

(2015) 12 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP No. 7632/2012-D

Roshan Lal Sharma

APPELLANT

Vs

CMD, UCO Bank and Others

RESPONDENT

Date of Decision : 31-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 12 SHI CK 0064

Hon'ble Judges : Piar Singh Rana, J.

Bench : Single Bench

Advocate : Praneet Gupta, Advocate, for the Appellant; Sanjay Dalmia, Advocate, for the Respondent

Judgement

Piar Singh Rana, J.—Present Civil Writ Petition is filed under Article 226 of the Constitution of India.

BRIEF FACTS OF THE CASE

2. It is pleaded that petitioner was appointed as Assistant Cashier-cum-Godown Keeper on dated 17.11.1977. It is further pleaded that thereafter petitioner was promoted to the post of Officers Cadre in Junior Management Grade Scale-I on dated 22.03.2006 and he was transferred from Dharamshala Himachal Pradesh to Hyderabad. It is further pleaded that thereafter petitioner filed a representation to retain him at Dharamshala region and petitioner also mentioned in the representation that he would be compelled to seek his reversion because it would not be possible for him to join at Hyderabad due to 100% mental retardment of son of petitioner and due to the reason that father of petitioner aged 70 years confined to bed due to ill health.

3. Thereafter non-petitioners/UCO Bank on dated 10.11.2006 issued letter Annexure P-3 to petitioner Sh. Roshan Lal Sharma debarring the promotion of petitioner for five years from the date of refusal and petitioner was reverted to substantive cadre which was occupied by the petitioner prior to his promotion.

Thereafter on 16.07.2012 new promotion policy was framed by the UCO Bank and circulated to its employees. Petitioner applied for promotion to the post of Junior Management Grade Scale-I but application of petitioner was rejected by non-petitioners/UCO Bank on the ground that as per latest promotion policy he was debarred by age for promotion. Petitioner sought following relief(s): (i) That petitioner be considered for the post of Officers Cadre in Junior Management Grade Scale-I w.e.f. 02.11.2011 and (ii) To direct the non-petitioners/UCO Bank to treat the petitioner as eligible for promotion to the post of Junior Management Grade Scale-I on the basis of his seniority.

4. Per contra response filed on behalf of non-petitioners/UCO Bank pleaded therein that Civil Writ Petition is not maintainable as petitioner has suppressed the material facts from the Court. It is further pleaded that promotion process has concluded prior to the filing of the civil writ petition and results of promotion already stood declared on dated 10.09.2012. It is further pleaded that petitioner was granted promotion from Clerical Cadre to Officers Cadre in Junior Management Grade Scale-I but petitioner relinquished his promotion and thereafter petitioner was debarred for promotion for five years from the date of relinquishment. It is further pleaded that opportunity was granted to the petitioner for promotion but petitioner relinquished to avail the opportunity of promotion. It is further pleaded that now petitioner could not be considered for promotion from Clerical Cadre to Officers Cadre in Junior Management Grade Scale-I because promotion of the petitioner is barred by age factor. It is further pleaded that as per promotion policy dated 16.07.2012 maximum age limit for promotion is prescribed as 56 years. It is further pleaded that age of the petitioner is 56 (fifty six) years 1 (one) month and 11 (eleven) days. It is further pleaded that petitioner was not eligible for promotional post. It is further pleaded that petitioner was promoted as Junior Management Grade Scale-I but petitioner himself refused to join at Hyderabad on 02.11.2006 and decided to forego his promotion. It is further pleaded that petitioner has crossed the maximum eligible age limit prescribed in the latest promotion policy and he is ineligible for participating in promotion process. It is further pleaded that vacancies were notified on 25.07.2012 and amended promotion policy came into operation on 16.07.2012. It is further pleaded that petitioner is not eligible for promotion as per latest promotion policy which came into operation w.e.f. 16.07.2012. Prayer for dismissal of Civil Writ Petition sought.

5. Court heard learned Advocates appearing on behalf of petitioner and non-petitioners and also perused the entire records carefully.

6. Following points arise for determination:

"1) Whether civil writ petition filed under Article 226 of Constitution of India is liable to be accepted as mentioned in memorandum of grounds of civil writ petition and whether civil writ petition is bad for non-joinder of necessary party?

2) Final order."

Findings upon point No. 1 with reasons:

7. Submission of learned Advocate appearing on behalf of petitioner that bar of promotion was for 5 years w.e.f. 02.11.2006 and 5 years expired on 02.11.2011 and thereafter promotion of petitioner was automatic in nature to the post of Officers Cadre in Junior Management Grade Scale-I because promotion was kept in abeyance by non-petitioners and on this ground Civil Writ Petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. It is held that promotion of the petitioner to the post of Officers Cadre in Junior Management Grade Scale-I after the expiry of 5 years was not automatic in nature and it is held that promotion of the petitioner was not kept in abeyance but petitioner was reverted to the post of Clerk as per Circular No. PER/MPTP/COM/88/2006 dated 10.11.2006 issued by the UCO Bank Annexure P-3. There is recital in the letter dated 10.11.2006 issued by the UCO Bank Annexure P-3 that petitioner was reverted to substantive cadre which petitioner occupied prior to his promotion subject to availability of similar vacancy in the same seniority region. There is further positive recital in the letter dated 10.11.2006 issued by the UCO Bank that if no similar vacancy would available then petitioner would be reverted only as Clerk and he would be posted in the same seniority region. There is further positive recital in the letter dated 10.11.2006 issued by the UCO Bank that on reversion the petitioner would work in both Cash & Accounts Departments. In view of the above stated facts it is held that promotion of the petitioner was not kept in abeyance but petitioner was reverted back to his substantive cadre which he occupied prior to his promotion because petitioner himself voluntarily relinquished his promotion due to his family problem.

8. Another submission of learned Advocate appearing on behalf of petitioner that eligibility of the petitioner was to be considered w.e.f. 02.11.2011 even as per latest promotion policy to the post of Officers Cadre in Junior Management Grade Scale-I is also rejected being devoid of any force for the reasons hereinafter mentioned. It is proved on record that vacancies were notified by the UCO Bank on dated 25.07.2012. It is also proved on record that amended promotion policy came into operation on 16.07.2012. It is proved on record that on the date of notification of vacancies amended policy of 16.07.2012 was in operation.

9. Another submission of learned Advocate appearing on behalf of petitioner that amended promotion policy will operate prospectively and not retrospectively and on this ground Civil Writ Petition be accepted is also rejected being devoid of any force for the reasons hereinafter mentioned. It is held that in the present case only amended latest policy of promotion was to be implemented because vacancies were notified on 25.07.2012 and amended promotion policy came into operation on 16.07.2012 prior to the notification of vacancies. It is held that from the date of notification of amended policy of promotion all subsequent process of promotion after 16.07.2012 would be governed by latest amended promotion policy which came into operation on 16.07.2012. It is also proved on record that results as per latest promotion policy also stood declared by the non-petitioners/

UCO Bank vide notification/circular No. CHO/PAS/05/12-13 dated 10.09.2012 and petitioner has not impleaded the persons who have been declared successful as co-party in the present civil writ petition. It is held that if present civil writ petition is allowed in favour of the petitioner then selected candidates would be adversely affected materially as of today. It is well settled law that no one should be condemned unheard on the concept of audi alteram partem. In view of the above stated facts it is held that present civil writ petition is bad for non-joinder of necessary party. Point No. 1 is answered in negative against the petitioner.

Point No. 2 (Final Order).

10. In view of findings upon point No. 1 above CWP No. 7632/2012-D is dismissed. No order as to costs. CWP No. 7632/2012-D is disposed of. Pending application(s) if any also disposed of.