
(2016) 07 SHI CK 0071
In the High Court Of Himachal Pradesh
Case No : LPA No. 19 of 2016

Roshan Lal

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Citation : (2016) 4 HimLR 2264

Hon'ble Judges : Mr. Mansoor Ahmad Mir, C.J. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Praneet Gupa, Advocate, for the Appellant; Mr. Sanjay Dalmia, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. - This appeal is directed against the judgment, dated 31st December, 2015, passed by a learned Single Judge of this Court in CWP No.7632 of 2012, titled Roshan Lal v. CMD UCO Bank and others, whereby the writ petition, filed by the petitioner (appellant herein), came to be dismissed, (for short, the impugned judgment).

2. Facts of the case, in brief, are that the writ petitioner was initially appointed as Assistant Cashier-cum-Godown Keeper in the respondent-Bank on 17th November, 1977, was promoted to the officer's cadre on 22nd October, 2006 and was asked to join at Hyderabad. The petitioner did not join and submitted the representation (Annexure P-1) to the Bank Authorities expressing his inability to join at Hyderabad and requested to retain him at Dharamshala Region or he would be compelled to seek reversion. It is apt to reproduce the relevant portion of Annexure P-1 hereunder:

"?.....Therefore, keeping in view the above facts, it is neither possible to leave my son and father alone nor bring them with me at new place of posting. You are requested to consider my case sympathetically to retain me in Dharamsala region or otherwise I will be compelled to seek reversion."

3. The said request of the petitioner did not find favour with the Bank Authorities and the competent Authority, vide order dated 10th November, 2006 (Annexure P-3), reverted the petitioner to the post he was holding. It is apt to reproduce the relevant portion of Annexure P-3 hereunder:

"In this context, please be informed that in terms of para 3.8.3(a) and its note of Promotion Policy Settlement for Workmen Staff 1988 as amended, you request for such refusal/reversion has been acceded to under the following terms & conditions:

i) You will be debarred for promotion for five (5) years from the date of your reversion/refusal;

ii) You will be reverted to your substantive cadre which you occupied prior to your promoting subject to availability of similar vacancy in the same seniority region. However, if no similar vacancy is available, you will be reverred only as a clerk and be posted in the same seniority region."

4. It has further been pleaded that the respondent-Bank amended the promotion policy (Annexure P-4) w.e.f. 16th July, 2012 and circulated the same vide letter dated 30th July, 2012 and as per the new promotion Policy, maximum age prescribed for promotion from clerical cadre to officers" cadre was 56 years as on 31st March, 2012.

5. The respondent-Bank issued circular, dated 25th July, 2012, (Annexure P-5), whereby the vacancy position was notified and applications were invited from the employees working in the clerical cadre. Acting upon the said notification, the petitioner applied vide application (Annexure P-6) disclosing his service particulars etc., meaning thereby he had not questioned the new Promotion Policy (Annexure P-4) or the circular (Annexure P-5). The application of the petitioner for promotion to the next promotional post was rejected for the reason that he had already crossed the upper age limit i.e. 56 years as per the extant promotion policy i.e. "Promotion Policy Settlement for Workmen Staff, 2012" (Annexure P-4). Clause 3.4 of the said Promotion Policy deals with the "Eligibility" and Clause 3.4.2 provides the maximum age limit for promotion from clerical cadre to officers" cadre in Bank"s Junior Management Grade Scale-I, which reads as under:

"Age:

The maximum age limit shall be 56 completed years as on 31st March of preceding date of notification."

6. Consequent thereto, the petitioner approached the respondents, but was informed that since he was not eligible, his application for promotion had been rejected, constraining the petitioner to file the writ petition, with the following reliefs:

"i) That the petitioner may be considered for the post of Officers cadre in JMG

Scale-I w.e.f. 2-11-2011,

ii) A writ in the nature of mandamus to strike down retrospective provisions of the policy as ultra virus and unsustainable in the eyes of law;

iii) To direct the Respondents to treat the petitioner as eligible for the promotion for the post of JMG-Scale-I and considering him for promotion due to him on the basis of his seniority with effect from the date he is found due for promotion;"

7. From the perusal of the above reliefs, the petitioner has neither questioned the new promotion policy i.e. Annexure P-4 nor has sought the quashment of the order, whereby his application was rejected on the ground that he was not eligible. Without seeking the basic reliefs, the writ petition was not maintainable.

8. The eligibility of the petitioner was to be determined as per the Rules occupying the field at the time when the vacancy position was notified and the vacant posts were decided to be filled up, by way of promotion, in terms of Annexure P-4. The vacancy position was notified on 25th July, 2012, after coming into effect the amended promotion policy. The petitioner also tendered his application in terms of the advertisement notice (Annexure P-4) without any demur. Therefore, the petitioner cannot be permitted to contend that he was eligible, entitled to be promoted as per the policy in vogue before coming into force the amended promotion policy (Annexure P-4) and he was to be considered for promotion immediately after the ban period of five years was over.

9. It is also apt to mention here, at the cost of repetition, that the petitioner was promoted in the year 2006, but he opted not to join and avail the promotional avenue, due to which the respondent-Bank reverted him to the post he was occupying at that time. The said reversion was accepted by the petitioner without any protest and was never questioned. Thereafter, the occasion for consideration of the petitioner to the next promotional post arose at the time when the vacancy position was notified after the amendment of the promotion policy (Annexure P-4) and as per the said policy, the petitioner was ineligible having crossed the upper age limit.

10. Having said so, the Writ Court has rightly dismissed the writ petition. As a consequence, the impugned judgment is upheld and the instant appeal is dismissed, along with pending CMPs, if any.