IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2019
DELIVERED ON : 27.11.2019

CORAM :

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.22846 of 2004

1.M.L.Johnson
2.G.Suyamprakasam .. Petitioners

Vs.

1.Union of India,
rep by the Secretary to Government,
Ministry of Finance,
Department of Economic Affairs (Banking Division),
New Delhi.

2.State Bank of India,
rep by its Chairman,
Corporate Office,
New Administrative Buildings,
P.B.No.12, Madam Cama Road,
Mumbai - 400 021.

3.The Circle Development Officer,
State Bank of India,
Local Head Office, 16 College Lane,
Chennai - 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records relating to the Staff Circular No.PER:46:85 dated 30.09.1985 passed by the 3rd respondent Bank read with the Order No.PER/GB No.1354 and No.1355 dated 19.06.2004 of the 3rd respondent and quash the same as being illegal, arbitrary and unconstitutional and consequently direct the 2nd respondent Bank to grant pay protection to the petitioners as per the letter of the Government of India dated 28.01.1983 bearing Ref.F.No.2/8/78-SCT(B) with all attendant benefits.

For Petitioners: Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents: Mr.J.Madanagopal Rao,
Senior Central Government Standing Counsel (R1)
Mr.K.Sankaran (R2 & R3)

O R D E R

The petitioners have filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records relating to the Staff Circular dated 30.09.1985 passed by the 3rd respondent read with order dated 19.06.2004 of the 3rd respondent and to quash the same and consequently direct the 2nd respondent to grant pay protection to the petitioners as per the letter of the Government of India dated 28.01.1983 with all attendant benefits.

2.It is the case of the petitioners that they served the Army as Short Service Commissioned Officers (SSCO) holding the rank of Captain. The 1st petitioner served the Army from 17.05.1976 to 16.04.1982 and the 2nd petitioner served the Army from 01.11.1976 to 01.10.1982. The petitioners joined the Bank on 28.03.1983 as Security Officers in Junior Management Grade (JMG) Scale - I Category. They were appointed in the Bank with starting scale of pay of Rs.700-4-900-5-1100-1800. Their last drawn basic pay in the Army was Rs.1,200/- per month. The petitioners sent representations requesting for fixation of the basic pay in accordance with the Bank's Circular No.104 dated 12.12.1984, which was based on the directives of the Government of India dated 28.01.1983, so as to protect their last drawn basic pay in the Army. Accordingly, their basic pay was revised and was fixed at Rs.1,200/- per month with effect from 28.03.1983 (i.e.) from the date of appointment and due annual increments for the service in the Bank were also paid. The Government Order was effective from 01.02.1983. The petitioners' services were also confirmed by the Bank on 28.03.1985 after the revision and fixation of pay at Rs.1,200/- per month and due annual increments during the two years of probationary period.

3.The respondent - Bank issued a Staff Circular dated 30.09.1985 giving instructions to all Offices to implement another directive of the Government of India dated 29.11.1984. The Circular came into effect from 01.11.1984. Though the petitioners were appointed on 28.03.1983 itself, the respondent - Bank, by order dated 27.01.1986, reduced the basic pay drawn by them from Rs.1,200/- per month to Rs.900/- per month with effect from 28.03.1983. It also directed recovery of the excess payments made to them. The respondent - Bank issued a show cause notice dated 22.01.2004 calling upon the petitioners to submit their explanations. Accordingly, the petitioners submitted their explanation to the Bank. However, the respondent - Bank passed the impugned order dated 19.06.2004 confirming their original stand. Aggrieved over the same, the petitioners have filed the above Writ Petition.

4.Heard Mr.N.G.R.Prasad, learned counsel appearing for the petitioners, Mr.J.Madanagopal Rao, learned Senior Central

Government Standing Counsel appearing for the 1st respondent and Mr.K.Sankaran, learned counsel for the respondents 2 & 3.

5.By the Office Memorandum dated 29.11.1984 issued by the Government of India, it was decided that the pay of those Officers, who joined pre-commissioned training or were commissioned after 10.01.1968, should be fixed on their appointment to various civil posts and those Officers may be granted advance increments equal to the completed years of service rendered by them in Armed Forces on a basic pay (inclusive of a deferred pay but excluding other emoluments) equal to or higher than the minimum of the scale attached to the civil posts. In the said Office Memorandum, it was stated that the orders will take effect from 01.11.1984. Admittedly, the petitioners joined the services of the Bank on 28.03.1983. Therefore, the said order cannot be applied to the petitioners. By the Staff Circular No.104 dated 12.12.1984, the retired Officers from the Army, who had joined the Bank in the scale applicable to JMGS - I, their basic pay was fixed at Rs.1,200/- per month.

6.Thereafter, the 3rd respondent sought for clarification from the 2nd respondent with regard to the Staff Ex-Servicemen Refixation of pay and the 2nd respondent, by letter dated 14.03.1985, informed the 3rd respondent that the provisions of their letter dated 19.11.1984 are applicable mutatis mutandis to Ex-emergency Commissioned Officers/Short Service Commissioned Officers who have joined the Bank after 01.09.1978. Based on the clarification received, the respondent - Bank fixed the basic salary of the petitioners at Rs.1,200/- by its proceedings dated 25.03.1985. Thereafter, after issuing show cause notice and receiving the explanation from the petitioners, the respondent - Bank issued the impugned Staff Circular No.46:85. The relevant portion of the Circular reads as follows:

> "...
>
> 2.Revised Instruction:
>
> We have been advised by the Government of India vide their letter F.No.201/3/85-SCT (B) dated Maarch 19, 1985 that the Ex-ECOs/SSCOs who joined the pre-commissioned training or were commissioned after January 10, 1968 may also be granted advance increment equal to the number of completed years of service rendered by them in armed forces. According to Indian Bank's Association guidelines the aforesaid Government directives be implemented in the Bank ensuring that the revised basic pay arrived at after adding increments to the extent of number of completed years of service in the armed forces is limited to the stage where it will be equal to or just below the last pay drawn in the armed forces. The Executive Committee of the

Central Board at its meeting held at August 29,1985 has approved that the aforesaid fitment formula be implemented in the Bank.

3.Further Instruction:

The aforesaid fitment formula will be effective from November 1, 1984. In other words, pay fixation of Ex-ECOs/SSCOs as per Government directives will be notionally made from the date of appointment in the Bank and arrears, if any, will be paid from November 1 1984. In some cases, he implementation of the above fitment formula may result in reduction of salary and allowances being paid now to the Ex-ECOs/SSCOs on account of different fitment formula to be followed now as per Government directives. It has been decided that no recovery be made from those whose salary and allowances get reduced as a result of the aforesaid Government directives for the period prior to November 1, 1984 since the revised formula is applicable."

7.Based on the Circular dated 30.09.1985, the respondent - Bank reduced the basic salary of the petitioners to Rs.900/- per month.

8.On a reading of the Circular dated 30.09.1985, it could be seen that the Bank had made it clear that the fitment formula will be effective from 01.11.1984. Therefore, as per the Circular, it can only be applied on and from 01.11.1984. In the case on hand, the petitioners have joined the services of Bank on 28.03.1983 itself. The Bank Circular No.104 dated 12.12.1984 was issued based on the Central Office's letter dated 19.11.1984 and when the petitioners applied for fixation of pay based on the Bank's Circular No.104 dated 12.12.1984, the 3rd respondent sought for confirmatory and safeguarding clarification from the Central Office viz., the 2nd respondent, vide, Telegram dated 05.03.1985, specifically asking as to whether the instructions implied in Circular dated 19.11.1984 was also applicable to Ex-ECOs/SSCOs. The Central Office once again re-iterated their stand, by confirming in writing, by their letter dated 14.03.1985 that the instructions implied in letter dated 19.11.1984/Circular No.104 dated 12.12.1984 are also applicable to Ex-ECOs/SSCOs like the petitioners. Therefore, the petitioners are entitled for fixation of salary as per the Circular No.104 dated 12.12.1984.

9.The respondent - Bank themselves having fixed the basic salary of the petitioners as per Circular No.104 dated 12.12.1984 at Rs.1,200/- per month, they cannot retrospectively reduce the basic salary under the impugned Circular.

10.In the judgment reported in (2015) 4 Supreme Court Cases 334 [State of Punjab and others Vs. Rafiz Masih (White Washer) and others], the Hon'bel Supreme Court held as follows:

"...

18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i)Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii)Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii)Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv)Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v)In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11.As per the above judgment of the Hon'ble Supreme Court, since the petitioners are Class - III employees, the recoveries by the respondent - Bank would be impermissible in law. The ratio laid down by the Hon'ble Supreme Court in the said judgment squarely applies to the facts of the present case.

12.In the judgment reported in 2009 SCC Online Mad 2444 [V.Veerabhaskaran (W.P.No.30242 of 2004]; Vs. State Bank of India, rep by its Assistant General Manager, Officer Administration, Local Head Office, Office Administration Department, "Circletop House", Aparna Complex, No.16, College Lane, Chennai - 600 006] wherein this Court held as follows:

"...

11.The respondent bank on notice have filed a counter-affidavit stating that the bank is bound by the circular in F.No.2/8/78-SCT(B) dated 28.1.1983 issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi. The Circular is addressed to the Chairman and Managing Directors of 20 Nationalised Banks and Chairman and Managing Directors of other banks. The Circular has been issued in partial modification of the guidelines already issued in the years 1980 and 1982 and it deals with fixation of pay for Ex-Servicemen reemployed in Public Sector Banks.

12.Prior to 28.1.1983, the pay protection was given taking into consideration the total emoluments (i.e.), pay plus D.A. last drawn by the Ex-Servicemen before their retirement from Armed Forces. On and from 28.1.1983, the modified Circular reads as follows and the same is set out in para 2 of the Circular:-

> "2. In partial modification of the guidelines, conveyed through the aforesaid letters, it has been decided that:
>
> (i) In respect of ex-servicemen absorbed in bank's service prior to September 1978, if no recoveries were made on account of pension and pension equivalent of gratuity in excess of Rs.125/- p.m., such recovery may not be made with retrospective effect. However, in future the adjustment of pension will be made in accordance with the Department of Expenditure OM No.18(34)-E III(B)/57 dated 25.11.1958 (copy enclosed) read with IBA's circular No.PD/76/589/865 dated 28.4.1982.
>
> (ii) The pay fixation in the case of ex-servicemen who joined Bank's service after the revision of pay scales in September, 78, will however be on the basis of protection of "pay" (instead of 'pay + DA') drawn by them prior to retirement. In other words, their pay fixation will be in accordance with the following office memorandum issued by the Ministry of Finance, Dept. of Expenditure: 1.OM No.18(34)-E III(B)/57 dated 25.11.1958 2.OM No.7(34)-E III(B)/62 dated 16.1.1964 3.OM No.5(14)-E III(B)/77 dated 19.7.1978" (emphasis supplied)

In other words with effect from 28.1.1983, the pay fixation of the Ex-servicemen who join the respondent bank will be on the basis of the pay drawn by them prior to retirement instead of Pay + D.A., which was applied earlier. In terms of the above said Circular, the petitioner in each one of the cases have been granted the benefit of pay protection on the basic pay drawn in the Military service.

...

24.In the present case, the Circular dated 28.1.1983 issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi has not been challenged, nor is it found to be at fault. Petitioners enjoyed the benefit of the said Circular for basic pay fixation. Therefore, they cannot turn around to state that the benefits that accrues to the juniors should be extended to them as well. The Circular dated 28.1.1983 issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi is a protection to the individual concerned at the entry level and that cannot be used as a ground to refix the scale of pay or to step up the pay at the time of entry of a new person on the same cadre.

...

27.The object of the circular is to ensure that persons of Ex-Service Military do get the benefit of pay fixation at entry into civil services and that has been protected by the Circular dated 28.1.1983 issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi. This is based on the objective that persons from Military service on retirement, when they enter into civil service do not get lesser pay than what they received in Military service. The Petitioners cannot claim further benefits like stepping up of pay in the absence of any specific rule or circular to that effect. The anomaly as has been pointed out by the petitioners was because of the implementation of the Fifth Pay Commission. Therefore, the plea of the petitioners that the juniors drawing higher scale of pay is arbitrary is rejected.”

13.In the above referred judgment, the Writ Petitions were filed by Ex-servicemen to issue Writs of Certiorarified Mandamus to call for the records pertaining to the order of the respondent therein, the State Bank of India, dated 13.07.2004 and to quash the same and consequently, directing the respondent - Bank to fix the pay scale of the petitioners on par with their immediate juniors, who are also Ex-servicemen, who had joined the respondent - Bank after rendering service with the Indian Military like the petitioners therein with effect from the date when the pay scale of their juniors were fixed and pay all the arrears of wages. In that case, the petitioners therein were appointed in the State Bank of India in different categories in the years 1998 and 2000. By the impugned proceedings dated 13.07.2004, the plea for stepping up of pay was rejected. This Court, while rejecting the petitioners' claim, made it clear that the respondent - Bank is bound by the Circular dated 28.01.1983 issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi. The respondent - Bank filed their counter in the Writ Petitions stating that the Bank is bound by the Circular dated 28.01.1983 issued by the Government of India. This Court also observed that the pay protection was granted in terms of the Circular dated 28.01.1983 issued by the Government of India. The petitioners' juniors were fixed higher pay for the reason that fixing the higher basic pay was due to the implementation of the 5th Pay Commission, which was also explained in the impugned proceedings dated 13.07.2004. The State Bank also took a specific stand in the Writ Petitions that they are bound by the Circular dated 28.01.1983. This Court also observed that the petitioners therein having enjoyed the benefits of the Circular dated 28.01.1983, they cannot turn around to state that the benefits accrued to the juniors should be extended to them as well. While dealing with the said issue, this Court held that the Circular dated 28.01.1983, issued by the Government of India, is a protection to the individual concerned at the entry level and that cannot be used as a ground to refix the scale of pay or step up the pay at the time of entry of a new person on the same cadre.

14.The order passed by this Court in the judgment reported in 2009 SCC Online Mad 2444, cited supra, has become final. The respondent - Bank having taken a specific stand that they are bound by the Circular dated 28.01.1983 in the case reported in 2009 SCC Online Mad 2444 cited supra, in the case on hand, they are taking a different stand relying upon another Circular dated 30.09.1985 vide Staff Circular No.PER:46:85 passed by the 3rd respondent.

15.It is pertinent to note that though the Circular dated 30.09.1985 was available to the respondent - Bank even for the petitioners in the Writ Petitions reported in 2009 SCC Online Mad 2444 cited supra, they have not relied upon the said Circular for the reasons best known to them. The respondent - Bank cannot pick and choose the petitioners for following the Circulars. When the respondent - Bank did not rely upon the Circular dated 30.09.1985 and had taken a specific stand that they are bound by the Circular dated 28.01.1983, which is also covering the case of the petitioners, the Circular dated 30.09.1985 cannot be applied to the petitioners. That apart, when the petitioners were appointed on 28.03.1983, the Circular dated 30.09.1985 cannot be applied retrospectively. It is unfortunate that the petitioners having served in the Indian Army and protected our nation for several years, are made to fight with the respondent - Bank for their pay protection, when the difference is only Rs.300/-.

16.For the reasons stated above, the impugned order dated 19.06.2004 is liable to be set aside. Accordingly, the same is set aside. The petitioners are entitled for fixation of basic salary at Rs.1,200/- per month as per Circular No.104 dated 12.12.1984, which was also confirmed by the 2nd respondent, by its letter dated 14.03.1985. In these circumstanes, the Writ Petition is partly allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Union of India, Ministry of Finance,
Department of Economic Affairs (Banking Division),
New Delhi.

2.The Chairman,
State Bank of India, Corporate Office,
New Administrative Buildings,
P.B.No.12, Madam Cama Road,
Mumbai - 400 021.

3.The Circle Development Officer,
State Bank of India,
Local Head Office, 16 College Lane,
Chennai - 600 006.

+1cc to Mr.K.Sankaran, Advocate SR.98630
+1cc to M/s.Row & Reddy, Advocate SR.99845

W.P.No.22846 of 2004

SSI(CO)
CB(18/12/2019)