

(2015) 04 DEL CK 0282
In the Delhi High Court
Case No : LPA 260 of 2015

State Bank of India and Others

APPELLANT

Vs

Dharmendra Prasad Singh and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
State Bank of India Act, 1955 — Section 43

Citation : (2015) 04 DEL CK 0282

Hon'ble Judges : Pradeep Nandrajog, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Rajiv Kapur, for the Appellant

Final Decision : Disposed off

Judgement

Pradeep Nandrajog, J.

CM No. 7976/2015

Allowed subject to just exceptions.

LPA No. 260/2015

1. "Better people translate into better business". This is the simple philosophy of Tom Gegax, the founder and CEO of Tires Plus, a Tire Retailer with over 150 stores scattered across 12 states.

2. It is trite that high-performance work practices lead to both high individual and high organizational performance. These high-performance work practices should be of a kind where there is a commitment to improving the knowledge, skills, and abilities of an organization's employees; increasing their motivation; reducing loafing on the job; and enhancing the retention of quality employees while encouraging though performers to lead.

3. How do we define who managers are? A manager is someone who works with

and through other people by coordinating their work activities in order to accomplish organizational goals. A manager's job is not about personal achievement - it is about helping others to do their work and achieve. It is a common phrase in the business world : "Our people are our most important asset". Put in a tabular form, the human resource management process would be thus :-

4. Human resource planning is the process by which managers ensure that they have the right number and kinds of people in the right place, and at the right times, who are capable of effectively and efficiently performing assigned tasks. Through planning, organizations can avoid sudden talent shortages and surpluses. Human resource planning has therefore to be condensed into two steps : (i) assessing current human Human Resource Planning Recruitment Identification and Selection of Competent Employees Decruitment Orientation Selection Training Adapted and competent employees with up-to date skill and knowledge Performance Management Compensation and Benefits Competent and high- performing employees who are capable of sustaining high performance over the long terms Career Development resources, and (ii) assess future human resource needs and developing a program to meet those future needs.

5. Once an organization knows its current human resource status and future needs it can begin to do something about shortages or excesses. Shortages are met by recruitment and the surplus by decruitment.

6. In the global world in the era of the internet, web-base recruitment or e-recruitment has become a popular choice for organizations and applicants. Online recruiter FlipDog.com is an example. Once the recruitment effort has developed a pool of candidates, the next step is to determine who is best qualified for the job. But, since selection is an exercise in prediction, organizations recruit personnel on an express understanding that their performance would be evaluated over a period of time, during which the employer helps the employee by training the employee. After a period of time a performance appraisal is done. This explains the concept of people being initially kept on probation.

7. There would be no progress in life if humans were not to experiment. To interpret the law in a manner which retards experimentation would do incalculable harm to the society.

8. In the context of our Constitution where the State and its instrumentalities are bound by the constitutional mandate of affording equal opportunity to all who are qualified and eligible to get employment under the State or its instrumentality, the principle of equality of opportunity has to be blended with the current needs of the State and its instrumentalities; to march with time.

9. If an organization is finding problems in its working, as in the instant case the State Bank of India finding it difficult to penetrate banking in the rural sector, it would be a fair and a rational decision to experiment on a hypothetical model.

10. To experiment, human resource is needed. It would be unfair to the human resource to recruit the personnel by first creating posts and then telling them that the experiment has failed and therefore the posts are being abolished - please go home. It would be more fair to let them know that the organization is experimenting and recruiting them for the limited duration of the experiment. If the experiment succeeds and it is found by the organization that with the cooperative effort of the organization and the employees, the employees have acquired a skill which can be of help by giving permanency to the experimental model, there is nothing wrong in the organization giving permanency to the experimental module created. If the State or its instrumentality is the employer, equality of opportunity of permanency would warrant a fair and a transparent policy to be framed to appraise the contractual employees and those who achieve the prescribed benchmark to be made permanent. The fair and the transparent policy must be of a kind which takes away the subjective discretion, capable of being misused to hire and fire.

11. The need for us to pen the aforesaid thoughts is the view taken by the learned Single Judge in the impugned decision dated February 09, 2015, while dismissing W.P.(C) No. 4061/2013 that the appellant has violated the law declared by the Constitution Bench of the Supreme Court in the decision reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 .

12. The said decision holds that the right to public employment when viewed through the eyes of Article 14 and Article 16 of the Constitution of India requires the recruitment and conditions of service of persons appointed to public services to be as per Rules framed in exercise of the constitutional power under Article 309 of the Constitution of India and appointments made strictly as per the Rules. Having made the Rules for appointment, the State cannot flout its Rules and confer undue benefits on a select few. In other words there cannot be backdoor entry. The decision guides that sympathy for those who had worked for years after entering the service through a backdoor cannot defeat the right of the citizens of this country to be offered equal opportunity in matters of public employment. The Court held that these backdoor entry employees would have no legitimate expectation of being confirmed. The Constitution Bench nullified all schemes of regularization and prohibited any to be made in future where backdoor entries were regularized.

13. What were these backdoor entries? Employment given without inviting applications from all eligible persons and flouting the eligibility norms prescribed by the Rules.

14. Like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, arising by reference to the need for readjustment in a changing

society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that "the life of the law has not been logic it has been experience" and again when he declared in another study that "the law is forever adopting new principles from life at one end," and "sloughing off" old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined.

15. The search for solutions, responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters.

16. It has also to be remembered, that many occasions for new options arise by the mere fact that no generation looks out on the world from quite the same vantage-point as its predecessor, nor for the matter with the same perception. A different vantage point or a different quality of perception often reveals the need for choice-making where formerly no alternatives, and no problems at all, were perceived. The extensiveness of the areas for judicial choice at a particular time is a function not only of the accumulation of past decisions, not only of changes in the environment, but also of new insights and perspectives both on old problems and on the new problems thrown up by the changes entering the cultural, social and business dominions in the society.

17. The dilemma which Judges face in a growing society poses the task of finding a new equilibrium, prompted not seldom by the desire to reconcile opposing mobilities. The competing goals, according to Dean Roscoe Pound, invest the Judge with the responsibility "of proving to mankind that the law was something fixed and settled, whose authority was beyond question, while at the same time enabling it to make constant readjustments and occasional radical changes under the pressure of infinite and variable human desires."

18. The principle of law declared in Uma Devi's case needs to be understood in the new environment in which business is conducted today. Too many shackles on the Public Sector Banks on the human resource development would make them uncompetitive vis-a-vis the Private Sector Banks. Consistent with the principles of fair play and equal opportunity to all who are eligible and qualified, there is enough scope for the ply in the joints in the law declared in Uma Devi's case for experimentation and crystallizing the gains of the experiment.

19. Time to note the relevant facts. The State Bank of India found that in its banking operations in the agricultural sector the non-performing assets i.e. bad

debts were bloating out of proportion.

20. A survey was got conducted by McKinsey and Co. A report was submitted by it. Based on the report the bank took a decision to create a new Agriculture Business Unit in the 14 territorial circles of the bank. The view was to reach out to as many villages as possible and to give a fillip to the financial inclusion policy of the Government of India and to increase the level of business in agriculture and at the same time try and recover the outstanding debts which otherwise would have been written off as non-performing assets. Section 43 of the State Bank of India Act, 1955 empowers the bank to appoint such number of employees and officers as are necessary and desirable for an efficient functioning of the bank.

21. There were no posts of Officers Marketing and Recovery (Rural) and Technical Officer (Farm Sector) and hence it was decided to induct agriculture graduates on contract basis purely on an experimental basis. Advertisements were published in leading newspapers inviting applications from eligible candidates. Eligibility criteria was mentioned : Graduate in Agriculture, Veterinary, Fisheries, Dairy, Agricultural Engineering, Agricultural Pharmacy from a recognized university with minimum 70% marks (65% for SC, ST or PH candidates) or Graduate in the stream of BBA, Social Work, Social Welfare, Marketing with minimum 60% marks (55% for SC, ST and PH candidates) or MBA with minimum 60% (55% for SC, ST and PH candidates). Minimum and maximum age limit was prescribed being minimum 23 years and maximum 32 years as of April 01, 2004. Number of posts intended to be filled up on contract basis were notified.

22. We have noted aforesaid fact to bring home the point that though no recruitment rules, technically so called, were framed, but the advertisement had all the features of fairness and transparency required by recruitment rules and could thus be said to be recruitment rules improperly so called.

23. All eligible candidates who applied were subjected to the selection process and those who cleared the same were offered appointment on contract basis initially for a period of two years. The same was extended on yearly basis. The candidates selected were imparted training, which we are given to understand was of 12 week duration. The service was regulated by the State Bank of India Management Training/Executive Service Conduct Rules, 2004 to the extent the same apply to the post of Officer Marketing and Recovery (Rural).

24. Came the year 2010. The management of the bank found that the experiment was a success. By the said year it had a pool of officers working on contract as Officer Marketing and Recovery (Rural) with sufficient experience, and as was to be expected, some were brilliant i.e. excellent and some very good, a few were the ones who were loafing on the job.

25. Motivation is a tonic to an employee and the most potent potion of a tonic is a permanent job.

26. On July 14, 2010 the Executive Committee of the Central Board and the Bank approved a policy for the permanent absorption of Officers Marketing and Recovery (Rural). And since similar contract appointments were made in the past for Technical Officers (Farm Sector), Micro Finance Marketing Officers and Customer Relationship Executives, the policy approved was extended to even these officers.

27. On July 20, 2010 the policy was made public in the form of an office memorandum. The relevant part thereof reads as under:-

"The Executive Committee of the Central board in their meeting held on the 14th July 2010 approved a policy for permanent absorption of Officers Marketing and Recovery (Rural), Technical Officers (Farm Sector), Micro Finance Marketing Officer, Customer Relationship Executive (PB) and Customers Relationship Executive (ME) in JMGS-I as Specialist Officers at the initial Stage of pay, as under:-

The terms and conditions of absorption of the aforementioned officers are as under:-

I. All above mentioned officers who are in the service of the Bank as on 14.07.2010 will be eligible for absorption, subject to having achieved minimum 60% targets during the year 2009-10. The performance of the officers, will be assessed as per the performance evaluation matrix advised by the concerned SBUs.

II. The officers who have been awarded punishment in the past or against whom disciplinary proceedings are pending/contemplated will not be considered for permanent absorption and their contract will be allowed to expire and will not be renewed any further."

28. As noted above the appellant Bank had to experiment before sanctioning permanent posts of Officers Marketing and Recovery (Rural). The banking sector had to penetrate the rural market to give a fillip to the financial inclusion policy of the Government of India and to increase the level of business in agriculture and simultaneously recover the outstanding debts which otherwise would have been written off as non- performing assets. A fair and a transparent policy of recruitment by prescribing eligibility criteria was notified and the age limit was fixed. Public advertisements were issued inviting applications from all eligible candidates and all those who applied were subjected to the selection process. Those found meritorious were offered appointment on contract basis. They were trained and assigned jobs. Their work profiles were recorded. What started as an experiment in the year 2004 was appraised in the year 2009 and in the year 2010 a decision was taken that since the experiment had succeeded, it was time to crystallized the mother solution. Decision was taken to regularize the contractual employees but after subjecting them to a proper scrutiny. A bench mark of achieving 60% targets was fixed. A pro forma was devised containing the evaluation matrix as advised by the concerned SBUs. The performance of the

officers was evaluated on said matrix and only those who secured the bench mark were regularized. For that, permanent posts were sanctioned.

29. Under the circumstances it has to be held that the signature tune and the ethos of the law declared in Uma Devi's case was not fouled.

30. We note that the factual controversy between the parties has neither been noted nor adjudicated upon by the learned Single Judge. The writ petitioners were appointed as Officer Marketing and Recovery (Rural) pursuant to an advertisement dated July 25, 2009 and were claiming a right to be made permanent in terms of the policy decision dated July 14, 2010, notified under the office memorandum dated July 20, 2010. The claim was opposed by the State Bank of India that its policy was applicable to the Officer Marketing and Recovery (Rural) appointed on contract basis in the year 2004 evidenced by the fact that clause I of the policy prescribed that only those officers would be eligible for absorption who had achieved minimum 60% target during the year 2009-10 and had worked for a sufficient period so that their performance could be evaluated as per the matrix advised by the concerned SBUs. We do not comment upon the merits of the controversy between the parties for the reason the grievance of the appellant bank is to the directions issued in the impugned order that since law declared by the Constitution Bench of the Supreme Court in Uma Devi's case has been brazenly breached by the Board of the State Bank of India the Secretaries to the Ministry of Finance and Law be sent a copy of the judgment and that the same shall also be placed before the Board of Directors of the Bank. Though no direction has been issued that the two Secretaries and the Board of Director of the Bank shall take action in terms of the decision, but the said direction would be in built because it would be idle formality for the two Secretaries and the Board of Directors to simply receive a copy of the judgment.

31. The appeal is disposed of setting aside the impugned judgment dated February 09, 2015 in so far it declares that the policy dated July 20, 2010 of the appellant bank was in violation of the law declared by the Constitution Bench of the Supreme Court in Uma Devi's case as also that a copy of the impugned decision be sent to the Secretaries Ministry of Finance and Law as also the Board of Directors of the appellant. We once again clarify that since the learned Single Judge has not dealt with the fact in issue between the contesting parties we have not commented on the same.

32. No costs.

CM No. 7975/2015

Dismissed as infructuous.