

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1024 of 2018**

**In**

**Civil Writ Jurisdiction Case No.8279 of 2018**

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Rabindra Nath Mishra son of Late Narmadeshwar Mishra resident of Village Bela, Post Office- Aurangabad, P.S. Aurangabad, District- Aurangabad-824101.

... .. Appellant

Versus

1. The State of Bihar through its Principal Secretary, Department of Cooperative, Government of Bihar, New Secretariat, Bailey Road, Patna-800001.
2. The Registrar, Cooperative Societies Bihar, New Delhi Secretariat, Bailey Road, Patna- 800001.
3. The Aurangabad District Central Cooperative Bank through its Managing Director- 824101.
4. The Managing Director, The Aurangabad District Central Cooperative Bank Aurangabad- 824101
5. The Board of Directors, The Aurangabad District Central Cooperative Bank Aurangabad- 824101
6. The Regional Provident Fund Commissioner Employees Provident Fund Organization, Road No. 6, R- Block, Patna- 800001.
7. The Manager, Pension and Group Insurance Department, Divisional Office, Life Insurance Corporation of India, Jeevan Prakash Building, Frazer Road, Patna- 800001.

... .. Respondents

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**Appearance :**

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|---------------------|---|-----------------------------------|
| For the Appellant/s | : | Mr.Y.V. Giri, Sr. Advocate        |
| For the State       | : | Mr.Raj Ballabh Prasad Yadav, AAG  |
| For the Resp. No. 6 | : | Mr. Dwivedy Surendra, Advocate    |
| For the Resp. No. 7 | : | Mr. Nilanjan Chatterjee, Advocate |
|                     |   | Mr. Sahil Kumar, Advocate         |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 08-05-2019**

Challenge in this present Letters Patent Appeal is to the judgment dated 19.06.2018 passed by the learned Single Judge in Civil Writ Jurisdiction Case No. 8279/2018.



By the impugned judgment the learned Single Judge has been pleased to follow the Special Bench Judgment of this court in the case of the **Organizer, Dehri C.D. & C.M. Union Limited Vs. State of Bihar reported in 2014 (1) PLJR 695** and held that the present writ application under Article 226 of the Constitution of India would not be maintainable against a cooperative society.

2. Although the Letters Patent Appeal was taken up for hearing earlier but it has been heard afresh today.

3. Mr. Y.V. Giri, learned senior counsel for the appellant has submitted that the judgment of the Hon'ble Special Bench of this court in the case of **Organizer, Dehri C.D. & C.M. Union Limited (supra)** has no application in the facts of the present case, moreover in the said case Hon'ble Special Bench was considering altogether a different issue. Learned senior counsel has taken this court through the provision of the Banking Regulation Act, 1949 and the NABARD Act, 1981 to submit that the respondent Bank is discharging the sovereign functions which is of public importance and therefore it would be amenable to Article 226 of the Constitution of India. In this connection



learned senior counsel has also relied upon the judgment of the Hon'ble Apex Court in the case of **U.P. State Cooperative Land Development Bank Limited vs. Chandra Bhan Dubey and others reported in (1999) 1 SCC 741** to submit that in the said case the appellant UP State Cooperative Land Development Bank though was a cooperative society registered under the UP Co-operative Societies Act, 1965 was constituted under the Uttar Pradesh Cooperative Land Development Bank Act 1964 (hereinafter referred to as the 'Bank Act'), in exercise of power conferred conferred on the State Government by Section 30 of the Bank Act, Rules were framed namely the UP Cooperative Land Development Bank Rules 1971. Service condition of the employees of the appellant was also framed under regulation framed by the UP Cooperative Institutional Service Code constituted under Section 122 of the Societies Act.

4. The Hon'ble Apex Court having noticed that the appellant was functioning as a cooperative society under the Societies Act but it had been constituted under the provisions of the Bank Act and the State Government had



by virtue of the power conferred upon it framed Rules of 1971 and various other factors came to a conclusion that the appellant is an authority controlled by the State Government and the service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them were statutory in nature and thus writ petition was maintainable against the appellant.

5. While dealing with the language of Article 226 of the Constitution of India the Hon'ble Apex Court held that *"The language of Article 226 does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in discharge of public duty and that writ is a public law remedy...."*

6. In this connection, learned senior counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Board of Control for Cricket in India Vs. Cricket Association of Bihar and Others** reported in



**(2015) 3 SCC 251** in which after referring to the catena of decisions the Hon'ble Apex Court held *“To sum up: public policy is not a static concept. It varies with times and from generation to generation. But what is in public good and in public interest cannot be opposed to public policy and vice versa. Fundamental policy of law would also constitute a facet of public policy. This would imply that all those principles of law that ensure justice, fair play and bring transparency and objectivity and promote probity in the discharge of public functions would also constitute public policy. Conversely, any deviation, abrogation, frustration or negation of the salutary principles of justice, fairness, good conscience, equity and objectivity will be opposed to public policy. It follows that any rule, contract or arrangement that actually defeats or tends to defeat the high ideals of fairness and objectivity in the discharge of public functions no matter by a private non-governmental body will be opposed to public policy.....”*

7. Learned senior counsel submits that the reliance placed by the learned Single Judge on the judgment of the Special Bench in the case of **Organizer, Dehri C.D. &**



**C.M. Union Limited (supra)** is because the learned Single Judge could not appreciate that so far as the terms and conditions of the services of the employees of the Cooperative Bank is concerned, Section 66B of the Bihar Co-operative Societies Act, 1935 confers a statutory sanction upon the power of the Co-operative Societies to formulate the types of posts, their numbers and procedures for recruitment of the personnel thereof. The society can frame personal policy for this purpose and subject to the provisions of its bye-laws and personal policy the cooperative society shall prescribe for, amongst others (1) eligibility, age and experience, (2) pay scale and other emoluments, (3) procedure for recruitment, (4) service condition and (5) disciplinary policy to be adopted. Sub-section (2) of Section 66B provides that any appointment made in contravention of the provisions of the bye-laws and the personal policy shall be void as if no such appointment ever existed and salary and other allowances paid, if any shall be recoverable under Section 44.

8. It is contended by learned senior counsel that by virtue of the said sub-section the Bank had framed its



regulation and as such considering the fact that the Bank is discharging sovereign function of public importance, there is no reason why writ application would not be maintainable.

**9.** It is the specific case of the appellant that the Central Co-operative Bank Limited, Aurangabad is not a Society like BISCOMAUN rather it is doing the banking business by which the bank advances loan to the farmers by payment of certain loan and it realizes interest from farmers (loanees) if the loan is not paid, it's dues are recovered by the bank under the provisions of Bihar Public Demand Recovery Act. It is further stated that the bank has obtained license from Reserve Bank of India for doing business of banking and therefore it is a State within the meaning of Article 12 of the Constitution of India and amenable to writ jurisdiction.

**10.** It is also pointed out that the Managing Director of the Bank whose order is under challenge is an officer of the State Government and posted by the State Government whose disciplinary authority is also the State Government, therefore any order passed by the Managing



Director would be amenable to the writ jurisdiction of this court under Article 226 of the Constitution of India.

**11.** It is submitted that after coming into force of the 1989 Amendment Act (Act 5 of 1989) certain cooperative bodies such as Central Co-operative Bank would be qualified to be treated as State within the meaning of Article 12 of the Constitution, and, therefore, the order of the Managing Director is amenable to a test on the anvil of Article 14 and 16 of the Constitution of India.

**12.** So far as the judgment of the Hon'ble Special Bench is concerned, it has been contended that the said judgment would have no application.

**13.** From I.A. No. 9076/2018 which has been filed for an interim order, it would appear that the petitioner has given the details of the letters issued by the Joint Secretary, Department of Co-operative, Government of Bihar by which the pay of the petitioner and others stood revised and fixed in the pay scale of Rs. 975-25-1150-30-1540 w.e.f. 01.01.1993, and accordingly pay of the petitioner was revised and fixed at Rs. 1100/- as on 01.01.1993.



**14.** Referring to the judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 814/1992, annexed as Annexure '1' to the Interlocutory Application, it has been submitted that the Hon'ble Supreme Court has noticed the facts of the case. It has been noticed in the said case that the services of all the persons were taken on deputation by respondent no. 5 on the ground of paucity of personnel and on exigencies of work. The Registrar, Co-operative Societies in Bihar by his letter no. 3647 dated 4<sup>th</sup> Appeal, 1988 issued direction for the absorption of the services of erstwhile Managers of the Primary Agricultural Co-operative Societies in the bank service subject to the satisfaction of certain conditions pertaining to educational and other qualifications. It is thus submitted that the Registrar, Co-operative Societies has shown his control over the pervasive control in the affairs of the bank. The learned Single Judge however could not notice the aforesaid facts which were contended before the learned Single Judge and decided to dismiss the writ application on the ground of maintainability alone.

**15.** Learned counsel for the respondent Bank



although opposed the submission of Mr. Y.V. Giri, learned senior counsel for the appellant but he could not seriously contest the issue on the face of the judicial pronouncements of the Hon'ble Supreme Court showing that in the given facts and circumstances a writ application may be maintainable.

16. We find from the judgment in the case of **Organizer, Dehri C.D. & C.M. Union Limited (supra)** that in the said case the Hon'ble Special Bench was considering as to whether a private Co-operative Society, duly registered under the provisions of the Bihar Co-operative Societies Act, 1935 not being a State by itself within the meaning ascribed to it under Article 12 of the Constitution, would become a "State" if the elected Managing Committee thereof is taken over and replaced by an Administrator appointed by the Registrar, Co-operative Societies, Bihar as a short term arrangement and whether under those circumstances, writ petition is maintainable questioning the orders passed by the said Administrator.

17. We, having gone through the judgment of the



Hon'ble Special Bench and after noticing the issues framed by the Hon'ble Bench, are of the considered opinion that in the said case neither the facts were similar to the present case nor the Bench was called upon to decide as to whether or not the said Co-operative Society would be the State within the meaning of Article 12 of the Constitution of India. The Hon'ble Bench proceeded on the admitted facts that the Co-operative Society was a private co-operative Society, the only issue was whether it will become the State within the meaning of Article 12 of the Constitution of India once the Registrar, Co-operative Societies appoints an Administrator.

**18.** Section 66B of the Bihar Co-operative Societies Act, 1935 and Rule 33 of the Bihar Co-operative Societies Rules 1959 would be relevant for purpose of consideration of the present case and as such those are quoted hereunder for a ready reference:

***“S.66B. Personnel policy of Co-operative Societies – (1) Co-operative Societies shall have autonomy in the formulation of the types of posts, their numbers and the procedure for recruitment of the personnel thereof. The Co-operative Society can frame personnel policy, for this purpose. Subject to***



*provisions of its Bye-laws and personnel policy the Co-operative Society shall prescribe for the following, among others: -*

- (1) eligibility, age and experience,*
- (2) pay scale and other emoluments,*
- (3) procedure of recruitment,*
- (4) service condition, and*
- (5) disciplinary policy to be adopted.*

*(2) Any appointment made in contravention of the provisions of the Bye-laws and the personnel policy shall be void as if no such appointment ever existed and salary and other allowances paid, if any, shall be recoverable under Section 40.”*

**“R.33.Appointment of paid employees. -** *(1) The appointment of a paid employee in any registered society shall be subject to such condition as to qualification, designation, scale of pay and travelling allowances, furnishing of security, compulsory contribution to provident fund, grant of leave, salary, increment, transfer, punishment, suspension, removal or dismissal as may from time to time, be determined by the Registrar by general or special order.*

*(2) A registered society aggrieved by any order of the Registrar under sub-rule (1) may within sixty days of the receipt of such order, prefer an appeal against the order to the State Government and the decision of the State Government thereon shall be final.*

*(3) Any appointment made hereinafter in contravention of the conditions determined by the Registrar under sub-rule (1) shall be void as if no such appointment ever existed and salary and*



*other allowances paid, if any to such persons shall be recoverable under Section 40 of the Act.”*

**19.** In the case of ***Bihar Rajya Sahkarita Prabandhak Sangh Vs. State of Bihar*** reported in **1999 (3) PLJR 110**; a learned Single Judge of this court was considering the grievance of the petitioners over fixation of their salary without dearness allowances. The learned Single Judge took note of the pleadings of the petitioners that it was on the basis of a comprehensive study of the problems of the Agricultural Credit Institution and the reasons as to why the growth of these institutions has been impeded and on the basis of the recommendation of the R.B.I., the Government of Bihar while accepting the recommendations of the R.B.I. initiated a re-structuring programme and all the existing facts were reorganized in the year 1977. As a result of the decision, the Government decided to establish a State Cadre Co-operative Society for the management of the State Level Cadre Fund in which contribution is to be made from all the PACs in the State.

**20.** The learned Single Judge in the above case considered Section 66B of the Act of 1935 and after relying



upon the judgment of the Hon'ble Supreme Court in the case of ***Chandra Bhan Dubey (supra)*** the learned Single Judge held that State Government exercises pervasive control over such cooperative societies and thus the Co-operative Society virtually act as an extended arm of the State. We have noticed the judgment of the Hon'ble Supreme Court in the case of ***Board of Control for Cricket in India (supra)*** wherein after considering a catena of decisions such as ***Zee Telefilms Ltd. Vs. Union of India reported in (2005) 4 SCC 649*** relied upon paragraph 31 of the judgment in ***Zee Telefilms Ltd. (supra)*** which reads as under :

*“31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go Scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the*



*remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.”*

**21.** The Hon’ble Supreme Court therefore held that the Majority view favours the view that BCCI is amenable to the writ jurisdiction of the High Court under Article 226 even when it is not “State” within the meaning of Article 12. It was held that the rationale underlying that view lies in the “nature of duties and functions” which BCCI performs.

**22.** Applying the aforesaid principles, we find no difficulty in holding that the Central Co-operative Bank, Aurangabad is a “State” within the meaning of Article 12 of the Constitution of India as it is discharging the banking functions which are regulated by statute such as Banking Regulation Act and is functioning under a license granted by the Reserve Bank of India. Apart from these, we have noticed Section 66B and Rule 33 of the Rules which are sufficient to indicate the nature of control of the State



Government. The Managing Director of the Bank is an appointee of the State Government whose disciplinary authority is also the State Government. The Managing Director is the Chief Executive of the Bank.

**23.** It is also evident on perusal of the Aurangabad District Central Co-operative Bank Limited (Officers & Employees) Service Regulations, 2013 that under Regulation 18(1) it is specifically provided that *“In every appointment and promotion the instructions for reservation as laid down in different Resolutions and Circulars, Ordinance and Acts of State Government issued from time to time and in force in respect of the State Government services shall be strictly followed.”* Sub-regulation (2) of Regulation 18 provides that *“a roster for each and every grade shall be maintained. The roster shall be started with retrospective effect as per rule in the State Government.”* Under sub-regulation (4) of Regulation 18 it is stated that *“any appointment/promotion made in contravention of above rule 18(1)(2) & (3) shall be void as if no such appointment/promotion ever existed and salary and other allowances paid if any shall be recoverable*



*under section 40 of the BCS Act 1935”.*

**24.** These are sufficient reasons to conclude that the Bank is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

**25.** We are of the opinion that for the reasons discussed hereinabove, the writ application would be maintainable and the impugned judgment of the learned Single Judge is liable to be set aside.

**26.** In order to avoid multiplicity of litigation we thought it just and proper to dispose of the writ application itself at this stage.

**27.** The parties have been heard on merit as well. The writ petition was preferred for issuance of a writ in the nature of mandamus directing the respondents concerned to compute and pay the petitioner his entire retiral benefits i.e. pension, gratuity, contributory provident fund and leave encashment without any further delay as also for setting aside the order contained in letter no. 750 dated 10.04.2018 issued under the signature of respondent no. 4 whereby the respondent no. 4 directed for recovery of excess amount of salary said to have been received by the petitioner by



getting fixed his salary at Rs. 1180/- w.e.f. 02.01.1995 in the pay scale of Rs. 940-1660/-.

**28.** Learned senior counsel for the petitioner has taken the court through Annexure '1' to the writ application which shows that pursuant to the judgment of Hon'ble Supreme Court in S.L.P. No. 8594/1993 the respondent Bank decided to absorb the services of the Co-operative Managers who were working in the Bank on deputation. They were absorbed on the said post of Assistant-cum-Accountant/Assistant Accountant in the pay scale of Rs. 940-40-1500 EB 14-1660/- with admissible allowances w.e.f. 02.01.1995. Altogether six persons including the petitioner came to be appointed by virtue of the order contained in Memo No. 509 dated 22.02.1995 w.e.f. 02.01.1995 (Annexure '1').

**29.** By Annexure '2' an office order was issued vide Memo No. 256 dated 25.08.1995 whereunder a decision of the Board was communicated to the petitioner and others. The office order says that the Board had approved the appointment of six persons on the post of Assistant-cum-Accountant in the pay scale of Rs. 940-20-



1660/-. The office order further says that in accordance with the provisions of the Bihar Service Code Rule 78(Ka) and the fundamental rules the salary of the petitioner and others were fixed at Rs. 1180/-.

**30.** Learned senior counsel submits that the decision was taken and communicated vide the office order as contained in Annexure '2' with intention to protect the pay of the petitioner and others who were at the relevant time receiving Rs. 1180/- as their salary when they were working on deputation. The office order was thus issued giving a kind of pay protection to the petitioner.

**31.** It is submitted that the pay of the petitioner was revised and fixed in the pay scale of Rs. 6210-230-8740 @ Rs. 7360/- as on 01.04.2006 + admissible allowance and as on 01.04.2012 the pay of the petitioner was Rs. 8740/- besides other admissible allowance i.e. at the end of last slab in the pay scale of Rs. 6210-8740/-. The petitioner was also given benefit of promotion from the post of Manager Scale-II to the post of Manager Scale-III in the pay scale of Rs. 25700-31500 w.e.f. 12.06.2013 vide letter no. 548 dated 19.12.2016 and 595 dated 10.04.2017 issued



by the Managing Director of the Bank. It is pointed out that this promotion was granted by virtue of the order passed by this court in CWJC No. 19099/2012, MJC No. 4663/2014 and MJC No. 91/2016. The petitioner also received the pay scale of 9<sup>th</sup> bipartite scale w.e.f. 12.06.2013. He completed his age of 60 years after rendering his unblemished service and superannuated as Development Officer/Manager Scale-III on 31.01.2018, yet he had not been paid his retiral benefits.

**32.** Relying upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 S.C.C. 334**; learned senior counsel submits that at the first instance the respondents have not come out with any case that the petitioner was instrumental in the matter of fixation of his salary as provided in Annexure '2' to the writ application. There is no fault on the part of the petitioner and at this stage the petitioner cannot be burdened with the recovery of the alleged excess amount.

**33.** Learned senior counsel has also relied on a recent judgment of this court in L.P.A. No. 221/2018 which



has been disposed of on 25.04.2019. The said case was also arising out of a decision taken by the respondents for recovery of certain amount from the appellant due to wrong fixation of the pay. The learned Single Judge has come to a conclusion that re-fixation of the pay scale was valid inasmuch as there was no material to establish that the appellant had been rightly granted the pay scale on the basis whereof payments had been made.

**34.** This court went through the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** reported in **(2015) 4 S.C.C. 334**, **Shyam Babu Verma Vs. Union of India** reported in **(1994) 2 SCC 521**, **Sahib Ram Vs. State of Haryana** reported in **1995 Supp (1) SCC 18**, **State of Karnataka and Anr. Vs. Manglore University Non-teaching Employees' Association and Ors.** reported in **(2002) 3 SCC 302** and finally came to a conclusion in the given facts of the case that since it was a matter of grant of pay scale to which the appellant was not entitled and the impugned judgment had already been upheld by the Hon'ble Division Bench in L.P.A. No. 704/2018, the



Division Bench refused to interfere with the judgment of the learned Single Judge but in paragraph '5' the Hon'ble Division Bench took note of the fact that the L.P.A. No. 704/2018 was filed by the State of Bihar assailing the same judgment against that part of the order whereby recovery from the appellant had been set aside. The appeal to that extent was dismissed but the later part of the judgment whereby a re-fixation had been directed by the learned Single Judge was approved of and the appellants were at liberty to re-fix the pay scale and make amendments in the pensionary and post-retiral benefits to which the respondent was entitled.

**35.** Learned senior counsel submits that the facts of the present case would show that the appellant is aggrieved by the action of the respondents Bank whereby recovery has been ordered. It is, according to learned senior counsel, is not a case of re-fixation of the pay scale as the petitioner has retired from service and during the service period he was granted promotion and it is not the case of the respondents that petitioner had received excess salary on the promotional post. The Managing Director of the Bank had



directed the recovery of the excess amount which was allegedly paid by fixing the salary of the petitioner at Rs. 1180/-.

**36.** Learned counsel for the Bank has opposed the prayer of the petitioner, however no material has been placed before us on behalf of the respondent Bank to show that this petitioner had at any point of time misrepresented or committed fraud in the matter of fixation of his salary. To that extent the learned counsel for the Bank has no reply.

**37.** Having heard learned counsel for the parties and on perusal of the records, we are of the considered opinion that a bare perusal of Annexure '2' to the writ application would show that by an office order contained in Memo No. 256 dated 25.08.1995, the Managing Director of the Bank had communicated to the petitioner about fixation of his salary at Rs. 1180/-. The said office order has been issued showing approval of the Board of Directors. There is no material to show that this petitioner had any role to play in the matter of issuance of Annexure '2'. After 23 years the Managing Director of the Bank decided to examine the matter of fixation of salary of the petitioner when the



petitioner made a representation for payment of his post-retiral dues.

**38.** The Managing Director, in response to the request of the petitioner to let him know the reasons for non-payment of his post-retiral dues, communicated him vide letter no. 750 dated 10.04.2018 (Annexure '17') which is impugned in the writ application saying that the excess amount of salary which he had received was being calculated which will be recovered from his post-retiral dues and further action will be taken accordingly.

**39.** It is not in dispute that this action towards recovery of the alleged excess amount of salary has been taken only against the petitioner out of the six persons who were appointed by the same office order as contained in Annexure '1' to the writ application. This is surprising that after 23 years the Managing Director of the Bank decided on his own to recover the alleged excess amount of salary from the petitioner. In our opinion, a decision which was taken by the Board of Directors of the Bank and communicated vide office order as contained in Annexure '2' to the writ application could not have been revisited



without prior approval of the Board of Directors and without prior authority from the Board to the Managing Director to review the decision of the Board. It is not to be forgotten that the Managing Directors acts under the supervision of the Board of Directors, therefore, any decision by which he is likely to up-turn a decision of the Board of Directors may be taken only after prior approval of the Board. This was a unique case in which the Managing Director on his own proceeded to take a decision with respect to the petitioner alone.

**40.** At the very first instance, we find on perusal of the records that it is a fact not denied by the Bank and is apparent from the office order contained in Annexure '1' and '2' to the writ application that the petitioner and five others similarly situated persons were working in the Bank on deputation basis. They were absorbed in service w.e.f. 02.01.1995 in the given pay scale. In the said pay scale the pay fixation was done vide Annexure '2' to the writ application at Rs. 1180/-. There is no reason to take a view that fixation of the salary of the petitioner at Rs. 1180/- was unjust and improper inasmuch as the contention of the



petitioner that the pay fixation was done at Rs. 1180/- with an intention to protect the salary which he was getting at the time of absorption, has not been denied on behalf of the Bank.

**41.** We also find that in the impugned order as contained in Annexure '17' an impression has been tried to be given that the petitioner got pay fixation done but the same does not get support from Annexure '2' to the writ application. Again choosing the petitioner alone for such action after 23 years seems to be more by way of an anguish shown to the petitioner when he was pursuing his request for payment of post-retiral benefits. We are of the considered opinion that the impugned action of the respondent Managing Director of the Bank by issuing Annexure '17' to the writ application is wholly illegal, arbitrary and without jurisdiction.

**42.** The impugned judgment of the learned Single Judge as well as the impugned order as contained in Annexure '17' to the writ application are, thus, quashed. The respondents are directed to make payment of the post-retiral dues of the petitioner with statutory interest without effecting any recovery



by virtue of the impugned order, within a period of 60 days  
from the date of receipt/production of a copy of this order.

**43.** The Letters Patent Appeal stands allowed.

**(Amreshwar Pratap Sahi, CJ)**

**( Rajeev Ranjan Prasad, J)**

*Rajeev/-*

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