

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 756 of 1999

J &amp; K Bank Ltd. &amp; Ors.

...Appellant(s)

vs.

Jagdish C. Gupta

...Respondent(s)

(with appln.(s) for permission and with office report)

Date: 12/02/2004 This/These matter(s) was/were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. P H Parekh, Adv.  
Mr. E R Kumar, Adv.For Respondent (s)Mr. M L Varma, Sr. Adv.  
Mr. Ashok Mathur, Adv.UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order. There shall be no order as to costs.

However, it would be open to the respondent to challenge his non-promotion before the appropriate forum if he is so advised and permissible under law.

(D.P. WALIA) (JANKI BHATIA)  
COURT MASTER COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.756 OF 1999

J & K. Bank Ltd. & Ors.?Appellants

Vs.

Jagdish C. Gupta? Respondent

O R D E R

The respondent herein was an employee of the appellant bank. In the year 1976 it appears that the respondent committed alleged some misconducts. For the abovesaid misconducts the appellant bank by order dated 21.8.1978 stopped one increment of the respondent permanently. Again the second and the third misconducts committed by the respondent came into light. For the second misconduct the respondent was punished by withholding one increment for a period of six months. For the third misconduct the appellant bank punished the respondent by order dated 4.10.1983 reducing him to the minimum of the scale of his pay in which he was working before suspension and treated the period of suspension as punishment and whatever the respondent had drawn during the suspension period was treated as his pay for that period. The respondent was also attached to the office of Deputy General Manager, Jammu and it was further directed by order dated 4.10.1983 that he should not be given independent charge for a period of next two years.

It is under such circumstances, the respondent herein filed a suit in the Court of Civil Judge, Jammu for declaration and consequential benefits being Suit No.90 of 1985. The relief sought in the suit were as under:

(i)Order No.636 dated 21.8.1978, whereby the increment of the respondent while working as Manager of the Branch office, Barnoti was stopped for six month with permanent effect and he was ordered to be transferred as second officer to some other branch.

(ii)Order No.8306 dated 4.10.1983, whereby the period of probation of the respondent was reduced to the minimum of the pay-scale and his suspension period from 14.2.1981 was treated as punishment for acts of misconduct committed at branch office, Marheen.

Subsequently, certain further alleged misconduct committed by the respondent came into light ( hereinafter referred to as "the 4th misconduct") with the result that the proceedings were taken against the respondent. Again the respondent filed a suit for permanent prohibitory injunction before the High Court of Jammu & Kashmir for restraining the bank from conducting any enquiry into the 4th misconduct against him. In the meantime, the respondent was again placed on suspension pending issuance of the charge-sheet. However, the suit relating to 4th alleged misconduct filed by the respondent was dismissed. On 25.2.1989, the Civil Judge decreed the suit of the respondent in respect of 2nd and 3rd alleged misconducts. By the decree, the trial Court declared two orders dated 21.8.1978 and 4.10.1983 as null and void. Secondly the bank was as directed to give all the consequential benefits to the respondent as permissible under the Service Rules. Thirdly, the bank was directed to pay costs of Rs.37/- to the respondent. In the meantime certain vacancies to the post of Chief Manager occurred and a Committee was constituted to consider the names of eligible officers for promotion to the post of Chief Manager on the basis of seniority-cum-merit. It appears that the Committee was of the view that since the respondent committed the alleged 4th misconduct, therefore, he was not suitable for being promoted to the post of Chief Manager. The respondent thereafter put the decree dated 25.2.1989 for execution. In that execution petition, the respondent also claimed the relief for being promoted to the post of Chief Manager in the appellant bank. Learned Sub-Judge at Jammu by order dated 12.4.1986 allowed the execution application as prayed for and directed that all the benefits as prayed for by the respondent in the execution petition be given to him withi

n a period of one month from the date of the order and called for the compliance report by 11.5.1996. In the order it was made clear that the benefits would also include promotion to the post of Chief Manager; and the respondent be given incremental relief from Scale I to Scale IV w.e.f. 1.1.1988. Aggrieved, the appellant bank challenged the said order by means of civil revision petition before the High Court. The High Court dismissed the said revision. It is against the said judgment the appellants are in appeal before us.

The short question involved in the case is whether the executing court could go beyond the decree by directing that the respondent be promoted to the post of Chief Manager. It is no more res integra that the executing court has no jurisdiction to go behind the decree. It is not disputed that the decree did not contain any direction to promote the respondent to the post of Chief Manager. Under such circumstances, we are of the view that the executing court as well as the High Court fell in error in issuing directions in execution case that the respondent be promoted to the post of Chief Manager. The order under challenge, therefore, deserves to be set aside. We order accordingly. The appeal is allowed. There shall be no order as to costs.

However, it would be open to the respondent to challenge his non-promotion before the appropriate forum if he is so advised and permissible under law.

????????????CJI  
(V.N. Khare)

????????????J.  
(S.B. Sinha)

????????????J.  
(S.H. Kapadia)  
New Delhi;  
February 12, 2004.