

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9708 OF 2011

[ARISING OUT OF SLP (CIVIL) NO.1921 OF 2010]

PREM PARKASH PAHWA

...

APPELLANT

Versus

UNITED COMMERCIAL BANK
& ANR.

...

RESPONDENTS

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Delay condoned.
2. Leave granted.
3. This appeal, by grant of special leave, is directed against the judgment and order dated 25/8/2009 passed by the Punjab & Haryana High Court dismissing Civil Regular Second Appeal No.145 of 1986 filed by the appellant.

4. Respondent 1-Bank holds tests for promotion to the officers grade. It has framed rules for examination for promotion to the officer's grade. Under the rules, marks are awarded to written tests, interviews and qualifications, etc. The rules reflect the policy and procedure of respondent 1, inter alia, for promotion to the officer's grade and, hence, are described as the 'Promotion Policy'.

5. The appellant, who is appearing in person, joined the service of respondent 1 in the year 1973 as a Stenographer in clerical cadre. He passed his graduation in the year 1973 from the Punjab University. He obtained Diploma in Office Organization and Procedures in the year 1979 from the said university. It is a 'Post Graduate Diploma' recognized by the Academic Council of the Punjab University. Respondent 1-Bank conducted examination in the year 1979 for promotion to the officers grade. According to the appellant, weightage of three (3) marks was given to him as per the Promotion Policy of respondent 1 for the year 1975, which

was in vogue at that time as he had obtained Diploma in Office Organization and Procedures. But, the appellant could not qualify in the said exam because he obtained less marks under other heads. He again appeared for the same examination on 17/1/1982. His case is that the Diploma granted by the Punjab University entitled him to weightage of three (3) marks as contemplated in Clause 3.1.2 (F)(d)(ii) of the 1981 Promotion Policy of respondent 1, which held the field at that time. He was not given weightage of three (3) marks because he did not possess 'Post Graduate Degree'. The appellant, therefore, filed a suit for declaration that he is entitled to the weightage of three (3) marks as he possessed 'Post Graduate Diploma'. In view of Clause 3.1.2 (F)(d)(ii) read with foot note (b) of Chapter (1) of the 1981 Promotion Policy of respondent 1, the trial court decreed the suit and held that he was entitled to weightage of three (3) marks. The lower appellate court set aside the said decree. The High Court upheld the order of lower appellate court. Hence, this appeal, by special leave.

6. We have heard the appellant, at some length and also learned counsel for the respondents.

7. We are concerned with interpretation of Clause 3.1.2 (F)(d)(ii) read with foot note (b) of Chapter (1) of the 1981 Promotion Policy of respondent 1. For better appreciation of the appellant's contention, it is also necessary to have a look at the relevant provisions of the Promotion Policy of respondent 1 of the years 1975, 1981 and 1988.

8. Clause III B(4)(d) of Chapter 1 of Part I of the 1975 Promotion Policy of respondent 1 reads as under :

"PART – I

CHAPTER 1 – PROMOTION TO OFFICER'S CADRE

III. PROMOTION TO THEBANK'S OFFICERS' CADRE:

A. xxx xxx xxx

B. Written Test and Interview.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Allocation of the marks for the written test, interview, length of service and qualifications.

Particulars		Maximum Marks Allotted	
(a)	Written Test		25
(b)	Interview		15
(c)	Length of service in the clerical cadre (2 marks of each complete – see Note under sub-para (ii) above-subject to a maximum of 40 marks).		40
(d)	Qualifications:		
	(i) Graduation from a recognized University		6
	(ii) Institute of Bankers Examination :		
	Part – I		3
	Part – II		6
	(iii) Double graduation or Master's Degree, from a recognized University or a Post-graduate Diploma of a recognized University or Institute.		3
	(iv) Graduation in commerce from a recognized University with 50% or over of average marks.	2	20
			
			100
			

Thus, as per 1975 Promotion Policy, a person holding Post Graduate Diploma of a recognized university or Institute was entitled to weightage of three (3) marks while

considering his case for promotion to the Bank Officer's Cadre.

9. Clause 3.1.3 F(d) of the 1981 Promotion Policy reads as under:

"CHAPTER – I

1. PROMOTION TO OFFICER'S CADRE

2. xxx xxx xxx

3. Promotion to the Bank's Officer's Cadre:

3.1.1 xxx xxx xxx

3.1.2 xxx xxx xxx

3.1.3 (A) xxx xxx xxx

(B) xxx xxx xxx

(C) xxx xxx xxx

(D) xxx xxx xxx

(E) xxx xxx xxx

(F) Allocation of marks for the written test, interview, length of service and qualifications shall be as under :

Particulars	Maximum Marks Allotted
(a) Written Test	40
(b) Interview	10

- | | | |
|-------|---|----|
| (c) | Length of service in the clerical cadre
(2 marks for each completed year of service - see Note under sub-para (ii) of para 3.1.2 above, subject to a maximum of 30 marks). | 30 |
| (d) | Educational Qualifications: | |
| (i) | Graduation from a recognized Universities | 6 |
| (ii) | Post Graduates/Double Graduates from recognized Universities/Institutes. | 3 |
| (iii) | Indian Institute of Bankers Examination : | |
| | Part – I ... | 3 |
| | Part – II ... | 6 |
| (iv) | All Honours Graduates/Cost Accountants or Graduates / Post Graduates having 50% marks or more in the aggregate. | 20 |

- Note:**
- (a) No candidate would get more than 20 marks for educational qualifications.
 - (b) Degrees, Diplomas should be from recognized Universities/Boards and Institutes recognized by the Government of India.
 - (c) In proof of educational qualifications original certificate issued by appropriate concerned authorities will have to be produced.

Thus, from Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy, the words 'Post Graduate Diploma' have been deleted but there is a reference to 'Diploma' in Note (b).

10. Clause 3.6.1.(d) of the 1988 Promotion Policy reads as under :

"PART II

CHAPTER – 1

3. PROMOTION FROM CLERICAL CADRE TO OFFICER'S CADRE IN BANK'S JUNIOR MANAGEMENT GRADE SCALE-I.

3.1	xxx	xxx	xxx
3.2	xxx	xxx	xxx
3.3	xxx	xxx	xxx
3.4	xxx	xxx	xxx
3.5	xxx	xxx	xxx

3.6 MODE OF SELECTION :

3.6.1 Merit-cum-Seniority Channel:

Under Merit-cum-Seniority Channel, there will be assessment of 100 marks distributed in the following manner:

- | | | |
|-----|---|----------|
| (a) | Written test to be conducted by the Institute of Banking Personnel Selection (IBPS) (model questions/syllabus will be given before the test). | 55 marks |
| (b) | Service (2 marks for each completed year of service as assessed vide para 3.4.3 above with a maximum of 25 marks.) | 25 marks |

(d)	Educational Qualification:	20 marks
(i)	Graduation from a recognized University	6
(ii)	Post Graduate/Double Graduate from recognized University.	3
(iii)	CAIIB Examination of Indian Institute of Bankers :	
	Part – I ...	3
	Part – II ...	6
(iv)	Honours Graduate / Graduate / Post Graduate from recognized University having 50% marks or more in the aggregate.	2
		
		20

Thus, the 1988 Promotion Policy keeps out 'Diploma' holders. It is stated by counsel for respondent 1 that a 'Diploma' holder is not entitled to weightage of three (3) marks as per this policy.

11. The appellant pointed out that he is concerned with 1981 Promotion Policy. Though Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy states that only Post Graduates/Double Graduates from recognized Universities/Institutes are entitled to weightage of three (3) marks, Note (b) thereunder clarifies that Degrees, Diplomas

should be from recognized Universities/Boards and Institutes recognized by the Government of India. Thus, the note explains that persons holding 'Diploma' from recognized University/Board and Institute would be entitled for weightage of three (3) marks.

12. Counsel for respondent 1 submitted that Note (b) to Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy is an inadvertent error. The fact that from Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy, the word 'Diploma' is excluded as an educational qualification, which was there in the year 1975 Promotion Policy, indicates that the intention was not to give weightage of three (3) marks to 'Diploma' holders. It was pointed out that this argument is supported by the fact that in the 1988 Promotion Policy, a 'Post Graduate' or 'Double Graduate' is entitled to the benefit of weightage of three (3) marks and Note (b) to Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy does not include the term 'Diploma'.

13. It is not possible for us to accept the respondents' case. We have already quoted the relevant provisions of 1975 Promotion Policy. Under that policy, a 'Double Graduate' or a person holding 'Master's Degree' from a recognized University or a 'Post Graduate Diploma' of a recognized University or Institute was entitled to get weightage of three (3) marks. Though from Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy, the word 'Diploma' of a recognized University and Institute is omitted, Note (b) thereunder states that Degrees, Diplomas should be from recognized Universities/Boards and Institutes recognized by the Government of India. Note (b) cannot be dismissed as an inadvertent error. It has a meaning. It is not superfluous. Notes under the rules cannot control the rules but they can provide aid for interpretation of those rules. It must be borne in mind that the note in the instant case is made contemporaneously with the rules. It is a part of the rule. It is not inconsistent with the rule but makes explicit what is implicit in the rule. It is not as if by mistake Note (b) was

lifted from 1975 Promotion Policy, because 1975 Promotion Policy did not contain any Note under Clause 3.1.2 (F)(d). Pertinently, 1988 Promotion Policy, inter alia, specifically states that 'Post Graduate' or 'Double Graduate' of a recognized university are entitled to weightage of three (3) marks, but in the Note under the said clause, there is no reference to 'Diploma'. Therefore, 1988 Promotion Policy, as stated by counsel for respondent 1, clearly keeps the diploma holders out. In the circumstance, we cannot view the word 'Diploma' found in Note (b) under Clause 3.1.2(F) (d)(ii) of the 1981 Promotion Policy as a clerical mistake or inadvertent error and ignore it. In our opinion, therefore, the High Court was clearly in error in holding that the intention of the 1981 Promotion Policy was to grant weightage of three (3) marks only to 'Degree' holders.

14. Respondent 1-bank has urged in its written statement that the word 'Diploma' mentioned in Note (b) could be linked to Clause 3.1.2(F)(d)(iii) which refers to Indian Institute of Bankers' Examination Part I and Part II. Nothing

prevented the rule makers from making it clear by specifically linking the two. We are informed that Indian Institute of Bankers has 'Certificate courses' and it also has 'Diploma courses'. But, in the absence of clear statement to that effect in Clause 3.1.2(F)(d)(iii), it is not possible to arrive at this conclusion.

15. In our opinion, relevant Clause 3.1.2(F)(d)(ii) of the 1981 Promotion Policy is not happily worded or rather it is worded in a manner which would create confusion rather than help the aspirant. In such a situation, in our opinion, it will have to be interpreted in favour of the appellant bearing in mind the fact that at one point of time, as per 1975 Promotion Policy, he was, in fact, given weightage of three (3) marks as he possessed 'Diploma in Office Organization and Procedures of a recognized university. Unfortunately, he did not get the necessary marks under other heads and, hence, he could not get benefit of those three (3) marks. The appellant has, thereafter, bona fide prosecuted these proceedings since 1979. The appellant joined respondent 1

in the year 1973. Considering the peculiar circumstances of this case, we think that interests of justice would be served if weightage of three (3) marks is given to him in the examination conducted on 17/1/1982.

16. We, therefore, set aside the impugned judgment and order and hold that the appellant is entitled to weightage of three (3) marks while considering him for promotion to the Bank Officer's Cadre in Officer's Grade examination held in 1982 in view of the fact that he possessed Post Graduate Diploma in Office Organization and Procedures from Punjab University, Chandigarh, which is a recognized University. The appeal is allowed.

.....J.
(AFTAB ALAM)

.....J.
(RANJANA PRAKASH DESAI)

NEW DELHI,
NOVEMBER 14, 2011.