

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2016

Pronounced on : 10.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No. 14147 OF 2011

K.V.Raman ... Petitioner
(P-1 substituted as per order dated 10.11.2016
in W.M.P.27905/2016 in W.P.14147 of 2011)

vs.

1. Central Government Industrial Tribunal
cum Labour Court
Rep. by its Presiding Officer,
1st Floor, 'B' Wing
No.26, Haddows Road,
Shastri Bhavan,
Chennai 600 006.

2. The Deputy General Manager,
Canara Bank, HRM Section,
Circle Office,
No.563/1, Anna Salai, Teynampet,
Chennai 600 018.

3. The General Manager,
Personnel Wing,
Canara Bank Head Office,
112, J.C.Road,
Bangalore 560 001.

सत्यमेव जयते ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF CERTIORARIIFIED MANDAMUS after calling for the concerned records from the 1st respondent, quash the award passed by the 1st Respondent Tribunal dated 24.01.2011 in I.D.No.10 of 2010 as illegal, arbitrary and contrary to law and consequently direct the 2nd respondent Bank to release the stagnation increment to K.V.Raman, being the concerned workman in the dispute, along with the arrears of wages from the date the same is entitled under the IV Bipartite Settlement along with 18% per annum.

For Petitioner : Mr.R.Vijayanarayanan,
Senior counsel for Mrs.V.J.Latha
For Respondents : Mr.T.R.Sathiyamohan for R2.
R1 - Tribunal
R3 - No Appearance

ORDER

The petitioner joined the services of the respondent Bank as a Stenographer in the year 1977 and worked till 1982. Thereafter, he was redesignated as a Clerk and posted to the Divisional Office, Erode in the year 1983. Subsequently, after passing promotion examinations, he was posted as an Officer in which position, he worked till the year 1987. He was subsequently promoted as an officer on 01.11.1983. Due to unforeseen domestic development, the petitioner could not continue as an Officer and on his request, he was reverted back to the post of Clerk on 07.02.1987. On 08.09.1983, a memorandum of settlement (IV Bipartite Settlement) was entered into between the Managements of certain Banks and their workmen with regard to wage revisions and changes in other service conditions. The respondent Bank was also a party to the said settlement. Under the terms of the said settlement dated 08.09.1983, a provision for grant of stagnation increment was introduced. As per the above settlement, whenever an employee, who after being offered and/or selected for promotion refuses to accept such promotion, he would not be entitled for the stagnation increment. Since the petitioner accepted his promotion and worked in the said position for about three years and subsequently, reverted to the position of a Clerk, he would be entitled for the stagnation increment. As per the terms of the memorandum of settlement dated 08.09.1983, the respondent Bank had initially extended the benefit of stagnation increment to the petitioner. However, in view of the subsequent VI Bipartite settlement dated 14.02.1995, the stagnation increment offered to the petitioner was withdrawn. The issue was raised by way of an Industrial Dispute before the Assistant Commissioner of Labour and the conciliation ended in a failure. The Government of India by reference dated 23.02.2010, referred the dispute for adjudication before the first respondent Tribunal and the terms of the reference was as to whether the action of the management of the respondent Bank in denying stagnation increment to the petitioner was legally unjustified. By an award dated 24.01.2011, passed in I.D.No.10 of 2010, the first respondent/Tribunal had dismissed the Industrial Dispute. Challenging the same, the petitioner is before this Court.

2.Heard Mr.Vijayanarayanan, learned Senior counsel appearing for the petitioner and Mr.T.R.Sathiyamohan, learned counsel appearing for the second respondent.

3. According to the learned Senior Counsel for the petitioner, when the IV Bipartite settlement was arrived on 08.09.1993, the petitioner was entitled for stagnation increment, as per the terms of the settlement, since he had not refused promotion, but on the other hand, he had accepted the same and worked in the position for more than three years. The respondent Bank had also initially accepted the case of the petitioner and granted stagnation increment. However, the first respondent/Tribunal, by relying on the VI Bipartite settlement dated 14.02.1995 had refused to extend the benefit to the petitioner, which is erroneous.

4. Mr. T.R. Sathiyamohan, learned counsel appearing for the second respondent on the other hand, submitted that the object of stagnation increment is only for persons, who are really stagnated. According to him, when an employee, who is offered promotion chooses to opt out, he would not be entitled for the increment. In other words, he submitted that acceptance of promotion and subsequent reversion would amount to refusal of promotion. Therefore, relying on the clause in the VI Bipartite settlement, dated 14.02.1995, the learned Standing Counsel submitted that the petitioner will not be eligible for stagnation increment, when he is reverted after three years from the date of promotion.

5. Before dealing with the submissions made by the respective counsel, it would be appropriate to look into the relevant terms of the both IV Bipartite settlement dated 08.09.1983 as well as VI Bipartite settlement dated 14.02.1995, which reads as follows.

Terms of settlement -IV Bipartite Settlement

"1. Stagnation increments:

(i) For every five completed five years of service after reaching the maximum in the scale of pay, members of the clerical and subordinate staff will be granted stagnation increments subject to a maximum of two increments each equivalent to the last increment in the respective scales of pay. The period of stagnation for this purpose will be reckoned from the date of reaching the maximum of the scale of pay. In case of an employee who is eligible for stagnation increments, the first such increment will be granted effective from the date on which it falls due or from 1st January 1980, whichever is later, but the next increment will accrue to him on completion of five years of service as from the date, the first stagnation increment falls due but not earlier than 1st January

1981.

ii) The grant of the stagnation increments would be subject to the following conditions:

(a) Stagnation increments would rank for superannuation benefits I.e provident fund and gratuity and wherever applicable pension, and only in the case of subordinate staff for dearness allowance. In the case of all workmen, stagnation increments would rank for H.R.A, C.C.A and other allowances.

(b) Stagnation increments would not be given to an employee who at any time after the commencement of this settlement after being offered and/or selected for promotion refuses to accept such promotion."

Clause 5 of the VI Bipartite Settlement reads as follows:
"5. Stagnation Increments

In substitution of clause 4B of Bipartite settlement dated 10th April, 1989, both clerical and subordinate staff shall be eligible for four stagnation increments at the rates and frequencies, as stated hereunder, and subject to the terms and conditions enumerated below:-

a) The clerical and the subordinate staff on reaching the maximum in their respective scales of pay shall draw three stagnation increments at the rate of Rs.230/- and Rs.100/- 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 and the fourth stagnation increment of Rs.230/- or Rs.100/- as the case may be, four years after earning third stagnation increment.

b) A workman already in receipt of three stagnation increments, shall be eligible for the fourth and the last stagnation increment on 1st November, 1994 or four years after receiving the third stagnation increment, whichever comes later.

c) In supersession of Clause 1 (ii) (b) of bipartite Settlement dated 8th September, 1983 read with 'Note' to clause 4B of Bipartite

Settlement dated 10th April 1989,

(i)Refusal to accept promotion at any stage or reversion within a year of promotion, wherever permissible under Bank's rules will not dis-entitle an employee from getting stagnation increments.

(ii)An employee shall not be eligible for stagnation increment/s if he, after accepting promotion, seeks, and is granted, reversion after one year from the date of promotion."

Some of the relevant dates pertinent in this case are as follows:

* The petitioner joined the respondent Bank as a stenographer on 05.05.1977.

* In the year 1983, he was redesignated as a Clerk.

* On 01.11.1983, he was promoted to the Officer category.

* On 07.02.1987, he was reverted back to the post of Clerk.

* In the year 1991, he had reached his maximum scale of pay.

* During the period of promotion and his reversion, the IV Bipartite settlement dated 08.09.1983 was in force.

6.As per terms of the IV Bipartite settlement, the petitioner was entitled for stagnation increment, since he had qualified for the same by completing five years of service, after reaching the maximum scale of pay. Further, the petitioner had not refused his promotion, but rather accepted it on 01.11.1983. But, after having worked for more than three years, he had opted to be reverted to the post of Clerk in the year 1987 on personal grounds. As such, as per the terms of the IV Bipartite settlement, dated 08.09.1983, the petitioner is deemed to be qualified for grant of stagnation increment.

7.In terms of the VI Bipartite settlement, dated 14.02.1995, which is extracted above, a new clause was introduced superceding the IV Bipartite settlement dated 08.09.1983, whereby refusal to accept promotion at any stage within one year promotion will not disentitle an employee from getting stagnation increment and that an employee, after accepting his promotion, seeks for reversion after one year from the date of promotion will be disentitled for stagnation increment. Relying on this clause of the VI Bipartite settlement, the tribunal had come to the conclusion that the petitioner is not entitled to stagnation increment.

8.It is not in dispute that the petitioner was earlier offered the benefit of stagnation increment under the IV

Bipartite settlement. It is only in view of the subsequent introduction of clause 5 sub clause (c) (ii) that stagnation increment was withdrawn. The VI Bipartite settlement came into force on 14.02.1995. In my view, the insertion of clause 5 (c) (ii) will come into effect prospectively. As a matter of fact, the benefit under the earlier IV Bipartite settlement was already extended to the petitioner. Such a benefit which was already extended cannot be withdrawn by adding a new clause in the subsequent VI Bipartite settlement. Hence, it can only be construed that the introduction of the new clause 5(c)(ii) came into effect from the date of the VI Bipartite settlement dated 14.02.1995. As such, the benefit, which was already extended to the petitioner under the IV Bipartite settlement dated 08.09.1983 will not disqualify the petitioner to avail the benefit of stagnation increment. The VI Bipartite settlement dated 14.02.1995 can only have a prospective effect for such of those employees who had refused to accept the promotion within one year and to such employees who had accepted the promotion and sought for a reversion after one year from the date of promotion. The petitioner having been already granted the benefit of IV Bipartite settlement cannot be deprived of such a benefit in the absence of any like clause in the IV Bipartite settlement. The petitioner was promoted on 01.11.1983 for the post of Officer and on his request, he was reverted on 07.02.1987, during which period, the IV Bipartite settlement was in force. He having reached the maximum scale of pay in the year 1981, would be entitled for the benefit of stagnation increment. As such the reasoning of the first respondent/tribunal in refusing to extend the benefit of stagnation increment to the petitioner is erroneous.

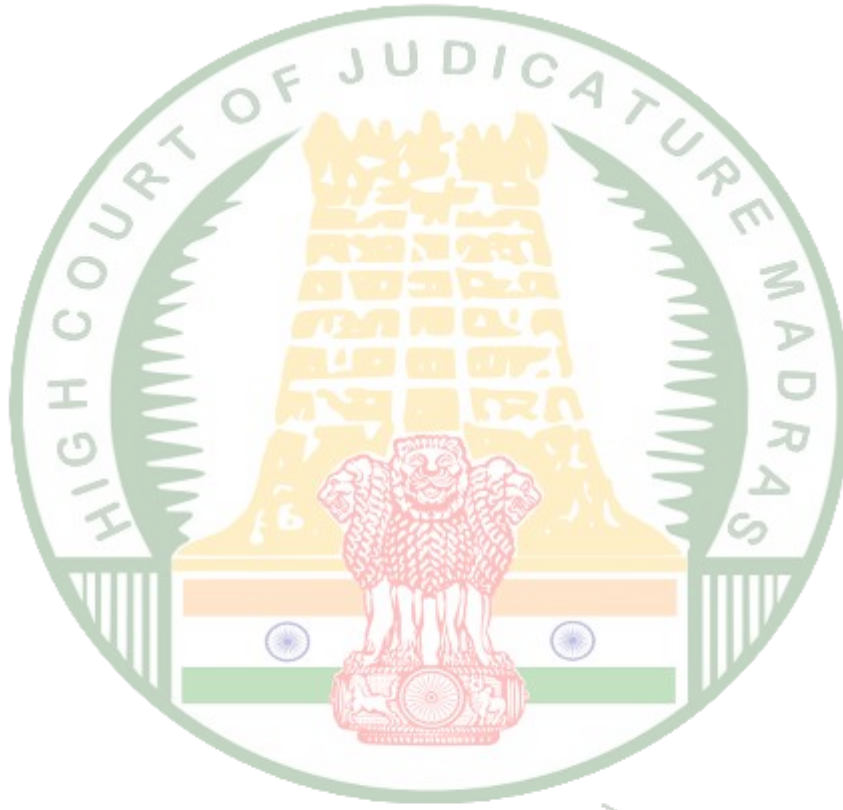
9. Under the said circumstances, the award passed by the first respondent Tribunal dated 24.01.2011 in I.D.No.10 of 2010 is quashed. Consequently, the second respondent Bank is directed to release the stagnation increment to the petitioner along with the entire arrears.

10. With the above observation, the writ petition stands allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



सत्यमेव जयते

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To

1. The Presiding Officer,
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cum Labour Court,
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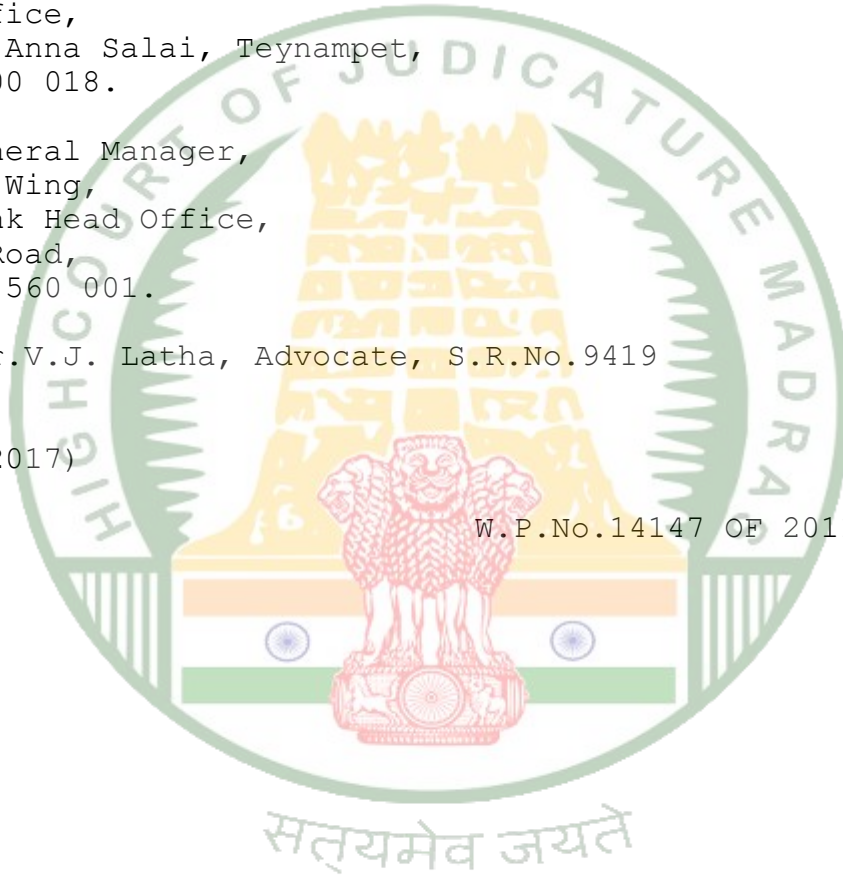
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3. The General Manager,
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112, J.C.Road,
Bangalore 560 001.

+lcc to Mr.V.J. Latha, Advocate, S.R.No.9419

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