C.V. SATHEESHCHANDRAN

v.

GENERAL MANAGER, UCO BANK AND ORS.

(C.A. No. 337 of 2008)

JANUARY 11, 2008

[P.P. NAOLEKAR AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Promotion – Bank service – Promotion of appellant-Clerk in Officer's grade w.e.f. 1-8-1997 – Promotion order provided that Appellant would be on probation for one year which could be extended upto two years in Bank's discretion – Subsequent transfer – Representation filed by Appellant on 3-3-1999 seeking reversion – Acceptance by Respondent Bank subject to conditions that appellant would forfeit permanently chances for promotion to officer's cadre and also become disentitled for stagnation increments – Challenge against – Held: Request for reversion having been made after one year of promotion, condition regarding disentitlement for stagnation increments was in accordance with bi-partite agreement dated 14-2-1995 and cannot be interfered with – However, the condition regarding permanent forfeiture of promotion was not in accordance with the bipartite agreement dated 13-4-1988 – There was no automatic confirmation of Appellant after one year – Reversion was sought for and granted to Appellant on his request during period of probation – Appellant's case was governed by Clause 3.8.3(a) of the bipartite agreement dated 13-4-1988 whereunder, he could be denied future promotion only for two years – Industrial Disputes Act, 1947 – ss.2(p) & 18(1) – Industrial Disputes (Central) Rules, 1957 – r.58 – Bi-partite agreement dated 13-4-88; Clauses 3.8.2 and 3.8.3 and Bi-partite agreement dated 14-2-95; Clause 5(c)(ii).

Appellant, Clerk in UCO Bank, was promoted to Officer's cadre in the rank of Assistant Manager w.e.f 1-8-

A 1997. The promotion order specifically provided that he would be on probation for one year and the period of probation could be extended upto two years in the Bank's discretion. Appellant was subsequently transferred. On 3-3-1999, Appellant filed representation seeking reversion B to original post in clerical cadre which Respondent Bank accepted on the condition that Appellant would forfeit permanently chances for promotion to officer's cadre and would also become disentitled for stagnation increments. Prior to his being relieved from his duty as Officer, C Appellant filed application seeking withdrawal of the request for his reversion. Respondent Bank rejected the application. Appellant filed writ petition challenging the reversion order which was dismissed.

In appeal to this Court, the question which arose for D consideration is whether the consequential effect of reversion viz, conditions regarding permanent forfeiture of promotion and disentitlement to get stagnation increments were in accordance with the bi-partite agreements entered into between the Bank and its E workmen dated 13-4-1988 and 14-2-1995.

Partly allowing the appeal, the Court

HELD: 1.1. Appellant was promoted to the post of officer on 1-8-1997. He had moved an application for F reversion on 3-3-1999, which is apparently beyond the period of one year. As per the bi-partite agreement dated 14-2-1995, an employee shall not be entitled to seek stagnation increment if he has been reverted on his own request after one year from the date of promotion. Thus, G the said term of agreement authorizes the Bank to stop the stagnation increment of the employee who has been reverted on his own request after one year of his promotion. In the present case, Appellant's application requesting for reversion having been made after a period of one year from the date of promotion, the order of H

reversion passed by the Bank to deny stagnation increments to the appellant is in accordance with the agreement between the parties and cannot be interfered with. However, in the matter of stopping the promotion for all times to come, the order of the Bank is not in accordance with the bipartite agreement dated 13-4-1988. [Paras 6, 7] [577-G; 578-A, B, C, D]

1.2. Under Clause 3.8.2 of the bi-partite agreement dated 13-4-1988, on promotion to the officers' cadre, the employee would be on probation for a period of one year and the period of probation may, if necessary, be extended to a total period of two years in the discretion of the Bank. Clause 3.8.2 does not provide for automatic confirmation of the probationer after a period of one year. The absence of extension of the period of probation would not be construed to be the confirmation of the officer on completion of period of one year under Clause 3.8.2. In the present case, there is nothing on record to indicate that on completion of the period of one year by the appellant on the post of officer, the Bank has confirmed him on the post of officer. Therefore, he was continued on the post of officer as probationer when he made the request for his reversion to the post of Clerk. [Paras 9, 10] [578-F, G; 579-E, F]

1.3. Under sub-clause (b) of Clause 3.8.3 of the bipartite agreement dated 13-4-1988, when an employee seeks reversion after the expiry of probation period, he may be allowed reversion on his request in the discretion of the Bank and if such a request is acceded to by the Bank, the employee shall have to forfeit permanently his chances for promotion to officers' cadre. Thus, to forfeit chances of promotion to the officers' cadre, the request for reversion is to be made after expiry of the probation period. In the present case, the request for reversion, which was made by the appellant on 3-3-1999, was although after a period of one year but was during the

A **period of probation. The appellant's case will be governed by sub-clause (a) of Clause 3.8.3 of the bipartite agreement dated 13-4-1988 whereunder, when an employee seeks reversion during the period of probation, he would be debarred for promotion for two years from the date of**
B **reversion and in such a case, he would be reverted to his substantive cadre which he occupied prior to his promotion on the same emoluments which he was drawing. Therefore, if the reversion is sought for and is granted to an employee on his request during the period**
C **of probation, he can be denied future promotion only for a period of two years. Thus, Appellant can be denied future promotion only for a period of two years from the date the order of reversion is made effective. [Paras 8, 11] [578-D, E, F; 579-G; 580-A, B, C]**

D **2. The submission that the appellant having moved an application for withdrawal of his request for reversion prior to his being relieved from the post and reliance placed on the decisions rendered by this Court on the point of resignation and voluntary retirement, has no**
E **application in the present case as those decisions are based on the legal proposition that unless the employee is relieved of his duty, after acceptance of offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. In**
F **the case of reversion, the said principle has no application. [Para 12] [580-C, D, E, F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 337of 2008.

From the final Judgment and Order dated 25.6.2004 of
G the High Court of Kerala at Ernakulam in RP. No. 958 of 2003(D)

T.V. George, Mathew Kuzhalanadan and Vikram Singh Mawari for the Appellant.

Bishwajit Bhattacharyya, Debashis Mukherjee and
H Ravindra Kumar for the Respondents.

The Judgment of the Court was delivered by A

P.P. NAOLEKAR, J. Leave granted.

The appellant was employed by UCO Bank (for short 'the Bank') as Clerk on 28.8.1982. He was promoted as Assistant Manager with effect from 1.8.1997. The promotion order, among B other terms, has specifically provided that he shall be on probation for one year. The period of probation may, if necessary, be extended upto a total period of two years in the Bank's discretion, as specified in Clause 3.8.2 of the Promotion Policy Settlement (PPS) dated 13.4.1988. Vide order dated C 6.8.1998, the appellant was transferred to Mavoor where he had joined the service. The appellant, for certain reasons, wanted the Management of the Bank to revert him to his original post and made a representation to that effect on 3.3.1999. The request of the appellant for reversion to the clerical cadre was acceded to by the respondent Bank vide orders dated 6.5.1999 and D 15.5.1999 on the following conditions:-

(1) You shall forfeit permanently your chance for promotion to officer's cadre;

(2) You shall be posted in the capacity of a Clerk E notwithstanding your occupying any functional special allowance post prior to your promotion;

(3) Your name will be included in the common seniority list of eligible employees in the clerical cadre for selection to functional special allowance posts under F bipartite settlements after five years from the date of such reversion;

(4) On reversion, you shall work in both Cash and Accounts Department;

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You will not be eligible for stagnation increment(s).

The order dated 15.5.1999 further stipulated that he shall be relieved immediately and can join at the new place of posting after availing permissible joining time. The reversion of the appellant was subject to Clause 3.8.3(b) of the PPS dated H

A 13.4.1988 and Clause 5(c)(ii) of the Bipartite Settlement dated 14.2.1995.

2. After the acceptance of the reversion of the appellant by the respondent Bank, the appellant was relieved on 28.10.1999. Prior to that, an application was moved by the appellant on
B 7.6.1999 to the effect that he may be permitted to withdraw the request for his reversion. The respondent Bank did not accept the request made by the appellant. That led the appellant to approach the Court by filling a writ petition. It was contended in the writ petition that the conditions regarding permanent
C forfeiture of promotion and ineligibility to get stagnation increments are the conditions which marred the prospects of the petitioner in his service career and are unconstitutional and, therefore, be struck down. It was also contended that the petitioner's request of withdrawal of his request for reversion
D should have been considered by the Bank and appropriate order passed. The petitioner prayed for quashing of the order of reversion passed by the respondent Bank reverting him to the clerical cadre. The learned Single Judge of the High Court dismissed the writ petition refusing the prayer for quashing the
E reversion order.

3. Aggrieved by the said order, the writ petitioner filed a writ appeal. The writ appeal was allowed by judgment dated 6.11.2003 and the Division Bench of the High Court held that the appellant was entitled to stagnation increments and there
F was no justification for forfeiting his chances of promotion to the officer's cadre. The order of reversion of the appellant was also set aside and the respondent Bank was directed to post the appellant as an officer of the Bank with all consequential benefits. Thereafter, the respondent Bank filed a review petition
G praying for review of judgment dated 6.11.2003 passed by the writ appeal court. The review court found factual errors in the judgment and on the basis of such factual errors, the application of law was found to be improper, and with these findings, the Court came to the conclusion that the judgment of the Division
H Bench allowing the writ appeal was not in accordance with law.

On that basis, the judgment of the Division Bench in writ appeal was set aside and in consequence thereof the writ petition filed by the appellant dismissed. Being aggrieved, the appellant is before us in the present appeal.

4. It is contended by the learned counsel for the appellant that the impugned order of the Division Bench of the High Court approving and confirming the decision taken by the respondent Bank denying the future increments to the appellant and marring his chances of future promotion is not in accordance with law. It is also contended by the learned counsel that the respondent Bank should have acceded to the request of the appellant for withdrawal of request of reversion when such a request was made prior to his actual relieving from duty as an officer of the respondent Bank and relied upon certain decisions wherein this Court has considered the aspect of resignation and voluntary retirement before the date of actual release from service.

5. The learned counsel for the respondent Bank has urged that the order of reversion and the consequential effect of stagnation and stoppage of future promotion are in accordance with the bipartite agreements entered into between the Management and the Union and, thus, the order of the High Court in review was in accordance with law and does not require any interference.

6. To understand the submissions made by the learned counsel for the parties, it would be appropriate to consider the agreements entered into between the Management of the respondent Bank and the different Unions of the Bank. In the Memorandum of Settlement arrived at on 13.4.1988 under Section 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 between the Management of the Bank and its workmen as represented by the All India United Commercial Bank Employees Federation, Clause 3.8.2 relates to 'probation' and Clause 3.8.3 relates to 'reversion'. Clause 3.8.2 and Clause 3.8.3, which are relevant, read as under :-

A "3.8.2 **Probation:**

On promotion to the Officers' cadre an employee would be on probation for one year. The period of probation may, if necessary, be extended upto a total period of 2 years in the Bank's discretion. Any defects or deficiencies
B observed during the period of probation shall be brought to the notice of the employee, in writing, so that he may have an opportunity to remove the defects or deficiencies and show sufficient improvement to merit confirmation as Officer. Where, inspite of such opportunity being given to
C him, he fails to remove the defects or deficiencies and show sufficient improvement and make good as an officer, the Bank, after notice to him will be entitled to revert him to the cadre, to which he belonged prior to his promotion, on the emoluments that he would have drawn, had he not
D been promoted."

"3.8.3 **Reversion**

(a) Where an employee on promotion to officers' cadre refuses the promotion or seeks reversion during the
E period of probation, he would be debarred for promotion for two years from the date of such refusal/ reversion. In such case he would be reverted to his substantive cadre which he occupied prior to his promotion on emoluments that he would have drawn
F in that cadre as if he was not promoted.

(b) Employee who seeks reversion after the expiry of probation period may be allowed reversion at the discretion of the Bank. In such case the concerned employee shall forfeit permanently his chance for
G promotion to officers' cadre, and shall be posted in the capacity of a clerk, notwithstanding his occupying any functional special allowance post prior to his promotion. His name will be included in the common seniority list of eligible employees in the clerical cadre

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for selection to functional special allowance posts under Bipartite Settlements after five years from the date of such reversion.

Note: On reversion under both 3.8.3 (a) & (b) above, such employees will work in Cash and Accounts Department."

In the Memorandum of Settlement dated 14.2.1995 between the Managements of 56 'A' Class Banks as represented by the Indian Banks' Association and their workmen as represented by the All India Bank Employees' Association, National Confederation of Bank Employees, Bank Employees' Federation of India and Indian National Bank Employees' Federation, under Section 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957, Clause 5 relates to 'stagnation increments', which reads as under:

"**5. Stagnation Increments**

xxx xxx xxx

(c) In supersession of Clause 1(ii)(b) of Bipartite Settlement dated 8th September, 1983 read with 'Note' to Clause 4B of Bipartite Settlement dated 10th April, 1989,

(i) Refusal to accept promotion at any stage or reversion within a year of promotion, wherever permissible under Bank's rules will not dis-entitle an employee from getting stagnation increment/s.

(ii) An employee shall not be eligible for stagnation increment/s, if he, after accepting promotion, seeks, and is granted, reversion after one year from the date of promotion.

xxx xxx xxx"

The bipartite agreements are binding upon both the Bank and the appellant. The appellant was promoted to the post of

officer on 1.8.1997. He had moved an application for reversion on 3.3.1999, which is apparently beyond the period of one year and as per the agreement dated 14.2.1995, an employee shall not be entitled to seek stagnation increment if he has been reverted on his own request after one year from the date of promotion. Thus, the said term of agreement authorizes the Bank to stop the stagnation increment of the employee who has been reverted on his own request after one year of his promotion.

7. In the present case, the appellant's application requesting for reversion having been made after a period of one year from the date of promotion, the order of reversion passed by the Bank to deny stagnation increments to the appellant is in accordance with the agreement between the parties and cannot be interfered with. However, in the matter of stopping the promotion for all times to come, we are of the view that the order of the Bank is not in accordance with the bipartite agreement dated 13.4.1988.

8. Under sub-clause (a) of Clause 3.8.3 of the bipartite agreement, when an employee seeks reversion during the period of probation, he would be debarred for promotion for two years from the date of reversion and in such a case, he would be reverted to his substantive cadre which he occupied prior to his promotion on the same emoluments which he was drawing. Therefore, if the reversion is sought for and is granted to an employee on his request during the period of probation, he can be denied future promotion only for a period of two years.

9. Under Clause 3.8.2, on promotion to the officers' cadre, the employee would be on probation for a period of one year and the period of probation may, if necessary, be extended to a total period of two years in the discretion of the Bank. Clause 3.8.2 does not provide for automatic confirmation of the probationer after a period of one year. The confirmation would not occur automatically by efflux of time. The order of appointment also does not clearly indicate that the confirmation of the appellant on the officer's post would automatically follow

at the end/expiry of the period of one year. The service rules, which we have mentioned, do not specifically provide for such eventuality. The expiry of the probation period does not necessarily mean confirmation. At the end/expiry of the period of probation, normally an order confirming the officer is required to be passed and if no such order is passed, he shall be deemed to have continued on probation unless the terms of appointment or the relevant rules governing the service conditions provide otherwise. A B

10. The order of appointment of the appellant provides that he has been promoted to the officers' cadre in Junior Management Grade Scale-I in conformity with the provisions of Clause 3.6.1 of the PPS dated 13.4.1988 and that he would be on probation for one year. The period of probation may, if necessary, be extended upto a total period of two years in the discretion of the bank, as specified in Clause 3.8.2 of the PPS dated 13.4.1988. If the officer is to be confirmed on the post, there should be a specific order of confirmation issued by the Bank. Simply because the period of one year has expired on the post as probationer, it does not necessarily mean that his probation period has expired. Under the Clause itself, the period of probation could be extended upto a period of two years. The absence of extension of the period of probation would not be construed to be the confirmation of the officer on completion of period of one year under Clause 3.8.2. There is nothing on record to indicate that on completion of the period of one year by the appellant on the post of officer, the Bank has confirmed him on the post of the officer. Therefore, he was continued on the post of officer as probationer when he made the request for his reversion to the post of Clerk. C D E F

11. Under sub-clause (b) of Clause 3.8.3 of the bipartite agreement, when an employee seeks reversion after the expiry of probation period, he may be allowed reversion on his request in the discretion of the Bank and if such a request is acceded to by the Bank, the employee shall have to forfeit permanently his chances for promotion to officers' cadre. Therefore, if the G H

A promotee officer has made a request after the expiry of the probation period, he has to give up all chances of future promotions to the officers' cadre. Thus, to forfeit chances of promotion to the officers' cadre, the request for reversion is to be made after expiry of the probation period. In the present case, B the request for reversion, which was made by the appellant on 3.3.1999, was although after a period of one year but was during the period of probation. The appellant's case will be governed by sub-clause (a) of Clause 3.8.3 of the bipartite agreement and, thus, he can be denied future promotion only for a period C of two years from the date the order of reversion is made effective. The order of the Bank debarring the appellant of all future promotions to the higher rank of Officer beyond the period of two years is, therefore, illegal and requires correction.

12. The submission of the learned counsel for the appellant D that the appellant having moved an application for withdrawal of his request for reversion prior to his being relieved from the post and reliance placed on the decisions rendered by this Court on the point of resignation and voluntary retirement, has no application in the present case. Those decisions are in relation E to resignation and voluntary retirement and are based on the legal proposition that unless the employee is relieved of his duty, after acceptance of offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. In the case of reversion, the said principle has F no application and, thus, cases on that aspect have no relevance in the present case.

14. For the aforesaid reasons, the appeal is partly allowed. The order of reversion imposing a condition that the appellant shall forfeit permanently his chances for promotion to the officers' G cadre is set aside and it is directed that he shall forfeit his chances for promotion to the officers' cadre only for a period of two years from the date of the order of reversion.

B.B.B. Appeal partly allowed.

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