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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 1st November, 2012*

+ W.P.(C) 4966/2002

M.M.CHANDNANI

..... Petitioner

Through: Mr. A.P. Dhamija and
Mr. J.P. Singh, Advs.

versus

BRANCH MANAGER, STATE BANK OF BIKANER
& JAIPUR & ORS.

..... Respondents

Through: Mr. Anil Kumar Sangel and
Mr. Siddharth Sangel, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner is seeking Mandamus by directing the respondents to grant the benefits of 4th Stagnation increment in terms of Clause 5 of the 7th Bipartite Settlement.
2. Consequently, after granting the notional increase in the pay on the basis of 4th Stagnation Increment, the petitioner would be entitled for the release of difference in payment of pension. Accordingly, the respondents would continue to pay the revised pension to the petitioner.
3. For the convenience, Clause 5 of the 7th Bipartite Settlement is reproduced as under:

“5. Stagnation Increments

- (i) In partial modification of Clause 5 (a) of Bipartite Settlement dated 14th February, 1995, both clerical and subordinate staff shall be eligible for five stagnation increments with effect from 1st November, 1997 at the rates and frequencies, as stated hereunder:-*

The clerical and subordinate staff on reaching the maximum in their respective scales of pay shall draw five stagnation increments at the rate of Rs.380/- and Rs.170/-, each, due under this Settlement, and at frequencies of three years and two years respectively, from the dates of reaching the maximum of their scales as aforesaid.

Provided that a clerical / subordinate staff already in receipt of four stagnation increments shall be eligible for the stagnation increment on 1st November, 1999 or 3/2 years respectively after receiving the 4th Stagnation increment whichever is later. In respect of employees who had received their fourth stagnation increment on or after 1st November, 1996 but before 1st November, 1997, the fifth stagnation increment shall be released on and from 1st November, 1999.

Provided further that an employee who has on or after 1.11.1997 but on or before the date of this Settlement received the 4th Stagnation Increment in terms of the provision of the Sixth Bipartite Settlement dated 14th February, 1995 would have the date of release of this increment notionally

preponed in terms of this Settlement and his Fifth Stagnation Increment released accordingly. There shall however be no payment of any arrears of pay and allowances on account of such preponement.”

4. Mr. A.P.Dhamija, Id. Counsel for the petitioner submits that according to the above Clause 5, employees, who were stagnant at the maximum of the pay scale were entitled to get five stagnation increments instead of four stagnation increments, which were given under the 6th Bipartite Settlement. It was also provided that the 4th Stagnation increment shall be given after a period of 3 years instead of 4 years and similarly, the 5th Stagnation Increment was to be allowed after a period of 3 years.

5. He further submitted that an employee, who has been granted 4th Stagnation Increment under the 6th Bipartite Settlement, on the expiry of period of 4 years, shall be granted 5th Increment after a period of two years by giving the benefits of 1 year, which has already been spent, while getting the 4th Increment under the 6th Bipartite Settlement, after a period of 4 years.

6. It is submitted by the Id. Counsel for the petitioner that the benefit of 4th and 5th Stagnation Increment, after the period of 2 / 3 years, were granted to all the existing employees of the respondent Bank who were in employment, but the petitioner who was not in employment also become entitled to the benefit of 4th Stagnation

Increment w.e.f 01.02.1997, was not given the benefit of said Increment.

7. He further submitted that because of the preponement of the date of Increment under the 7th Bipartite Settlement, 4th Stagnation Increment was to be granted to the petitioner w.e.f 01.02.1997 but the monetary benefit was to be granted only from the date of the Settlement i.e. 27.03.2000, which is a nominal financial benefit to a retired person like the petitioner.

8. Mr. Anil Sangel, Id. Counsel appearing on behalf of the respondents has submitted that admittedly, petitioner was granted 3 Stagnation Increment on the following dates as under:

1. *With effect from 01.02.1988*
2. *With effect from 01.02.1991*
3. *With effect from 01.02.1984*

9. He further submitted that it is also not disputed that the petitioner retired voluntarily on 30.09.1997 and the 7th Bipartite Settlement is of dated 27.03.2000 whereby 5th Increment was to be provided after the interval of 3 years to those who had already got 4th Increment. The purpose of the Clause 5, as relied upon by the petitioner, was only to give 5th Increment to all those who had already got 4th Increment. Therefore, the petitioner cannot be given the benefit of the same as he retired before getting the 4th Increment.

10. Id. Counsel has further submitted that as the petitioner was relieved on 30.09.1997, the relationship of the employer-employee

between the petitioner and respondent bank had come to an end. Even if the petitioner had continued in service, he would have got 4th Stagnation Increment on 01.02.1998 under the 6th Bipartite Settlement dated 14.02.1995, notwithstanding with the aforesaid 7th Bipartite Settlement dated 27.03.2000.

11. It is further submitted that in case the petitioner had continued in service, his case for further Stagnation Increments will have governed by the 2nd Proviso to Clause 5 of the 7th Bipartite Settlement. Same is reproduced for convenience as under:

“Provided further that an employee who has on or after 1.11.1997 but on or before the date of this Settlement received the 4th Stagnation Increment in terms of the provision of the Sixth Bipartite Settlement dated 14th February, 1995 would have the date of release of this increment notionally preponed in terms of this Settlement and his Fifth Stagnation Increment released accordingly. There shall however be no payment of any arrears of pay and allowances on account of such preponement.”

12. Ld. Counsel appearing on behalf of the respondents has submitted that on perusal of the aforesaid Proviso to Clause 5 of the 7th Bipartite Settlement, it is clear that, it only envisages a notional preponement of the date of release of the 5th Stagnation Increment. The said 7th Bipartite Settlement does not at all help the petitioner to get the 4th Stagnation Increment w.e.f the date of said Settlement i.e. 27.03.2000 for the purposes of re-computation of his pension as claimed by him.

13. Ld. Counsel for the respondent has relied upon a case of ***Union of India & Ors. vs. Dr.Vijayapurapu Subbayamma 2000 SCC (L & S) 1012*** wherein it is held as under:

“Applying the aforesaid principles what we find in the present case is that the respondent retired on 13.11.1980 and under the then relevant rules, an employee who has put in less than twenty years of qualifying service was not eligible to earn pension. At that point of time the respondent had put in only twelve years of qualifying service and, therefore, was not entitled to earn the pension on her retirement. The recommendations of the Fourth Pay Commission were enforced with effect from 1.1.1986 whereby the requirement of qualifying service to earn pension was reduced to ten years from twenty years. By the said recommendations a new class of pensioner was created. But the said recommendations of the Pay Commission were not enforced with effect from 13.11.1980 - the date when the respondent retired but with effect from 1.1.1986. Thus, the recommendations of the Fourth Pay Commission not being with retrospective effect, the respondent was not entitled to receive pension under the said recommendations which came into effect from 1.1.1986.”

14. I heard ld. Counsel for the parties.

15. It is emerged from the submissions advanced by ld. Counsel for parties that the purpose of 7th Bipartite Settlement dated 27.03.2000 was to give the 5th Increments to those who have already got the 4th Increment. The case of the petitioner is that he only got the 3rd and before getting the 4th one, he got the voluntary retirement from the

service. The petitioner could not give even a single instance of those who retired with the petitioner and got the benefits prior to 01.11.1997. Therefore, the case of the petitioner does not fall as per Clause 5 of the 7th Bipartite Settlement as relied upon by the petitioner.

16. Moreover, the petitioner has admitted in the instant petition that 5th Stagnation Increment was added in the 7th Bipartite Settlement on 01.11.1997 and the date of release of the increments for those employees who had received the 4th Stagnation Increment after the expiry of 4 years would have been granted w.e.f 01.11.1999 after the expiry of 2 years.

17. Keeping in view the above submission and legal position, I find no merit in the instant petition. Same is accordingly dismissed with no order as to costs.

CM. NO. 8473/2002 (Stay)

In view of the above instant application has become infructuous and disposed of as such.

SURESH KAIT, J

NOVEMBER 01, 2012

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