

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-12-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20474 of 2013

V.Janakiraman

..Petitioner

-vs-

1.IDBI Bank Ltd.,
IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai-400 005.

2.The Chairman and Managing Director,
IDBI Bank Ltd.,
IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai-400 005.

3.The Chief General Manager,
Human Resources Department,
IDBI Bank Ltd.,
IDBI Tower,
WTC Complex,
Cuffe Parade,
Mumbai-400 005.

4.The Union of India Represented by
the Secretary to the Government,
Ministry of Finance,
Department of Financial Services,
Banking Division,
Jeevan Deep Building,
No.10, Parliament Street,
New Delhi.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to adopt the uniform formula in respect of D.A., stagnation increments and leave encashment applicable to the Banking Industry/RBI, accordingly refix the pay and pension of the petitioner and pay the arrears.

For Petitioner - Mr.R.Yashodvardhan,
Senior Counsel for Mr.M.Muthupandian.

For Respondents 1to3- Mr.N.V.Srinivasan and Mr.Varun
Srinivasan for M/s.N.V.S and
Associates.

For Respondent-4 - No Appearance

ORDER

The relief sought for in this writ petition is for a direction to direct the respondents to adopt the uniform formula in respect of D.A., stagnation increments and leave encashment applicable to the Banking Industry/RBI and accordingly, re-fix the pay and pension of the writ petitioner and pay the arrears.

2. The learned Senior Counsel, appearing on behalf of the writ petitioner, raised a concern with regard to the restriction of service protection provided by the respondents at the time of merger of the IDBI as IDBI Bank Limited. The Industrial Development Bank (Transfer of Undertaking and Repeal Act) 2003 was enacted on 30th December 2003. Clause 5 of the said Act denotes the provisions in respect of Officers and other employees of the Development Bank and the said Clause 5(1) reads as under:-

"(1) Every officer or other employee of the Development Bank (except a director of the Board or the chairman and managing director or any whole-time director) serving in the employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in the Company by virtue of this Act, become, as from the appointed day, an officer or, as the case may be, other employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Development Bank if its undertaking had not vested in the Company and shall continue to do

so as an officer or, as the case may be, other employee of the Company or until the expiry of a period of six months from the appointed day, if such officer or other employee opts not to continue to be the officer or other employee of the Company within such period."

3. The learned Senior Counsel, appearing on behalf of the writ petitioner, is of the opinion that the rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Development Bank if its undertaking had not vested in the Company and shall continue to do so as an Officer or, as the case may be, other employee of the Company or until the expiry of the period of six months from the appointed day.

4. The learned Senior Counsel took an exception in this regard and urged this Court by stating that the service protection granted for six months is unsustainable in law. The principle in this regard is that, at the time of merger, the employees are entitled for service protection, including pay protection. Such a protection cannot be restricted to six months alone and the same is to be continued even after six months. In view of the restriction of service protection for six months, the writ petitioner is deprived of his monetary benefits, including D.A., stagnation increments and leave encashment as applicable. Thus, the relief sought for in this writ petition deserves to be granted.

5. The learned counsel, appearing on behalf of the respondents 1 to 3, vehemently opposed the contention raised on behalf of the writ petitioner by stating that the writ petitioner was an Officer of IDBI Bank in the cadre of Assistant General Manager and he was very well aware of all these provisions and the protection granted in this regard by the IDBI Bank Limited at the time of merger.

6. Further, the learned counsel for the respondents 1 to 3, contended that at the time of merger, as contemplated under the said Act, the pay protection was extended to all the employees and the pay granted originally by the erstwhile IDBI was continued without any alteration and there was no monetary loss

or otherwise to the employees who were transferred on account of the merger. Further, the learned counsel for the respondents 1 to 3, brought to the notice of this Court that there was a pay revision during the year 2009 and the revised pay scale was fixed, taking into account the pre-revised scale of pay and other allowances and perquisites.

7. Such being the revision of pay granted, there cannot be any grievances in respect of D.A., stagnation increments and leave encashment etc. The revision of pay was granted taking into account the existing pre-revised scale of pay and the same had not been disputed by the writ petitioner at the time of sanctioning the revised scale of pay.

8. The learned counsel for the respondents 1 to 3 is of the opinion that the present writ petition was filed after the writ petitioner attained the age of superannuation and therefore, the same deserves to be rejected. The learned counsel for the respondents 1 to 3 states that, at no point of time, the employees were deprived of their existing remuneration and it was raised consistently in accordance with the rules and at the time of implementing the revision of scale of pay in the year 2009, the pre-revised scale of the respective employees were taken note of. Thus, the grievances sought to be redressed in this writ petition are imaginary and no such grievances were brought to the notice of the respondents 1 to 3 during the relevant point of time and even as per the respondents 1 to 3, such grievances are untenable.

9. Considering the arguments and the counter arguments as advanced by the learned Senior Counsel for the writ petitioner as well as the learned counsel appearing on behalf of the respondents 1 to 3, this Court is of the opinion that the writ petitioner has not approached this Court in time. The Industrial Development Bank (Transfer of Undertaking and Repeal Act) 2003 was implemented in the year 2003 itself. The merger of the Bank as well as the transfer of the employees were taken place at that point of time. The writ petitioner was granted the pay as admissible even after his transfer from IDBI to IDBI Bank Limited.

10. The writ petitioner, without raising any objection, had received the salary till the year 2009, when the revision of scale of pay has been adopted. Thus, as per the writ petitioner, the revision of scale of pay has been implemented in the year 2009 and he continued to receive the same till his retirement. At no point of time, the writ petitioner has raised any objection in respect of Clause 5(1) of the Industrial

Development Bank (Transfer of Undertaking and Repeal Act) 2003. Further, the said provision has not been challenged during the relevant point of time. Even in this writ petition, the said provision has not been challenged. However, the learned Senior Counsel, appearing on behalf of the writ petitioner, referred the said clause and contended that the said clause is unconstitutional.

11. This Court is not inclined to consider the same in view of the fact that the said clause has not been challenged even in the present writ petition on hand. Secondly, the writ petitioner was a responsible Officer of the respondent-Bank, worked in the cadre of Assistant General Manager, cannot plead that he was not aware of the service conditions of the employees under the said Act. Thus, he would have approached this Court in time, if at all any grievance in respect of revision of pay. The writ petitioner had received the revised pay from the year 2009 onwards. However, the writ petition is filed only on 23.7.2013. Thus there is an enormous delay in filing the writ petition and the same is to be dismissed on the ground of laches also.

12. This Court is of the opinion that an employee, who has slept over his right, cannot wake up one fine morning and knock the doors of the Court, to redress his grievances. More-so, the writ petitioner was a responsible Officer, worked in the cadre of Assistant General Manager, cannot plead that, he is ignorant of the provisions of the Act and the Rules and the implementation of the revision of scales of pay. Thus, this Court has to draw an inference in this regard that the writ petitioner has not addressed his grievances during the appropriate period before the appropriate Forum.

13. All of a sudden, after the retirement, the writ petitioner has got this noble idea of challenging the revision of pay on the ground of clause 5(1) of the Act, which was enacted in the year 2003 as unconstitutional. Such a ground raised after a lapse of 14 years, cannot be entertained in this writ petition. Even otherwise, the writ petitioner is unable to substantiate that the monetary benefits granted was lesser than that of the monetary benefits granted before his transfer. In fact, there was a consistent increase and if at all, any grievance in respect of D.A., leave encashment or stagnation increment, the same would have been addressed during the relevant point of time before the Competent Authorities. In the absence of any such action, now after a lapse of 14 years from the merger, this Court is not inclined to consider the claim of the writ petitioner.

14. This apart, the Act was enacted in the year 2003 and implemented in December 2003. Now after a lapse of 14 years, if

the provision of clause 5(1), as contended by the learned Senior Counsel for the writ petitioner, is held invalid, then the repercussion would be large and this Court is not inclined to reconsider the arguments in this regard by the learned Senior Counsel for the writ petitioner.

15. Further, the writ petitioner contended that only in the year 2010, the implementation of the revised pay was taken place. However, the whole reliance in this regard by the writ petitioner is Clause 5(1) of the Act, which was enacted in the year 2003 and the writ petitioner received the pay as well as the revision of pay continuously from the year 2003 onwards till his date of retirement.

16. This being the factum of this case, the claim made out in this writ petition is not only belated and even on merits, this Court do not find any material to grant the relief. The learned counsel for the respondents 1 to 3 also informed this Court that the revision of pay was granted to the benefit of the employees and certainly, it was higher than the pre-revised scale of pay and therefore, the grievances are not in accordance with the rules of revision of pay and the same cannot be accepted.

17. In this view of the matter, no further adjudication needs to be undertaken in this regard on the grounds raised in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn

To

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Mumbai-400 005.

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3.The Chief General Manager,
Human Resources Department,
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4.The Secretary to the Government,
Union of India,
Ministry of Finance,
Department of Financial Services,
Banking Division,
Jeevan Deep Building,
No.10, Parliament Street,
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+2 Ccs to Mr.N.V.S. Associates, sr 86565 & 86470.

+1 CC to Mr.M. Muthupandiyar, Advocate sr 85710



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SP(12/12/2017)

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