



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 1884 OF 2021**

All India Bank of Maharashtra  
Employees Federation  
(Through its General Secretary,  
Devidas S/o. Ramchandra Tuljapurkar,  
Age: 62 years, Occu.: Retired Employee of  
the Bank of Maharashtra)  
having his Office at C-3, Sector N-1,  
Town Centre, CIDCO, Aurangabad,  
Tal. & Dist. Aurangabad

**... PETITIONER**

**VERSUS**

1. The Bank of Maharashtra  
(A Government of India Undertaking)  
Through its Managing Director,  
Central Office, "Lokmangal",  
1501, Shivaji Nagar, Pune – 411 005

2. The Union of India

**... RESPONDENTS**

....

Mr. U. M. Bodshetty, Advocate for the Petitioner  
Mr. Sudhir Talsania, Senior Advocate a/w Mr. Ajay Deshpande,  
Advocate for Respondent No.1

....

**CORAM : RAVINDRA V. GHUGE AND  
Y. G. KHOBRAGADE, JJ.**

**DATE : 02.08.2024**

**ORAL JUDGMENT (Per – Ravindra V. Ghuge, J.) :-**

1. Rule. Rule made returnable forthwith and heard  
finally by the consent of the parties.

2. The Petitioner before us is a trade union, which is undisputed. The Petitioner has put forth prayer clause (B), as under:-

*“B. By a Writ of Mandamus or any other appropriate writ, order, or directions in the like nature,*

*i) the impugned Sub Clause (d) of the Clause 6 of the Employees Grievances Redressal Policy as approved by the Board of Directors of the Respondent Bank on 22<sup>nd</sup> November, 2019 and as Circulated by the Bank Administration on 30<sup>th</sup> November, 2019 vide letter No.AX1/ST/BM/Cir.93/2019-20, may please be quashed and set aside*

*AND*

*ii) the 1<sup>st</sup> Respondent-Bank may please be directed to delete the impugned Clause (d) of the Clause 6 of the said Employees Grievances Redressal Policy AND*

*(iii) further the 1<sup>st</sup> Respondent Bank may also please be directed to modify the said Policy to allow representation/participation of Office Bearers of the Petitioner-Federation (Recognized Union) who are retired employees of the 1<sup>st</sup> Respondent Bank.”*

3. The Petitioner has challenged clause 6 of the Employees Grievance Redressal Policy of the Respondent bank, approved by its Board of Directors on 22.11.2019 and circulated by vide communication dated 30.11.2019. The challenge is posed more specifically to Sub Clause (d) of Clause 6, which prohibits participation of retired employees of the bank in the meetings of the grievance redressal committee. By Clause 6(d), the bank has

permitted only those elected office bearers of the union who are 'in-service' employees of the bank, to participate in the grievance redressal committee meetings. The Employees' Grievance Redressal Committee is constituted under Clause-viii of Clause-II of the Code of Conduct and Discipline, which is a part of the Memorandum of Settlement signed with the Employees federation, dated 22.10.1988.

### **SUBMISSIONS OF THE PARTIES**

4. The grievance of the Petitioner Employees Federation is limited only to Clause 6(d), by which, though a person is elected as an office bearer of the union in order to participate in the wage revision negotiations or demands negotiations and to represent the union which is the sole bargaining agent in the bank, would not be permitted to participate in the grievance redressal committee's meetings, if he has retired from the service. The Petitioner union is relying upon a judgment delivered by the Calcutta High Court dated 23.12.2022, reported in *MAT 83 of 2019, Writ Petition Appeal No.29480 of 2017 (UCO Bank Vs. All India UCO Bank Officers Federation and Others)*, with *COT No.26 of 2019 (All India UCO Bank Officers Federation and Others Vs. UCO Bank and Others)*.

5. The learned Advocate for the Petitioner points out that the learned Division Bench of the Calcutta High Court has recorded the facts of the case in paragraph numbers 4 to 10, wherein, an identical situation was brought before the Calcutta High Court. The union was aggrieved by the fact that only serving officers/employees of the union were permitted to participate in the meetings/discussions/negotiations with the management. All those who had retired, notwithstanding that they were elected as the union office bearers, were not permitted to participate in the meetings for representing the members of the union.

6. The learned Advocate then points out that the Calcutta High Court held in favour of the union, in paragraph numbers 20 to 36, which read as under:-

*“20. Thus, it is evident from the aforesaid Rules of the respondent no. 1 Federation that in case the ordinary member happens to be an office-bearer of the association, the Central Executive Committee may allow such ordinary member to continue as office-bearers of the Federation even after his retirement from service. Similarly, a life member may also be allowed to continue as office-bearers in the same position as is/was held by them prior to their retirement from Bank’s service till next Triennial Conference.*

*21. In a democratic set up, the members of an association have a right to elect from amongst them the office-bearers of*

*the association upon whom management of the affairs of the Federation shall be entrusted. The members of the Federation are the best persons to decide as to who are competent to manage the affairs of the Federation.*

**22.** *Neither the 1926 Act nor the Constitution of the respondent no. 1 Federation prohibits a retired employee from continuing as well as performing the duties as an office-bearer of the respondent no. 1 Federation. The policy decision of the Bank is inconsistent with the provisions of the 1926 Act and this Court, therefore, holds the same to be an arbitrary one.*

**23.** *The management of the Bank sought to justify their decision of imposing restriction on the ground that only the serving officers shall represent the case of the serving officers in the best possible manner. The restriction imposed by the Bank management in the garb of policy decision, in the considered view of this Court, amounts to infringing upon the right of the members of the Federation to elect their office-bearers. The effect of the policy decision is that the members cannot elect retired persons as office bearers of the Federation though there is no such restriction either in the 1926 Act or the Constitution of the Federation. The selection and/or choice of the office-bearers falls within the exclusive domain of the members of the Federation and management cannot, in the garb of policy decision, infringe upon such right of the members. The members of the association are the best persons to decide who shall represent them in the negotiations with the management of the Bank and such choice cannot be left to the sweet will of the management of the Bank. This Court is, therefore, of the considered view that office-bearers of the Federation who has since retired from service cannot be debarred by the Management of the Bank from participating in the negotiations with the management of the Bank.*

**24.** *The Hon'ble Single Judge after taking note of the undisputed factual position that the respondent no. 1*

*Federation is a registered Majority Organization of Officers and that the respondent no. 2 is a duly elected office-bearer as a life member of it, was right in holding that the Bank in formulating its policy decision is in effect refusing or has refused to negotiate.*

**25.** *The Madras High Court in the case of **L. Balasubhramaniam** (supra) after considering the provisions laid down in the explanation to Section 22(2) of the 1926 Act and taking note of the fact that the bye-laws of the Union do not prohibit office-bearers to continue in such post even after their retirement held that the office-bearers of the Union even after their superannuation are entitled to participate in the negotiations and discussions with the management of the Bank pertaining to employer-employee relationship. The Madras High Court distinguished the judgment in the case of State Bank of India Staff Association (supra) by noting that the rules of the association do not permit any ordinary/honorary member to occupy or continue in any post in the Central Committee. The decision of the Madras High Court supports the view taken by this Court.*

**26.** *The sheet anchor of the Bank is the decision of the Hon'ble Supreme Court in the case of **State Bank of India Staff Association** (supra). In the said reported decision, the Staff Federation followed a policy that none but a serving employee has to represent Federation or Circle Union / Association at all levels in bilateral forums. The appellant no. 2 in the said reported decision was elected as the General Secretary when he was an ordinary member, but after his retirement from service he was not elected as an honorary or a temporary member. On such factual background, the Hon'ble Supreme Court held that the said appellant cannot legitimately claim his continuance as an ordinary Member and General Secretary of the Union after his retirement from service and, therefore, cannot claim a right to negotiate with the management as a representative of the Union.*

*27. The aforesaid decision was subsequently explained by the Hon'ble Supreme Court of India in **Cement Corporation of India** (supra) by observing that in the absence of any provision in the constitution of the Trade Union for automatic cessation of membership as a result of cessation of employment, it cannot be said held that an employee would cease to be a member of the Trade Union upon his retirement.*

*28. In **Chairman, SBI and another vs. All Orissa State Bank Officers' Association and others** reported at (2003) 11 SCC 607, the issue that fell for consideration was whether a non-recognized association has a right to espouse the case of officers of the Bank with the management of the Bank or such right was vested only upon the recognized association. The Hon'ble Supreme Court in its judgment delivered on 06.05.2002 reported at (2002) 5 SCC 669 held that the management cannot outrightly refuse to have any discussion with a non-recognized union in matters relating to service conditions of individual members and other matters incidental thereto. However on a review petition filed against the judgment dated 06.05.2002, the Hon'ble Supreme Court in (2003) 11 SCC 607 allowed the review petition thereby recalling the judgment dated 06.05.2002. The Hon'ble Supreme Court after taking note of the grievance procedure circulars held that the right of representation was not given to the majority union also and, therefore, there was no discrimination. The said decision is distinguishable on facts and, therefore, is not applicable to the case on hand.*

*29. In **UCO Bank Employees' Association & Anr. vs. UCO Bank & Anr.** reported at 2014 SCC OnLine Cal 5074, the decision of the Bank to negotiate at the apex level on policy matter with the majority union was challenged on the ground that the same is unreasonable and against the spirit of the Sastri Award. It was further contended that the object of collective bargaining would be frustrated if the other unions are*

*left out of the discussion. The said decision of the learned Single Judge of this Court is distinguishable on facts and therefore, is of no assistance to the Bank.*

**30.** *In the case of All India SBBJ Employees' Coordination Committee vs. Union of India & Ors reported at 2015 SCC OnLine Rajasthan 11826, the union issued the notice of strike and nominated the elected representatives for discussions/negotiations who were only serving employees of the Bank and pursuant to the said notice of strike, the management of the Bank invited such representatives to participate in the discussions/negotiations before initiation of strike. The learned Single Bench of the Rajasthan High Court by its Order dated November 8, 2015 dismissed the writ petition filed by the union. On an appeal being preferred therefrom, the Division Bench of that Court in DB Civil Special Appeal (Writ) number 1057 of 2015 passed a judgment on 18.11.2015. The Hon'ble Division Bench after taking note of the provisions laid down in Section 3 read with Section 36 of the Industrial Disputes Act, 1947 and considering the purpose for such negotiations held that the provisions of the Industrial Disputes Act and not the Trade Unions Act will prevail.*

**31.** *The decision of the Rajasthan High Court is based on the provisions laid down under the Industrial Disputes Act, 1947. Section 3(1) of the said Act lays down the manner in which the Works Committee in an industrial establishment is to be established. It further provides that the representative of the workmen shall be chosen in the prescribed manner from amongst the workmen engaged in the establishment in consultation with their Trade Union, if any, registered under the 1926 Act.*

**32.** *Section 36 of the 1947 Act provides for representation of the parties. Sub-Section (1) thereof provides how a workman who is a party to the dispute shall be entitled to be represented in any proceeding under the 1947 Act. Sub-Section 2 thereof*



*provides how an employer who is party to a dispute shall be entitled to be represented in a proceeding under the 1947 Act.*

*The issue arising in the Rajasthan decision was with regard to a notice for strike under the provisions of the 1947 Act.*

**33.** *In the case on hand the issue is how an association of officers will be represented in the meetings/ discussions/ negotiations with the management of the Bank. The issue involved in the Rajasthan decision is completely different from the case on hand and therefore, the same do not have any manner of application to the case on hand.*

**34.** *The Hon'ble Single Judge in the judgment and order impugned herein held that in the event the Bank is required to have meetings/ discussions/ negotiations henceforth with the respondent no. 1 Federation, it must allow the respondent no.2 or any duly elected not serving in the Bank office-bearer of the Union to participate in such negotiations/ meetings/ discussions. However, the Hon'ble Single Judge did not allow the prayer of the writ petitioners/respondent no. 1 and 2 herein for quashing the impugned resolution dated November 3rd, 2017 and the letters dated November 3rd , 2017 and November 24th, 2017 for which they have taken out the Cross-Objection being COT no. 26 of 2019.*

**35.** *For all the reasons as aforesaid, this Court holds that the management of the Bank had no authority and/or jurisdiction to impose a restriction in the matter of representation by the office-bearers of the Federation to the effect that only serving officers who are duly elected office-bearers of the Majority Officers' Association shall participate. Such restriction, in the considered view of this Court, is an arbitrary exercise of power by the management of the Bank and, therefore, the policy decision and all consequential action taken pursuant thereto are liable to be set aside and quashed.*

*Such policy decision of the Bank infringes upon the right of the members of the Federation to elect the office-bearers according to their choice. Therefore, this Court is unable to accept the contention of Mr. Choudhury that the writ petition was not maintainable.*

*36. Accordingly, the decision taken in the meeting of the Board of Directors held on 3rd November, 2017 to allow only serving officers who are duly elected office-bearers of the Majority Officers' Association in meetings/ discussions/ negotiations are hereby set aside and cancelled. All consequential steps taken pursuant thereto including the letters dated 3rd November, 2017 and 24th November, 2017 are also set aside and quashed.*

*The Cross-Objection being COT no. 26 of 2019 stands allowed. The Appeal being MAT 23 of 2019 stands dismissed without any order as to cost. Connected applications, if any, also stand disposed of accordingly.*

*Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities."*

7. The learned Senior Advocate Shri Talsania, along with the learned Advocate Shri Deshpande, has strenuously opposed this Petition by contending that the experience of the management in allowing retired employees/elected office bearers to participate in the GRC meetings with the management, is not happy. Earlier, an attempt was made by permitting even retired employees to participate in the meetings.

8. It is further submitted that, a long time ago, the bank had maintained the same policy of prohibiting retired employees from participating in the grievances redressal meetings on the ground that individual grievances have to be discussed at the regional levels and all long term policies had to be discussed at the central level. To simplify the process at the regional level, it was decided to permit only three office bearers working in the region to participate in the industrial relations meetings at the concerned region. Hence, the central office bearers/office bearers working in other regions in the meeting, were restrained from participating in such meetings, with effect from 01.01.2010. This aspect was brought to the notice of the Petitioner by the bank vide the communication dated 21.12.2009. Shri Talsania has further canvassed that the bank, thereafter, consistently maintained the said policy by permitting only representatives who are in service of the bank, to attend such meetings.

9. Mr. Bopshetty, the learned Advocate for the Union points out a communication dated 10.10.2014, by which only those five representatives of the All India Bank of Maharashtra Employees' Federation Majority Award Staff Union, who are in active service of

the bank, were permitted in the zonal level industrial relations meetings. However, the management decided to allow only 'in-service' representatives in such meetings, out of which one representative would be from the bank level federation, one would be the General Secretary or any of the union level office bearer of the union affiliated to the federation and three would be the representatives from within the zone.

10. Shri Bopshetty further points out the circular issued by the bank dated 24.11.2014, by which the policy of the bank was amended and the bank decided to allow even those office bearers of the majority worker union, who have retired, to participate in the I.R. meetings and office zonal office meetings. The General Secretary of the respective unit was given the liberty to decide the five representatives to participate in the zonal level I.R. meetings. However, by the impugned board resolution, dated 22.11.2019 and by the employees grievances redressal policy dated 30.11.2019, Clause 6(d) was introduced for disallowing those elected representatives who are not in service of the bank, from participating in the meetings of the grievance redressal committee.

11. For clarity, it would be apposite to reproduce Clause-6 of the policy, here under:-

**6) GRIEVANCE REDRESSAL MEETING / INDUSTRIAL RELATIONS MEETING WITH AWARD STAFF UNION**

- a) The periodicity is subject to number of issues to be discussed in the meeting and shall be at the discretion of the Zonal Head / Authority concerned.
- b) Meeting shall be held maximum for one day.
- c) Issues arising out of union rivalry shall not be discussed in the meeting.
- d) Meeting can be attended only by the representatives who are in the service of the Bank.**
- e) Zonal Heads shall not allow the number of representatives to exceed the permitted limit for any reason whatsoever.
- f) The issues pertaining to disciplinary matters & Vigilance matters shall not be discussed in the meeting.
- g) The issues pertaining to day-to-day administration/managerial functions shall not be discussed in the meeting.
- h) No policy issues shall be discussed at Zonal Office level with any registered trade union including the majority union i.e. All India Bank of Maharashtra Employees' Federation.
- i) In the Industrial relations meeting, the issues pertaining to business development shall also be discussed. Apart from issues of Industrial grievance the business development shall also be discussed in the meeting.

- j) The broader HR issues / operational issues & issues of common interest of the employees only shall be discussed in the meeting.
- k) Minutes of the meeting shall be signed by both the parties in respect of majority union. The minutes shall contain the issues relating to grievances.
- l) In case of meeting with other registered unions, brief gist of the discussion shall be prepared. The gist shall contain the issues relating to grievances.
- m) Normally it is expected that the employee shall, in the first instance take up his grievance with the Branch / Dept. Head who shall take a decision or refer the matter to Zonal Office. If the grievance is not redressed then the Union representative may take up the grievance at Zonal Office.
- n) No zonal Head / Authority is permitted to grant any benefit over and above the provisions of the Bipartite settlement (BPS) & guidelines issued by IBA/ Govt., or any other provisions or rules of the Bank. In case of any doubt regarding interpretation of any provision / guidelines etc., the Zonal head / Authority concerned shall refer the matter to HRM Dept, H.O. Pune, in writing for guidance / decision. While referring the issues to HRM Dept complete facts should be informed.
- o) Any demand of any union which is not as per provisions of BPS shall not be considered at Zonal Office level and need not be referred to HRM Dept for any reason.
- p) With focus to use technology and to save time, transit and cost, the representatives of federation/ central committee should, as far as possible, attend meetings through video conference facility.

- q) The periodicity, representation, nature of issues in the meeting are detailed herein below.
- r) Representatives attending the meeting are entitled to TA/DA and duty leave as applicable.
- s) The Zonal Office shall provide attendance certificate to participating union representatives subject to above condition.
- t) The TA/DA claims have to be forwarded to Head Office for sanction along with attendance certificate and relevant tickets/documents.
- u) The gist of the meeting should be sent to Head Office within reasonable period.”

### **ANALYSIS AND CONCLUSIONS**

12. We deem it appropriate to refer to a circular dated 17.03.2010, issued by the bank to all the regional heads regarding industrial relations meetings. The number of representatives to be allowed in the meetings to be held at the region level, were prescribed by the bank. The three office bearers/representatives working in the region, were permitted to participate. For the other award, staff unions (minority unions), two office bearers/representatives working in the region, were permitted. The Bank of Maharashtra Organization/majority officers union, was permitted to be represented by three office bearers/representatives,

who were working in the region. For the Bank of Maharashtra Officers Association and other minority officers union, two office bearers/representatives who were working in the region, were permitted.

13. However, by the amendment circulated by the bank to all the branches and officers dated 24.11.2014, even retired employees were permitted to participate in the meetings of the grievance redressal committee. A further circular was issued on 03.03.2015, allowing office bearers of all trade unions, who have retired from the bank, to participate in the I.R. meetings at the Head Office and the Zonal office, on trial basis for six months. It was observed that if there is a positive feedback and there is value addition in the industrial relations, the policy may be continued for allowing retired employees to participate in the said meetings.

14. We find from Clause 6(j) that broader H.R. issues/operational issues and issues of common interest of the employees only, would be discussed in the meeting of the grievance redressal committee. By sub clause (d), only 'in-service' elected office bearers were to be allowed to participate in the said meeting.



15. The learned Senior Advocate Shri Talsania has vehemently canvassed that a temporary deviation was made and the management departed from the earlier policy of restraining retired employees from participating in the meetings, vide the circular dated 24.11.2014. It was purely on experimental basis in order to assess as to whether the meetings could be conducted smoothly or whether there could be any impediment on account of the retired employees having participated in such meetings. It was further canvassed that as local issues and zonal issues with regard to industrial relations and the problems of the workers were to be discussed in such grievance redressal committee, there was no necessity to permit the retired elected office bearers on zonal basis or national basis to participate in such meetings.

16. He has further canvassed that the experience was not found to be encouraging and there was no value addition by the retired employees/representatives, who participated in the industrial resolution meetings. To the contrary, it was found that retired employees had no personal stakes involved and were rather adamant and not flexible in their approach and caused a stalemate on several

occasions. Hence, it was decided to withdraw the decision of allowing retired employees to participate in the meetings of the G.R.C. He relies upon the affidavit in reply as well as the additional affidavit filed by the bank in support of this contention.

17. In *Bajaj Auto Limited Vs. The State of Maharashtra and others*, the learned Single Judge concluded vide order dated 05.04.2011, passed in *Writ Petition No.2596 of 2011*, that those workers who were earlier the employees of the company, can form a union even after losing their employment. The said order was carried before the Appeal Bench in *Letters Patent Appeal No.78 of 2013 (Bajaj Auto Limited Vs. State of Maharashtra and others)*. The Appeal Bench delivered an order on 31.01.2018, concluding that such union of former employees, can be registered.

18. In *All Escorts Employees Union Vs. State of Haryana and others*, the Hon'ble Supreme Court delivered a judgment on 14.09.2017 in Civil Appeal Nos.12843 – 12844 of 2017. It was held in paragraph 22, as under:-

*“22) From the definition of Trade Union contained in Section 2(h) of the Act, it becomes apparent that such a Union is formed primarily for the purpose of regulating the relations between workmen and employers (which is the instant case) or*

*it can be between workmen and workmen or between employers and employers. It includes any federation of two or more Trade Unions also though we are not concerned with it. When we keep in mind the aforesaid objective of formation of a Trade Union, namely, regulating the relations between the workmen and its employer, normally such a Union of workmen would be of those workmen who work in a particular Establishment. This gets further strengthened when we peruse the definition of Trade Dispute contained in Section 2(g) of the Act. The Trade Unions of workmen while regulating their relations between the employers would normally have negotiations representing its workmen before the employer and in case those negotiations do not result in amicable settlement or resolution of disputes, such Trade Unions would raise trade dispute with its employer. Section 6 of the Act mandates a Trade Union to have its Constitution/Bye-Laws/Rules by incorporation of the provisions contained therein i.e. under Section 6. Clause (e) deals with admission of ordinary members and specifically provides that ordinary members should be those persons who are actually engaged or employed in an industry with which the Trade Union is connected. This provision implicitly confines the membership to those who are the workmen of the industry where they are employed.”*

19. Under Chapter II-B - Grievance Redressal Machinery, provided under the Industrial Disputes Act, 1947, Section 9C was introduced by the amendment dated 18.08.2010 with effect from 15.09.2010, which provided for setting up of grievance redressal committee. Clause (1) provided that every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising

out of individual grievances. Sub section (2) provided that the Grievance Redressal Committee would consist of equal number of members from the employer and the workmen. Sub section (3) provided a selection of the Chairman of the Grievance Redressal Committee from amongst the employer and the workmen, alternately on rotation basis every year.

20. For clarity, Section 9C is reproduced as under:-

***“9C. Setting up of Grievance Redressal Machinery.—(1) Every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.***

*(2) The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.*

*(3) The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.*

*(4) The total number of members of the Grievance Redressal Committee shall not exceed more than six:*

*Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the number of members are more than two, the number of women members may be increased proportionately.*

*(5) Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to raise industrial dispute on the same matter under the provisions of this Act.*

*(6) The Grievance Redressal Committee may complete its proceedings within thirty days on receipt of a written application by or on behalf of the aggrieved party.*

*(7) The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose off the same and send a copy of his decision to the workman concerned.*

*(8) Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.]'*

21. It is, thus, clear that there is no embargo even under the Industrial Disputes Act, as regards the representation of the workers by their representatives in the G.R.C. There is no express exclusion of a retired employee or a non employee of the concerned industry from participating in the meetings of the G.R.C. Under Section 22 of the M.R.T.U. & P.U.L.P Act, 1971, the rights of unrecognized unions were prescribed. Under the rules, officers, members of the office staff and members of any union (other than a recognized union), were vested with a right to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension. They were also given the right to appear

on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.

22. It is beyond debate that a trade union is held to be connected with an industry, only on fulfillment of the prescription under the Trade Unions Act, 1926. Section 22 of the Trade Unions Act, describes the proportion of office bearers, to be connected with the industry. The said section reads as under:-

***“22. Proportion of office-bearers to be connected with the industry.—(1) Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unrecognised sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected:***

*Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.*

*Explanation.--For the purposes of this section, "unorganised sector" means any sector which the appropriate Government may, by notification in the Official Gazette, specify.*

*(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.*

*Explanation.--For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.*

*(3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other office-bearer of a registered Trade Union.]”*

23. The explanation below Sub section 2 to Section 22, clearly purports a meaning that an employee who has retired or has been retrenched, shall not be construed as an outsider for the purpose of holding an office in a trade union. With this legal position, a retired employee cannot be treated as an outsider by any employer or in an industry, as long as the union is legally connected to the industry.

24. In the case of *L. Balasubhramaniam and Anr. Vs. Indian Overseas Bank and Ors (Madras High Court Writ Appeal No.2137 of 2013 dated 09.01.2014)*, it was concluded that when a retired employee is not treated as an outsider, he has every right to be elected as an office bearer of a union, even after his superannuation and will have a right to participate in the negotiations and meetings of the trade union with the management, considering the employer-employee relationship between the management and the workmen who are represented by his trade union.

25. In *Bokajar Cement Corporation Employees' Union Vs. Cement Corporation of India Limited, (2004) 1 SCC 142*, the Hon'ble Supreme Court explained the judgment delivered in *State Bank of India Staff Association* (supra) and concluded that unless Trade Unions Act does not prohibit a retired or a former employee, with a provision for an automatic cessation of the union membership of a retired employee, he does not cease to be the member of the union and continuous with his membership.

26. In the *Chairman, State Bank of India and another Vs. All Orissa State Bank Officers Association, (2003)11 SCC 607*, the Hon'ble Supreme Court considered the rights of a non recognized union/association (a registered union/association), vis-a-vis a right to espouse the cause of its members with the management of the bank. It was concluded that the management cannot out-rightly refuse to have any discussion with an elected office bearer of a non recognized union in relation to the service conditions of the individual members represented by it. This is supported by Section 22 of the MRTU & PULP Act, 1971, which gives rights to the elected office bearer to even represent an employee in a domestic or departmental enquiry, which is a personal issue with regard to such an employee.



27. Section 36 of the Industrial Disputes Act, 1947 reads as under:-

**“36. Representation of parties.—***(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—*

*(a) [any member of the executive or office bearer] of a registered trade union of which he is a member;*

*(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;*

*(c) where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.*

*(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—*

*(a) an officer of an association of employers of which he is a member;*

*(b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;*

*(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.*

*(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.*

*(4) In any proceeding [before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the*

*proceedings and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].”*

28. It is, thus, clear that a workman who is a party to a dispute would be entitled to be represented in any proceeding, by (a) any member of the executive or other office bearer of a registered trade union of which he is a member or (b) through any such representative of a federation to which his union is affiliated to or (c) even any workman who may not be a member of any trade union, (d) by any member of the executive or other office bearer of a trade union connected with the industry or (e) by any other workman employed in the industry in which the worker is employed, if authorized in such manner as may be prescribed.

29. In **All India UCO Bank** (supra), the Division Bench of the Calcutta High Court came to a conclusion that the management of the bank had no authority or jurisdiction to impose a restriction in the matter of representation by the office bearer or the federation, in a manner that only a serving officer/employee duly elected as an office bearer of the majority union/association, would be permitted. Such restriction imposed by the bank was held to be unsustainable as an arbitrary exercise of the power by the management. It was also held

that such a restriction would impinged upon the rights of the members of the union or federation. Consequently, the decision taken in the meeting of the board of directors to allow only serving officer bearers could represent the employees, was quashed and set aside. This judgment of the Calcutta High Court was carried in *Special Leave to Appeal (Civil) No.2733 of 2023 (UCO Bank and others Vs. All India UCO Bank Officers Federation and others)*. By order dated 27.03.2023, the SLP was dismissed.

30. We are of the view, in the light of the judicial pronouncements referred to herein above, and in the absence of any provision in the constitution of the Trade Union for automatic cessation of membership of the union as a result of cessation of employment, that an elected member would not be an outsider after being elected to a post which is provided under the constitution of the union. If the law provides representation by an elected office bearer of the union, subject to legal restrictions as may be provided in law, the Employer cannot introduce a restriction so as to create an embargo on the freedom to represent a member, which would certainly be an arbitrary act. If such restriction is unreasonable, irrational, unjustly curbs the freedom of an elected office bearer and

does not stand the test of judicial scrutiny, such restriction deserves to be struck down in judicial review for being arbitrary.

31. In view of the above, **this Writ Petition is allowed.** The decision of the Respondent bank dated 22.11.2019, to the extent of introducing Clause 6(d) in the Employees Grievances Redressal Policy dated 30.11.2019, is quashed and clause 6(d) stands struck down. As such, any further policies or circulars issued by the bank on the basis of the said clause, would be rendered inoperable.

32. Rule is made absolute in the above terms.

33. No order as to costs.

[ Y. G. KHOBRADE, J. ]

[ RAVINDRA V. GHUGE, J. ]

SMS