

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

DATED : 01.09.2011

CORAM

**HON'BLE MR. JUSTICE S. P. WANGDI,
ACTING CHIEF JUSTICE.**

W.P(C) NO. 26 OF 2009

1. Mrs. Guruwati Singh,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office
at 31-A National Highway
P.O. Gangtok, East Sikkim.
2. Mrs. Deo Kumari Thapa,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Tashiling Secretariat Branch,
P.O. Tashiling Secretariat,
Gangtok, Sikkim.
3. Mrs. Pema Choden Bhutia,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Deorali Branch,
P.O. Deorali,
Gangtok, East Sikkim.
4. Mrs. Bimla Subedi,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gyalshing Branch,
P.O. Gyalshing, West Sikkim.

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5. Mrs. Usha Kiran Thapa,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office
at 31-A National Highway
P.O. Gangtok, East Sikkim.
6. Mr. Topching Sangderpa,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Dentam Branch,
P.O.Dentam, West Sikkim.
7. Mr. Tsering Thendup,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gyalshing Branch,
P.O. Gyalshing, West Sikkim.
8. Mrs. Phupu Doma,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Tashiling Secretariat Branch,
P.O. Tashiling Secretariat,
Gangtok, East Sikkim.
9. Miss Tsering Palmoo B hutia,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
M.G. Marg Branch,
P.O. Gangtok, East Sikkim.
10. Mr. Punya Pd. Sharma,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office
at 31-A National Highway
P.O. Gangtok, East Sikkim.

11. Mrs. Laden Bhutia,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office
at 31-A National Highway
P.O. Gangtok, East Sikkim.
12. Mrs. Dil Maya Gurung,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office
at 31-A National Highway
P.O. Gangtok, East Sikkim.
13. Mrs. Bhakti Kumari Tewari,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Singtam Branch,
P.O. Singtam, East Sikkim.
14. Mr. Benjamin Pega,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Sombaria Branch
P.O. Sombaria, West Sikkim.
15. Mrs. Chachuden Bhutia,
Account Assistant/
Cash Assistant,
State Bank of Sikkim,
Gyalshing Branch,
P.O. Gyalshing, West Sikkim.
16. Mr. Bal Kumar Rai,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Namchi Branch,
P.O. Namchi, South Sikkim.

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17. Mrs. Tara Sharma,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Singtam Branch,
P.O. Singtam, East Sikkim.
18. Mrs. Chiden Bhutia,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Tashiling Secretariat Branch,
P.O. Tashiling Secretariat,
Gangtok, East Sikkim.
19. Mrs. Sumati Chettri,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Singtam Branch,
P.O. Singtam, East Sikkim.
20. Mrs. Menuka Devi Sharma,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Jorethang Branch,
P.O. Jorethang, South Sikkim.
21. Mrs. Mala Bhutia,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Officer,
31-A, National Highway.
P.O. Gangtok, East Sikkim.
22. Mr. Chamchey Bhutia,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Ravangla Branch,
P.O. Ravangla, South Sikkim.

23. Mrs. Shova Gurung,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Soreng Branch,
P.O. Soreng, West Sikkim.
24. Mr. Purna Kr. Chettri,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Namchi Branch,
P.O. Namchi, South Sikkim.
25. Mr. Ranjit Chettri,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Sombaria Branch,
P.O. Sombaria, West Sikkim.
26. Mrs. Ran Maya Gurung,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Soreng Branch,
P.O. Soreng, West Sikkim.
27. Mrs. Rupa Mukhia,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Jorethang Branch,
P.O. Jorethang, South Sikkim.
28. Mr. Dil Kumar Rai,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Rangpo (Check Post) Branch,
P.O. Rangpo, East Sikkim.

29. Mrs. Aruna Lama,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Officer,
at 31-A, National Highway.
P.O. Gangtok, East Sikkim.
30. Mrs. Uma Pradhan,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Deorali Branch
P.O. Deorali, East Sikkim.
31. Puspa Lata
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Soreng Branch,
P.O. Soreng, West Sikkim.
32. Mrs. Hissey Doma,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Soreng Branch,
P.O. Soreng, West Sikkim.
33. Mrs. Durga Maya Thapa,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Singtam Branch,
P.O. Singtam, East Sikkim.
34. Mrs. Angi Ongmu Lepcha,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Officer,
at 31-A, National Highway.
P.O. Gangtok, East Sikkim.

35. Miss Sunita Pradhan,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Rangpo (Check Post) Branch,
P.O. Rangpo, East Sikkim.
36. Kamala Rai,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Soreng Branch,
P.O. Soreng, West Sikkim.
37. Mrs. Pratima Thapa,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
M.G. Marg Branch,
P.O. Gangtok, East Sikkim.
38. Mr. Shanta Dhoj Subba,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Dentam Branch,
P.O. Dentam Bazar, West Sikkim.
39. Mr. Tharma Nath Chettri,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Mangan Branch,
P.O. Mangan, North Sikkim.
40. Mrs. Shanti Kumari Pradhan,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.

41. Mr. Rudra Kumar Subedi,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Rabdentse Branch,
P.O. Gyalshing, West Sikkim.
42. Mrs. Padma Rai-I,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Namchi Branch,
P.O. Namchi, South Sikkim.
43. Mrs. Bindya Pradhan,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office at
31-A, National Highway,
P.O. Gangtok, East Sikkim.
44. Mrs. Sangeeta Pradhan,
Jr. Account Assistant/
Jr. Cash Assistant,
State Bank of Sikkim,
M.G. Marg Branch,
P.O. Gangtok, East Sikkim.

..... **Petitioners**

Versus

1. The State Bank of Sikkim,
a body corporate represented by and
through its Managing Director
having its Head Office at 31-A,
National Highway, Gangtok,
P.O. Gangtok, East Sikkim - 737 101.
2. The Board of Directors of the
State Bank of Sikkim
represented by and through its
Managing Director, having
its Head Office at

31-A, National Highway,
Gangtok, P.O. Gangtok,
East Sikkim - 737 101.

3. The managing Director of State Bank of Sikkim, having its Head Office at 31-A, National Highway, Gangtok, P.O. Gangtok, East Sikkim - 737 101.
4. The State of Sikkim, represented by and through the Secretary, Finance, Tashiling Secretariat, Gangtok, P.O. Tashiling Secretariat, Gangtok, East Sikkim.
5. Miss Tshering Uden, Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Establishment Section Head Office,
at 31-A National Highway, Gangtok,
P.O. Gangtok, East Sikkim.
6. Mrs. Usha Devi Chhetri,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Deorali Branch,
P.O. Deorali, Gangtok,
East Sikkim.
7. Mr. Bibek Kr. Pradhan,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office,
at 31-A National Highway, Gangtok,
P.O. Gangtok, East Sikkim.

8. Mr. Diwakar Rai,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
M.G. Marg Branch,
P.O. Gangtok, East Sikkim.
9. Mr. Dinesh Chandra Rai,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Chungthang Branch,
P.O. Chungthang, North Sikkim.
10. Mr. Rapden Tsh. Bhutia,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office
at 31-A National Highway,
P.O. Gangtok, East Sikkim.
11. Mr. Sunil Kr. Tamang,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(O.D. Section),
Gangtok Head Office
at 31-A National Highway,
P.O. Gangtok, East Sikkim.
12. Mr. Mandorjee Tamang,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(Cash Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
13. Mr. Norden Shenga,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,

Rangpo Checkpost Counter Branch,
P.O. Rangpo, East Sikkim.

14. Mrs. Namgyal Donka Bhutia,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(Cash Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
15. Mrs. Kusum Pradhan,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Mangan Branch,
P.O. Mangan, North Sikkim.
16. Mrs. Choden Bhutia,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
17. Mrs. Subhadra Pradhan,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(Cash Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
18. Mrs. Rinchen Doma Bhutia,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Gyalshing Branch,
P.O. Gyalshing, West Sikkim.

19. Mrs. Permila Gurung,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Namchi Branch,
P.O. Namchi, South Sikkim.
20. Mr. Dawa Sherpa,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(Loan Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
21. Mr. Tashi Tsh. Lachungpa,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Chungthang Branch,
P.O. Chungthang, North Sikkim.
22. Mrs. Chhali Maya Subba,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Tashiling Secretariat Branch,
P.O. Tashiling Secretariat,
Gangtok, East Sikkim.
23. Ms. Tshering Yanki Bhutia,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(Cash Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
24. Mrs. Krishna Kala Pradhan,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,

(Cash Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.

25. Mrs. Chewang Lhamu,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
(Cash Section),
Gangtok Head Office,
at 31-A, National Highway,
P.O. Gangtok, East Sikkim.
26. Mrs. Pavitra Subba,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Tashiling Secretariat Branch,
P.O. Tashiling Secretariat,
Gangtok, East Sikkim.
27. Mrs. Kalpana Pradhan,
Sr. Account Assistant/
Sr. Cash Assistant,
State Bank of Sikkim,
Ranipool Branch,
P.O. Ranipool, East Sikkim.

....Respondents


- | | | |
|---------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the petitioner | : | Mr. A. Moulik, Senior Advocate with Mr. N.G. Sherpa and Ms. Kessang D. Bhutia, Advocates for the petitioners |
| For the respondents | : | Mr. J.B. Pradhan, Additional Advocate General with Mr. A.J. Sharma, Advocate for respondent Nos. 1, 2 & 3 and with Mr. S.K. Chettri, Asstt. Govt. Advocate for respondent No. 4. |
| | | Mr. K.T. Bhutia, Senior Advocate with Ms. Bandana Pradhan, Advocate for respondent Nos. 5 to 20 and 22 to 27. |

JUDGMENT***Wangdi, ACJ***


By filing the present writ petition, the petitioners seek to quash the impugned Orders dated 23.01.2009, Circular dated 18.02.2009 and Office Order dated 04.06.2009 filed as Annexure-3, Annexure-4 and Annexure-10 respectively to the writ petition.

2. It is the case of the petitioners that by issuance of Office Order dated 23.01.2009 (Annexure-3), the respondents No. 5 to 9 have been given 2 promotions retrospectively, firstly as Junior Accountants/Cashiers with effect from 18.07.1997 and as Accountants/Head Cashiers with effect from 08.09.2005 without considering the case of the petitioners, who were equally circumstanced as the respondents No. 5 to 9.

3. It is stated that the effect of the impugned Office Order dated 23.01.2009 (Annexure-3) was as follows:

-  (i) The respondents No. 5 to 9 who were holding the lowest posts of Accounts

Clerks/Assistant Cashiers were granted retrospective promotion to the higher grade of Junior Accountants/Cashiers with effect from 18.07.1997;

- (ii) Those amongst the petitioners who were Junior Accountants/Cashiers promoted in the year 1999 were granted promotion to the post of Accountants/Head Cashiers with effect from 08.06.2005;
 - (iii) The respondents No. 5 to 9 were deemed to have been promoted to the post of Accountants/Head Cashiers with effect from 08.06.2005 ostensibly to restore their seniority vis-à-vis the others including the petitioners holding the post of Accountants/Head Cashiers; and
 - (iv) By this the rights of the petitioners who were holding equivalent posts and similarly circumstanced as the respondents No. 5 to 9 were effected adversely.
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4. It is further the case of the petitioners is that they were always treated at par with respondents No. 5 to 9 and educational qualification had never been adopted as the criteria for promotion, which will be established from the fact that they were promoted as Accounts Assistants/Cash Assistants together vide Office Order dated 23.08.2005 being Annexure-2 to the writ petition.

5. That the classification of the respondents on the basis of them being graduates was de hors the rules. Although such classification was permissible, it cannot be applied retrospectively. The respondents-Bank by adopting such classification and applying it retrospectively, has unsettled the settled position of seniority of the petitioners No. 1 to 5 rendering them juniors to respondents No. 5 to 9, who otherwise were juniors to the petitioners in the rank of Junior Accounts Assistants/Junior Cash Assistants.

6. That the matter got worse confounded when by the impugned order dated 23.01.2009 (Annexure-3) the respondents No. 5 to 9 were again promoted to the posts

of Senior Accounts Assistants/ Senior Cash Assistants retrospectively with effect from 08.06.2005. It is stated that the graduates had no exclusive right for promotion and, although they may be entitled to being given preference but were not be exempted from facing the departmental promotion examination.

7. As regards the impugned Circular dated 18.2.2009 (Annexure-4) is concerned, the petitioners contended that the Circular is grossly illegal as it provides for giving double promotion to the employees working in the posts of Junior Accounts Assistants/ Junior Cash Assistants directly to the post of Senior Accounts Assistants/ Senior Cash Assistants without having first to cross the position of the Accounts Assistants/ Cash Assistants thereby giving unfair advantage to them.

8. It is further contended that the Circular was bad for seeking option from the interested candidates/ participants to sit for the departmental promotion examination because consideration for promotion was a matter of right for the employees and as a model employer the Bank could not have sought for such option.

It is stated that the Circular (Annexure-4) was a modified form of an earlier Circular dated 14.07.2008 filed as Annexure-5 to the writ petition and the scheduled examination based upon the Circular had been kept abeyance as the petitioners had represented against it. It is further contended that the representation submitted by the petitioners against the Order dated 23.01.2009 (Annexure-3) and Circular dated 18.02.2009 (Annexure-4) have been ignored by the respondents-Bank.

9. It is the case of the petitioners that they had objected to the requirement of appearing in the examination pursuant to the Circular dated 18.02.2009 (Annexure-4) but they were compelled to do so on being threatened by the respondents-Bank as regards their future promotions. Accordingly, they had appeared in the examination for promotion to the post of Senior Accounts Assistants/ Senior Cash Assistants held on 01.03.2009, but were deliberately failed, selecting respondents No. 10 to 27 illegally vide Office Order dated 04.06.2009, filed as Annexure-10 to the writ petition.

10. It is alleged that the examination held on 01.03.2009 lacked fairness in as much as there was mass copying as most of the successful respondents had sat around the same table in the examination hall permitting unfair practice without being objected to by the examiners. On the above premises, the petitioners submit that the Office Order dated 23.01.2009 (Annexure-3), Circular dated 18.02.2009 (Annexure-4) and the Office Order dated 04.06.2009 (Annexure -10) deserves to be quashed and set aside.

11. The respondents No. 1, 2 and 3 by filing a common counter-affidavit have denied all material allegations and have defended the action of the respondents-Bank in the following premises.

12. That the impugned Office Order dated 23.01.2009 (Annexure-3) was issued in order to give effect to the resolution of the Board of Directors in its 121st Board Meeting held on 18.07.1997 by which the respondents No. 5 to 9 had been granted promotion from the posts of Accounts Clerk/Assistant Cashier to the higher post of Junior Accountants/Cashiers giving due

regard to their qualification as graduates and in consideration that they were having seven years of continuous service. This resolution had been overlooked by the respondents-Bank resulting in formal Office Order not being issued in the year 1997.

13. The facts and circumstances leading to the passing of the resolution by the Board of Directors on 18.07.1997 that have been set out in the counter-affidavit on behalf of the respondents No. 1, 2 and 3 may be reproduced below:

"(iii) That in the year 1984 large number of Under matric/ matric including some of these Petitioners were appointed to the post of Accounts Clerk, Assistant Cashiers (redesignated as Jr. Accounts Assistant/Jr. Cash Assistant). Five graduate candidates i.e. the respondent Nos. 5 to 9 were appointed in the year 1988-89 and the petitioner No. 43 who is also a graduate was appointed in the year 1994 to the post of Accounts Clerk (redesignated as Jr. Accounts Assistant/Jr. Cash Assistant). In eighties there was dearth of graduate people in the State of Sikkim which resulted into the appointment of large number of under metric, metric passed candidates to the post of Accounts Clerks as no minimum qualifications had been prescribed for the said post. That the respondent Bank being a commercial organization competing with other Nationalized and Non- Nationalized Banks had to give emphasis on the efficiency of its employees. Accordingly, those Account Clerk who had higher educational qualification were being given work of Clerk

higher responsibility such as to assist internal audit, establishment work etc. The work of internal audit involve physical verification and checking of cash balance, examination of cash books and ledger, verification expenses incurred against predetermined budgets. Since those works can be performed only by a person having higher educational qualification, those Accounts Clerks who were Graduates were assigned the said aforesaid works. It is pertinent to state here that other Account Clerks who were metric or under metric were not be able to do the above function. Similarly establishment work of the Bank requires knowledge of rules and regulations of the Bank and involves the preparation of salary statement etc. They are also called upon to assist Controlling Officers whose responsibility is with regard to short term and long term investments of respondent Bank with other Nationalized Bank and keeping account and record of such investment. The above such jobs can be understood and handled only by persons with certain higher educational qualification. In the respondent Bank, the aforesaid work had/were assigned to those Account Clerk who were Graduates. It is submitted that those Accounts Clerks who were either Matric or under matric are not qualified and do not possess the accumenship to either assist or handle such nature of works. In the respondent Bank such aforementioned work/duties had been assigned to only those Account Clerks who were Graduates and who were capable of discharging the said duties and responsibilities. That in view of the work assigned to the graduate Accounts Clerks they were given 3 advance increments. That keeping in view of the background of appointment, in the absence of rules prescribing minimum qualification to the post of Accounts Clerks, nature of job assigned to and carried out by the graduate Accounts Clerks, and to achieve the efficiency in the work vide resolution dated 18/07/1997 No. 11(B) (Annexure R-1) the respondent Nos. 5 to 9 who were graduates and had completed seven years service were promoted to the post of Jr.

Accountants. It is humbly submitted that the weightage given to higher educational qualification has got direct co-relation to the administrative efficiency and the efficiency of the employees of the bank who are responsible to carry out their assigned duties in the age of competition.

- (iv) That in the year 2005 the respondent Bank issued an office order No. SBS/GTK/H.O./37/2005/275 dated 23/08/2005 (Annexure 2 to the writ petition) thereby inadvertently promoting respondent No. 5, 6,7,8 & 9 in the post of Accounts Assistant either named as Junior Accountant along with 22 other employees in the pay scale of Rs.4000-100-6000/- with effect from 08/06/2005. However, having come to know that respondent No. 5, 6, 7, 8 & 9 were already promoted to the post of Junior Accountants (re-designated post as Accounts Assistant) in the year 1997 by the Board of Directors, the respondent No. 3 to correct the anomaly and in all fairness issued office order No. SBS/GTK(HO)/ 41/09/3437 dated 23rd Jan. 2009, (Annexure 3 to the writ petition, thereby promoting the respondent Nos. 5, 6, 7, 8 and 9 to the post of Junior Accountants (Now re-designated as Accounts Assistant) in the scale of 1080-1760 (Revised pay scale 4000-100-6000) w.e.f. 18/07/1997. As the respondent Bank had given promotion to all other Junior Accountant/Cashier who were holding the said post in the year 1999 in the post of Accountant, the respondent No. 5 to 9 were further promotion to the post of Accountant/Head Cashier in the scale of 4500-135-7200 w.e.f. 08.06.2005 vide Office Order No. 318 dated 08.09.2005 to maintain equality with an object not to deprive anyone from inter-se-seniority in the post of Accountant/Head Cashier in the pay scale of Rs.4500-135-7200."

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14. As regards the object behind the issuing of Circular dated 18.02.2009 (Annexure-R 4), it has been averred as follows:

"4. That due to non availability of promotional posts in time, a large number of Junior Accounts Assistants/Junior Cash Assistants were serving in the same post for more than 15 years and to remedy the same the Board of Directors of the respondent Bank passed a resolution in its 150th Board Meeting held on 11.04.2007 to the effect that the future promotion be given purely on merit/performance by conducting departmental competitive examination. The copy of the said resolution is annexed herein and marked as Annexure R-4. The respondent Bank with the intention to provide promotion to those Junior Accounts Assistants/ Junior Cash Assistants having minimum 15 years of continuous service to the posts of Senior Accounts Assistant/ Senior Cash Assistant decided to conduct departmental competitive examination. While giving chance of promotion to the Junior Accounts Assistants/ Junior Cash Assistants as aforesaid the interest of Accounts Assistants/ Cash Assistants was also taken care of and they too with the minimum service of 3 years in the post of Accounts Assistant/ Cash Assistant were made eligible for promotion to the post of Senior Accounts Assistant/ Senior Cash Assistant through departmental competitive examination. Further, to ensure fair play, reasonableness and equal treatment all interested candidates/ participants were given time to submit their willingness on or before 27/02/2009 and Circular (Internal) to that effect bearing reference No. SBS/GTK/ (HO)41/09/3487 dated 08/02/2009, (Annexure-4 to the Writ Petition), was issued."

15. It is stated that all the petitioners had opted to sit for the examination in pursuance of the Circular dated

18.02.2009 (Annexure-4) by submitting their willingness in writing and participated in the entire selection process being fully aware of the criteria laid down in the impugned Circular dated 18.02.2009 (Annexure-4). That the petitioners and others, who are not party to the present writ petition, did not object either orally or in writing against the Circular dated 18.02.2009 (Annexure - 4), but rather choose to abide by it. It is stated that the petitioners after having participated in the entire selection process with full knowledge of the criteria willingly without any demur and having failed to get themselves selected are not now permitted to turn back and allege that the entire selection process was bad. As stated, having participated willingly, the petitioners are now estopped from challenging the selection process as they have waived the right to do so.


16. It is submitted that the petitioners have suppressed the fact that they had willingly opted to sit for the examination and, therefore, are not entitled to the discretionary relief under Article 226 of the Constitution of India.

17. The respondents No. 5 to 9 by filing a joint counter-affidavit have taken the same stand as that of the respondents No. 1, 2 and 3 and, therefore, it need not be dealt with in detail for the sake of brevity.

18. At the hearing Mr. A. Moulik, Senior Advocate, learned counsel appearing for the petitioners, submitted that the Office Order dated 23.01.2009 (Annexure-3) is inherently illegal as it has been issued by an authority having no such power under the State Bank of Sikkim Proclamation, 1968 (in short, 'the Proclamation') under which the Bank has come into existence and which prescribes the powers and jurisdiction of various authorities provided thereunder. Clause 16 of the Proclamation provides for the power and remuneration of the Managing Director that stipulates, inter alia, that subject to the general control of the Board, the Managing Director shall exercise such power and perform such duties as may be entrusted or delegated to him by the Board by regulations or otherwise. It is submitted that the Board of Directors has not entrusted or delegated to the Managing Director the power to issue Office Orders of the kind as Annexure-3 and, therefore, the impugned

Office Order dated 23.01.2009 (Annexure-3) having been passed without any jurisdiction or authority is a nullity, non est and invalid.

19. It is stated that before the impugned Office Order dated 23.01.2009 (Annexure-3) was issued, the petitioners were treated at par with respondents No. 5 to 9, who were governed by a common seniority list and the prescribed qualification to be eligible for entry into Group-C posts was class X passed and, that this requirement has remained without any alteration even in the new regulations framed by the Bank. This fact, as per the learned Counsel, stands established when by Office Order dated 23.08.2005 filed as Annexure-2 to the writ petition, the petitioners and the respondents No. 5 to 9 were promoted together to the post of Accounts Assistants/Cash Assistant with effect from 08.06.2005, but this has been undone by the subsequent Office Order dated 23.01.2009 (Annexure-3) whereby they were given retrospective promotion to that post with effect from 18.07.1997 and as Accountants/Head Cashiers with effect from 08.06.2005, thereby rendering the petitioners junior to them which was impermissible in law as being



arbitrary and violative of Articles 14 and 16 of the Constitution of India.

20. It is urged that the decision taken by the Board of Directors in its 121st Board Meeting held on 18.07.1997 was based on no material to support such decision. It is submitted that although the educational qualification is a proper basis for classification for the purpose or promotion, the validity of such classification has to be judged on the facts and circumstances of each case and there ought to be material to justify such classification and establish a nexus between the classification and the object sought to be achieved by such classification. Reference in this regard was placed upon the decision of ***Food Corporation of India & Others vs. Om Prakash Sharma & Others: (1998) 7 SCC 676.***

21. Even otherwise as per the learned counsel the decision of the Board in 1997 having not been given effect to until 23.01.2009, it is hit by the principle of desuetude, as during the intervening period action contrary to and in conflict with the said decision of the

Board had been taken. In support of that contention the decision of ***Municipal Corporation for City of Pune & another vs. Bharat Forge Co. Ltd. & others: (1995) 3 SCC 434*** was referred to.

22. As per the learned counsel the seniority list Annexure-13 and the promotion of the petitioners and the respondents No. 5 to 9 vide Office Order dated 23.08.2005 (Annexure-2) clearly treating them at par, was contrary to and in clear conflict with the decision taken in the 121st Board Meeting dated 18.07.1997, thereby rendering it non est and otiose. This position can be inferred also from the fact that the respondents No. 5 to 9 raised no objection at all and remained silent when the said Office Order dated 23.08.2005 (Annexure-2) was issued.

23. Referring to the note-sheet pages apparently dealing with the representation of the respondents No. 5 to 9, it was submitted that the note of the General Manager clearly indicates that although the respondents No. 5 to 9 had been representing for promotion in terms of the decision taken in the 121st Board Meeting, the

matter was kept pending for a long time, and, therefore, proposed that they be promoted and their seniority be restored. This, as per the learned counsel was an afterthought and also reflects the fact that the Board was aware of the decision but had chosen not to give effect to it. It is reiterated that the decision taken vide impugned Order dated 23.01.2009 (Annexure -3) was impermissible as by that it had unsettled the settled seniority amongst the petitioners and the respondents No. 5 to 9.

24. Mr. Moulik, learned Counsel for the petitioners submitted that the respondents No. 5 to 9 were aware of their position in the seniority list which is revealed from the representation dated 20.08.2005 filed as Annexure PR-3 (Coll.) to their counter-affidavit.

25. Reverting to the submission on behalf of the petitioners that the impugned Office Order dated 23.01.2009 (Annexure-3) as being issued by the Managing Director unauthorizedly, it was submitted that the ratification of such order of the Managing Director by the Board of Directors in its 155th Board Meeting held on 27.11.2010 was of no effect, as such defect was

incurable in law. In support of this contention, the decision of **Marathwada University vs. Sheshrao Balwant Rao Chavan: (1989) 3 SCC 132** was referred to and relied upon, more particularly paragraph 27, which reads as under:

"27. These principles of ratification, apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified."

26. Thus, it was submitted that since under the proclamation the Managing Director did not have any power to issue such orders apart from the fact that the Managing Director had not been authorized to do so by the Board of Directors under Clause 16 (1) (b) of the Proclamation, the principle of ratification did not have any application and void ab initio being bereft of the power to do so.


27. Learned counsel further urged that the impugned Office Order dated 23.01.2009 (Annexure-3) was also in clear violation of decision of the Board of Directors in its 121st Meeting dated 18.07.1997 at item

No. 11 (B) (L) stipulating that in future, promotion from Class IV employees and above be done through competitive examination and interviews for the reason that the respondents No. 5 to 9 had been promoted without any competitive examination and interview. It was further submitted that the impugned Officer Order dated 23.01.2009 (Annexure -3) deserved to be quashed as being impermissible in law.

28. It was next submitted that the Circular dated 18.02.2009 filed as Annexure-4 to the writ petition was illegal, firstly because it offered unfair advantages to those who were holding the post of Junior Accounts Assistants/Junior Cash Assistants, as those of them who had completed more than 15 years of continuous service could also compete for the post of Senior Accounts Assistants/ Senior Cash Assistants along with their seniors holding the post of Accounts Assistants/Cash Assistance having completed 3 years and more continuous service in that post, in an examination scheduled on 28.02.2009, which actually appears to have been held on 01.03.2009. This tantamounts to jumping the regular channel of promotion, which in law, is not

permissible. Referring to the case of ***Delhi Administration & Others vs. Nand Lal Pant & Another: AIR 1997 SC 3068***, it was submitted that no one is entitled to jump the regular channel. Secondly, the interested candidates were required to submit their option in writing preferring to sit for the examination and lastly the circular was issued by the General Manager, who had no power to do so under the Proclamation.

29. It is further submitted that the impugned Circular dated 18.02.2009 (Annexure 4) which is a modified form of the Circular dated 14.07.2008 (Annexure - 5) had been kept in abeyance by an Office Order dated 25.07.2008 (Annexure - 6) on a representation submitted by the petitioners. That Annexure-4, Annexure-5 and Annexure-6 were issued either by the General Manager or the Chief General Manager, who had no power or jurisdiction to do so under the Proclamation and, therefore, had no force and suffered from the same infirmity as the impugned Officer Order dated 23.01.2009 (Annexure-3).



30. It is further submitted that the petitioners against their will and under protest appeared in the departmental promotion examination held on 01.03.2009 in terms of impugned Circular dated 18.02.2009 (Annexure-4) under compelling circumstances as they were threatened and coerced in doing so.

31. Mr. J.B. Pradhan, learned Additional Advocate General, on the other hand submitted that the various plea raised on behalf of the petitioners stand rendered irrelevant since all the petitioners had without any condition opted to appear in the departmental promotion test in terms of Circular dated 18.02.2009 (Annexure-4) being sought to be impugned in the writ petition and drew the attention of this Court to the copies of the letters submitted by the petitioners and other persons, filed as Annexure R-5 collectively. It is submitted that the petitioners have suppressed this fact and for this reason alone the writ petition ought to be dismissed.

32. It is then submitted that the petitioners having willingly participated in the selection process and after having failed, now cannot turn back and complain that

the entire selection process was illegal. It is pointed out that although the petitioners seek to quash the Office Order dated 23.01.2009 (Annexure-3), no prayer has been made to quash the decision of the Board of Directors in its 121st Meeting dated 18.07.1997. It is further submitted that the resolution of the Board of Directors dated 18.07.1997 was passed in exercise of the powers vested in it under clause 18 and sub clauses thereunder of the Proclamation and, therefore, is valid and binding upon all.

33. That the decision to promote respondents No. 5 to 9 based on their qualification having been taken within its powers by the Board of Directors, the issuance of the impugned Office Order (Annexure-3) was a consequential action taken by the Managing Director of the Board. In any case, the issuance of Office Order in compliance to the resolution dated 18.07.1997 was confirmed and ratified as valid by the Board of Directors in its 155th Meeting held on 27.11.2010. This was permissible under the law as the action taken by the Managing Director was not taken *de novo* by acting on his own, but to give effect to the decision taken by the Board of Directors.

34. It is the submission on behalf of the respondent-Bank that rules had not been framed to regulate the conditions of service of the employees of the Bank governing appointments, promotion, etc., and instead followed the precedents, the resolutions adopted or passed by the Board of Directors from time to time and adopts such modes according to exigencies based on equity, fairness and reasonableness. That the Bank has very recently framed State Bank of Sikkim (Classification, Recruitment and Promotion) Regulations, 2011 and State Bank of Sikkim Regulation, 2011, which have been brought into force with effect from 01.03.2011 and that these Regulations now govern matters relating to recruitments, promotions and other conditions of service of the employees of the State Bank of Sikkim.

35. That the decision to promote the respondents No. 5 to 9 have been taken on a reasonable criteria with the object to achieve efficiency in the functioning of the bank and, because by virtue of their higher educational qualification they had been charged with the intricate works of accountancy and other higher responsibilities, the Board of Directors took a decision in exercise of its

powers conferred by the State Bank of Sikkim Proclamation, 1968 to grant them promotion to the higher post. Such action was permissible under the law and, therefore, the grievance expressed by the petitioners could not be entertained in its merit apart from the fact that the petitioners have waived their rights to do so for the reasons already discussed above.

36. It is further submitted that the respondents-Bank being a commercial organization competing with Nationalised and Non Nationalised Banks has been consistently emphasizing on the efficiency, merit and qualifications of its employees. On account of this, the respondents-Bank has been consistent in its view that promotion should be on the basis of a competitive examination and interview purely based on merit and not on seniority. Having realized its need of having qualified meritorious people as far back in the year 1997 the Board of Directors of the Bank in its 121st Meeting (Annexure R-1) passed two resolutions vide Resolution No. 11 (F) & (L) which are extracted herein below:-

9 " 11(F)... The Board reiterated its earlier decisions on the undermatriculate Jr. Accounts/Cahiers and Accounts Clerks - Asstt. Cashiers that they shall not be given further promotions unless they clear

the minimum qualification of class-X (ten) examination of recognized Boards of education.

(L)... The Board approved the proposal for promotions from Class-IV employees and above to be done through competitive examinations and interviews in future."

37. It is stated that even in the year 2007 the Board in its 150th Meeting vide Agenda No. 17 again reiterated the need for having qualified personnel with higher qualification and also for granting promotion on the basis of competitive examination rather than seniority.

"AGENDA NO. 17: INFUSION OF QUALIFIED MAN-POWER

The Board abeyance the proposal of the management.

The Board advised the management to select the existing graduate employees for imparting intensive training programme for minimum of six months and gauge the outcome of the proposal.

The Board further directed that the system of promotion on seniority should be abolished with immediate effect. All future promotion should be effected by conduct of competitive examination & interviews, i.e. purely based on merit/performance."

38. Thus, it is stated that on account of the above policy and the change in the banking scenario at the national level, the respondents-Bank vide Circular dated 14.07.2008 (Annexure-5) informed all the employees

that it would be conducting a Competitive Departmental Promotion Examination on 27.07.2008. The Circular further provided that all employees who have completed the minimum of 12 years of continuous service as on 30.06.2008 in the post of Jr. Accountants/Cash Assistants shall be eligible to sit in the examination. The Circular also notified that there would be two question papers viz; Question on banking accounts and service rules with total marks of 70 and, 2nd paper on General Knowledge carrying 30 marks. However, as the employees of Bank had by an application dated 24.07.2008 had represented against the Circular dated 14.07.2008 (Annexure-5) the scheduled examination was kept at abeyance vide Office Order dated 25.07.2008 (Annexure-6).

39. In the meanwhile in order to comply with the decision of 121st Board meeting dated 18.07.1997 (Annexure-R1) the respondents-Bank issued the impugned Office Order dated 23.01.2009 (Annexure-3) whereby the respondents no. 5 to 9 were promoted to the post of Jr. Accountants/Cashiers with effect from 18.07.1997 and further in order to undo the justice and to restore inter-se-seniority they were further promoted

to the post of Accountants/Head Cashier with effect from 08.06.2005.

40. That further the respondents-Bank in its 121st Board meeting held on 18.07.1997 had passed a resolution No. 11 (A) & (B) [III] in respect of 'staff matters', which is extracted herein below:-

"11. Staff Matters

(A)

(B) (VIII)... The screened five graduate Accounts Clerks/Asstt. Cashiers drawing the scale of Rs.975-1560 having put in seven years' service are promoted to the posts of Jr. Accountants/Cashiers in the scale of 1080-1760.

The residual vacant posts of Jr. Accountants/Cashiers shall be filled up by the senior eligible Asstt. Cashier/Accounts Clerks."

41. It is submitted that the 121st Board meeting dated 18.07.1997 has not been challenged by the petitioners in the instant writ petition. It is further submitted that impugned office order dated 23.01.2009 (Annexure-3) granting promotions to the respondents No. 5 to 9 is in compliance and pursuant to the said 121st Board meeting which is still valid. It is further submitted that respondent Bank vide its 155th Board meeting held on 27.11.2010 (Annexure R-6) has confirmed/ratified the

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order dated 23.01.2009 implementing the decision of the 121st Board meeting.

42. The representations dated 24.07.2008 with regard to holding departmental promotion examination dated 27.07.2008 vide Office Order dated 25.07.2008 (Annexure-6) having duly considered, the respondents-Bank on 18.02.2009 issued a Circular (Internal) (Annexure-4) whereby the earlier eligibility criteria fixed for promotion to the post of Sr. A.A./Sr. C.A. was revised and all Jr. A.A./Jr. C.A. who had completed more than 15 years of continuous services and A.A./C.A. who had completed three years and more continuous service were made eligible to sit for the departmental promotion test for the post of Sr. A.A./Sr. C.A. The said Circular also gave an option to all the candidates to submit their option in writing through their respective controlling office for the said departmental promotion examination.

43. That pursuant to above Circular (Internal) as many as 54 to 55 A.A./C.A. and Jr. A.A./Jr. C.A. submitted their consent letter (filed collectively as Annexure R-5 to the counter-affidavit on behalf of the

respondents No. 1, 2 and 3) to appear in the said Departmental Promotion Test. The departmental promotion test was accordingly held on 01.03.2009. 18(eighteen) candidates i.e., respondents No. 10 to 27 in the writ petition, who had qualified were promoted to the post of Sr. A.A./ Sr. C.A. vide Office Order dated 04.06.2009 (Annexure-10).

44. It is, therefore, submitted that after appearing in the departmental promotion examination pursuant to Circular (Internal) dated 18.02.2009 (Annexure-4) the petitioners are now estopped from impugning the said Circular (Internal) dated 18.02.2006, as well as, the Office Order dated 04.06.2009 (Annexure-10) whereby 18 (eighteen) successful candidates in the said examination were promoted.

45. The petitioners' failure to challenge the Office Order dated 23.01.2009, at the material time, the respondents No. 5 to 9 having already secured their promotion vide impugned Office Order dated 23.1.2009 (Annexure-3) did not appear in the departmental promotion examination. As such their promotion order

(Annexure-3) cannot now be impugned after the change in circumstances.

46. Mr. K.T. Bhutia, learned Senior Advocate appearing on behalf of the private respondents No. 5 to 20, 22 to 27, while reiterating the submissions made on behalf of the respondents No. 1, 2 and 3 placed by learned Additional Advocate General, submitted that the petitioners seeking to challenge the decision of the board of the year 1997 and the ratification of the actions of the General Manager and the Managing Director in its 155th meeting could not be sustained as the Board of Directors had acted within the powers vested by the Proclamation. It is further submitted that as the petitioners had been promoted to the higher post of Junior Accountants/ Cashiers by the decision of the Board in its 121st meeting held on 18.07.1997 (Annexure-4), which had remained unchallenged by any one let alone the petitioners, the respondents No. 5 to 9 preferred not to sit for the departmental promotion test held on 01.03.2009. It is submitted that the manner in which the petitioners have conducted themselves disentitles them to prefer the present writ petition.

47. Mr. Bhutia went on to submit that the Circular dated 14.07.2008 (Annexure-5) had proved to be a hurdle for the petitioners as they did not fulfill the eligibility criteria laid down therein to sit for the proposed departmental promotion test and, therefore, they having represented against the said Circular, the respondents-Bank kept the operation of that Circular at abeyance by issuing the Office Order dated 25.07.2008 (Annexure-6). This resulted in the respondents-Bank issuing the Circular (Internal) dated 18.02.2009 (Annexure-4), which modified the eligibility criteria prescribed in the earlier Circular dated 14.07.2008 (Annexure-5) and brought within its ambit the Junior Accounts Assistants/Junior Cash Assistants who had completed more than 15 years continuous service in that post and all Accounts Assistants/Cash Assistants having completed 3 years and more of continuous service in that post, for being eligible to compete in the departmental promotion test scheduled on 28.02.2009, which actually appears to have been held on 01.03.2009. It was further stipulated in Circular dated 18.02.2009 (Annexure-4), that all interested

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candidates should submit their option in writing to sit for the examination on or before 27.02.2009.

48. Mr. Bhutia submits that the petitioners had opted to sit for the examination by giving written option and referred to the series of letters filed as Annexure R-5 (Coll.) to the counter-affidavit of the respondents No. 1, 2 and 3. Thus, having opted to appear for the examination willingly it was not permissible for the petitioners to question the entire process of the examination having waived their rights. The decisions in the case of ***Trivedi Himanshu Ghanshyambhai vs. Ahmedabad Municipal Corpn. & Others : (2007) 8 SCC 644; Dhananjay Malik & Others vs. State of Uttarancha & Others: AIR 2008 SC 1913*** and ***Om Prakash Shukla vs. Akhilesh Kumar Shukla & Others: AIR 1986 SC 1043*** were referred to by Mr. Bhutia in support of his contention.

49. It was then submitted that in law, classification based on educational qualification was permissible. In the present case, the object of the classification based upon graduation was to achieve administrative efficiency

and not as a fortuitous circumstance. That the decision was taken by the Board of Directors of the Bank validly in exercise of its powers conferred by the Proclamation of 1968. The case of ***State of Jammu & Kashmir vs. Triloki Nath Khosa & Others*** rendered by the Constitution Bench of Hon'ble Supreme Court reported in ***AIR 1974 SC 1*** and the Constitution Bench judgment of Hon'ble Supreme Court in the case of ***Mohammad Shujat Ali & Others vs. Union of India & Others: AIR 1974 SC 1631*** were referred to in support of this contention. It is, therefore, submitted that the grounds raised by the petitioners to assail the promotion of respondents No. 5 to 9 as a consequence of impugned Office Order dated 23.01.2009 (Annexure-3) are unsustainable in its merits and also on the ground of waiver as a consequence of the willing participation of the petitioners in the departmental promotion examination held on 01.03.2009.

50. In reply Mr. A. Moulik submitted on behalf of the petitioners that the manner in which the respondents No. 5 to 9 were promoted to the post of Accountants/Head Cashiers with effect from 08.06.2005

was in conflict with the decision on agenda No. 11 (B) (G) (L) passed in its 121st Board Meeting held on 18.07.1997 filed as Annexure PR-1 on behalf of the private respondent, wherein the said resolution clearly laid down that all future promotion of the employees in Class-IV and above were to be done through competitive examination and interviews. That it was not permissible for the respondents-Bank to have granted promotion to the respondents No. 5 to 9 in such manner. The Circular dated 18.02.2009 (Annexure-4) seeking willingness of the interested candidates was an attempt to procure documents for future records in order to pre-empt the petitioners from approaching the Courts. This, as per Mr. Moulik, is hit by the Section 28 of the Indian Contract Act, 1872 and, therefore, is void and, that even if the rest of the petitioners are estopped from preferring the present writ petition, the petitioners No. 19 and 34 cannot be deprived of such right as they had neither opted for nor sat for the examination in pursuance of the Circular dated 18.02.2009 (Annexure-4).

51. I have heard the rival contentions placed by the learned counsel for both sides and have given anxious consideration to the matter.

52. The question for determination here is as to whether the resolution passed by the Board of Directors of the respondents-Bank in its 121st meeting held on 18.07.1997 giving promotion to the respondents No. 5 to 9 on the basis of their qualification and the impugned Office Order dated 23.01.2009 (Annexure-3) to the writ petition whereby those respondents were given retrospective promotion to the post of Junior Accounts Assistants/ Junior Cash Assistants with effect from 18.07.1997 and thereafter to the post of Accountants/ Head Cashiers with effect from 08.06.2005 can be sustained in law.

53. It would also be necessary to determine as to whether it is open for the petitioners to bring the present writ petition with the challenge raised therein on account of their own conduct subsequent to the issue of impugned Office Order dated 23.01.2009 (Annexure-3).

54. It is an admitted position that there were no rules in existence governing the conditions of service of the officers and employees of the respondents-Bank. There is also no dispute on the fact that for the purpose of appointments, promotion, etc. the respondents-Bank followed the precedents set in such matters and on the basis of resolutions passed by the Board of Directors from time to time as the exigencies of services would require and that such decisions of the Board of Directors were passed on the principles of equity, fairness and reasonableness. Although in the writ petition it has averred that the Bank had adopted the Government rules, it was not pressed during the arguments and conceded to the above position.

55. The State Bank of Sikkim is created under the State Bank of Sikkim Proclamation, 1968. The Proclamation is a law duly protected under Article 371 F (k) of the Constitution of India and governs the entire gamut of activities of the Bank including the prescription of the authorities and their jurisdiction and powers. In order to appreciate the matter *in lis* it would be necessary

to extract the relevant clauses i.e., clauses No. 8, 16, 19, 36 and 41 of the Proclamation, which are set out below:

“ CHAPTER III
Management

7.

8. (1) The general superintendence and direction of the affairs and business of the Bank shall be vested in the Board which may, subject to the provisions of this proclamation, exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by this proclamation expressly directed or required to be done by the bank in general meeting.
- (2) The Board in discharging its functions shall act on business principals, regard being had to public interest, and development of banking industry, trade and commerce in Sikkim.

9 to 15.

16. (1) The Managing Director
- Power and remuneration of managing director
- (a) shall be a whole-time officer of the Bank and
- (b) subject to the general control of the Board, shall exercise such power and perform such duties as may be entrusted or delegated to him by the Board by regulations or otherwise.
- (2) The managing director shall receive such salary and allowances as may be determined by the Board on the recommendation of the United Commercial Bank Ltd. determine the salary and allowances payable to him.

17.

18. (1) They shall meet at such time and place and shall observe such rules or procedure in regard to the transa-
- Meeting of the Board

ction of business at its meetings as may be prescribed.

- (2) To constitute a quorum at a meeting of the Board, not less than three directors shall be present of whom at least one shall be a person nominated by the Government of Sikkim and one shall be the managing Director or the Director nominated by clause (c) of section 9.
- (3) All questions at the meeting shall be decided by a majority of the votes of the directors present and in the case of equality of votes, the Chairman, or in his absence, the director presiding over the meeting shall have a second or casting vote.
- (4) If for any reason the Chairman is not able to be present at a meeting of the Board, any director, other than the managing director, authorized by the Chairman in writing in this behalf, and in the absence of such authorization any such director elected by the directors present from amongst themselves, shall preside at the meeting.

CHAPTER VII
Miscellaneous

36. Bank may appoint officers and other employees

- (1) The bank may appoint such number of officer, adviser and employees as considers necessary or desirable for the efficient performance of its function, and determine the term and condition of their appointment and service.
- (2) The officers, advisers and employees of the Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Board by regulation or otherwise.

37 to 40

41. Delegation of powers

The Board may, by general or special order, delegate to the chairman, or director or other officer of the Bank,

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subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this act as it may deem necessary."

56. From the above provisions it is quite manifest that while the general superintendence and direction of the affairs and business of the Bank is vested in the Board, the Managing Director has been empowered to exercise such of the powers and perform such duties as may be entrusted or delegated to him by the Board by regulations or otherwise. Clause 18 vests the Board of Directors to decide all questions at the meeting. The power of appointment of officers and other employees has been vested in the Bank by clause 36 and clause 41 provides for delegation of power by the Board of Directors to the Chairman or the Managing Director or other officers of the Bank which of course, is subject to such conditions and limitations as may be specified.

57. It would appear from the above that the parameters of the actions of the Bank are the decisions of the Board of Directors taken in its meetings held from time to time in exercise of its powers under clause 18 of the Proclamation and, therefore, bears statutory

character and binding upon the Bank and its functionary. Such being the nature of the decision of the Board of Directors taken in its 121st meeting held on 18.07.1997 there can be manner of doubt that the decision is valid and unassailable.

58. The impugned Office Order dated 23.01.2009 (Annexure-3) was issued obviously in compliance to the Board's decision dated 18.07.1997, which had remained un-complied. The only contentious issue arising out of the impugned Order dated 23.01.2009 (Annexure-3) is the retrospective promotion given to the respondents No. 5 to 9 with effect from the date of decision of the Board of Directors i.e. 18.07.1997 and the second promotion given to them, which in the first glance gives one an impression that it is a case of double promotion. There appears to be an intervening event when the respondents No. 5 to 9 were given promotion to the post of Junior Accounts Assistants/ Assistant Cahiers vide Office Order dated 23.08.2005 (Annexure-2) along with the petitioners. It appears from the representation dated 20.08.2005 (Annexure PR-3) that these respondents had represented to the respondents-Bank pointing out they


ought to have been promoted in 1997 in terms of the decision of the Board. It also appears that a batch of employees some of whom are the petitioners, had been promoted to the post of Accountants/ Head Cashiers from Junior Accountants/ Cashiers in the year 1999 clearly in disregard to the decision of the Board of Directors dated 18.07.1997. However, there appears to have been a continuous state of deliberation for resolving the issue which ultimately culminated in the issuance of the impugned Office Order dated 23.01.2009 (Annexure-3).

59. Mr. Moulik, learned senior counsel for the petitioners submitted that while the first part of the impugned Order promoting the respondents No. 5 to 9 to the post of Junior Accountants/Cashiers retrospectively with effect from 18.07.1997 could be considered as a valid one as being in pursuance of the decision of the Board of Directors, the second part granting them further promotion to the post of Accountants/Head Cashiers with effect from 08.06.2005 was impermissible as being unauthorized and without jurisdiction as it was beyond the scope of the decision of the Board of Directors. The Managing Director who issued the impugned Office Order

neither had such powers nor has he been delegated with such powers under the Proclamation of 1968.

60. It was submitted by Mr. Moulik that the so called ratification by the Board of Directors in its 155th Meeting held on 27.11.2010 was of no effect and could not validate the Managing Director as the principles of ratification do not have any application with regard to the exercise of powers conferred under the statutory provisions. Mr. Moulik, in support of this proposition, relied upon the decision in **Marathwada University vs. Sheshrao Balwant Rao Chavan** (supra), which we have already alluded to above.

61. On careful consideration of the submissions of the learned Counsel and the facts and circumstances obtaining in present case, I am of the view that the principle laid down in the decision of **Marathwada University** (supra) is not applicable here and is clearly distinguishable. In that case the Executive Council of the University had appointed a four-member committee including the Vice-Chancellor of the University to inquire into a complaint of non-payment of certain bills for the



works performed by the complainant. The four-member committee appointed one person to inquire into the matter who submitted his report to the Executive Council. The Executive Council instead of accepting the report of that person entrusted the question to the Vice-Chancellor, but the Vice-Chancellor proceeded to act in conflict with the purpose for which the report had been entrusted to him and went on to institute a departmental inquiry which on being challenged in a petition under Article 226 of the Constitution before the High Court, it was observed during the proceedings that the entire matter be placed before the Executive Council for taking an appropriate decision. Consequently, the Executive Council in a meeting passed a resolution inter alia, ratifying the action taken by the Vice-Chancellor and confirming the dismissal of the respondent, thereby added a new dimension to the case. The High Court held that the acts done by the Vice-Chancellor remain the acts without any authority or powers and that defect cannot be cured by the subsequent resolution. The matter thereafter having reached the Hon'ble Supreme Court resulted in the ratio that principles of ratification,

apparently do not have any application with regard to exercise of powers conferred under statutory provision. It was further held that such principles would be applicable with regard to transactions of a company where the general body is the repository of all powers, a principle which could not be extended to that case. Ultimately, it was held that there was no prior delegation of power to the Vice-Chancellor to take disciplinary action against the respondent. Pertinent feature of that case relevant for the matter *in lis* before us are two fold. Firstly, in that case the stand of the Executive Council that powers had been delegated to the Vice-Chancellor was negated as the delegation was held invalid as not being in conformity with Sec. 84 of the Marathwada University Act, 1974 which prescribes that Delegation of Power by the University was permissible "subject to the approval of the Chancellor". Secondly, the Executive Council could not have ratified an action of the Vice-Chancellor which was non-est for want of a valid delegation.

62. In the case at hand, the action of the Managing Director in issuing the impugned Officer Order dated

23.01.2009 (Annexure-3) cannot be termed as one where there was no delegation of power to do so. Power of the Managing Director to take action in terms of impugned Office Order dated 23.01.2009 (Annexure-3) can be traced to the decision of the Board of Directors in its 121st meeting dated 18.07.1997 and is consequential thereto. This is one part of the matter. On the other part, it is the stand of the respondents-Bank that the Managing Director of the Bank has been exercising such powers right from the inception and has been accepted as valid by virtue of continuous usage and practice. Clause 41 of the Proclamation providing delegation of powers by the Board has no restriction as that under Sec. 84 of the Marathwada University Act, 1974 requiring approval by a higher authority. Therefore, I do not find any infirmity in the impugned Office Order dated 23.01.2009 (Annexure-3).

63. There is another aspect of this case that requires consideration which distinguishes from the case of **Marathwada University** (supra). Under the Proclamation of 1968, the Bank is a body corporate having perpetual succession and a common seal with the

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right to sue and be sued. This Proclamation is a law framed prior to the merger of Sikkim as a component part of the Union of India. By the Proclamation it intended to incorporate a Banking institution in the name and style of State Bank of Sikkim. The Bank has all the characters of a Company Limited by shares, though it is not a Company incorporated under the Companies Act, 1956, a law which is not in force in Sikkim. From a plain reading of Clause 18 of the Proclamation of 1968, duly extracted above, the repository of all powers with regard to the Bank is clearly the Board of Directors and the powers and functions of the Managing Director is subject to the control of the Board. Considering the peculiar feature of the Proclamation, the ratification of the impugned Officer Order dated 23.01.2009 (Annexure-3) cannot be said to be unauthorized. It would rather appear that by its ratification the Board of Directors has confirmed the action of the Managing Director as a decision taken by it.

64. The next question as regards the validity of the Circular (Internal) dated 18.02.2009 (Annexure-4) is concerned, I am of the view that it is not open for the

petitioners to raise such question after having complied with it by giving written option and after having participated in the departmental promotion test in terms of the impugned Circular dated 18.02.2009 (Annexure-4). Having failed to get selected, it is impermissible for them to turn back and say that the entire process of the departmental promotion test is illegal. The petitioners have undoubtedly waived their rights to do so. We may in this regard refer to the case of ***M/s Motilal Padampat Sugar Mills Co. Ltd. vs. The State of Uttar Pradesh & Others: AIR 1979 SC 621***, where it has been held that waiver means abandonment of a right which may be either express or implied from conduct. The petitioners in the present case have intentionally with their full knowledge abandoned their rights and have on their own free will and volition preferred to sit for the examination.

65. In the case of ***Dhananjay Malik & Others vs. State of Uttaranchal & Others*** (supra), it has been held as follows: -

"8. In *Madan Lal vs. State of J & K* (1995) 3 SCC 486, this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the

Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted....."

(emphasis supplied)

66. We may also refer to the case of **Trivedi Himanshu Ghansyambhai vs. Ahmedabad Municipal Corpn. & Others** (supra) and the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla & Others** (supra) which also propound the same position of law.

67. As already pointed out, the writ petitioners voluntarily opted in writing to participate in the selection process and did so without any demur and, therefore, are now estopped from complaining that the Circular dated 18.02.2009 (Annexure-4) was illegal and that after having failed in getting themselves selected, it is not open for them to question the selection process as not being in accordance with the rules. The petitioners had

the liberty to challenge the impugned Circular at the appropriate time without participating in the selection process but they did not do so.

68. The assertion made on behalf of the petitioners that they had objected to the impugned Circular dated 18.02.2009 (Annexure-4), but had appeared under compelling circumstances, are not supported by any material. In any case, such allegations having been categorically denied by the respondents-Bank in their counter-affidavit, it is difficult for this Court to accept such contention.

69. This leads us to other consequences that flow from the conduct of the petitioners of having willingly participated in the departmental promotion test held on 01.03.2009. The challenge to the Office Order dated 23.01.2009 (Annexure-3) by implication stand abandoned and conceded as, the Circular (Internal) dated 18.02.2009 (Annexure-4) was complied by the petitioners by taking part in the examination held on 01.03.2009. The latter two dates are obviously subsequent to the date of the impugned Office Order


dated 23.01.2009 (Annexure-3). The other aspects, which in my view is more serious is that the petitioners have nowhere in the writ petition disclosed the fact of their having submitted the written options in compliance to the requirement under the impugned Circular dated 18.02.2009 (Annexure-4). They have rather made an effort to give an impression that they had been objecting to that Circular and, in fact have averred in the pleadings that they were forced to sit in the departmental promotion test on being threatened of their careers. This is a clear case of suppression of material fact and an attempt to mislead this Court.

70. In the case of ***Ramjas Foundation & Others vs. Union of India & others: 1993 Supp (2) SCC 20***, it has been held that a person invoking an equitable extraordinary jurisdiction of the Court under Article 226 of the Constitution of India is required to come with clean hands and should not conceal material facts. This is what the petitioners have precisely done in the present case thereby disentitling them from any relief in the present proceedings.

70. It was then submitted that at least the petitioner No. 19 and 34 would have the right to seek the remedies in the present proceedings as they had not opted for the examination in compliance to the impugned Circular dated 18.2.2009 (Annexure-4). It is difficult to accept this contention since we find from the records that the petitioner No. 19 had submitted her written option to sit in the examination by her application dated 24.02.2009, which we find in page 293 of the paper-book. In so far as the petitioner No. 34 is concerned, the writ petition is bereft of any material as to how she is aggrieved except to say that she is one of the persons holding the post of Junior Accounts Assistants/ Junior Cash Assistant and that too in the cause-title of the writ petition. This, in my view, is not sufficient for a petitioner to assert locus standi. In any case, in view of the fact that the petitioners had participated in the departmental promotion test in compliance to the impugned Circular dated 18.02.2009 (Annexure-4) and, the fact that they have suppressed material facts and also attempted to mislead this Court, renders the necessity of dealing with the other issues, which

otherwise appears to be peripheral in nature, would be redundant and irrelevant.

In the result, the writ petition is dismissed. No order as to costs.


Acting Chief Justice
01.09.2011

Index: Yes/No

Internet: Yes/No

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