



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

W.A. (MD) .No.404 of 2014

1.Indian Bank,
rep. by its Chief Manager (HRM),
H.O.66, Rajaji Salai,
Chennai - 600 001.

2.The Assistant General Manager,
(HRM Section),
Circle Office,
Indian Bank,
100-101, East Avani Moola street,
Madurai.

3.The Chief Manager,
Indian Bank,
Karaikudi Branch,
Karaikudi.

... Appellants/Respondents

Vs.

R.M.Venkatachalam

.. Respondent /Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act against the order dated 24.08.2011 made in W.P.(MD).No.6348 of 2007 on the file of this Court.

Prayer in WP(MD). 6348/ 2007 :

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certioraried Mandamus calling for the records relating to the impugned order of the 2nd respondent bearing Ref:MCO:HRM dated 23/06/2007 and quash the same in so far as it directs re-fixing of petitioners salary retrospectively and consequently direct the respondents from in any manner effecting recovery from petitioners salary consequent upon such re-fixation of salary

For Appellants

: Mr.Pala Ramasamy

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondent

: Mr.K.M.Ramesh

**JUDGMENT**

[Judgment of the Court was made by
The Hon'ble The Chief Justice]

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The respondent, while working as a Clerk in Royapettah Branch, Chennai, of the appellants bank was placed under suspension and charge memo for misconduct was issued on 28.05.2010 which resulted in the punishment of only "warning". The respondent is stated to have regretted his misbehavior and prayed for mercy agreeing that the period spent on suspension be treated as suspension period.

2. The respondent was allowed normal annual increment during the period of suspension and as per the Indian Bank Association Circular, dated 13.06.1992, in this behalf, the employee is entitled to such annual increment, if no mention, in this behalf, has been made.

3. The respondent was given the last stage annual increment on 15.07.1996, but the second stagnation increment, which is said to have been due to the respondent on 15.07.2002, was not granted. On his representation, the appellants informed him on 06.12.2005 that the respondent was not entitled to increment during the period of suspension and that his salary was required to be refixed retrospectively, with the effect from 1989 and excess payment recovered. Suffice to say that there was some proceedings *inter se* and the respondent got a chance to make a representation, in pursuance to a show cause notice dated 15.06.2007, but the same resulted in an adverse order. This order was assailed in Writ Petition (MD).No.6348 of 2007, which has been allowed by the impugned order, dated 24.08.2011.

4. Learned Single Judge opined that an employee is entitled to annual increment as a right which can only be withheld by a specific order, while in the present case, there is absence of such a specific order. There was no orders stopping increment by way of punishment. Any other interpretation, it was observed, would amount to defeating the very object of imposition of a minor punishment of only "warning".

5. Learned counsel for the appellant refers us to the disciplinary action procedure of the appellant Bank and the issue of suspension was dealt with as under:

"Pending or initiation of such enquiry, an employee may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the



period of suspension; and if some punishment other than dismissal is inflicted, the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages allowance, etc.”

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6.It is the submission of the learned counsel for the appellants that the issue is one of discretion of the management.

7.We are unable to accept the aforesaid plea in the facts of the case, for the reason that the discretion, if any, was exercised in favour of the respondent at the time when the punishment of warning was imposed and thus, the respondent cannot be denied the benefit of the increment during the period of suspension and the amounts recovered after years. In fact, the learned Single Judge has rightly interpreted this issue in paragraph No.20 of the impugned order by observing that the circular has to be read to lay down that during the period of suspension, delinquent may not be entitled to increments, but after the final order is passed and an employee is exonerated or given a minor punishment, he would be entitled to annual increment.

8. We, thus, find no fault in the impugned order. Accordingly, Writ Appeal is dismissed leaving the parties to bear their own costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

gcg/gb

+1cc to Mr.Pala Ramasamy, Advocate Sr.No. **58429**

+1cc to Mr.K.M.Ramesh, Advocate Sr.No. **58362**

JAM/20.10.16/EM-MPA /3p-3c

JUDGMENT MADE IN
W.A. (MD) .No.404 of 2014
04.10.2016