IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1701 of 2015
IN
Civil Writ Jurisdiction Case No. 14896 of 2012

==

1. Triloki Nath S/o Late Baidyanath Prasad, at present posted at Uttar Bihar Gramin Bank, Branch - Runni Saidpur, District - Sitamarhi
2. Awadh Kishore Sharma S/o Late Maheshwar Prasad Sharma, at present posted at Uttar Bihar Gramin Bank, Regional Office, District - Chapra
3. Nitishwar Prasad Shahi S/o Sri Mundrika Prasad Shahi, at present Posted at Uttar Bihar Gramin Bank, Branch - Sahbaajpur II, District - Muzaffarpur
4. Anil Kumar S/o Late Pushipati Nath Tiwari, at present Posted at Uttar Bihar Gramin Bank, Branch Bhagwanpustri, District - Vaishali
5. Sonelal Ram S/o Sri Saryug Ram, at present Posted at Uttar Bihar Gramin Bank, Branch Hakimpur, District - Vaishali
6. Sukhdeo Ram S/o Sri Lakshami Ram, at present Posted at Uttar Bihar Gramin Bank, Branch - Olipur, District - Sitamarhi
7. Ramdas Paswan S/o Late Saryug Paswan, at present Posted at Uttar Bihar Gramin Bank, Branch - Sirsia II, District - Sitamarhi
8. Birendra Singh S/o Late Rameshwar Singh, at present Posted at Uttar Bihar Gramin Bank, Branch - Baligaon, District - Vaishali
9. Ratneshwar Prasad S/o Sri Khublal Ram, at present Posted at Uttar Bihar Gramin Bank, Branch - Dheng, District - Sitamarhi
10. Mahesh Chandra Sinha S/o Late Rajendra Prasad, at present Posted at Uttar Bihar Gramin Bank, Branch - Shahi Minapur, District - Muzaffarpur
11. Vishundeo Ram S/o Late Gunjar Ram, at present Posted at Uttar Bihar Gramin Bank, Branch - Olhabaaz, District - Motihari
12. Chandrakant Dwivedi S/o Sri Srish Chandra Dwivedi at present Posted at Uttar Bihar Gramin Bank, Branch - Alineora, District - Vaishali
13. Surendra Baitha S/o Late Fakira Baitha, at present Posted at Uttar Bihar Gramin Bank, Branch Turki Khararoo, District - Vaishali
14. Bindeshwar Singh S/o Sri Madhusudan Singh, at present Posted at Uttar Bihar Gramin Bank, Branch Prataptand, District - Vaishali
15. Nagina Paswan S/o Late Saryug Paswan vill. - Gobarsahi, P.O. Khabra, District - Muzaffarpur
16. Mithu Ram S/o Late Damri Ram vill. + P.O. Prabhat Nagar, Muslim Tola Bhagwanpur, District - Muzaffarpur

.... Petitioners/ Appellants

Versus

1. The Chairman, Uttar Bihar Gramin Bank, Head office, Kalambagh Chowk, Muzaffarpur, Bihar
2. The Regional Manager, Uttar Bihar Gramin Bank, Head office, Kalambagh Chowk, Muzaffarpur
3. The Chief Manager, Uttar Bihar Gramin Bank, Head office, Kalambagh Chowk, Muzaffarpur
4. The Senior Manager, Uttar Bihar Gramin Bank, Head office, Kalambagh Chowk, Muzaffarpur

.... Respondents/Respondents

==

Appearance :

For Appellants : Mr. Chakrapani & Mr. Ashutosh Kumar, Advocates

For the Respondents : Mr. Prabhakar Jha, Advocate

===

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 11-01-2016

The appellants herein were the petitioners in CWJC No. 14896 of 2012 filed under Article 226 of the Constitution of India, which has been dismissed by a learned single Judge of this Court by order, dated 28.01.2015. The present appeal has been preferred, under Clause 10 of the Letters Patent of the Patna High Court, questioning the legality of the said order, dated 28.01.2015, passed by the learned single Judge.

2. The appellants are the employees of Uttar Bihar Gramin Bank, Vaishali. They approached this Court invoking Article 226 of the Constitution of India seeking the following reliefs :-

> (i) Issuance of an order, direction or writ, in the nature of *Certiorari*, quashing that part of the decision, dated 29.06.2011, whereby the Board of Directors of respondent Bank, in its 28th meeting, have decided to pay arrears of salary to the petitioners and others similarly situated persons

w.e.f. 1.04.2011 instead of 1.12.1989;

(ii) Issuance of an order, direction or writ, in the nature of *mandamus*, commanding the respondents to pay arrears of difference of salary w.e.f. 1.12.1989, i.e., the effective date of promotion.

(iii) Issuance of an order, direction or writ, in the nature of *mandamus*, commanding the respondents to pay interest on the arrears of difference of salary at the Bank rate.

3. As pleaded in the writ application, the appellants were initially appointed as Field Supervisor in the erstwhile Vaishali Kshetriya Gramin Bank and were subsequently promoted, with effect from 1.12.1989, to the post of Officers Junior Management Grade –I.

4. Vaishali Kshetriya Gramin Bank was a Regional Rural Bank, established by the Central Government, under the Regional Rural Banks Act, 1976 (hereinafter referred to as `the Act'), with Punjab National Bank as its *"Sponsor - Bank"*. In course of time, the said Vaishali Kshetriya Gramin Bank and some other Regional Rural Banks were amalgamated under a Central Government decision taken in exercise of power under Section 23A of the Act to form Uttar Bihar Gramin Bank with its headquarters at Muzaffarpur. Section 3 of the Act prescribes for establishment and incorporation of regional rural

bank by the Central Government on a request made by a Sponsor Bank. Sub-section (3) of Section 3 of the Act confers enjoyance of duties on the sponsor bank to aid and assist the regional rural bank, sponsored by it, by subscribing share capital of such regional rural bank, and training of personnel of such regional rural bank etc.

5. It is the case of the appellants that in view of the acceptance of the award of National Industrial Tribunal (NIT) and reports of the Equation Committee to maintain parity in the matter of fixation of salary with the employees holding equivalent posts in the Sponsor Bank, they become entitled for fixation of their pay-scale in the grade at par with that of the Branch Manager/Officers of the sponsored Bank, namely, Central Bank of India. With the implementation of the 5th Bipartite Settlement for the employees of the Sponsor Bank, they also become, in the light of the aforesaid circular, issued by the NABARD, entitled to revision of pay exactly in the manner recommended in the 5th Bipartite Settlement.

6. It appears that scales of these appellants, in the revised scale of Officers Junior Management Grade-I, were earlier fixed, which gave rise to certain anomalies. Certain officers, who were promoted to the rank of Field Supervisor in the years 1981, 1982 and 1985, complained disparity in their pay scales inasmuch as the persons, junior to them, like the

appellants, were given higher pay scales than them with effect from 1.12.1989. They approached this Court seeking a direction for placing them, at least, at par with their juniors in the matter of fixation of their pay. Having noticed the apparent disparity, Vaishali Kshetriya Gramin Bank decided to lower down the pay scales of these appellants by an order, dated 15.03.2002, with retrospective effect. Implementation of the said order, dated 15.03.2002, had the consequence of recovery of amount already paid to the appellants, approximately to the tune of Rs.1.60 lacs on an average, from each of them. Aggrieved by the said decision, the appellants filed a writ application under Article 226 of the Constitution of India before this Court giving rise to CWJC No. 4768 of 2002. The said CWJC No. 4768 of 2002, preferred by the appellants, came to be dismissed by an order, dated 17.02.2003, along with another application, made under Article 226 of the Constitution of India, being CWJC No. 10504 of 2000, by a learned single Judge of this Court. The appellants preferred appeal, under Clause 10 of the Letters Patent Appeal, against the said order, dated 17.02.2003, passed by learned Single Judge, giving rise to LPA No. 207 of 2003.

7. Before we proceed to take note of the developments, which took place after institution of LPA No. 207 of 2003, it would be appropriate to refer to certain facts, as are evident from Supreme Court's decision in the case of ***South***

Malabar Gramin Bank vs. Coordination Committee of South Malabar Gramin Bank Employees Union, reported in ***(2001) 4 SCC 101,*** on the question of maintaining parity in the pay scales of the employees of Regional Rural Bank with the employees of comparable level of their respective Sponsor Banks.

8. Section 17 of the Act provides for appointment of officers and other employees by a regional rural bank for efficient performance of its function and confers upon the bank the power to determine the terms and conditions of their appointment and service. The second proviso to Section 17 of the Act provides that remuneration of officers and other employees, appointed by 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 local authorities of comparable levels and status in the notified areas. It appears that writ applications, under Article 32 of the Constitution of India, were filed before the Supreme Court challenging the validity of Section 17 of the Act claiming that employees of the rural banks are entitled to get same scale of pay as is available to the employees of different nationalized commercial banks. During the pendency of the writ applications, the Government of India had agreed to appoint a

National Industrial Tribunal to decide the question relating to pay, salary and other allowances and benefit payable to the employees of rural regional banks established under the Act. A retired Chief Justice of Andhra Pradesh High Court, Justice S Obul Reddy, came to be appointed by the Central Government as the Chairman of the Tribunal, called National Industrial Tribunal (NIT), for the purpose of referring the dispute to the NIT, as regards pay, salary and other allowances, etc., as noted above, of the employees of the rural banks. The NIT passed an award, after elaborate discussion, to the effect that officers and employees of the regional rural banks would be entitled to claim parity with the officers and other employees of the Sponsor Bank in the matter of pay scale, allowances and other benefits. The Tribunal further directed that the award shall be given effect from 01.09.1987. As regards the equation of posts and consequent fixation of new scales of pay, allowances and other benefits for officers and employees of regional rural banks at par with the officers and other employees of the comparable level in corresponding posts in Sponsor Bank and, their fixation into the new scales of pay, as are applicable to the officers of the bank, the Tribunal observed that it was a matter, which had to be decided by the Central Government in consultation with such authorities as it might consider necessary.

9. As on 01.09.1987, employees of the

nationalized commercial banks were receiving their pay scales on the basis of 5th bipartite settlement and, by virtue of implementation of the award of the NIT, the employees of the regional rural banks were also given the benefit of the said 5th bipartite settlement on the basis of which pay structure of nationalized commercial banks had been determined.

10. Subsequently, litigations started before various High Courts at the instance of the employees of various regional rural banks, when pay structures of the employees of the nationalized commercial banks were further revised in 1992 and 1997 on the basis of 6th and 7th bipartite settlements, as the employees of the regional rural banks were not being extended the benefit of corresponding revision of pay structure. The dispute travelled up to the Supreme Court. In case of ***South Malabar Gramin Bank vs. Coordination Committee of South Malabar Gramin Bank Employees Union*** (supra), the Supreme Court, upon considering the NIT's award and the issue of its implementation, held in paragraph 11 of its decision, as follows:-

> *"….. On the construction of the award of Justice Obul Reddi and the provisions of the second proviso to Section 17(1) of the Act, <u>we have no hesitation to hold that the revision of pay structure of the employees of the regional rural banks could be made, only after the Central Government exercises its power under the</u>*

provisions of the Act and determines the same. If however, the Central Government fails to discharge its obligation as in the case in hand, which would result in gross disparity between the pay scales of the commercial banks and the regional rural banks, then a mandamus could be issued to the Central Government for performance of its duties and the Central Government would be bound to perform its duties, taking into account all germane factors, including the factor of the subsequent pay revision of the employees of the nationalized commercial banks."

(Emphasis mine)

11. A question arose before the Supreme Court, in the case of ***South Malabar Gramin Bank*** (supra), as to whether financial condition of the regional rural banks could be a vital consideration for the Central Government in determining pay structure of the employees of the concerned rural banks. The plea, so raised, was negated by the Supreme Court, in view of the NIT award and subsequent implementation by the banks. The relevant portion of paragraph 12 of the Supreme Court decision, in the case of ***South Malabar Gramin Bank*** (supra), is being extracted hereinbelow:-

" This conclusion of the Tribunal has become final, the award in question not having been assailed and on the other hand having been implemented. In the aforesaid premises, it is a futile attempt on the part of the employer as well as the Union of India to reagitate the dispute, which has already been resolved and has been given effect to. In our considered opinion, therefore, the aforesaid contention o behalf of the appellant cannot be

> *sustained and it would no longer be open, either for the Bank or the Union of India to raise a contention that in determining the wage structure of the employees of the RRBs, the financial condition would be a relevant factor."* (Emphasis mine)

12. It needs to be noticed that the Central Government had taken a stand before the Supreme Court that the employees of the regional rural banks would be granted new scales, with effect from 01.04.2000, in accordance with the scales granted to commercial bank employees of equivalent level. The Supreme Court finally passed the following order as regards maintenance of parity in the matter of pay scale/allowances of the employees of the rural bank *vis-à-vis* the employees of the sponsored banks in the case of ***South Malabar Gramin Bank*** (supra):-

> *"15. In view of the aforesaid conclusions of ours on the different conclusions raised and in view of the fact that the Union of India in its interlocutory application had already indicated that the employees of the RRBs will be granted the new scales w.e.f. 1.4.2000 in line with scales granted to commercial bank employees of equivalent level, we direct that the same determination be a determination under the second proviso to sub-section (1) of Section 17 of the RRB Act and as such the salary of the employees of the Regional Rural Bank w.e.f. 1.4.2000 be determined accordingly.*
>
> *16. We also further direct that for maintaining the parity between the employees of the commercial banks and the employees of the Regional Rural Banks, the said Union Government shall decide the question as to what would be the salary of the employees of the RRBs subsequent to the 6th bipartite settlement having been given effect to, in case of employees of the commercial banks and with effect from what date and the benefit flowing*

> *from such decision be given to the RRB employees. The decision in question shall be taken within a period of six months from today.*
>
> *17. Hereafter, as and when the pay structure of the employees of the nationalized commercial banks gets revised on the basis of any bipartite settlement, the Union Government should take a decision so far as the employees of the regional rural banks are concerned, within a reasonable time and bearing in mind the conclusions we have already arrived at, so that the so-called parity could be maintained."*

13. Subsequent to the Supreme Court's decision in the case of ***South Malabar Gramin Bank*** (supra), the Government of India came out with a notification, on 11.04.2001, to the following effect:-

> *"(i) The new basic pay of each RRB employee as on 1.4.2000 would be determined by notionally granting the benefit of 6^{th} and 7^{th} bipartite settlements and officers' wage revision w.e.f. 1.11.1992 and 1.11.1997 respectively. The formula for fitment of salary in various scales may also remain the same as was adopted for commercial bank employees. Thus as on 1.4.2000, the pay scales of the RRB employees would become equal to that of their counterparts in commercial banks.*
>
> *(ii) The current payment of increase in the salary due to grant of new pay scales shall be made in such a manner that the case outflow in a particular year on this account is not more than 50% of the operating profit of RRB concerned as per the previous year's published balance sheet. RRBs which have incurred operating losses in the previous year would not be able to make current payment of increased portion of the revised salary and the amount due on account of increase in salary shall be transferred to the arrear account. Similarly, if anticipated cash outflow on account of the increase in the salary is exceeding 50% of the operating profit in the last year, the current payment may be restricted only to 50% of the operating profit and the rest shall be transferred to*

the arrear account, which is to be treated in the manner stated hereunder.

(iii) There shall be a two-year moratorium on the payment of arrears i.e. up to 31.3.2002 and during this period no arrear shall be payable by any RRB. After the moratorium period, the arrears may be paid in such a manner that the cash outflow on that account and the increase in wages during the current year on account of implementation of this package do not exceed 50% of the operating profit of the respective RRB for the immediate previous year. Arrears would mean increase in salary i.e. basic pay, DA and CCA due to the RRB employees by notionally granting them wage revision w.e.f. 1.11.1992 and 1.11.1997 on a par with the commercial bank employees and residual amount, if any, arising out of clause (ii) above.

(iv) The house rent allowance (HRA) and city compensatory allowance (CCA) would be payable at the same rate as applicable to comparable employees in the sponsor banks and would be given prospective effect i.e. date of issue of these orders as is done in commercial banks.

(v) As far as other allowances are concerned, individual sponsor banks shall negotiate the same with the respective RRBs. The revised allowances shall be paid w.e.f. 1.4.2000. The ceiling on the payment shall, however, be as per the formula stated in clause (iii) above.

The RRBs may issue a comprehensive order based on the above orders indicating the revised pay scales in respect of each category of employees after getting approval of their Board of Directors.

The principles for current payment and payment of arrears spelt out in these orders should be strictly adhered to."

14. Alleging that the said notification was in breach of the direction, issued by the Supreme Court, All India Regional Rural Bank Officers Federation and others filed a contempt application before the Supreme Court. The Supreme

Court disposed of the contempt application in the following terms as would be evident from paragraph 4 of the decision in the case of ***All India Regional Bank Officers Federation vs. Govt. of India***, reported in ***(2002) 3 SCC 554,*** the relevant portion of which reads thus:-

> *"… While, therefore, we do not propose to take any action against the alleged contemnors, we direct that the employees of the Regional Rural Banks should be paid their current salaries on the basis of determination made under the notification dated 11.4.2001, the new basic pay having been arrived at, as on 1.4.2000 forthwith. Paragraph (i) of the aforesaid notification dated 11.4.2001 should be immediately implemented and the employees should be paid accordingly. Paragraphs (ii) and (iii) of the notification are quashed and the Central Government is directed to issue a fresh notification for proper implementation of the judgment of this Court. We make it clear that the period of moratorium with regard to the payment of arrears, since is going to be over on 31.3.2002, the arrear salary accruing to the employees be paid to them in three equal annual instalments, the first being on 30.4.2002, the second on 30.4.2003 and the third on 30.4.2004. This payment has to be made as aforesaid without being in any way dependent upon any other considerations and there cannot be any distinction between the Regional Rural Bank incurring loss and the Regional Rural Banks, making profit. Further, the question of anticipated cash outflow on account of increase in salary if exceeds 50% of the operating profit, then the current payment would be restricted only up to 50%, is absolutely of no relevance, which was indicated in the impugned notification dated 11.4.2001. Having regard to the financial condition of the Government as well as these Banks, the instalment to be paid on 30.4.2002, pursuant to this order of ours, the same may be deposited in the employees' provident fund account. But all other instalments will have to be paid in cash."*

15. Coming back to the dispute at hand, as has already been noted above, aggrieved by the said judgment and order, dated 17.02.2003, passed by the learned single Judge in CWJC No. 4768 of 2002, the appellants had preferred an appeal,l under Clause 10 of the Letters Patent of the Patna High Court, giving rise to LPA No. 207 of 2003. An appeal was also preferred by the writ petitioners of CWJC No. 10504 of 2000, which gave rise to LPA No. 227 of 2003. During the pendency of the said LPA No. 207 of 2003, the Vaishali Kshetriya Gramin Bank got amalgamated with Uttar Bihar Gramin Bank with its head office at Muzaffarpur. The Division Bench of this Court, while deciding LPA No. 227 of 2003 along with LPA No. 207 of 2003, did not interfere with the decision of the Bank in lowering down their pay scale to bring them at par with the officers senior to them. The Division Bench, however, accepted the contention of the appellants that no recovery could be made from their salary. Pursuant to implementation of the NIT award, the Board of Directors of the Bank, in its 28th meeting held, during the pendency of the Letters Patent Appeals, on 29.06.2011, considered the issue of removal of anomaly in fixation of pay scale of the officers of the Bank promoted to the rank of Field Supervisor/OJM –I (Officers Grade-I) from the post of Clerk-cum-Cashier. The Board of Directors, considering the pitiable financial condition of the Bank and the fact that the Bank had

been running in loss for last several years, decided to give notional benefit of the implementation of NIT award with effect from 1.12.1989 and, at the same time, decided to make actual payment of arrears with effect from 1.04.2011. From the judgment and order, dated 19.09.2011, passed in LPA No. 207 of 2003 and LPA No. 227 of 2003, it appears that the decision of the Board of Directors of the Bank that arrears of salary would be payable to such employees of the bank, with effect from 1.04.2011, as contained in its resolution, dated 29.06.2011, was brought on record by the Bank. The Division Bench did not go into the question of legality or otherwise of the said resolution, dated 29.06.2011, whereby it was decided to pay arrears of salary with effect from 1.04.2011, but disposed of the appeals with an observation as follows:-

> *"We accept the argument advanced by learned counsel appearing on behalf of the appellants that they are entitled for refund of recovery which was effected in 36 equal installments. Accordingly, we are of the opinion that a direction may be issued to the Bank to refund the recovered amount preferably within 20 equal installments from the date of receipt of a copy of this order. With regard to the latest communication which was appended by way of show cause filed on behalf of respondent-Bank, stating that, the arrears of the salary would be payable to them w.e.f. 01.04.2011, we are not inclined to go into the merits of that Resolution dated 29.06.2011 annexed by the Bank with the show cause. If any of the parties are still aggrieved they can agitate their rights before the appropriate forum."*

16. It was in the above background that the

appellants preferred the said CWJC No. 14896 of 2012 seeking quashing of the decision of the Board of Directors of the respondent-Bank, dated 29.06.2011, in its 28th meeting, whereby it was decided to pay arrears of salary with effect from 01.04.2011, instead of 01.12.1989. According to the appellants, they are entitled to the benefits of the award of National Industrial Tribunal, with effect from the date of their respective promotions, to the rank of Officers in Grade-I. It is their plea that paucity of funds cannot be a basis to deny the legitimate claims of the employees.

17. The writ petition came to be dismissed by the learned single Judge by order, dated 28.01.2015, in the light of another decision of a learned single Judge of this Court, dated 02.07.2014, passed in CWJC No. 3040 of 2014.

18. Mr. Chakrapani, learned counsel appearing on behalf of the appellants, has submitted that the appellants are entitled to the pay scale on the promoted posts with effect from the date of promotion and not from any other date as has been decided by the respondent-Bank. He has submitted that anomalies arose, because the respondent-Bank had wrongly fixed the pay of the appellants. He has also submitted that policy decision of the Bank, dated 29.06.2011, of giving arrears of salary to the appellants, with effect from 01.04.2011, instead of 01.12.1989, is invalid, being violative of Articles 14 and 16 of

the Constitution of India.

19. Mr. Prabhakar Jha, learned counsel appearing on behalf of the Bank, per contra, submits that there is absolutely no illegality in the decision of the Bank to give notional benefit of implementation of NIT award with effect from 01.12.1989 and actual benefits with effect from 01.04.2011. He has submitted that the decision of the Bank to give notional benefit, with effect from 01.12.1989, has been taken keeping in mind the poor financial condition, which the Bank had been facing since long. He has further submitted that the appellants have no legally enforceable right to claim particular scale with effect from 01.12.1989. He has placed heavy reliance on a judgment and order of this Court passed by a learned single Judge in CWJC No. 3040 of 2014 (Anirudh Kumar Yadav & Ors. Vs. The Union of India & Ors.), wherein a learned single Judge, in exactly similar circumstance, refused to interfere with the decision to grant higher pay scale notionally from retrospective effect and actual monetary benefit from a subsequent date.

20. After having heard learned counsel for the parties and having perused the material on record, we find that the claim of the appellants that they were entitled to particular pay scale, with effect from 01.12.1989, was raised by them in CWJC NO. 4768 of 2002. According to them, they were fitted in the pay scale after coming into force of NIT's award and they

were also given the benefit of revision of pay scale in terms of the direction issued by the NABARD. Such fixation, in favour of the appellants, had resulted into anomaly inasmuch as the persons, senior to the appellants, were given lower pay scale. Such employees of the Bank, who had grievance that the persons junior to them have been given higher pay scale, had approached this Court by filing writ application giving rise to CWJC No. 10727 of 1993. This Court, by order, dated 15.02.2000, passed in CWJC No. 10727 of 1993, disposed of the said writ application with a direction to the authorities to pay the writ petitioners the same higher pay scale, which the junior officers of the same category were being paid. For ready reference, we are extracting hereinbelow the relevant portion of the order, dated 15.02.2000, which reads thus:-

> "It is well known that in the matter relating to grant of scale, persons junior should not get higher scale to that of seniors. In this regard a bare reference to the guidelines issued by the NABARD dated 20.3.1993, a copy of which is Annexure 3 to the writ application, would show that specific direction was issued by the Government of India in paragraph 4(VIII) of the circular dated 27.2.1991 that while fixing the pay structure etc, it should be ensured that no senior draw a lesser pay scale that the junior. Similar was the view taken by this court in the above mentioned case, while dealing with the anomalies in the pay scale of the Officers of Nalanda Gramin Bank. It was held that in case a senior officer gets lower scale to the junior of the same grade, it will certainly be against equitable principles of Articles 14 and 16 of the Constitution of India.
>
> xx xx xx xx
>
> Therefore, having regard to the view expressed

> above there cannot be any dispute that because of such unreasonable attitude of the respondents there has been unequal treatment in the matter relating to grant of pay scale to those officers who were, in fact, senior to those who are getting the higher scale."

21. In the light of the said order of this Court, dated 15.02.2000, the erstwhile Vaishali Kshetriya Gramin Bank came out with a circular/communication revising the fitment chart and refixing the salary of such junior officers, who were fitted in higher pay scale than their seniors. Refixation had the effect of lowering down the pay scale of such officers of the Bank, who were given higher pay scale, like the appellants, and recovery of excess payment so made as a consequence thereof. The appellants challenged the decision of the Bank to lower down their pay scale by way of refixation by filing CWJC No. 4768 of 2002. They took specific plea before this Court that since they were fitted in the scales as per NIT's award and the circular/direction, issued by the Government of India, through NABARD, the scales could not have been revised lowering down their pay scale. The stand, which they so took before the writ court in CWJC No. 4768 of 2002, is evident from the order, dated 17.02.2003, passed in the said case by this Court, which has been brought on record by way of Annexure 1 to the writ application. Relevant portion of the said order, dated 17.02.2003, which discloses the stand, which the appellants had

earlier taken, is being extracted hereinbelow:-

> *" Dr. S N Jha, learned senior counsel appearing on behalf of the petitioners in CWJC No. 10504 of 2000 and Mr. Jayanandan Singh, learned counsel appearing on behalf of the petitioners in CWJC No. 4768 of 2002 submitted that since the petitioners were fitted in scales as per the NIT award and the circulars/directions issued by the Government of India through NABARD, the same could not have been revised lowering down their scale. Learned counsel further submitted that the authorities have issued the circulars and the directions most unreasonably and in violation of principles of natural justice inasmuch as that no opportunity of being heard was given to them before passing of the orders/circulars impugned."*

22. As has been noted above, the writ application came to be dismissed by order, dated 17.02.2003, as the Court refused to interfere with the decision of the Bank on refixation of salary and revision in fitment chart. The appellants had, thereafter, preferred appeal under Clause 10 of the Letters Patent of this Court, which was disposed of by judgment and order, dated 19.09.2011. The Division Bench, too, did not interfere with the decision of the Bank refixing the pay scale of the appellants. The Division Bench, however, restrained the Bank from making any recovery on the principle that their being no case of misrepresentation or fraud on the part of the appellants, the recovery of excess payment could not be made. The dispute, which is being raised in the present proceedings, was the dispute before the learned single Judge in CWJC No. 4768 of 2002 too and subsequent appeal therefrom in LPA No.

207 of 2003. The sole basis on which the appellants seek to challenge the decision of the Bank is an observation made by a Division Bench of this Court, in LPA No. 207 of 2003, that if any of the parties were still aggrieved, they could agitate their rights before an appropriate forum.

23. We have carefully perused the decision taken by the Board of Directors of Uttar Bihar Gramin Bank, in its 20th meeting held on 26.06.2011, which was the subject matter of challenge before the learned Single Judge in CWJC No. 14896 of 2011. The decision of the Board of Directors reads thus:-

> **"दिनांक 29.06.2011 को सम्पन्न बैंक के निदेशक मंडल की 20वीं बैठक में लिये गये निर्णय।**
>
> **कार्यसूची सं0 439**
>
> **एन0आई0टी0 अवार्ड के लागू होने के पश्चात लिपिक सह कोषापाल (वर्तमान में कार्यालय सहायक) से एफ0एस0/ओ0जे0एम0–1 (वर्तमान में अधिकारी संवर्ग–1) में प्रोन्नत अधिकारियों के वेतनमान निर्धारण में विसंगति के संबंध में।**
>
> अध्यक्ष महोदय द्वारा विस्तृत रूप में विषयवस्तु से सदस्यों को अवगत कराया गया। तदुपरान्त, प्रोन्नति के कारण उत्पन्न वेतन विसंगति के
>
> सभी पहलुओं पर विस्तृत विचार विमर्श के बाद मंडल ने यह सुझाव दिया कि प्रस्तावित 73 कर्मचारियों का वेतनमान retrospective date से तय की जाए। चूंकि बैंक विगत कई वर्षों से हानि में चलता आ रहा था जो मार्च 2011 में नोमिनल राशि से लाभ में आया और चुंकि यह बैंक बिहार राज्य के विकास विशेषकर ग्रामीण क्षेत्रों के उत्थान के लिए सतत् प्रयासरत रहा है तथा इस हेतु संकल्पित है अतः मंडल द्वारा यह निर्णय लिया गया कि उनके बकाये का भुगतान 01.04.2011 से किया जाए। इस आशय से सम्बन्धित जानकारी तथा बैंक का पक्ष माननीय उच्च न्यायालय, पटना को आवश्यक दिशानिर्देश हेतु प्रस्तुत की जाए।
>
> उपरोक्तनुसार आपको निर्देश दिया जाता है कि निदेशक मंडल की बैठक दिनांक 29.06.2011 में लिए गये निर्णयानुसार कार्य करे एवं एक सप्ताह के अन्दर अधोहस्ताक्षरी को कृत कारवाई से अवगत करावें।"

24. The English translation of the above Hindi version of the decision reads as follows:-

> **"Decision taken in 20th meeting of the Board of Directors of Bank held on 29.06.2011.**
>
> **<u>Agenda No. 439</u>**
>
> Regarding anomaly in pay fixation of officers promoted from Clerk cum Cashier (presently Office Assistant) to F.S./O.J.M. -1 (presently Officer Grade- I).
>
> The Chairman apprised all the members of the subject matter in detail. Consequently, after detailed discussion on all the aspects of pay anomaly arising out of promotion, the Board advised that the pay scale of proposed 73 employees may be fixed with retrospective date. Since the Bank had been running in loss for the last several years which gained profit by nominal amount in March 2011 and since this Bank has been continuously making effort for the progress of Bihar State, particularly its rural areas and is determined for it, hence the Board decided that payment of their arrear may be made with effect from 01.04.2011. The concerned information to this effect and view of the Bank may be submitted before the Hon'ble High Court, Patna for necessary guidelines.
>
> As mentioned above, you are directed to take action as per the decision taken in the meeting of the Board of Directors on 29.06.2011 and apprised the undersigned within a week of the action taken."

25. From a bare reading of the impugned decision of the Board of Directors, dated 29.06.2011, it appears that the Bank intends to extend the benefit of NIT's award to the appellants with effect from 01.04.2011, on the ground of financial constraints. From the materials on record and the order under appeal as well as the earlier order passed by the Division Bench in LPA No. 207 of 2003, we find that the decisions of the Supreme Court, in the case of ***South Malabar***

Gramin Bank (supra) and in the case of ***All India Regional Rural Bank Officers Federation & Others*** (supra), have not been taken into account. In the case of South Malabar Gramin Bank (supra), the Supreme Court had specifically directed that the employees of the regional rural banks would be granted new scales with effect from 01.04.2000 in line with the scales granted to the commercial bank employees of the equivalent level. While holding that the decision of the Union of India to this effect be treated to be a determination under the second proviso of sub-section (1) of Section 17 of the Act, the Supreme Court directed that the salary of the employees of the regional rural banks shall be determined accordingly with effect from 01.04.2000. The Supreme Court further directed that as and when pay structure of the employees of the nationalized commercial banks is revised on the basis of bipartite settlement, the Union Government should take a decision within a reasonable period of time, so far as the employees of the regional rural banks are concerned, so that the parity and pay structures could be maintained. As has been noted above, the Supreme Court held in more specific terms that it would be no longer open either to the bank or to the Union of India to raise a contention that in determining the wage structure of the employees of the regional rural bank, the financial condition would be a relevant factor.

26. Upon perusal of the impugned decision of the Board of Directors of the Regional Rural Banks, we find that the Board has utterly failed to take into account the observations made in, and directions given by, the Supreme Court in the case of ***South Malabar Gramin Bank*** (supra) and in the case of ***All India Regional Rural Bank Officers Federation and Others*** (supra).

27. In view of the discussions held above, the impugned decision, dated 29.06.2011, of the Board of Directors cannot be sustained and is accordingly set aside.

28. The order passed by the learned Single Judge under appeal, thus, cannot be sustained and is accordingly set aside.

29. This appeal is accordingly allowed with a direction to the respondent, Uttar Bihar Gramin Bank, Muzaffarpur, to take a decision afresh, strictly in terms with the decision of the Supreme Court in the case of ***South Malabar Gramin Bank*** (supra) and in the case of ***All India Regional Rural Bank Officers Federation and Others*** (supra), within a period of one month from today. The Bank shall, hereafter, be required to undertake an exercise of fitting/refixing of the pay scales of the appellants and calculating the arrears arising out of refixation of pay scale. Arrears, if any, are found to be payable to these appellants, the Bank shall ensure that the

same are paid within a period of two months thereafter.

30. In the result, this appeal is allowed.

31. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

I A Ansari, ACJ:- I agree.

(I A Ansari, ACJ.)

AFR/
Mrl

U			