

(2010) 05 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 1426 of 1999

UCO Bank and Others

APPELLANT

Vs

Jagdish Narain Purviya

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16
Contract Act, 1872 — Section 23

Citation : (2011) 1 LLJ 403 : (2010) 4 RLW 3258 : (2010) 6 SLR 274

Hon'ble Judges : Prakash Tatia, J; Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—This intra-court appeal by the employer-appellant UCO Bank is directed against the order dated 06.09.1999 whereby the learned Single Judge of this Court has allowed the writ petition (CWP No. 1410/1997) filed by the employee-respondent Jagdish Narain on his grievance against denial of promotion because of a debarment clause contained in the circular dated 19.10.1989 (Annex. 1) whereby a casual worker, when absorbed in the subordinate staff, was declared ineligible to be considered for promotion for all time in future, if having higher qualification on the date of his first engagement. The learned Single Judge has found such a debarment clause, taking away altogether the right of the employee to be considered for promotion, illegitimate and illegal; and, while striking the same down, has directed the appellants to consider the claim of the respondent (writ petitioner) for promotion.

2. It could be noticed at the outset that the aforesaid circular dated 19.10.1989, containing the questioned debarment clause, came to be issued pursuant to a settlement arrived at between the management of the appellant-Bank and the workers' unions on 12.10.1989. The background of such settlement had been that the unions were demanding regular appointment for the casual workers who were engaged on daily wages basis and after discussions, the appellant-Bank

agreed to absorb in the subordinate staff certain casual workers, who would satisfy the given eligibility criteria like that of period of working, i.e., 240 days or more with or without interruption during a period of 3 years preceding the settlement; that of age on the date of first engagement, i.e., minimum 18 and maximum 26 years with applicable relaxation to SC/ST categories; and that of the requisite educational qualification i.e., of minimum 8th standard and not passed SSLC or equivalent on the date of first engagement. The impugned debarment clause came to be mentioned in the said circular as a part of the saving clause appended to the education qualification criterion; and being the bone of contention, is reproduced as under:

Educational Qualification:

Such Casual Worker should have had a minimum qualification of 8th Standard and not passed SSLC or equivalent examination on the day of his first engagement as Casual Worker. Saving Clause:

Education Qualification: Any person who after being engaged by the Bank as Casual Worker has acquired higher qualification such as SSLC/SSC/Matriculation or higher qualification shall not be disqualified for absorption in terms of this Settlement merely on the ground that he has higher qualification. However, he would not be eligible to be considered for promotion to Clerical Cadre for a period of five years from the date of his absorption. Further, any person who was Matriculate or higher qualified on the date of his first engagement as casual worker shall not be disqualified for absorption in terms of this Settlement merely on the ground that he has higher qualification. However, such persons on absorption would not be eligible to be considered for promotion as also selection to any functional special allowance post for all the time in future. Any person who has qualification less than 8th Standard may be absorbed as sweeper-cum-peon. However, he shall not be eligible for any functional special allowance posts for all the time in future. However, if such person upon absorption acquires Educational Qualification of 8th Standard he would be entitled for being absorbed as peon as per the usual procedure applicable for Sweepers. This Saving Clause, however, shall not confer any rights on any existing employee in the Subordinate Cadre to declare their suppressed qualification if any for regularization.

3. The facts and the background aspects relevant for the issue involved in this matter could be taken note of, in brief, as follows: The appellant-Bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The writ petitioner was initially engaged as subordinate staff at Johari Bazar, Jaipur Branch of the appellant-Bank on daily wages basis in the year 1987. At the time of his initial engagement, the writ petitioner was a graduate having obtained the degree of Bachelor of Commerce in the year 1986. Later on, in terms of the aforesaid circular dated 19.10.1989, the application moved by the writ petitioner for regular appointment in the Bank in the subordinate staff cadre came to be granted and, by the order dated 05.04.1991 (Annex.2), he was taken on the post of Peon-cum-Farrash but, with the

stipulation that he would abide by the terms stated in the appointment order including the aforesaid term debarring him from promotion forever.

4. However, on 09.04.1996, after completing 5 years of service in terms of the appointment order aforesaid, the writ petitioner made an application for considering him for promotion to the clerical post. The appellant-Bank informed the writ petitioner of rejection of his application by the letter dated 21.05.1996 (Annex.3) while observing that in view of the aforesaid debarment clause in the circular dated 19.10.1989, he was ineligible to be considered for promotion and for selection to any functional special allowance post for all the time after absorption. The writ petitioner made another representation dated 15.07.1996 (Annex.4) against denial of promotion; and the same was also rejected by the appellant-Bank under the communication dated 02.12.1996 (Annex.5) reiterating that he was not entitled to be considered for promotion so also for selection to any functional special allowance post for all time to come. Being aggrieved and dissatisfied, the petitioner challenged the said debarment clause in the circular dated 19.10.1989 by way of the writ petition wherefrom has arisen this intra-court appeal; and prayed for quashing of the impugned debarment clause with consequential reliefs.

5. The appellant-Bank in its reply before the writ Court pointed out that the said circular came in existence in the background of the circumstances that a large number of persons like the writ petitioner were engaged in various Branches of the Bank and had put in more than 240 days of service; and, therefore, arose the problem about dealing with the services of such persons with a great pressure from the employees' unions to regularise them. The appellant submitted that on 12.10.1989, after exchange of thoughts and negotiations, a settlement was brought about between the management and the unions; and the writ petitioner owed his birthmark in the service only to the circular issued in terms of this settlement.

6. While asserting that the settlement between the management and the unions was not open to judicial review; and the terms thereof were binding on the writ petitioner, the appellant reiterated that the writ petitioner got absorbed only under the terms of the said settlement and he was not entitled to put up any claim beyond the terms of the settlement; and as per Clause 6 of the settlement, the conditions were acceptable to all casual workers like the writ petitioner. It was further submitted that in terms of the said settlement, the management had changed its position and absorbed the writ petitioner and the like persons without subjecting them to selection through open competition; and the writ petitioner could not be permitted to turn around and question the circular under which he got absorbed. It was also submitted that the petitioner had not questioned the terms of his absorption for good 6 years and had been ill-advised to submit his claim for promotion on clerical post.

7. In the impugned order dated 06.09.1999, the learned Single Judge of this Court observed that every person has a right to challenge the circular/order/

statutory provision as and when he would feel adversely affected thereby; and therefore, the objection of delay and laches was of no substance. The learned Judge, while observing that the appellant-Bank, being admittedly the "State" within the meaning of Article 12 of the Constitution of India and being a public authority and public undertaking, was bound by the mandate of the constitutional provisions, pointed out that it could not be defended properly as to how could a person possessing higher qualification prior to employment be legally deprived of his right to be considered for promotion nor could it be successfully submitted as to how could a person be held bound by an illegal and illegitimate clause in the agreement/settlement. The learned Judge referred to the decision of the Hon'ble Supreme Court in the case of Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, holding that a person cannot be forced to be bound by an illegitimate and illegal term of an agreement for the reason that such an agreement was unenforceable in law by virtue of the provisions of Section 23 of the Contract Act. The learned Judge further pointed out that what to say of settlement, even a clause enshrined in a Standing Order, if found to be arbitrary, was liable to be quashed.

8. The learned Single Judge observed that the offending clause in the settlement, making higher qualification to be a disqualification, could not be termed merely arbitrary and illegal but was unfortunate too. A person, the learned Judge observed, should not be deprived of the right to be considered for promotion only on the ground of being more qualified. The learned Judge further indicated that such an arbitrary clause would have serious repercussions in the society, demoralizing the eligible persons; and would adversely affect the industrial peace and harmony. The learned Single Judge, thus, allowed the writ petition as noticed hereinbefore.

9. This intra-court appeal, preferred against the order so passed by the learned Single Judge, was admitted for consideration on 29.11.1999 and by way of ad interim order, the operation and effect of the impugned order passed by the learned Single Judge was stayed. However, on 17.09.2001, after hearing the parties, the stay order came to be modified to the extent that as and when considering the cases for promotion to the post of clerk from Class IV employees, the writ petitioner's case would also be considered subject to the final outcome of this appeal.

10. On behalf of the appellant-Bank, an additional affidavit has been filed pointing out that in terms of the modified stay order dated 17.09.2001, the writ petitioner's case was considered and he was promoted by the order dated 27.04.2002 subject to the final outcome of this appeal. It has also been pointed out that the settlement in question was further considered between the management and the unions; and in the memorandum of settlement dated 11.02.2009, it was agreed that the aforesaid debarment clause in the matter of promotion and selection to functional special allowance posts in respect of peons who have been absorbed, would be waived; and the settlement was approved by

the Human Resources Committee of the Bank in its meeting dated 08.03.2009 and it was decided that the debarment clause shall be waived notionally from 08.03.2009 subject to the condition that to take advantage of removal of debarment clause, the concerned employee shall withdraw any case pending before any Conciliation Officer, Labour Court, Tribunal or any other Court and the claim shall be deemed to have been settled in terms of the settlement dated 11.02.2009. The revised settlement further provides that the concerned employee applying in terms thereof shall be deemed to have accepted the benefits thereunder in full satisfaction of any pending dispute or claim; that he shall not be eligible for any benefit beyond that stipulated in the settlement; and that removal of debarment clause shall not confer any right on the employees to claim benefit of higher qualification from any retrospective date other than the stipulated one i.e., 08.03.2009.

11. It has been contended on behalf of the appellant that in view of the aforesaid subsequent developments, the writ petition has been rendered infructuous and the impugned order deserves to be quashed and the writ petitioner deserves to be directed to apply for waiver of the debarment clause in terms of the settlement dated 11.02.2009. On the merits of the case, while assailing the order passed by the learned Single Judge, the learned Counsel for the appellant-Bank has strenuously contended that the impugned order runs contrary to the scheme of the Industrial Disputes Act, 1947 ("the Act of 1947") and, therefore, deserves to be set aside. The learned Counsel submitted that under the scheme of the Act of 1947, special mechanism and machinery has been provided for bringing about settlement in consensus between the management and the workers; and such a settlement being essentially a private contract, cannot be permitted to be questioned by way of a writ petition by an individual like the writ petitioner. The learned Counsel further submitted that so far the writ petitioner is concerned, he was bound by the terms of the circular dated 19.10.1989 and, while giving appointment under the order Annexure-2, he was apprised of the conditions of service and the clause aforesaid was specifically made a part of his appointment order. The learned Counsel emphasized that the writ petitioner, who did not challenge the said condition and, rather accepted the appointment thereunder, was not entitled to turn around after having taken benefit of the said circular and hence, the writ petition ought to have been dismissed. The learned Counsel has referred to and relied upon the decisions in Reserve Bank of India and Ors. v. C.N. Sahasranaman and Ors. 1986 SCC 547 , K.C.P. Limited Vs. Presiding Officer and Others, K.A. Nagamani v. Indian Airlines and Ors. AIR 2009 SCW 3265, Amlan Jyoti Borooah v. State of Assam and Ors. AIR 2009 SCW 2017 , and Dhananjay Malik and Others Vs. State of Uttaranchal and Others, The learned Counsel for the writ petitioner, while resisting the submissions that the writ petition has been rendered infructuous for the alleged subsequent settlement, has duly supported the impugned order while referring to the said decision of the Hon"ble Supreme Court in the case of Hari Om Sharma (supra).

12. Having given a thoughtful consideration to the entire matter, we are unable

to find substance in any of submissions made on behalf of the appellant; and, for there being not even a wee bit of justification in the questioned debarment clause, in entire agreement with the learned Single Judge, we are clearly of opinion that this appeal deserves to be dismissed with costs.

13. The questioned debarment clause, denying forever the right of consideration for promotion to a particular class of employees on being absorbed as subordinate staff, who had been the casual workers earlier and were carrying higher than the prescribed qualification at the time of initial engagement, came to be incorporated in the circular dated 19.10.1989 in the saving clause appended to the criterion of educational qualification. As noticed, the said circular dated 19.10.1989, came to issued in terms of the settlement between the management and the unions as arrived at essentially for the purpose of absorption of the persons who were already working in the Bank as causal workers. The preamble of the circular itself makes out that while the unions were pressing on the point that the persons so engaged as causal workers on daily wages basis were not being paid appropriate wages and were entitled to full time employment on regular basis, on the other hand, the contention of the Bank was that such engagements were mostly unauthorized and/or in temporary vacancies for meeting temporary needs without any right of permanent employment. After discussions, the Bank agreed to absorb certain casual workers who would satisfy the criteria enshrined in the settlement including the requirements in respect of educational qualification as reproduced hereinbefore; and thus came to be issued the circular aforesaid. While it was definitely within the domain of the Bank to decide as to whether the casual workers be absorbed in the regular cadre or not but then, the question is: after having considered and agreed to absorb every such casual worker who would fulfill the relevant and reasonable criteria regarding the number of days of working, age, and minimum educational qualification, whether the Bank could have offered appointment in the fashion that a causal worker, if having higher than the prescribed qualification, though would get appointed in the subordinate staff on regular basis but then, would remain stuck as subordinate staff always and for all time to come with complete denial of any chance of promotion? Viewed from whichever angle, we are unable to find any other answer to this question except negative.

14. Examining the said saving clause on educational qualification as occurring in the circular dated 19.10.1989 and so also as incorporated in the appointment order issued to the writ petitioner, it is noticed that there has been provided a category of persons who had acquired higher qualification after being engaged as casual workers. For a person falling in this category, it is envisaged that he would not be disqualified for absorption on the ground of higher qualification but a moratorium of 5 years from the date of absorption has been provided before he would be considered for promotion to clerical cadre. Even such a stipulation sounds arbitrary and unjust but we would not like to dilate on the same for being not the subject matter of this appeal. It is the second part of this clause which is the cause of concern. This second part relates to another category of casual

workers (to which the writ petitioner belongs) who were matriculate or higher qualified on the date of first engagement as casual labour. As per the questioned stipulation, such a person, though would not be disqualified for absorption merely on the ground of having higher qualification but then, after absorption, he would never be eligible to be considered for promotion or for selection to any functional special allowance post! And such a drastic prejudice would be suffered by a person because of the only fault that he was having higher than the minimum qualification of 8th standard at the time of initial engagement! Such a provision beats logic and rationality and cannot but be treated to be against public policy. We are unable to find any principle wherefor we could countenance such a perennial ban on an employee's right to be considered for promotion only because he was having higher than the required qualification at the time of initial engagement as casual worker.

15. A feeble suggestion has been made on behalf of the appellant-Bank that the said clause had its logic and rationale to promote the education. We fail to appreciate as to how the cause of education could at all be served by the said clause whereby the persons with higher qualifications were, though, being absorbed as subordinate staff but then, were told to remain stuck there forever? Contrary to the appellant-Bank's suggestions, the offending clause would operate rather against the constitutional goals of promoting education if having educational qualification more than the minimum required would itself be detrimental to a person's progression in service. Such a clause, treating insolently a person having higher education who would take up a job in the lower echelons only under the force of circumstances, particularly in view of rampant unemployment, could only give rise to unrest and disharmony. The learned Single Judge has rightly termed this clause as rather unfortunate. Such "a clause, even if incorporated in a settlement between the management and the union, could not have been enforced in the Court of law for being clearly against the public policy.

16. The case of the writ petitioner has been a classic example of absurdity of the impugned debarment clause. The writ petitioner was none less than a graduate but took up the employment as a casual worker with the appellant-Bank and then, came to be absorbed as Peon-cum-Farrash in terms of the settlement. To tell a person like the petitioner that he would remain stagnated as Peon-cum-Farrash for the whole of his service life if he serves in the appellant-Bank because of his fault of being a graduate at the time of entry as casual worker, would be a travesty of justice and a mockery of all the principles of reasonableness and fairness.

17. The submission as made by the learned Counsel for the appellant that the debarment clause could not be questioned for being a part of settlement arrived at under the Act of 1947 does not carry any merit. True it is that ordinarily such settlements are given recognition and are countenanced but then, an unfair term which offends the very fundamentals of public policy and which is ex facie illegal

and illegitimate can neither be upheld nor enforced.

18. In the case of K.C.P. Ltd. (supra) as relied upon by the learned Counsel for the appellant, the settlement between the employer company and the workmen followed a dispute that had led to strike and retaliatory lockout; and disciplinary actions against 29 workmen for various acts of misconduct culminating in their dismissal. Under the settlement, the dismissed employees were given the option either to receive lump sum amount together with other monetary benefits or of reinstatement with continuity of service without back wages provided they tendered apology and assured good conduct. The terms of settlement, being not unjust or unfair, were held binding even on the dissenting workmen. Apart from an entirely different fact situation wherefor the said decision does not support the appellant, noticeable are the following observations of the Hon''ble Supreme Court in the said decision:

24. In connection with the justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that were in force at the time of the reference. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of industrial peace and well-being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust. It was further observed that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

19. The present one is clearly a case where objectionable portion , completely puts at naught the other advantage gained by a casual worker on being absorbed; and rather hands down unconceivable disadvantages. Viewed from any angle the offending debarment clause, being entirely unjust and unfair, cannot be approved.

20. In the case of C.N. Sahasranaman (supra), there had been a scheme framed by the employer for promotion and combined seniority list of workmen that provided for qualifying test on the basis of centre-wise seniority and determination of vacancies in promotion post for each centre. The employer submitted a modified scheme reducing percentage of overall vacancies to be filled on centre-wise basis, fixing a minimum qualifying period for filling such vacancies, and also for merit test for all employees with a minimum length of service on all-India basis and selection test for direct recruitments; and appointment letters were issued in terms of concerned service regulations specifying the offices or centres where the employees were to work. It was noticed that chances of promotion in some areas occurred more often in smaller

centres than the bigger centres but such a position was considered fortuitous and not violating Articles 14 and 16 of the Constitution of India. In the given context, the Hon'ble Supreme Court pointed out that in service jurisprudence, there cannot be any service rule which would satisfy each and every employee; and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to majority of employees while fortunes of some individuals is not the touchstone. In the same context, the Hon'ble Supreme Court, while further pointing out that settlement of disputes by negotiations or collective bargaining is to be preferred being best suited for industrial peace, and while pointing out that there had been referendum under the orders of the Court taking opinion of majority by secret ballots which indicated that the majority of employees were in favour of acceptance of the modified settlement, observed,-

61. ...In matters of service conditions, it is difficult to evolve an ideal set of norms governing various conditions of services and in grey area where service rules operated, if more than one view is possible without sacrificing either reason or common sense, the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few. See in this connection the observations in K.K. Dutta v. Union of India at page 841 (SCC p.53). These principles, however, significant, do not authorise the majority of the employees to trample upon the constitutional guarantees or rights of the individual or minority employees. Majority cannot thwart or barter away the constitutional rights of the minorities. The constitutional guarantees are to protect this very danger. But in judging the content of the constitutional rights, the entire perspective of the equality of opportunity here and denial of equal rights in public employment have to be viewed in a fair, reasonable and just perspective. Viewed in that light, it is true, there may be individual instances exemplifying injustice by postponing or delaying the chances of promotions of the contesting respondents yet that does not deny them their constitutional right in its proper measure, and the considerations that have weighed with the making of the modified scheme and in the light of the other considerations mentioned hereinbefore, we must observe that with whatever care and objectivity or foresight any rule is framed, some hardship, inconvenience or injustice might result but the paramount consideration is the reconciliation of the conflicting claims of two important constituents of service - one which brings fresh clerical employees and the other mature experience. There has been a happy merger of these two considerations in the scheme proposed and in that merger, no violation of the guaranteed rights of the opposing respondents have occurred.

62. It has further to be borne in mind that the promotion scheme having been evolved after careful consideration and having been in operation ever since the inception of the Bank with modification from time to time as a result of the negotiations under the Industrial Disputes Act should not be modified drastically. In such matters one should hasten slowly.

21. Again, for an entirely different fact situation, the aforesaid decision in C.N.

Sahasranaman does not apply to the present case. Noticeable further it is that the present one is not a case of mere hardship or inconvenience to a particular number of persons with mere delaying or postponing the chances of promotion but, by way of the offending clause, the entire class of higher qualified casual workers on absorption was to be denied promotion altogether and forever; and without any corresponding object to be achieved. Contrary to the fact situation in C.N. Sahasranaman (supra) where a promotional scheme had been evolved and operated, in the present case, what the appellant-Bank suggested was that there would never be any chance of promotion to a higher qualified person if he was a casual worker and was being absorbed as subordinate staff. The debarment clause had been in direct violation of the right of being considered for promotion. The same cannot sustain itself.

22. The decisions in K.A. Nagamani, Amlan Jyoti Borooah, and Dhananjay Malik (supra), proceeding on their own facts and circumstances and putting estoppel on the candidate who participated in selection process are not of any application to the present case for the essential reason that the Bank cannot be allowed to contend that a term in its circular or even the appointment letter, though contrary to law, could yet to be held binding. There cannot be considered any estoppel against the said offending debarment clause.

23. In the case of State of Tripura and Others Vs. K.K. Roy, apart from explaining that the principles of estoppel do not apply in the matters of avenues for promotion, the Hon"ble Supreme Court pronounced rather heavily against absence of avenues of promotion with reference to several of the previous decisions and said,-

6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional-avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State....

24. Further, in the case of Food Corporation of India and Others Vs. Parashotam Das Bansal and Others, the Hon"ble Supreme Court countenanced judicial intervention when employees are denied an opportunity of promotion for long years and said,-

12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction

to issue necessary direction.

25. The debarment clause as sought to be enforced by the appellant-Bank rather stands at loggerheads with the constitutional requirement of providing the avenues of promotion and cannot be given any legitimacy on any known principle. The offending clause in the circular being contrary to all the principles of law and so also being against the public policy, is clearly hit by Section 23 of the Contract Act too as pointed out by the Hon''ble Supreme Court in Hari Om Sharma''s case (supra). Therein, a clause of agreement whereby a person on being promoted to higher post or put to officiate as stopgap arrangement, was not to claim higher salary or attendant benefits, was held to be unenforceable in view of Section 23 of the Contract Act.

26. It is not that the appellant-Bank remained ignorant of total absurdity of the said debarment clause. It is borne out from the circular dated 04.06.2009 (as placed before us with additional affidavit) that regularly the matter was represented to the appellant-Bank to waive such debarment clause and ultimately, the settlement was reached on 11.02.2009 that the offending clause would be waived subject to withdrawal of pending litigation; and then, the matter was placed before the Human Resources Committee of the Board of Directors of the Bank who agreed to waive the said clause from the date of its meeting i.e., 08.03.2009. Here again, the appellant-Bank, ignoring the requirement of acting fairly and reasonably as an agency and instrumentality of the State, has inserted rather queer terms in the circular dated 04.06.2009 to the effect that the waiver would be from 08.03.2009 and the concerned employee shall have to withdraw the case pending before any authority or Court; and that the employee would not be entitled to seek benefit of higher education from any retrospective date other than the stipulated one i.e., 08.03.2009.

27. While we appreciate that the Bank has, albeit late, realised the absurdity, illegality, unreasonableness and untenability of the debarment clause and has waived the same but we are rather dismayed to notice that here again, the Bank has tried to overreach by saying that the benefit of waiver of debarment clause would not be available before the date of meeting of its Human Resources Committee. The proposition that waiver would effective from 08.03.2009 is again nothing less illegitimate than the offending clause itself; and cannot be countenanced. To say the very least, such a debarment clause was null and void ab initio; and the date when the Bank realised so, whether that of new settlement i.e., 11.02.2009 or that of the meeting of the concerned Committee i.e., 08.03.2009, has got hardly any relevance so far the rights of the employees are concerned. The offending debarment clause was absolutely illegal and unconstitutional and has to be treated non-existent right from inception; and the rights of the writ petitioner are required to be settled accordingly.

28. It has been pointed out that pursuant to the interim order passed in this appeal, the writ petitioner has since been promoted by the order dated 05.04.2002 but subject to the decision of the appeal. This appeal is being

dismissed with costs hereby. The writ petitioner shall be entitled to all the consequential benefits in terms of the order passed by the learned Single Judge.

Accordingly, and with the observations aforesaid, this appeal is required to be, and is, hereby dismissed with costs quantified at Rs. 3,300/- (Rupees three thousand three hundred).