. C 5268 and CM No. 10684/2011, W.P. C 5600/2011 and CM No. 11426/2011, W.P. C 6234/2011 and CM No. 12556/2011, Mr. K.S. Kashyap in W.P. C 6963/2011, W.P. C 7739/2011 and CM No. 17533/2011 and Mr. Sidharth Joshi in W.P. C 8154/2011 and CM No. 18354/2011, for the Appellant; Rajiv Kapur and Ms. Vatsala Rai, Advocate for Respondent Nos. 1 to 3 in all Appeals, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.

W.P. (C) Nos. 5267-68, 5600, 6234, 6963, 7739 & 8154 of 2011

1. All these petitions raise identical issues, though facts of each petition are different, hence, all the aforementioned petitions are being decided by a common judgment by this Court. Facts of W.P. (C) No. 5267/2011 are discussed inter alia, wherein the petitioner is seeking the following reliefs:-

(a) Pass a Writ/Order/Direction in the nature of a writ of Mandamus or any other appropriate writ, order or direction quashing and declaring as non-est and invalid the termination order No. HR/L&D/458 (Annexure P-1) dated May 13, 2001 passed by the Respondent Bank against the Petitioner;

(b) Stay the operation and effect of termination order No. HR/L&D/458 dated

May 13, 2011 (Annexure P-1) of Respondent Bank, pending hearing and final disposal of the present Petition;

(c) Issue a Writ/order/Direction, directing the Respondent Bank to declare the results of Petitioner for the Confirmation Test held on March 6, 2011;

(d) Pass a Writ/Order/Direction, directing the Respondent Bank to reinstate the Petitioner to its post as Management Executive in the Middle Management Grade Scale II or Middle Management Grade Scale III of the Respondent Bank, as would have been assigned to the Petitioner on the basis of the marks secured in the Confirmation Test and permit the Petitioner to perform his duties without any hindrance;

(e) issue a Writ/Order/Direction, directing the Respondent Bank to pay the back wages to the Petitioner with effect from June 13, 2011 till the date of reinstatement of the Petitioner;

(f) Award costs of this Petition to the Petitioner.

2. Learned counsel appearing on behalf of the petitioner submits that on the similar issue, the petitioner therein filed a petition bearing W.P. (C) No. 1298/2011 titled as Palak Modi Vs. SBI before the Allahabad High Court, which has been allowed vide order dated 17.11.2011.

3. The respondents have challenged the same before the Apex Court by filing Civil Appeal Nos. 7841-7842 of 2012 titled as State Bank of India & Ors. Vs. Palak Modi & Anr.. However, the same were dismissed by the Apex Court vide its order dated 03.12.2012.

4. Learned counsel for the petitioner submits that the facts of the case and the issues raised in the instant petitions are identical as has been decided by the Apex Court in the aforesaid Civil Appeal Nos. 7841-42/2012.

5. The facts of the aforesaid Civil Appeal Nos. 7841-7842 of 2012 decided by the Apex Court read as under:-

4. The private respondents appeared in the test held on 27.2.2011, the result whereof was declared on 10.5.2011. Their names did not figure in the result apparently because Institute of Banking Personnel Selection (for short, "IBPS"), an independent expert body engaged in conducting recruitment for various services, which was entrusted with the task of preparing the examination papers and evaluating the answer sheets sent a report to the Bank that some candidates including the private respondents are suspected to have used unfair means. After four days, respondent No. 3 issued letters dated 14.5.2011 and extended the probation of the private respondents for three months by invoking Rule 16(2) of the Rules. However, without waiting for expiry of the extended period of probation, respondent No. 3 terminated their services vide letters dated 27.6.2011 by indicating that this was being done under Rule 16(3) of the Rules.

5. The private respondents challenged the termination of their services by filing

writ petitions mainly on the grounds that the action taken by the concerned authorities of the Bank was arbitrary and violative of the rules of natural justice. They pleaded that during the period of probation, no one had informed them about any shortcoming, deficiency or defect in their work and yet their services were terminated without giving them notice and opportunity of hearing. The private respondents further pleaded that even though they had requested the concerned officers of the Bank to disclose the reasons for extension of probation and termination of their service but no response was received from them.

6. The facts of the present case are as under:-

3 (a) The Petitioner was initially employed with the Respondent Bank as a Clerk on January 7, 2009, with his first posting at the Kuteshra Branch (Muzaffar Nagar), U.P. During his training and probation period for the post of Clerk, the Petitioner bagged 1st prize in the Exit Test competition, from AGM, SBLC, Noida of the Respondent Bank. Thereafter, upon successful completion of (six) 6 months probation, the Petitioner was confirmed as an Assistant (Accounts and Cash) of the Bank on July 7, 2009. While posted at Kuteshra Branch, the Petitioner performed extremely well and popularized "Alternate Channels" of Banking and offered customized services to the customers of the Banks. Due to the efforts of the bank officials, initiated by the Petitioner, the said Branch of the Respondent Bank won Bronze and Silver medals in two successive quarters in Deposits, which also improved the said Branch's score and received A+ rating in the Delhi circle audit. The Branch Manager of the Kuteshra branch of the Respondent Bank also appreciated the efforts and performance of the Petitioner, and gifted him a Wall Clock as a token of his appreciation. Further, it was only because of the outstanding performance of the Petitioner that the Branch Managers of the nearby Branches like Charthawal (Muzaffar Nagar) used to invite the Petitioner on deputation whenever their cash officer used to go on leave. The Petitioner worked as an Assistant (Accounts & Cash) with the Bank for 15 (fifteen) months, 9 (nine) months of which were a confirmed service, prior to his selection as MMGS-II, Management Executive. A copy of letter dated April 3, 2010, releasing the Petitioner from his duties as the Assistant (Accounts and Cash), is annexed hereto and marked as Annexure P-2.

(b) The Petitioner is a mathematics graduate and has a post graduate degree in Business Management. The Petitioner secured 1st division in both Graduate and Post Graduate examination. Copies of graduate and post graduate degrees of the Petitioner are annexed hereto and marked as Annexure PS (Colly).

(c) The Petitioner was hired by a company by the name of Cipla Pharmaceuticals, at a Campus Placement during his Business Management Course in 2008 where the Petitioner worked for 4 (four) months before joining the Respondent Bank

(d) The Petitioner also cleared the written exam test for the post of Tax Assistant, conducted by the Staff Selection Commission (Northern Region) in the year 2006 and cleared the ICICI Bank Probationary Officer's exam in January

2009. A copy of letter dated January 2, 2009 issued by ICICI, inter-alia, making a job offer to the Petitioner is annexed hereto and marked as Annexure P-4

(e) The Petitioner is a certified Junior Associate, of Indian Association of Banker (JAIIB) since January 2011. The said certification is granted by the Indian Institute of Banking and Finance (IIBF). Copy of JAIIB certification of the Petitioner is annexed hereto and marked as Annexure P-5.

4. The Petitioner thus comes from an unblemished, meritorious academic record and has served the Respondent Bank with utmost dedication and honesty in his previous employment with the Respondent Bank.

5. In the background of the above mentioned academic and professional accolades of the Petitioner, the factual matrix leading to the filing of the present Petition are as under:-

(i) The Respondent Bank published an advertisement being Advertisement No. CPRD/ME/2009-10/02 for recruitment to the post of Management Executives (hereinafter referred to as "MEs"), in the Respondent Bank in the Middle Management Grade Scale-II (hereinafter referred to as the "MMGS-II"). A copy of the advertisement is annexed hereto and marked as Annexure P-6.

(ii) The eligibility criteria for applying for the post of MMGS-II, as published in the said advertisement were as under:

ELIGIBILITY CRITERIA : AS ON 01.08.2009

(A) Educational Qualifications:

(i) Post Graduate Degree/Diploma in Business Administration, Business Management, Finance, Marketing, International Business, Operations Management, Systems, HR or

(ii) M. Com or

(iii) M.A./M. Sc. in Economics or M.A./M. Sc. in Statistics or

(iv) C.A./CWA/CS/CFA (Company Secretary)

(B) Percentage of Marks (for candidates without any Professional qualifications):

(i) 60% minimum aggregate marks in XIIth Standard for General/OBC Category candidates (55% minimum aggregate marks for SC/ST/PWD Category candidates).

AND

(ii) 55 % minimum aggregate marks in graduation irrespective of pass course or Honours Course for General/OBC Category candidates (50 % minimum aggregate marks for SC/ST/PWD Category candidates) AND

(iii) 555 minimum aggregate marks in Post Graduation for General/OBC Category

candidates (50% minimum aggregate marks for SC/ST/PWD Category candidates)

(C) In case of candidates having Professional Qualification CA or CWA or CFA or CS, candidates must have secured 60% minimum aggregate marks in XIIth Standard. (55% minimum aggregate marks for SC/ST/PWD/Category Candidates).

(iii) During his tenure as an Assistant (Accounts and Cash) at the Respondent Bank, and being eligible/qualified both in the educational and professional Qualifications, the Petitioner applied for the said post of an ME and appeared for the Written Test conducted by the Respondent Bank on September 13, 2009.

(iv) Upon clearing the Written Test, the Petitioner was called for Group Discussion and Interview by the Respondent Bank vide its email dated November 25, 2009. A copy of email dated November 25, 2009 is annexed hereto and marked as Annexure P-7.

(v) Thereafter, vide an email dated December 14, 2009 the Petitioner was informed by the Respondent Bank that the Group Discussion and the Interview were rescheduled and were now to be held on January 7, 2010 at 8.30 a.m. A copy of email dated December 14, 2009 is annexed hereto and marked as Annexure P-8.

(vi) The Petitioner successfully cleared the Group Discussion and the Interview as well. Consequently, the Respondent Bank vide Appointment Letter No. HR/RC/52/606 dated March 18, 2010 informed the Petitioner that the Central Recruitment and Promotion Department of the Respondent Bank had selected the Petitioner for appointment as a Management Executive in the Respondent Bank at its New Delhi circle office. The said Appointment Letter was signed by Respondent No. 2 on behalf of the Respondent Bank. The Petitioner was called upon to join the Respondent Bank from April 5, 2010 and report to the Assistant General Manager (HR) at its local Head Office at 11, Sansad Marg New Delhi for further orders. The appointment letter further stated that the Petitioner would be on probation for a period of one (1) year from the date of appointment and the confirmation in the Respondent Bank would be subject to

(a) Satisfactory reports from the Respondent Bank's own sources as well as from District Authorities regarding the Petitioner's character and antecedents;

(b) Satisfactory completion of the in-service training during probation;

(c) Satisfactory performance in the evaluation tests to be conducted by the Respondent Bank during the probation period. Candidates who secured minimum 50% marks (45% marks for SC/ST/PWD) in the Written Test and minimum 50% marks (45% marks for SC/ST/PWD) in the Group Discussion and Interview, would be confirmed as Officers in MMGS-II. Services of the candidates who secured less than 50% marks (45% marks for SC/ST/PWD) would be terminated;

(d) The Candidates securing 75% or more marks in the above process (in Written Test and in the Group Discussion and Interview) would be considered for placement in MMGS II on the basis of appraisal of 1 year's job performance after confirmation in MMGS II. A copy of the Appointment Letter dated March 18, 2010 is annexed hereto and marked as Annexure P-9.

(vii) Subsequently, the policy of probation and confirmation in relation to MEs who secured less than 50% marks in their Confirmation Test, was revised by the Respondent Bank by an E-Circular No. 996/2010-11 dated February 26, 2011 (hereinafter referred to as "Revised Policy") to inter-alia read as follows:

(a) The probation period of MEs securing less than 50% (45% for SC/ST/PWD) were to be extended by 6(six) months, during which period the candidates were to appear for a Second Confirmation Test. However, all candidates who took the Second Confirmation Test and secured 50% or above marks, were to be confirmed only to MMGS-II and were not to be considered placement as MMGS-III; and

(b) The candidates who were unsuccessful in the Second Confirmation Test were to be confirmed as Junior Management Grades Scale-I at the starting of the scale viz. Rs. 14,500/- according to the Respondent Bank's current scale of Junior Management Grade Scale-I Officers.

A copy of the said E-Circular dated February 26, 2010 is annexed hereto and marked as Annexure P-10.

(viii) Accordingly, all MEs including the Petitioner were given the option to be governed either by the Old Policy or the Revised Policy on the Confirmation Test vide a letter dated March 1, 2011 sent by the Respondent Bank. The Petitioner (along with other MEs) was directed to exercise its option and return the said letter dated March 1, 2011 after counter signing the same, to the Respondent Bank.

(ix) The Petitioner opted for the Revised Policy which essentially was a revision which sought to remove the option of termination in the event of a candidate securing a lower percentage of marks in the Confirmation Test by extension of their probation and an appearance for a Second Confirmation Test. An unsuccessful attempt in the Second Confirmation Test would demote the candidate to Grade/Level Junior. Therefore, even 2 successful attempts at the Confirmation Test would not make a candidate eligible to be terminated from the employment with the Respondent Bank. The Format of Option letter dated March 1, 2011 is annexed hereto and marked as Annexure P-11.

(x) During the entire duration of 10 (ten) months of serving the probation period, the Petitioner underwent grueling and extensive training and was posted in 10 (ten) different locations in the country. During this period, the Petitioner had to incur substantial expenditure on boarding and lodging etc. including on rental accommodations at these postings at his own expenses. During the probation of

10 (ten) months, the Petitioner was posted at the following training locations of the Respondent Bank:

(xi) At this juncture, recourse is made to the provisions of Rule 27.14.4 of the State Bank of India Service Rules wherein it is stated that the Probationary Officers/Training Officers (ME"s) are required to submit a Monthly Diary on prescribed format to the Branch Manager/Regional Manager/Departmental Head during the period of probation training who will forward it to P& HRD Department (hereinafter referred to as the "Monthly Diary"). The Monthly Diary so submitted by the Officers would be carefully perused by P & HRD Department and corrective action, wherever required, will be intimated by them promptly in order to ensure that the Officers receive proper training and guidance. Further, a scrutiny of the Month Diary is made regularly at the level of Branch manager and the P & HRD Department. The provisions of the said Rule further provides for submission of Confidential Reports of the Officers at the end of completion of the training at each of the branches and that a consolidated pre-confirmation note to be submitted by Assistant General Manager, (P & HRD) to the appropriate authority recommending the confirmation or otherwise of the Officer. The recommendations of the Assistant General Manager should be based on the reports given by the Branch Managers, performance of the Officers in the evaluation tests, project report and his/her own observations during the periodical meetings with the Probationary Officers. Rule 27.14.4 is extracted and reproduced hereinbelow:

27.14.4-Submission of Monthly Diary by the POs/TOs, Confidential Report and Confirmation

While the POs/TOs are undergoing institutional training it would not be necessary for them to submit the periodical diaries. However, POs/TOs will submit the monthly diary on prescribed format to the Branch Manager/Regional Manager/Departmental Head during the period of on-the-job/Regional Office/Local Head Office training who will forward it to the HR Department at Local Head Office after furnishing the comments thereon. The monthly diaries submitted by the POs/TOs will be carefully perused by the HR Department and corrective action, wherever required, will be initiated by them promptly in order to ensure that the POs/TOs receive proper training and guidance. The scrutiny of the monthly diary at the level of the branch manager and the HR Department will have to be of a high order so that it aids the total training of the POs/TOs. Otherwise, the routineness observed in regard to the diary systems under the existing training system should altogether be avoided. The diary should be seen and used as a tool for monitoring the training of the POs/TOs. The formats for the diary and BM"s report are given at annexure 27.1.

During training, the confidential report on the POs/TOs should be submitted at the end of completion of the training at each of the branches and that a consolidated pre-confirmation note will be submitted by the Asst. General Manager (HR) to the appropriate authority recommending the confirmation or

otherwise of the POs/TOs. His recommendations will be based on the reports given by the branch managers, performance of the POs/TOs in the evaluation tests, project report and his own observations during the periodical meetings with the POs/TOs. It should be noted that the POs/TOs, who do not perform well during the training, are not confirmed as a matter of routine.

Thus, the provisions of the SBIOSR also casts a duty on the Respondents No. 1 to 3 to evaluate the performance of the Officers and intimate any shortcomings in their performance and the outcome of their trainings to the Officers in order to ensure that the MSs receive proper training and guidance throughout this period. The Monthly Diary was submitted by the Petitioner from time to time. However, the Petitioner was not allowed to keep a copy of the Monthly Diary. The format of the Monthly Diary is annexed hereto as Annexure P-12.

(xii) Rule 27.14.4 also provided that based on the Monthly Diary submission and the ME's performance during probation, a Confidential Report at the end of each training of the ME is to be made. A draft format of the Confidential Report is annexed hereto and marked as Annexure P-13.

(xiii) Therefore, a duty is also cast upon the officers of the Respondent Bank to evaluate the overall performance of the MEs and satisfy themselves with regard to the suitability of the said Officer/ME by objectively evaluating the performance of each candidate. Only the successfully trained candidates are selected to sit for the Confirmation Written Exam.

(xiv) Thus, the duties of a ME in Middle Management are not akin to the duty performed by the other officers of the Respondent Bank. During the period of training, the MEs are required to undergo rigorous training in different departments and under different authorities at various levels. The estimated cost which is incurred by the Respondent Bank on the training of the ME is approximately Rs. 10 lacs per person. Keeping this fact in mind, a specific provision has been carved out under the SBIOSR which casts a duty on the higher officers to train, guide and advice MEs in order to ensure that the MEs received proper training and guidance.

(xv) In addition, during the Institutional Training provided by the Respondent Bank, an Exit Test would be held by the Respondent Bank to confirm and assess the level of the learning of the MEs during the training.

(xvi) Throughout the entire period of probation of 10 (ten) months, the Petitioner performed efficiently and diligently and there was no deficiency of any type whatsoever on the part of the Petitioner nor any lack of character was ever pointed out either orally or in writing by any Superior Officer of the Respondent Bank. At no point of time, was the Petitioner intimated about any shortcoming and the overall performance of the Petitioner was assessed on the basis of reports given by the Branch Managers, performance in the evaluation tests and project reports. All these reports were extremely positive. In fact, the ability and dedication of the Petitioner was repeatedly appreciated by his superiors in the

Respondent Bank.

(xvii) The Petitioner performed his entire probation period of 10 (ten) months to the full satisfaction of the Respondent Bank. The Petitioner also appeared successfully in all Exit Tests during his training and the Petitioner was also awarded with a Certificate of excellence for his outstanding performance in the SBIRD Quiz during the period 01.01.2010 to 31.12.2010 and for the period 01.01.2011 to 31.03.2011. Copies of Certificates of Excellence are annexed hereto and marked as Annexure P-14 (Colly.).

(xviii) Vide an e-circular No. CDO/P&HRD-CM/65/2010-11 dated January 12, 2011, the Respondent Bank, notified the ME's inter alia, that as per the policy of recruitment of ME's, a Confirmation Test would be held after 10 (ten) months from the date of the appointment and advised that the Confirmation Test would be for 200 marks, as under:

A copy of e-circular dated January 21, 2011 is annexed hereto and marked as Annexure P-15.

(xix) Having successfully completed 10 (ten) months of grueling training and efficiently and dedicatedly providing its services to the Respondent, including frequent transfers, Institutional Trainings and all Exit and other Tests, vide letter No. RCPC/272 dated March 4, 2011, the Petitioner was informed by the Respondent Bank that he was eligible to sit for the Confirmation Test (the Written Exam for confirmation of the MEs of 2010 batch) which would be conducted on March 6, 2011 at State Bank of India, B-16, Sector-162, Noida, Uttar Pradesh. The Petitioner was asked to report at the said venue by 9.00 a.m. for taking the Confirmation Test. A copy of the letter dated March 4, 2011 addressed to the Petitioner by the Respondent Bank, along with its English translation is annexed hereto and marked as Annexure P-16. The said letter also contained detailed guidelines for the written examination/confirmation test. A list of eligible candidates appearing for the Confirmation Test is annexed hereto as Annexure P-17.

(xx) Accordingly, the Petitioner, alongwith other MEs, took the Confirmation Test on March 6, 2011 and like other MEs, was expecting to be confirmed to the grade of MMGS-II. On or around April 4, 2011, the results of other candidates who had appeared in the Confirmation Test along with the Petitioner were declared. However, the name of the Petitioner alongwith a few others was not found in any category of the results. The Petitioner tried to ascertain his result but none of the officials of the Respondent Bank provided the Petitioner with any information regarding his result.

(xxi) Subsequently, on April 5, 2011 itself the Petitioner was handed over by Respondent No. 3 a letter addressed to him by the Respondent Bank inter-alia stating that based on post examination reports purportedly furnished by the examination conducting agency, IBPS, Respondent No. 4, it had been concluded that the Petitioner had allegedly resorted to unfair means/copying in the Written

Confirmation Test. However, short while later, the said letter was taken back by the said Mr. Munish Chandana, CM, Learning and Development of the Respondent Bank, Respondent No. 3 herein, and was torn up/thrown away. This completely surprised the Petitioner because to his understanding, his conduct was completely above board in course of the examination and neither of the invigilators had during or after the Confirmation Test told the Petitioner anything about any misconduct or improper behavior, thus leaving the Petitioner extremely shocked and puzzled.

(xxii) Thereafter, the same day, by a letter dated April 5, 2011 the Respondent Bank informed the Petitioner that the Respondent Bank had decided to extend the probation period of the Petitioner by 3 (three) months i.e. July 5, 2011 under Rules 16(2) of SBIOSR. No other information or reasons for extending the probation of the Petitioner were provided or communicated to him either orally or in writing. A copy of letter dated April 5, 2011 is annexed hereto and marked as Annexure P-18.

(xxiii) Although extremely disappointed with the letter, Petitioner continued to serve the Respondent Bank under the "Extended Probation Period". During the period from April 5, 2011 onwards, the Petitioner was not provided with the results of his Confirmation Test or any explanation of the reasons for this extension of probation.

(xxiv) Instead in an utterly, arbitrarily, unilateral and illegal manner the Respondent Bank through Respondent No. 2 terminated the services of the Petitioner vide its termination order dated May 13, 2011 (Annexure P-1), with effect from May 13, 2011 purportedly in terms of Rules 16(3) of SBI Officers Rules which stated that the Petitioner "was not deemed fit" to be confirmed in the services of the Respondent Bank as follows:-

It is not deemed fit to confirm you in the service of the Bank. You are, therefore, discharged from the service of the Bank pursuant to the Provisions of Rule 16 (3) of SBIOSR from the date of this letter.

You will be paid one month's salary in lieu of one month notice period.

No reason whatsoever was stated in the said order neither was the Petitioner given an opportunity to render any explanation nor were any reasons given by Respondent Bank for this.

(xxv) Aggrieved by the utterly, arbitrary and unilateral termination order dated May 13, 2011, the Petitioner enquired into the matter and was shocked to learn that the Petitioner had been terminated by the Respondent Bank along with a few other MEs from Delhi Circle of the Respondent Bank and several other ME's in around 15 others circles of the Respondent Bank across the country on the grounds of allegedly using unfair means/resorting to copying in the Confirmation Test held on March 6, 2011.

(xxvi) The Petitioner was subsequently also informed that the said allegation of

cheating had been concluded based on a report furnished by the Examination Authority of the Respondent Bank, the institute of Banking Personnel Selection, Respondent No.4 herein. No official of the Respondent Bank has to date, provided or is willing to provide any of the above information to the Petitioner in writing and in fact and consequent to the illegal termination order dated May 13, 2011. Apart from the letter of the Respondent Bank which was destroyed by Respondent No. 3 as aforesaid, the Petitioner has never been provided with any information whatsoever either orally or in writing, regarding either his results of the Written Confirmation Test held on March 6, 2011 or the consequences under which the Respondent No. 4 came to the erroneous conclusion that the Petitioner along with few other MEs have resorted to unfair means/copying in the Confirmation Test held on March 6, 2011.

(xxvii) Aggrieved by the said illegal, arbitrary and stigmatic termination dated May 13, 2011, the Petitioner met with the Officers of the All India State Bank Officers Federation of the Respondent Bank. Subsequently, the association of officers through its General Secretary made a representation to the Deputy Managing Director & CDO of the Respondent Bank on May 18, 2011, on behalf of the terminated MEs across the country including the Petitioner, inter-alia requesting that the MEs be reinstated. A copy of Representation dated May 18, 2011 is annexed hereto and marked as Annexure P-19.

(xxviii) Thereafter, the All India State Bank Officers Federation of the Respondent Bank also made another representation to the Deputy Managing Director of the Respondent on May 24, 2011, on behalf of the terminated MEs of the Delhi Circle, including the Petitioner, requesting the review of decision to terminate the MEs and for reinstating them. A copy of Representation dated May 24, 2011 is annexed hereto and marked as Annexure P-20.

(xxix) In the meantime, the Respondent Bank had issued an E-Circular special Letter No. CIRDO/HR/RC/10/2011-12 dated May 19, 2011 titled as "Detection of use of Unfair Means/Copying in Objective Test by the Candidates" wherein it cautioned the staff of the Respondent Bank that Candidates have been reported to be copying answers/involved in use of unfair means during the examination process etc. A copy of the E-Circular dated May 19, 2011 is annexed here as Annexure P-21.

(xxx) Despite the foregoing, not having heard anything from the Petitioner himself made a detailed representation addressed to the Chairman of the Respondent Bank on June 4, 2011. The said representation was sent through Regd. A.D. However, the Petitioner has not received any response from the Chairman. A copy of the representation dated June 4, 2011 along with its postal receipt is annexed hereto and marked as Annexure P-22 (Colly).

(xxxi) Subsequently the Petitioner also filed an application under the provisions of the RTI Act requesting the Respondent Bank to inter-alia disclose his marks obtained in the Confirmation Test and why his result was withheld. A copy of the

RTI Application filed by the Petitioner is annexed hereto and marked as Annexure P-23. No response has been received to the RTI Application so far. However, the Petitioner has received a letter dated July 7, 2011 from Central PIO & Asst. GM of the Respondent Bank which purports to be an "interim reply" and states that "you will be advised in the matter in due course." No further communication has been received. A copy of Reply dated July 7, 2011 received by the Petitioner is annexed hereto as Annexure P-24.

6(a) The Petitioner has been suffering the effects of the stigmatic termination ever since he has received the termination order which has severally impacted his life. The severe effect of the said order can be seen as the Petitioner is unable to even secure any kind of job in other Banks and Financial Institutions in the last two (2) months despite several attempts and inspite being academically and professionally well qualified. As soon as the Petitioner presents his termination letter to a prospective employer, his candidature is rejected.

(b) In the facts and circumstances of the case and in view of the sequence of events, the Petitioner has a bonafide belief that the Respondent Bank has acted on a mere presumption that the Petitioner may be a suspect case of using unfair means.

7. I have heard learned counsel appearing on behalf of the parties and perused the judgment rendered by the Apex Court.

8. The issue involved in these petitions and the issue raised before the Apex Court in the aforesaid civil appeal is identical. The Apex Court has discussed the same and observed as under:-

11. The question whether termination of the service of a temporary employee or a probationer can be treated as punitive even though the order passed by the competent authority does not contain any stigma has been considered in a series of judgments. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , which can be considered as an important milestone in the development of one facet of service jurisprudence in the country, the Constitution Bench was called upon to decide whether the order of reversion of an official holding a higher post in an officiating capacity could be treated as punitive. After elaborate consideration of the relevant provisions of the Constitution and judicial decisions on the subject, the Constitution Bench observed:

...In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the

requirements of Article 311 must be complied with....

9. Finally, the Apex Court has decided as under:-

33. The proposition laid down in none of the five judgments relied upon by the learned counsel for the appellants is of any assistance to their cause, which were decided on their own facts. We may also add that the abstract proposition laid down in paragraph 29 of the judgment in Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences (supra) is not only contrary to the Constitution Bench judgment in Samsher Singh v. State of Punjab (supra), but large number of other judgments-State of Bihar v. Shiva Bhikshuk Mishra (supra), Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha (supra) and Anoop Jaiswal v. Government of India (supra) to which reference has been made by us and to which attention of the two-Judge Bench does not appear to have been drawn. Therefore, the said proposition must be read as confined to the facts of that case and cannot be relied upon for taking the view that a simple order of termination of service can never be declared as punitive even though it may be founded on serious allegation of misconduct or misdemeanor on the part of the employee.

34. In the result, the appeals are dismissed. The appellants shall reinstate the private respondents within 15 days of the production of copy of this judgment before respondent No. 3 and give them all consequential benefits like pay, allowances, etc. within next one month. However, it is made clear that this judgment shall not preclude the competent authority from taking fresh decision in the matter of confirmation of the private respondents after giving them effective opportunity of hearing against the allegation of use of unfair means in the test held on 27.2.2011.

10. In view of the above discussion, I am of the considered opinion that since the issue raised in the instant petitions has already been decided by the Apex Court in the aforesaid Civil Appeal Nos. 7841-42/2012 vide its judgment rendered on 03.12.2012, therefore, the present petitions raising identical issues stand disposed of accordingly.

11. I further make it clear that the directions issued by the Apex Court in para 34 of the judgment mentioned above, are applicable in the cases in hand.

12. It is clarified that the respondents shall comply with this order within a period of four weeks from the date of receipt of the copy of the judgment.

13. No further orders are required. Consequently, all these petitions are disposed of.

CM No. 10682/2011 (for stay)

With the disposal of the petition itself, the instant application has become infructuous. The same is disposed of accordingly.

A copy of this order be given dasti to the learned counsel for the parties.