IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision :17.03.2015

1. CWP No. 2774 of 1995(O&M)

Khazan Singh and others .... Petitioners

versus

Union of India and another .... Respondents

2. CWP No. 3974 of 1995(O&M)

V.K.Khanna and others .... Petitioners

versus

Union of India and others .... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present: Mr. R.K.Malik, Sr. Advocate with
Mr.Kuldeep Sheoran, Advocate for the petitioners.

Mr.G.S.Bajwa, Advocate for respondent No.2.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This order shall dispose of the above said two petitions. Since common questions of law and facts are involved therein, they both are being decided by this common order. For ready reference facts are being taken from CWP No. 2774 of 1995.

This petition has been filed challenging the order whereby the fitment in the 5th stage was revoked and they were ordered to be fitted in the 4th stage. Under the Regional Rural Banks Act, 1976(hereinafter referred to as ' the Act' for short) the Punjab National Bank sponsored respondent No.2. The petitioners were appointed as Field Officers/Accountants on various dates in the year 1977. Till that time there were no established scales of payment or rules regarding service. Section 17 of the Act is to the following effect:-

> "*17. Staff of Regional Rural Banks.—*
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> *(1) A Regional Rural Bank may appoint such number of officers and other employees as it may consider necessary or desirable [19] [in such manner as may be prescribed] for the efficient performance of its functions and may determine the terms and conditions of their appointment and service: Provided that it shall be lawful for a Sponsor Bank, if requested so to do by a Regional Rural Bank sponsored by it, to send, [20] [***] such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions: Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.*
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> *(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, no award, judgment, decree, decision or order of any industrial tribunal, court or other authority, made before the commencement of this Act, shall apply to the terms and*

conditions in relation to the persons appointed by a Regional Rural Bank.
(3) The officers and other employees of a Regional Rural Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Board."

By an order dated 29.04.1980 the Government of India having received representations regarding anomalies made the following provision:-

" *In accordance, therefore, with the second proviso, to sub para (i) of Section 17 of the Regional Rural Banks Act, 1976(21) of 1976 and taking into account the recommendations of the Steering Committee for the Regional Rural Banks in the Reserve Bank of India, the Government has been please to decide as follows:-*

Branch Managers/Field Officers/Accountants

Merger of posts into a cadre of officers and prescription of its pay scales etc.

i) The existing posts of Branch Managers(by whatever name called), Field Officers and Accountants will be merged into a single category of posts to be known as 'Officers'.

ii) With effect from May 1, 1980 the officers will draw pay in the pay scale applicable to Block Development Officer(Ordinary i.e. lower grade), in the concerned state in which the Regional Rural Bank is located."

Subsequent to this on 1.8.1980 respondent No.2 framed service regulations called the Haryana Kshetriya Gramin Bank (Staff) Service Regulations,1980 and, in pursuance to the order of 29.04.1980(supra) defined 'Officers' which included the categories to which the petitioners had been appointed. 11 years later, on 22.02.1991 the Government of India accepted the award of the National Industrial Tribunal dated 30.04.1990 and the recommendations of the Equation Committee dated 16.01.1991 and issued further instructions in terms of proviso (1) of Section 17 of the Act. As per this letter new pay scales were prescribed w.e.f. 1.9.1987 and it was stipulated that those persons who had completed 9 years of service in a particular grade on the appointed date would be fitted into the 5th stage. The petitioners represented that they should be fitted into the 5th stage. However, since at that time the entire position had not been clarified they were asked to give undertakings to the effect that any amount wrongly paid or excess paid will be refundable in one instalment and any payment due but not paid or less paid will be paid for. It is admitted that all the petitioners gave such undertakings. On these undertakings they were fitted into the 5th stage by orders passed in the month of March, 1991. In the month of June, 1991, by Annexure P-5 it was noticed as follows:-

> "*Now it has been transpired that period service of the above officer was considered above 9 years inadvertently due to bona fide mistake. Whereas the completed years of service as Officer/Branch Manager were 7 years on 1.9.1987. Therefore, it has been decided by the competent authority to correct the pay inadvertently fixed vide our above referred letter.*"

By this very letter the pay of the petitioners was reduced and they were fitted in the 4th stage. As per the petitioners they represented and claimed that they had to be considered as officers w.e.f. the date/s of their appointment. However, as per the respondents, after the order of 4.6.1991 the petitioners moved representations and the matter was referred to the sponsor-bank for clarification by letter dated 29.08.1991 and, in the meantime to preserve industrial harmony(and not because of the representations of the petitioners) the original fitment was restored by letter Annexure P-6 dated 23.12.1992. In this letter it was again specified that the fitment had been made subject to clarification and verification by the sponsor-bank/NABARD/Government of India. After receiving the clarification the petitioners and other similarly situated persons were issued show cause notices in which they were informed that the original fitment had been wrongly made by considering them as officers with effect from the date/s of their appointment whereas actually they could have been considered as officers only with effect from 1.5.1980 i.e. when the Government of India issued Annexure R-2/2. On this score the order has been sought to be defended.

Learned senior counsel appearing for the petitioners has argued that once the petitioners were defined as officers in the regularisations they had to be considered as such from the date/s of their appointment. Learned counsel for respondent No.2 has relied upon Anenxure R-2/6 i.e. Miscellaneous Petition No. 326 of 1980, Narayan Parsad Pandey v. Rewa Sidhi Gramin Bank and another decided on 30.06.1982 whereby a Division Bench of the Madhya Pradesh High Court in a judgment authored by B.C.Verma, J.(as his lordship then was) held as follows:-

> *"2. After hearing the learned counsel for the parties,we are of the opinion that the petition is wholly misconceived and must be dismissed. It is clear from Annexure-A that different scales of pay were fixed for different pots for the employees of the Regional Rural Banks only temporarily pending framing of necessary rules. For Branch Manager was prescribed a consolidates scales of pay and for other employees, including the Field Officers, Accountants, Clerks and Junior Clerks, pay scales as admissible to certain officers of the respective states where the Banks are situated, were made admissible. It is evident from Annexure-H that divergent scales of pay and different allowances were admissible to Block Development Officers in different states. This was noticed and the matter was enquired through a committee. This led to the passing of the notification Annexure-H. We are of the opinion that the Central Government has the necessary powers to form a cadre of 'Officers' and prescribe their scales of pay. This power is well spelt out from the second proviso to Section 17(1) of the Act. This proviso reads as under:-*
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> *"Provided further that the remuneration of officers and*

> *other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Governments, and, in determining such remuneration, the Central government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area."*
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> *According to this proviso, the Central Government does have the power to determine the remuneration of the 'Officers' and other employees appointed by the Regional Rural Bank. The provision also contains a guide-line for fixing such remuneration and provides that in so doing, regard shall be have to the salary structure of the employees of the State Govt.and the local authorities of comparable level and status in the notified area. After going through the Annexure-H and its various provisions, we are satisfied that no part of it is beyond the scope of the above provision. What is done through Annexure-H is that one cadre of officer is formed................."*

Learned counsel has further argued that the interpretation being sought to be given by the sponsor bank, the Government of India and Reserve Bank of India to the effect that prior to 1.5.1980 the petitioners could not be treated as officers has been vindicated by this judgment because it is mentioned therein that the cadre of officers was confirmed only by the letter dated 29.04.1980.

To my mind the Division Bench decision(supra) does corroborate the arguments of learned counsel for respondent No.2. The petitioners can claim to have been encadred as officers only w.e.f. 1.5.1980 in terms of the letter dated 29.04.1980 which was issued by the Central Government in exercise of the powers under Section 17(1) of the Act as has been pointed out in the above quoted judgment. Consequently no fault can be found with the action of the respondents in treating the petitioners as having been encadred as officers only w.e.f. 1.5.1980 and, therefore, the fitment in the 4th stage as on 1.9.1987(6 years-9 years service) is legal and valid.

The second grouse made by learned senior counsel for the petitioners is that even if this order is to be effected, no recoveries could have been made from the petitioners. He has relied upon a decision of the Hon'ble Supreme Court in **State of Punjab and others v. Rafiq Masih(White Washer) etc.** reported as 2015(1) Recent Apex Judgments(R.A.J.) 104 wherein it was held as follows:-

> "***2***. *All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons;including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay scales;or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake,employees were in receipt of monetary benefits, beyond their due.*
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> ***3***. *Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents,in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the*

private respondents,were as innocent as their employers, in the wrongful determination of their inflated emoluments.

***6**. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.*

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature,which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore,arbitrary. And accordingly, the interference at the hands of this Court.

***8.** As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be inconsonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the* *effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.*

10. *In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair,more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."*

Learned senior counsel has argued that the case of the petitioners is covered within para 3 above. In my opinion this argument is not correct. Undoubtedly the pay scale was granted to the petitioners only in March, 1991 and it was withdrawn in the year 1995. The mere fact that it was granted for the period 1987-89 would not militate against the fact that excess payment had not been made for a period more than 5 years. This coupled with the fact that at every stage the petitioners were made aware that the higher pay granted to them was subject to correction and the petitioners gave specific undertakings in this behalf would disentitle them from claiming that no recovery should be made from them.

No other point has been urged.

The petitions are dismissed.

(AJAY TEWARI)
JUDGE

March 17, 2015
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