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Court : Gujarat

Decided On : Feb-23-1989

Reported in : (1989)2GLR747

Judge : P.M. Chauhan and; P.R. Gokulakrishnan, JJ.

Acts : State Bank of India Act, 1955 - Sections 43; State Bank of India (Supervising Staff) Service Rules - Rule 31; State bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979; Constitution of India - Articles 14 and 16

Appeal No. : Special Civil Application No. 8154/1988

Appellant : Sanjeevkumar P. and anr.

Respondent : State Bank of India and ors.

Advocate for Def. : Mr. G. N. Desai

Advocate for Pet/Ap. : Mr. N. J. Mehta, Mr. Mehta

Judgement :

Chauhan, J.

1. Petitioners, some of the Officers in Junior Management Grade Scale 1 of the State Bank of India, have by this petition under Art. 226 of the Constitution of India

, challenged the circular dated July 13, 1988 (Annexe 'C') issued by the respondent State Bank of India fixing the eligibility criteria and the zone of consideration for the promotion to the post of Officers Middle Management Grade Scale II by providing for the length of service from December 31, 1980 instead of the prior cut off date i.e. August 1, 1980 as arbitrary, unjustified, illegal, null, void and ultra vires the provisions of Section 43 of the State Bank of India Act, 1955 (hereinafter referred to as 'the S.B.I. Act').

2. The grievance of the petitioners is that by extending the zone of consideration by fixing the cut off date by five months later on July 13, 1988, for the vacancies arising on August 1, 1986, the respondent Bank has applied the circular retrospectively without any powers under the provisions of Section 43 of the S.B.I. Act and therefore the said Circular is ultra vires the powers of the respondents and is arbitrary, unjustified, illegal, null and void. The validity of Rule 31 of the State Bank of India (Supervising Staff) Service Rules (hereinafter referred to as the Service Rules), and para 17 of the State bank of India Officers (Determination of Terms and Conditions of Service) Order, 199 (hereinafter referred to as the Officers Terms and Conditions of Service Order) is also challenged as ultra vires the Section 43 of the S.B.I. Act and ultra vires Arts. 14 and 16 of the Constitution of India in so far as they purport to authorise or interpret to so authorise the Executive Committee to lay down the promotion policy with retrospective effect. The petitioners have also prayed for the directions to the Bank authorities policy contained in Staff Circular No. 200 of 1983, dated November 2, 1983 (Annexure 'A') for effecting promotions through merit channel, with effect from August 1, 1986.

3. In State Bank of India, there were Officers Grade I and Officers Grade II and there was dissatisfaction relating to their service conditions and, therefore, the Government had appointed a committee known as Pillai Committee for considering the questions of standardizing the pay and allowances of the Officers Staff in the Nationalised Banks. Ultimately the new cadre i.e. Junior Management Grade Scale I, was formed. The Committee recommended four Grades for the Officers, viz.

(1) Top Executive Grade,

(2) Senior Management Grade,

(3) Middle Management Grade and

(4) Junior Management Grade and provided only one scale at the Junior Management level. As agreed with the Officers Federation, the Officers Grade II were to be junior to the then existing Officers Grade I. The promotion avenues are from Junior Management Grade Scale I to Middle Management Grade Scale II, from Middle Management Grade Scale II to Middle Management Grade Scale III, and from Middle Management Grade Scale III to Senior Management Grade Scale IV. The dispute in this writ petition is in narrow campus, relating to some relation in the age eligibility criteria for promotion to Middle Management Grade Scale II from Junior Management Grade Scale I. Prior to the issuance of the impugned Staff Circular No. 38 of 1988, dated 13th July, 1988 laying down the eligibility criteria for promotion to Middle Management Grade Scale II, with effect from 1st August, 1986, the promotion policy and the eligibility criteria were fixed by the Staff Circular No. 149 of 1983 dated 29th August, 1983 and Staff Circular No. 200 of 1983 dated 2nd November, 1983, issued by the Executive Committee in accordance with the provisions of paragraph 17 of the Officers' Terms and Conditions of Service Order and Section 43 of the S.B.I. Act. The Staff Supervising Promotion Policy specified in Staff Circular No. 149 of 1983 dated 29th August, 1983, was on the basis of the agreement between the Management of the State Bank of India and the Officers' Federation for the agreement between the Management of the State Management Grade Scale I to Middle Management grade Scale II. Some of the salient features of the agreement are that there would be two channel promotion policy for promotion to Scale II, viz. the merit channel and the seniority channel, the service criterion for merit channel promotion was six years total service as on 1st August every year, but care should be taken to call all other Officers also to the test who had inter se seniority, prior to 1st October, 1979, over the Officers being called for the test on 6 years total service basis; the proportion in which the promotions would be made in the years 1983, 1984, and 1985 through the seniority channel and merit channel, would be 65% respectively. Clause (h) of the promotion policy

specifically provided 'proportion of vacancies for seniority channel and other related matters will be reviewed bilaterally for promotions to Scale II for 1986 onwards'. In pursuance of the promotion policy the Staff Circular No. 200 of 1983 dated 2nd November, 1983 (Annexure 'A') was issued specifying that there shall be two channels of promotion to Middle Management Grade Scale II i.e. Multi Channel and Seniority Channel beginning from the year 1983. The eligibility criteria for promotion is as under :

'(a) Merit Channel :

(i) 6 years service (including period of probation). Upto 1985 only erstwhile Officers Grade I will be considered.

(ii)

(iii)

(b) Seniority Channel :

(i)

(ii) 65% of the total vacancies will be reserved for promotions under seniority channel during the years 1983, 1984 and 1985. This percentage is being fixed with a view to providing an opportunity for speedy promotion of the erstwhile Officers Grade I.

(iii) Seniority Channel promotions with the above eligibility norms would be in force till 1985, by which time most of the erstwhile Officers Grade I would have been promoted or at least considered for promotion to Middle Management Grade Scale II, where after the eligibility norms and promotion of vacancies, etc. under this channel would be reviewed'.

From the above two staff circulars it is apparent that the service criteria for merit channel promotion was six years total service as on 1st August every year and the other officers whose seniority was above the Officers being called for the test on 6 years total Officers being called for the test on 6 years total service basis, prior to 1st October, 1979 were also eligible for being called for interview. It, therefore, transpires that the service criteria of six years was not to be strictly complied with; but the officers who were senior in the seniority list prior to 1st October, 1979 were also eligible for the test irrespective of the fact whether they have completed 6 year of service or not. The second salient feature was that the proportion for the seniority channel and the merit channel was 65% and 35% for the years 1983, 1984 and 1985. The proportion of vacancies for seniority channel and other related matters were to be reviewed bilaterally for promotion to Scale II for 1986 and onwards. The percentages for the vacancies for seniority channel and merit channel were fixed for the period of three years only and not only the proportion of vacancies for seniority channel but other related matters were also to be reviewed bilaterally for the promotion to the scale II for the year 1986 and onwards. It is, therefore, apparent that the promotion policy was fixed for three years from 1983 to 1985.

4. In consultation with the Officers' Federation promotion policy is laid down by the Executive Committee in exercise of the powers under paragraph 17 of the Officers Terms and Conditions of Service order and accordingly, Staff Circular No. 38 of 1988 is issued on 13th July, 1988 for promotion to Middle Management Grade Scale II, with effect from 1st August, 1986, under the Seniority and Merit Channels and the eligibility criteria is practically same as in Circular No. 200 of 1983 with change in length of service. So far as merit channel is concerned it provides as under :

'II. Merit Channel :

(i) Erstwhile Officers Grade II appointed/promoted to that grade on or before 30th September 1969.

(ii) Erstwhile Officers Grade I who were not found suitable for promotion to M.M.G. II earlier, and

(ii) Officers in JMG Scale I appointed/promoted to that grade on or before 31st December, 1980'

For merit channel written test is also provided and it is stated that broad nature and contents of the test will be same as provided by Staff Circular No. 200 of 1983. The only change effected is that instead of 6 years total service as on 1st August, 1980, the complete service of 6 years as on 31st December, 1980 for the eligibility criteria, has been provided and that is the main contention by the petitioners. It is clear that the policy laid down for the purpose of promotion to Middle Management Grade Scale II will be effective from 1st August, 1986.

5. The petitioners contended that the petitioners and other similarly situated persons have been eligible to be considered for promotion through merit channel since 1st August, 1986 to Middle Management Grade since 1st August, 1986 to Middle management Grade Scale II, but the test for promotion to the Middle Management Grade Scale II was not conducted. According to them, their promotion with effect from 1st August, 1986 should be governed by the existing promotion policy contained in Staff Circular No. 200 of 1983 dated 2nd November, 1983 in as much as they were eligible to be promoted through merit channel on 1st August, 1986 and the promotions were to be effected for the vacancies identified for that year. The petitioners and other similarly situated persons who were recruited between 1st October, 1979 and 31st December, 1979 ought to have been governed by the promotion policy contained in Circular No. 200 of 1983 dated 2nd November, 1983. The petitioners have made the grievance that the respondent Bank issued Staff Circular No. 38 of 1988 dated 13th July, 1988, inter alia, changing the eligibility criteria for merit channel by dispensing with the requirement of six years service for promotion to Middle Management Grade Scale II through Merit Channel and instead of fixing the cut off date from 1st August 1980, the same is fixed as 31st December, 1980 i.e. increasing the scope of competition by enlarging the eligibility age criteria by five months. According to the petitioners, the impugned promotion policy contained in Circular No. 38 of 1988 dated 13th July, 1988 cannot be made applicable with retrospective effect to the persons like the petitioners who were to be promoted in the year 1986 and even though in the impugned Circular the promotions are to be given with effect from 1st August, 1986. The promotions which ought to have been effected in the year 1986 could not be governed by the subsequent promotion policy contained in Circular dated 13th July, 1988. In view of the petitioners the deletion of the

requirement of six years services and enlarging the scope of the age eligibility criteria by five months more, has resulted in equal treatment to the persons placed unequally and, therefore, to that extent it is arbitrary, discriminatory, violative of Arts. 14 and 16 of the Constitution of India. The grievance of the petitioners is that the promotion policy is given effect retrospectively, even though the provisions of Section 43 of the S.B.I. Act, Rule 31 of the Service rules and paragraph 17 of the Officers Terms and Conditions of Service Order, do not empower the Bank to lay down the promotion policy having retrospective effect. Even though the said provisions do not authorise the Executive Committee to frame promotion policy making it effective with retrospective effect the respondent-Bank authorities consider it as authorising the Executive Committee to lay down the promotion policy with retrospective effect and operation and, therefore, Rule 31 of the Service rules and paragraph 17 of the Officers Terms and Conditions of Service Order confer absolute, unguided, uncanalised and arbitrary powers on the authorities of the Bank in the matter of laying down promotion policy so as to affect the vested rights of the employees and to that extent they are arbitrary, discriminatory, ultra vires the provisions of Section 43 of the S.B.I. Act and violative of Arts. 14 and 16 of the Constitution of India. The petitioners also stated that the respondent Bank had, in the year 1988, prescribed the mode of conducting the examination and the method of allotting the marks for promotions through Merit Channel. Total 100 marks were prescribed for written test, including 40 marks for written test, 8 marks for confidential reports, 12 marks for performance appraisal, 10 marks for seniority Associated Examination, 10 marks for seniority and 20 marks for interview. The service of each year in excess of minimum stipulated service, would earn 2 marks for the seniority. The grievance of the petitioners is that by dispensing with the minimum eligibility criteria the mark system for the seniority is also disturbed and anomaly is created by that and that is also arbitrary and discriminatory. The petitioners preferred appeal but is was rejected by the appellate authority. In short the grievance of the petitioners is that by enlarging the eligibility criteria by Circular dated 13th July, 1988 the respondent-Bank authorities have made it applicable retrospectively, as the said criteria would govern the vacancies due on 1st August, 1986 and that is violative of Section 43 of the S.B.I. Act and Arts. 14 and 16 of the Constitution of India.

6. Gujarat Circle is one of the 13 Circles of the State Bank of India and the promotion policy is uniform in all the circles of the State Bank of India. Mr. M. K. Desai, Personnel Manager of Ahmedabad Local Head Office of State Bank of India, has filed Affidavit-in-reply on behalf of the respondent-Bank authorities, in which the respondents have mainly raised four contentions. viz. (1) by impugned promotion policy they have merely enlarged the basket of eligible personnel; which should not give cause of grievance to the petitioners; (2) this Court has no jurisdiction to restrain promotions in other Circles situated outside the State of Gujarat; (3) the impugned promotion policy was framed in consultation with the All India State Bank Officers' Federation; and (4) the promotion to Middle Management Grade Scale respondent-Bank authorities have, however, admitted that the petitioners are being considered for promotion to Middle Management Grade Scale II with effect from 1st August, 1986 and the delay caused in declaring the promotion of earlier years, is due to the fact that discussions were going on with the Officers' Federations, determination of vacancy position etc and also due to administrative reason and that after completion of necessary formalities, the policy has been laid down, in pursuance of which Circular No. 38 is issued. It has been stated that the policy has been accepted and acted upon by majority of the Officers working in 13 Circles of the State Bank of India and in some Circles the promotions are Officers. The respondent Bank has however refuted the claim of the petitioners to be considered under the previous promotion policy as it is obsolete and no longer in existence after the promotion with effect from 1st August, 1986. It is also contended that the petitioners have only right for being considered for promotion which is not denied in any manner whatsoever. Merely because some of the Officers come within the zone of consideration and the basket of eligible personnel for consideration is enlarged that by itself would not make the policy bad or violative of Arts. 14 and 16 of the Constitution of India. It is contended that the petitioners have no right to promotion much less the vested right. The respondent-Bank has asserted 3the right to formulate the policy for promotion and to effect change in it from time to time. The respondents have categorically denied that promotion policy is made effective retrospectively. We will advert to the other contentions of the respondents at appropriate stage.

7. As provided in Section 43 of the SBI Act, the State Bank may appoint such number of officers, advisers and employees an it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment and service. The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board. Under Section 43 of the S.B.I. Act the State Bank is empowered to make Rules and Regulations for appointment of the officers and their service conditions. State Bank of India (Supervising Staff) Service Rules are accordingly enacted by the State Bank of India. Rule 31 of the said Rules provides that all promotions shall be made in accordance with the policy laid down in this regard by the Executive Committee from time to time. It also provides that permanent vacancies in the grades of Officers, Staff Officers and Senior Staff appointments shall be filled by promotion or otherwise, in accordance with Rules 7 and 8, but the Bank reserves the right not to fill any such vacancy. The Executive Committee has, therefore, laid down or formulated the policy for the promotion of the Officers of the Bank. In exercise of the powers conferred under sub-section (1) of Section 43 of the SBI Act, the Central Board of the State Bank of India has made the State Bank of India Officers (Determination of Terms and Conditions of Services) Order, 1979, determining certain terms and conditions of the appointments and services of the Bank. Paragraph 17 of the aforesaid Order, relating to promotions provides as under :

'Promotions :

17. Promotions to all grades of Officers in the Bank shall be made in accordance with the policy laid down by the Central Board or the Executive Committee from time to time

Explanation : For the avoidance of doubts, it is clarified that the provisions of this paragraph shall also apply to promotions of any category of employee to junior Management Grade.'

In pursuance of paragraph 17 of the Officers Terms and Conditions of Service Order, the promotion policy was laid down in the year 1983 as well as in the year 1988. As the Executive Committee has the power and authority to formulate the promotion policy, and the Officers Terms and Conditions of Service Order is made under the provisions of Section 43 of the SBI Act and the promotions policy is laid down by the Executive Committee in exercise of the powers conferred on it, it cannot be accepted that Rule 31 of the SBI Rules or paragraph 17 of the Officers Terms and Conditions of Service Order are ultra vires the provisions of Section 43 of the SBI Act. The contention of the petitioners that the provisions of Rule 31 of the Service Rules of paragraph 17 of the Officers Terms and Conditions of Service Order are violative of Section 43 of the SBI Act and hence offending the provisions of Acts. 14 and 16 of the Constitution, therefore, deserves to be repelled.

8. It is submitted by Mr. N. J. Mehta, learned Counsel for the petitioners that by effecting the promotion policy vide Circular No. 38 of 1988, dated 13th July, 1988, with effect is given from 1st August 1988, retrospective effect is given to the said Circular, which is not permissible, while as asserted by Mr. G. N. Desai, learned Counsel for the respondent-Bank the previous promotion policy laid down by Staff Circular No. 200 of 1983, dated 2nd November, 1983 was not in existence as that policy was only for three years, till 1985 and, thereafter, the promotions could not be effected for various reasons as discussed above. This policy for promotion was laid down for first time after 1985 and merely because it is issued in the year 1988, it cannot be considered to be given retrospective effect. The submission of Mr. N. J. Mehta, that the Rule or the Order even though issued in exercise of the power under the statue cannot be given retrospective effect, except when the Rules issued under Art. 309 of the Constitution of India or the statute specifically provides for given the retrospective effect should be accepted. The legal position is now well settled and does not require elaborations. In State Bank of India v. Yogendra Kumar and ors. (1988-I-LLJ-41), similar contention about the retrospective operations of the State Bank of India Officers (Determination of Terms and Conditions of Services) Order, issued under Section 43 of the SBI Act, was raised and it was contended that the said section does not authorise the Bank to pass any such order with retrospective effect, and the Supreme Court accepting the said contention observed (p 49) :

'It is now well settled that unless the statue, under which the Rules are framed by the rule making authority, does specifically authorise the making of rules with retrospective effect, such authority cannot frame any rule with retrospective effect - See : Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise. Cochin. 1970 (2) S. C. R. 830 : Income Tax Officer, Alleppey v. M. C. Ponnoose, 1970 (1) S. C. R. 678 : Hukum Chand v. Union of India 1973 (1) S. C. R. 896 : Regional Transport Officer Chittor v. Associated Transport, Madras (P) Ltd. 1980 (4) S. C. C. 597 :

9. The question posed, however, is as to whether the Staff Circular No. 38 of 1988, dated 13th July, 1988 is given retrospective effect or is issued only for providing the promotion policy with effect from 1st August, 1986. That also requires us to consider whether any promotion policy was in existence on 1st August, 1986. We have discussed above the promotion policy laid down by Staff Circular No. 149 of 1983 dated 29th August, 1983 and the Staff Circular No. 200 of 1983 dated 2nd November, 1983. We would not like to repeat the contents of the policy. It is clear that the proportion of the seniority channel and the merit channel to the extent of 65% and 35% respectively was laid down only for the years 1983, 1984 and 1985 and not for the subsequent period. The policy of these two channels was laid down by Circular No. 200 of 1983 dated 2nd November, 1983 beginning from that year. It is also clear that in the seniority channel promotion with the eligibility norms were to be in force till 1985 and thereafter the eligibility norms and the proportion of the vacancies under that channel should be reviewed. It is also clear that for merit channel, the eligibility criteria was total six years service as on 1st August, every year, but it was also provided that the Officers, who had inter se seniority, prior of 1st October, 1979 over the Officers being called for test on six years total service basis, should also be called for test. Six years total service eligibility criteria was, therefore, not strictly adhered to by the promotion policy. It is also clear that proportion of vacancies for majority channel and other related matter will be required to be reviewed bilaterally for promotion to Scale II for 1986 onwards. It is therefore, clear that by Staff Circular No. 149 of 1983 and Staff Circular No. 200 of 1983 the policy was laid down and eligibility criteria was fixed for the period of three years, viz. 1983, 1984 and 1985 and that policy was required to be reviewed bilaterally for promotion to Scale II for 1986 onwards. Submission of Mr. Mehta learned Counsel for the petitioners that the policy was required to be reviewed for the promotions of 1986 for the seniority of

Mr. Mehta is accepted, then channel, cannot be accepted for various reasons. If such submission of Mr. Mehta is accepted, then it would lead to drastic results. Percentage for the reservation of seniority channel would be required to be fixed for the year 1986 and that would consequently require the fixation of the reservation for the merit channel promotion and that cannot be done without affecting the merit channel promotion policy. Mr. Mehta, however, submits that proportion of the vacancies for seniority cannel and merit channel is required to be reviewed but not the age criteria. When it was provided that the promotion policy relating to other matters will be required to be reviewed bilaterally for the year 1986 and onwards, it could not have been only for the purpose of fixing the reservation quota for the different channels, but it should be for the entire promotion policy for promotion to Middle Management Grade Scale II. In view of this provision to review the Executive Committee of the State Bank of India had negotiated this question with the Federation of the Officers, of which the petitioners are the members, and thereafter new Policy is laid down. It therefore appears that the federation of the office which had entered into agreement in the year 1983 had also agreed that the 1983 policy was laid down for three years and not for the promotions of 1986 and onwards. It should therefore be accepted that after 1985 no promotion policy for promotion to scale II for 1986 and onwards was existence. It is true that the vacancies for the 1986 year required to be filled in and the promotion policy is made effective from 1st August, 1986 but merely because it is issued in 1986 and the vacancies of 1986 are required to be filled in it cannot be said that it has retrospective effect. Mr. Mehta learned counsel for for the petitioners has admitted that no rule, circular or promotion policy required that the list for promotion should be prepared either in August of the year or during the course of the year. In absence of any such obligatory duty or the provision under the rules or the binding instructions, it cannot be accepted that the list was required to be prepared every year and therefore, the right of being considered for promotion of the petitioner arose at that particular time. If it is there would have been obligation to provide the list every year, it could have been conveniently asserted by Mr. Mehta learned counsel for the petitioners that the right to be considered for promotion arose at that to be particular-point of time and therefore, the policy in existence at that particular time should be applicable and any subsequently policy would not govern the selection and if at all made applicable it can conveniently be said to have been given the retrospective effect which would offend the provision of section 43 of the SBI Act, or that it was not permissible under the statutory provision. That being not the position in the instant case and that, as discussed above, no promotion policy was in existence after the year 1985, merely because the policy was formulated in the year 1988 to be effective from 1st August, 1986 it cannot be said to be made effective retrospectively. It is rejected as the policy being effected retrospectively, not authorised under the provisions of section 43 of the S.B.I. Act, it would created void and would cause drastic effect and Junior Management Grade scale I officers will not be selected for the Middle Management Grade scale II and the petitioners and all similarly situated officers would be the suffers. It is not the contention of the petitioners that the policy meant for 1st August, 1986 cannot be formulated in the year 1988. The submission of Mr. Mehta, learned counsel for the petitioners that the promotion policy of 1983 continued and the eligibility criteria was in existence till it was changed and therefore, the promotions for the year 1986 should be governed by the conditions of that policy, cannot be accepted.

10. In support of the submission that the vacancies in existence at a particular time should be governed by the prevalent rules, Mr. Mehta, learned counsel for the petitioners, has referred to the case of Y. V. Rangaiah and ors. V. J. Sreenivasa Rao and ors, (1983-II-LLJ-23). To appreciate the law laid down by the supreme court, the facts, and the relevant rules under considerations of the supreme court are required to be considered in short. The Andhra Pradesh Registration subordinate service Rules, which were under consideration of the supreme court, provide that the list of the approved candidates for promotion in the service should be prepared in the prescribed manner in the month of September every year so as to be in force until the list of approved candidate for the succeeding year is prepared and for the purpose of preparing the said list the claims of as many eligible candidates as such authority considered necessary shall be considered in pursuances of the Rules, instructions were issued to the appointing authorities and they were directed to ensure that the panel were prepared promptly in the month of September every year. The list of the approved candidate, therefore should have been prepared on September 1, 1976 for making the appointment to the post

of sub-Register Grade II by transfer he or promotion. The grievance of the petitioners in that matter was that the list was not prepared on to the post of sub-Register Grade II by transfer or promotion. The grievance of the petitioners in that matter was that the list was not prepared on September 1, 1976, and it was delayed and drawn up year 1977, when an amendment to the Rules had been incorporated by G.O. dated March 22, 1977, whereby original Rules providing for the consideration of the lower Division clerks for appointment as Sub-Registrar Grade II was done away with and the promotion or transfer to that category was to be made from amongst Upper Division Clerks, employed in the Registration and Stamps Department. The grievance of the petitioners in those matters was that by delaying the preparation of the list of the approved candidate till after the Rules were amended their chances for consideration for appointment to the higher post were adversely affected in as much as the petitioners who were senior to many others, were denied their legitimate chance of promotion. The Administrative Tribunal, Andhra Pradesh, held that the list was prepared in violation of the Rules and quashed the list and directed to draw the fresh panel for the year 1977 with reference to the vacancies which arose during that period strictly in accordance with the Rules as they existed at the time and the vacancies pertaining to that period should be filled on the basis of such a panel. Approving the judgment of the Administrative Tribunal, Andhra Pradesh and considering the relevant rules the supreme court observed that under the old rules a pane had to be prepared every year in September. According a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. If at all the list would have been prepared as required under the Rules some of the petitioners who rank higher than others who were selected, would not have been deprived of their right of being considered for promotion. It was also observed that the vacancies which occurred prior to the amended rules, would be governed by the old rules and not by the amended rules. In view of the supreme court, the question was of filling up the vacancies that occurred prior to the amended rules. The law laid down by the supreme court was in relation to the specific rules under which it was obligatory to prepare the list on 1st September every year. As that list was not prepared the eligible candidate lost the chance of being considered for promotion and therefore, it was held that before the amendment of the rules the unamended rules prevalent on September 1, 1976 were applicable. Admittedly state Bank of India (supervising staff) service Rules and state Bank India officers (Determination of Terms and Conditions of Service) order 1979 did not provide for the obligation to prepare the list either on 1st August every year or at a particular point of time in a year. As it was not obligatory duty to prepare a list at a particular time in the year, it would not create any right in the petitioners for being considered. Even the supreme court clearly specified that the right for being considered for promotion would have arisen if the list which was required to be prepared under the rules would have been prepared September 1, 1976 in the aforesaid case and the supreme court did not say that the petitioners had right of promotion. In the instant case it was not obligatory to prepare list in the year 1986, it cannot be said that the petitioners had right for being considered for promotion in the year 1986. Such right would arise only when the eligible candidates are being considered for promotion and not when the vacancies may arise. Sub-rule (2) of rule 31 of S.B.I. Service Rules clearly provides that the Bank reserve the right not to a fill any permanent vacancy in the grades of officers, staff officers and in senior staff appointments. Not only that it was not obligatory upon the respondent-Bank to prepare the list for the year 1986, but it was also not obligatory to make appointment in that year for the permanent vacancies. The judgment of the supreme court in the case of Rangaiah (supra) is therefore, not much helpful to the petitioners to assert their rights.

11. The contention that for merit channel 10 marks are reserved for length of service after completing the minimum service of 6 years and by the impugned circular the minimum requirement of six years service is dispensed with which has crated anomaly in the scheme of test to be conducted for promotion, through merit channel and the allotment of 10 marks under the head of seniority would not be possible, cannot be accepted. Referring to the letter (Annex. 'E') dated October 7, 1986, it is contended that sub-clause (2) of Item (B) of the letter states that marks for seniority are, 10, 2 marks for each year of service as Junior Management Grade Scale I (including that as erstwhile Officer Grade II) over and above the stipulated minimum service for being considered for promotion to Middle Management Grade Scale II. It is contended by the petitioners that on one hand the requirement of minimum 6 years service has been dispensed with and on the

other hand they have provided under the head of seniority, 10 marks, to be reckoned on the basis of 12 marks per year in excess of the stipulated minimum service. This line of reasoning of the petitioners can hardly be appreciated. On the contrary that creates favourable circumstances for the petitioners who have completed service of six years. As per the Staff Circular No. 38 of 1988, those Officers who have completed minimum service of six years as Junior Management Grade Scale I, as on December 31, 1986 i.e. the service of 5 years and 7 months instead of completing six years will be eligible for promotion in merit channel. The petitioners and similarly situated Officers would get 2 marks for completed service of one year above the minimum service of six years. By that a favourable condition of service is created in favour of the petitioners and similarly situated Officers, while those Officers who have not completed the service of six years, will not get that advantage. The discretion is in favour of the petitioners and similarly situated persons rather than the Officers who have not completed the service of six years. Only for that reason the Circular can hardly be impugned as arbitrary or discriminatory. If at all any grievance can be made on the ground of arbitrariness or discrimination that can only be made by the Officers who are eligible but have not completed minimum service of six years.

12. G. N. Desai, learned Counsel for the respondent-Bank, submitted that the petitioners are eligible for being considered for promotion in merit channel and if at all they are selected, they will be given the promotion retrospectively and their right is not affected in any manner. It is now well settled that the employee has the right of being considered for promotion and not the right to promotion. The right of being considered for promotion of the petitioners is not taken away or affected. The respondent-Bank has contended that by enlarging the basket of eligible Officers and the zone of consideration for being considered for promotion by the impugned circular, it does not in any way affect the seniority of the petitioners vis-a-vis the other eligible Officers. By reducing the service eligibility criteria, it only gives a right to some more Officers for being considered for promotion and does not in any way affect the rights of the petitioners for being considered for promotion. It is apparent that by reducing the service period for eligibility only the basket of eligible Officers is enlarged for zone of consideration and that too only those Officers who have completed the service of 6 years on December 31, 1980 instead of August 1,

1980. Mr. Mehta learned Counsel for the petitioners trying to refute that position in vain submitted that by that policy the unequals are being treated as equals and that offends Art. 14 of the Constitution of India. It can hardly be accepted that by extending the zone of consideration and given chance to some more Officers for being considered for the merit channel, which is within powers of the Executive Committee under the SBI Officers (Determination of Terms and Conditions of Service) Order, 1979, the Officers who are now sought to be included are unequal to the petitioners or the similarly situated persons. All the Officers eligible under the valid promotion policy are equal and giving chance to them for being considered for promotion would not offend the equality provision of Art. 16 of the Constitution of India. The respondent-Bank through the affidavit of Mr. K. M. Desai has clearly stated that the impugned policy has been accepted and acted upon by majority of Officers working in 14 Circles of the Bank and promotions have been effected in some of the Circles in accordance with the said valid policy. Examinations have been conducted as per the said eligibility criteria and interviews as also in progress as scheduled in some other Circles. Even though no statistics are provided, there is no reason to discard that factual aspect. If other Officers in other Circles than Gujarat Circle have benefited and are considered for the promotion, the denial to the eligible officers under the new promotion policy would amount to discrimination to them and their right would be jeopardised, specially when such officers are not made party to the proceedings.

13. It has been categorically stated in the affidavit of Mr. K. M. Desai that the cut off date is arrived at by taking into account the number of vacancies, the number of officers eligible and it has got nexus with the objects sought to be achieved, and it is always open to Bank to enlarge the basket of eligible officers so that adequate opportunity is given to adequate number of officers to get promotions and thereby neither the petitioners have been excluded from their eligibility nor their juniors have been allowed to supersede the petitioners. As discussed above, even in 1983 policy no rigid criteria was laid down for the minimum service of six years and some of the Officers who were fixed in seniority above the Officers who have completed 6 years as on October 1, 1979 were also allowed to compete. Apart from that, it is also clear that the Executive Committee had right to review the policy after the promotions of 1985. The categorical statement is made in the

affidavit of Mr. K. M. Desai that the Bank had also held negotiations with the representative Union and the representative Union had agreed to the policy as enunciated by the impugned Circular No. 38 of 1988 dated July 13, 1988. The policy was also discussed with the representative body of the Officers namely, All India State Bank Officer's Federation and Officer's Association in the Bank of which the petitioners are the members. Mr. K. M. Desai has also deposed in the affidavit that the State Bank of India Officers Association in their Circular No. 27 of 1988 dated June 13, 1988, circulated to all the members including the petitioners, stated that if the eligibility is now fixed with reference to 1st August one whole batch of Officers Grade II in a Circle or two might get excluded. It would be unfair and unjust to them. It is also stated in the said Circular that it is only from their point of view that the eligibility is fixed with reference to December 31, 1980. The Officers promoted in various Circles, throughout the calendar year 1980 are thus included. The said Association has urged upon all its members including the petitioners to look at the problems from organisational angle. It is also stated therein that competition amongst the members for career has to be within the over-all interest of the organisation, and if that perspective is kept in view, there can be greater satisfaction all around and organisations enabled to serve the interest of officers class as a whole. It is therefore, submitted that Officers Association in the larger interest has accepted the principles enunciated by the said Circular.

14. In the affidavit-in-Rejoinder filed by the petitioners it has been stated that the Federation has to agreed to the change on the eligibility criteria contained in the original promotion policy.

According to the petitioners, the Federation had no authority whatsoever to agree to a change in any promotion policy on behalf of persons like petitioners, and therefore, the alleged agreement is of no avail to the respondents. The petitioners have also stated that the consultation with Federation or securing the consent of Federation will not absolve or immunise the impugned promotion policy from the challenge of unconstitutionality, arbitrariness, discriminatory and being contrary to the Rules and Regulations. As such there is no reason to discard the say of Mr. K. M. Desai in the affidavit filed on behalf of the respondent-Bank. Mr. G. N. Desai learned Counsel for the respondent-Bank has produced the Circular No. 27 of 1988 in which the above referred facts are stated. Even in the Staff Circular No. 149 of 1983 dated August 29, 1983, it was stated that the proportion of vacancies for seniority channel and other related matters will be reviewed bilaterally for promotions to Scale II for 1986 and onwards. Bilateral agreement was even contemplated in the year 1983 and accordingly the promotion policy was discussed with the Federation of the Officers and even the Federation advised its members to accept it in the larger interest of the Officers. It is also clear that the change in the eligibility criteria was effected with a view of benefit certain class of the Officers at the instance of the Federation. When the Federation has agreed and the policy is laid down in the larger interest of the Officers, the challenge by the petitioners on the above ground can never be accepted. It is true that even the Federation cannot agree for the illegal terms and conditions, but as discussed above, there is no illegality or irregularity committed by either side to the agreement in providing the new promotion policy and enlarging the basket of zone of consideration.

15. In view of this position, some observations of the supreme Court regarding the service jurisprudence and protecting the interest of the majority are required to be referred to and extracted.

16. In the case of V. T. Khanzode v. Reserve Bank of India & Anr., (1982-I-LLJ-465) Y. V. Chandrachud, C.J., (as he then was) speaking for the Bench, in para 40 of the judgment observed :

'No Scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. Vested interests are prone to hold on to their acquisitions and we understand the feelings of Group 1 Officers who have to surrender a part of the benefits which had accrued to them in a water-tight system of grouping. Combined seniority is indispensable for the smooth functioning of the Bank and no organisation can function smoothly if one section of its officers has an unfair advantage over others in matters of promotional opportunities.'

Regarding the retrospective effect given to the Scheme, it has been observed in para 42 of the judgment :

'As regards the retrospective operation given to the scheme with effect from May 22, 1974, it does not appear that the Board has struck a via media between the extreme contentions, advanced by officers belonging to Group I and those belonging to Groups II and III. But that was inevitable and we consider it as the best solution in the peculiar circumstances of the case. In order to rectify the imbalances and anomalies caused by the compartmentalised and group-wise seniority, it was necessary to give retrospective effect to the Combined Seniority List ....'

It is also observed by the Supreme Court :

'As we have stated earlier, any scheme of seniority is bound to produce isolated aberrations. That cannot justify the argument that the entire scheme is for the reason violative of the guarantee of equality.'

Equally enlightening observations, required to be extracted are made by the Supreme Court in the case of Reserve Bank of India, v. C. N. Sahasranamam & ors., (1986-II-LLJ-316) where in para 58 it has been observed :

'Whether there has been denial of equality in the view of promotion of any constitutional right infringed or not cannot be judged, where interests of large number of people are concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workmen are in favour of the scheme as evolved by the Bank as modified as it would be apparent from the submissions urged or behalf of All-India Reserve Bank Employees Association-impleaded as party-respondent in this Appeal as well as All India Reserve Bank Employees' Federation, Hyderabad. It has to be borne in mind that in service jurisprudence, there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judge by considering whether it is fair, reasonable and does justice to the majority of the employees, and fortunes of some individuals is not the touch stone.'

'It is well to bear in mind the fact that settlement of disputes by direct negotiations or settlement through collective bargaining is always to be preferred for it is best suited for industrial peace which is the aim of legislation for settlement of labour dispute. See the observations in New Standard Engineering Co. Ltd. v. N. L. Abhayankra (A.I.R.) 1978 S.C. 982 at P 984 : This view has again been reiterated by this Court in Tata Engineering & Locomotive v. Their Workman (1981-II-LLJ-429). The order of this Court dated 2nd May, 1984 and the referendum and the result thereof have been set out hereinbefore.'

It is further observed :

'... Viewed in that light, it is true, there may be individual instances exemplifying injustice by postponing or dealing 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 consideration 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.'.

The Supreme Court in the case of State Bank of India v. Yogendra Kumar (supra), has reiterated the same view in the case of Khanzode (supra)

17. Applying the test to the facts of the instant case it is apparent that the promotion policy as per Circular No. 38 of 1988 is enunciated after discussion with Federation of the Officers and the minor change was effected at the instance of the Federation for giving benefit to other Officers. At the most it can be said that the petitioners will have to face competition with some more Officers of their rank.

Except that, their interest is not affected in any manner. The only right which they have is right of being considered for promotion and that right is not affected in any manner. For this reason also the contentions of the petitioners are required to be turned down.

18. In the contention of the respondent-Bank, the impugned policy is affecting 13 Circles of the Bank in the entire Country and the petitioners are serving in Gujarat Circle only and the decision of this Court would affect the similarly situated Officers in other Circles and therefore, this Court has no jurisdiction. In view of our discussion above, we think it not necessary to consider this aspect.

19. In view of above, the petition fails and is rejected. Notice discharged. Interim relief is vacated.

20. After the delivery of the judgment, Mr. N. J. Mehta made a prayer for the purpose of granting certificate for appeal to the Supreme Court. The learned Counsel also prayed for staying the judgment passed by us today.

21. The main question that we have decided is that there is no question of any retrospective effect of the Circular issued, but it only provided promotion policy with effect from 1st August, 1986. We have also considered the various submissions made by the learned Counsel appearing on behalf of the petitioners and have come to the conclusion that the promotion policy does not affect the petitioners and it has been done with due respect to the Officers concerned. Even the Federation of Officers has agreed that the policy laid down is in the interest of the Officers. Further, if the impugned policy is stayed, it will affect all the Circles of the Bank in the entire Country. It has also been brought to our notice that this Circular has been given effect to in certain Circles. Considering all these aspects of the case, we do not think that there is any justification to extend the stay we have already granted. Hence the prayer to continue the stay already granted is rejected.

22. As regards the prayer for granting certificate for appeal to the Supreme Court, the discussions we have made above and also the reasons we have give in the judgment clearly establish that no substantial question of law of general

importance which needs to be decided by the Supreme Court arises in this case and hence, this prayer for grant of certificate for appeal to the Supreme Court is also rejected.