

All India State Bank Officers Federation through Its President and Other

Vs

Union of India and Others

National Federation of Sate Bank Officers and Another

Vs

Union of India and Others

Civil Writ Petition Nos. 507 and 1260 of 1989

(Smt. M. S. Fathima Beevi, J. S. Verma, S. Ranganathan JJ)

16.04.1990

ORDER

1. This order will dispose of a preliminary objection raised on behalf of the respondents that these writ petitions should be dismissed because the petitioners have suppressed certain material facts from this Court and have also tried to abuse the process of court in the manner hereinafter appearing.
2. Writ Petition No. 507 of 1989 has been filed by the All India State Bank Officers' Federation (hereinafter called 'the Federation') through its President. It was filed in this Court On April 21, 1989 and was supported by an affidavit of Umed Singh, President of the Federation, affirming the contents of the petition to be true to his personal knowledge. By this writ petition the Federation seeks to impugn a new promotion policy decided upon by the State Bank of India (hereinafter called 'the Bank'). In paragraph 9 (mm) of the petition it is stated that the petitioners are approaching this Court in great haste as the Bank is moving with great speed and is likely to constitute Departmental Promotion Committees and declare the results of the interviews in implementation of the new promotion policy within the next two or three days. In the affidavit of Umed Singh, referred to earlier, it has been stated in paragraph 4 that the petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court.
3. In the counter-affidavit filed on behalf of the Bank, it is stated that the statement in paragraph 4 of the petition in support of the writ petition is false. It is pointed out that the Federation through its Deputy General Secretary had filed Writ Petition No. 5286 of 1989 in the High Court of Andhra Pradesh at Hyderabad, along with an application No. 6969 of 1989, seeking stay of the promotion policy. On April 13, 1989 the Andhra Pradesh High Court admitted the writ petition but the learned Judge rejected the application for interim stay observing "that he was prima facie satisfied that the selection is going on according to a fair procedure and that there is no need to stay any of the interviews or the appointments". It is further pointed out that another petition has also been filed by the State Bank of India Officers' Association (Karnataka) having its office at Bangalore in the Karnataka High Court, being Writ Petition No. 788 of 1989. It is, therefore, submitted that the petitioners have suppressed from this Court the material fact that a writ petition had already been filed by them in the Andhra Pradesh High Court and that an application for stay had been made and rejected by the said court. A second objection to the maintainability of the petition raised on behalf

of the Bank in paragraph 3 of its counter-affidavit was that since promotions had already been made they could not be disturbed "as the promoted officers have not been made parties". It is common ground that 58 officers had been promoted w. e. f. April 24, 1989 but no steps were taken to implead these officers, who would be directly affected as a result of the prayer made in the writ petition.

4. To these objections, a rejoinder was filed on behalf of the petitioners, supported again by an affidavit of Umed Singh on October 23, 1989. The two objections raised by the bank were sought to be refuted in the following manner :

"1. That the contents of para 1 are denied and it is reiterated that the writ petition is maintainable as there is clear violation of fundamental rights guaranteed to the petitioners. The writ petition filed in the Andhra Pradesh High Court has since been withdrawn as per the undertaking given to the Supreme Court during arguments on April 24, 1989. The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came to his knowledge the same has been withdrawn. Even otherwise the deponent understands that in the said writ petition the stay of interview was prayed and the same was declined on respondent Bank. It is indeed regrettable that even before Hon'ble High Court the bank made incorrect statements. A perusal of the order of High Court would show the same. Regarding the question of making such employees who have been promoted as a party respondent, it is submitted that firstly it is the promotion policy which had been challenged being arbitrary, discriminatory and framed in gross violation of the prescribed procedure and provision of law, secondly the petitioners even today do not know the names of all such 58 candidates who have been promoted favoured."

5. It may be mentioned here that Writ Petition No. 507 of 1989 came up for admission before a bench of this Court on April 26, 1989. Apparently, the counsel for the State Bank of India was present and accepted notice on behalf of the Bank. The bench passed the following order :

"Issues notice Mr. S. S. Dharma, learned counsel accepts notice on behalf of the State Bank of India. Counter-affidavit shall be filed within four weeks from today. Reply, if any, shall be filed within two weeks thereafter, the matter will be placed for final disposal on October 24, 1989 subject to overnight part-headed. The promotion if given in the meantime will be subject to the decision in the writ petition. Mr. K. K. Venugopal, learned counsel states that the writ petition which has been filed before the High Court will be withdrawn."

6. The writ petition came on for hearing before us on April 5, 1990. Sir G. Ramaswamy, counsel for the Bank, put the above objections in the forefront as preliminary objections. After hearing him and the counsel for the petitioner, we directed the petitioner federation to file a better affidavit explaining the correct position. In compliance with the direction given by us, another affidavit has been filed by Sri Umed Singh. In this affidavit, again, although purporting to "tender an unqualified apology" for the misstatement in the earlier affidavit, the deponent reiterated "that he did not know on the date of swearing of the affidavit on April 21, 1989 that some other office bearer of the petitioner federation has filed such a petition". He claims to have come to know of it only on April 23, 1989 from a telephonic conversation with the Deputy Secretary and wishes to take credit for the fact that he at once informed his counsel about it who in turn brought it to the notice of the court at the time of the preliminary hearing on April 26, 1989. The truth of these allegations is refuted on

behalf of the Bank. It is submitted that the counsel for the petitioner did not, even at the time of hearing on April 26, 1989, bring to the notice of this Court the fact that he had filed a petition in the Andhra Pradesh High Court. On the other hand, it is claimed, it was the counsel for Bank, that brought to the notice of the court that the petitioner had already moved the Andhra Pradesh High Court in regard to the same relief and it was only thereafter that the counsel for the petitioner made a statement that the petitioner would withdraw the petition filed in the Andhra Pradesh High Court. Even this, it is pointed out, they did not do immediately as stated in Umed Singh's affidavit for the said petition was withdrawn only much later on 27, 1989.

7. On behalf of the Bank it is also pointed out that the statement made in the rejoinder filed by Umed Singh, supported by his affidavit, that the addresses of the 58 promotees was not known to the petitioner is again a total falsehood as is demonstrated by two circumstances. In the first place, in the writ petition filed in the Karnataka High Court, the petitioner there has joined all the 58 officers as parties and an application was moved before the said High Court on April 27, 1989, seeking stay of promotion of the said respondents. That apart, on May 1, 1989, a fortnightly bulletin issued by the State Bank of India Officers' Association (Mumbai circle), which is admitted to be one of the associations affiliated to the petitioner federation, carries a message of congratulations to all the 58 officers, who had been promoted w. e. f. April 24, 1989. The names of all the 58 officers so promoted has been set out in this bulletin.

8. In this state of the record, learned counsel for the Bank strongly urged that we should dismiss the writ petition straightway on the ground that the petitioner has not come to court with clean hands.

9. We have heard learned counsel on both sides at length. There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but had also tried to abuse judicial process. The explanation that the President of the federation when he filed the writ in this Court on April 21, 1989, was not aware that a petition had been filed in the Andhra Pradesh High Court (repeated for a second time in the affidavit of April 5, 1990) is, in our opinion, totally unacceptable. Admittedly the federation was considerably agitated by the new promotion policy. The matter was considered to be very urgent and the federation was too keen to obtain a stay of implementation of the policy which, it feared, the Bank might do any day. In this situation, not even the most gullible of persons would be credulous enough to accept the explanation that the Deputy General Secretary of the federation had not apprised the President of their failure to obtain the stay order from the Andhra Pradesh High Court. It is totally unbelievable that between April 13, 1989, when the interim application in the Andhra Pradesh High Court was rejected and April 21, 1989 when the writ petition was filed, the President was not aware of that had happened in the High Court. It is deplorable that such an explanation should have been not only put forward in the original rejoinder but should have been repeated again in the latest affidavit. The petitioner had, in our opinion, deliberately suppressed from the petition this crucial and important fact. As to the credit sought for having brought this fact to the notice of court on April 26, 1989, the circumstances suggest that perhaps they would not have brought it to the notice of the court at all had not counsel on behalf of the Bank been present to receive notice when the matter was moved for admission on April 26, 1989. Whether, as asserted by the counsel for the petitioner, the petitioner considered it prudent, in view of the presence of the Bank's counsel, to volunteer at the time of the said hearing the information that a petition had been failed in the Andhra Pradesh High Court and to offer an undertaking that it would be withdrawn or whether, as alleged in a "statement of facts" placed before us by Sri S. S. Sharma, the learned counsel for the Bank who appeared at the hearing, even this information had to be supplied to the court by the Bank, is a controversy into which we need not enter. We shall proceed on the assumption that the statement made by the counsel for the

petitioner is correct, but even that does not explain why a reference to the writ petition in the High Court was not made in the writ petition as it had to be made. The statement in a affidavit of Umed Singh that no petition had been filed in any High Court was clearly and plainly false.

10. It is equally clear that the statement made in the rejoinder affidavit that "till today (i. e. October 23, 1989) the petitioner federation is not aware of the names of the promoted officers" is again an incorrect statement. These officers had been impleaded in the interim application for the relief sought against them in the Karnataka High Court as early as April 27, 1989. That apart the federation could not have been unaware of the contents of the bulletin issued by the Mumbai circle of the SBI Officers' Association issued on May 1, 1989. There is no doubt that the petitioner did not deliberately implead the 58 promoted officers. Sri Sachar, for the petitioner, sought to contend that these 58 officers may be proper parties but not necessary parties and he referred us to the judgments of this Court in *General Manager, South Central Railway, Secunderabad v. A. V. R. Siddhantti and Col. D. D. Joshi v. Union of India*. We are not here concerned with the question whether these officers were necessary or proper parties and, indeed, this issue is no longer alive as, subsequently, the petitioner itself has undertaken to implead these 58 officers and notices have been issued to them in both the writ petitions. What we are concerned herewith is the statement, in the rejoinder affidavit that the federation was not aware of the names of the 58 officers till November 1989 which, in the circumstances is a clear misstatement.

11. Apart from misstatements in the affidavits filed before this Court, the petitioner federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Court on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filling a petition in single court. It seems the object here in filing different petitions in different courts was a totally different and not very laudable one. Again an attempt was made to obtain a stay in the Andhra Pradesh High Court and when that attempt failed the writ petition here was filed. In this the petitioners were able to obtain only an order that any promotions made during the pendency of the petition would be subject to the decision in writ petition, But, having obtained this order on April 26, 1989, it is curious and inexplicable that an affiliated association should have made an application on April 27, 1989 in the Karnataka High Court praying for a stay of the promotions. These are only tactics that will be indulged in by a chronic and compulsive litigant and not by a federation like the petitioner.

12. We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.

13. The question that now remains to be considered is whether the petition is liable to be dismissed for this conduct of the President of the federation. Sri Rajinder Sachar, appearing on behalf of the petitioners, sought to get over the Bank's objections by addressing certain technical arguments. He submitted that that even if Writ Petition No. 507 of 1989 was liable to be dismissed for misstatement and suppression there would be no reason to dismiss C. W. P. No. 1260 of 1989 which has been filed by another association of the same officers. He also sought to contend that, since it had been brought to the notice of this Court on April 26, 1989 that a petition had been filed in a High Court and that it was being withdrawn, the order passed by this Court on April 26, 1989 should be taken as having condoned any misstatement or misconduct or defects in the writ petition. We are not inclined to accept these submissions. However, it is not necessary to discuss this aspect further as we do not wish to penalise the various officers who may suffer as a consequence of the new policy, which they wish to challenge, for the misstatements or wrong steps taken by the officers of the federation perhaps, in their overanxiety to get quick interim relief. We do not wish to decline them an opportunity to put forward their grievances before the court by dismissing these writ petitions on the preliminary objections raised by the Bank. In fact, we should like to place on record our appreciation of the stand taken by Sri G. Ramaswamy, learned counsel for the Bank this respect. He fairly stated that, as he is appearing for a public sector undertaking, he is quite prepared to contest the writ petitions on their merits and that his preliminary objections were primarily intended to bring to our notice the conduct of the petitioners in this case. We are glad he did it as this was a matter which needed serious notice. We should like to record our disapproval of the way in which the proceedings have been conducted on behalf of the federation.

14. However, as mentioned above, we overrule the preliminary objections and will proceed to dispose of the writ petitions on their merits. The writ petitions are adjourned, as per separate order, to July 17, 1990 for further hearing.

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