IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.34160 & 34258 of 2019
and
W.M.P.Nos.34775 & 34889 of 2019

Canara Bank Employees' Union,
(Regd.) Rep. by its President,
A.K.Nayak Bhavan, Second Floor,
14, Second Line Beach,
Chennai - 600 001. ... Petitioner in W.P.No.34160/2019

Canara Bank Officers' Association,
(Regd.) Rep. by its General Secretary,
No.216, Royapettah High Road,
Chennai - 600 014. ... Petitioner in W.P.No.34258/2019

vs

1. Canara Bank,
   rep. by its Managing Director and CEO,
   Head Office, 112, J.C. Road,
   Bengaluru - 560 002.

2. General Manager,
   Human Resources Wing,
   Industrial Relations Section,
   Canara Bank, Head Office,
   112, J.C.Road,
   Bengaluru - 560 002.

3. Government of India,
   Rep. by the Secretary,
   Ministry of Finance,
   Department of Financial Services,
   3rd Floor, Jeevan Deep Building,
   Sansad Marg,
   New Delhi - 110 001. ... Respondents in both Cases

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration declaring the impugned Circular issued by the 3rd respondent bearing F.No.4/1/4/2019-IR dated 24.10.2019 and the consequential circular issued by the 1st respondent Bank bearing Circular No.588/2019 dated 25.11.2019 as illegal and unauthorized and consequently declare both the circulars as inoperative and non-est in the eye of law.

For Petitioner in both cases : Mr.AL.Somayaji, Senior Counsel for Mr.K.M.Ramesh

For Respondents in both cases : Mr.G.Anand, for M/s.T.S.Gopalan & Co., for R1
Mrs.Me.Sarashwathy, Central Govt.Standing Counsel for R3.

C O M M O N O R D E R

The prayer sought for in both these writ petitions is for issue of Writ of Declaration to declare the Circular issued by the 3rd respondent dated 24.10.2019 and the consequential circular issued by the 1st respondent Bank dated 25.11.2019 as illegal and unauthorized and consequently to declare both the circulars as inoperative and non-est in the eye of law.

2. The case of the petitioners in short is as follows:

The petitioner is a registered trade union representing the officers and supervisory staff working in the Respondent Bank respectively. The membership, admission, register of members and removal of membership are defined under the Rules and Bye-laws and such right of admission of the membership is vested purely at the discretion of the Union and no one can automatically become the member on mere submissions of application form. The department of Financial Services, Ministry of Finance, Government of India, issued circular dated 24.10.2019, to SBI and all other nationalized banks regarding online facility for recording/modifying employee mandate for deduction of association membership subscription from the salary and linking the same to HRMS for auto deduction. The said circular is against the basic tenets of Trade Union rights to admit the members and regulate the same. By enabling auto-admission through an entry in HRMS package by an applicant, the Union is deprived of its right to accept or reject membership of an individual applicant on valid grounds. Consequent upon the above circular issued by the 3rd respondent dated 24.10.2019, the 1st respondent bank has decided to implement the same and communicated such decision through its impugned circular dated 25.11.2019. Though the petitioners objected through their representation dated 18.11.2019, the implementation of those circulars is in the progress. Hence, the present writ petitions.

3. The respondents 1 and 2 filed a counter affidavit, wherein it is stated as follows:

The ultimate deduction from the salary of an employee towards subscription of Union is only at his/her written request and not at the request of the Union. Such request for deduction of subscription from salary was hitherto submitted in physical format which is now digitalized and the employees are advised to submit the same through HRMS. The said guidelines are only to align with the advent of technology and seamless movement of such request and for immediate implementation of such request of deduction of subscription and therefore, there is no violation of any legal right of the petitioner. The deduction from the salary of an employee towards union subscription happens only based on their written request. The Bank has no say in the right of an employee to be a member of union /association or to maintain its membership. This position continues even after the impugned notification. The 1st respondent Bank has no intention to undermine the legitimate rights of the recognised unions or control their membership and therefore, the apprehension of the petitioner in this regard is not justified. The digital process has commenced from 7th December 2019 which was earlier in physical format. Any employee who is allowed to become a member of trade union belonging to any of the registered trade Union in the respondent bank can make further change only between 7th and 14th of every month.

4. A reply affidavit is filed by the petitioner wherein it is stated that admission of members and the right of admission is vested with the Union and by introduction of HRMS procedure, the employee can straightaway log in the system and claim membership by authorizing the respondents 1 and 2 to deduct subscription to the Union. It is further stated that the procedure to be followed by an employee is to apply for admission to the Union in the prescribed format and the Union, on receipt of such application, will scrutinize the same and decide. It is further stated that only after admission into the Union, the question of giving mandate to the bank for deduction of subscription would arise. While so, by introduction of the new procedure, the respondents are trying to put the cart before the horse.

5. Learned senior counsel for the petitioner Mr.AL.Somayaji, submitted that in view of the present system introduced by the respondent Bank, based on the impugned circulars, one can straightaway upload his name and claim as a member of a particular union, without getting himself registered as a member of such Union and therefore, based on such information provided by such person, the respondents cannot act upon and make deduction, without verifying the veracity of such statement made by such person claiming such membership. Therefore, the learned senior counsel contended that the impugned circulars, giving room for such confusion, should be clarified by the respondents.

6. On the other hand, the learned counsel for the 1st respondent Bank as well as the learned counsel appearing for the 3rd respondent submitted that the apprehension of the petitioner is without any basis as the Bank has no say in the right of the employee to be a member of Union/Association or to maintain his membership. They also submitted that it is the prerogative of the Union to admit the members and therefore, the petitioner is not justified in stating that the respondent bank has altered such position by implementing the digitalization of the procedure.

7. Heard both sides. Perused the materials placed before this Court.

8. The dispute between the parties appears to lie in a narrow compass. The respondent Bank is not disputing the right of the petitioners Union with regard to their power to grant and admit a person as its member. In other words, in their counter affidavit, it is clearly stated that the first respondent Bank has no say in the right of an employee to be a member of an Union or an Association or to maintain its membership and that the Bank has no intention to undermine the legitimate rights of the recognised Unions or control their membership. The subscription payable by a member of the Union is being deducted from the salary of such employees. It is seen that it was done previously by adopting physical format. Now, it is sought to be digitalized. It is further seen that any employee who is allowed to become a member of a registered trade union, can submit the mandate and make any change in such mandate through the digital process which commenced from 7th December, 2019. It is further seen that any change in the mandate already submitted can be made between 7th and 14th of every month. The only apprehension of the petitioners Union is that no person can be permitted by the respondent Bank for effecting deduction of subscription to the Union through the said digital process without verifying as to whether such person is a member of a particular Union or not. I find that the said apprehension or the grievance of the petitioner has some force in view of the fact that it is not the Union which is providing the list of its members for deducting the subscription and on the other hand, the very employee himself/herself can upload the mandate through digital process. Since the mandate is made by the employee claiming to be the membership under the trade union, before making deduction, it is better for the bank to cross verify with the particular Union to ascertain as to whether the claim of such person to be the member of a particular association/union is genuine or not. If such verification is made before making such deduction, I do not think that the petitioners union will have any grievance against such deduction, provided such employee is the member of such union.

9. Considering the above stated facts and circumstances and in view of the counter filed by the 1st respondent Bank

specifically explaining their stand on the present procedure, these Writ Petitions are disposed of as follows:

(a) The right of admitting a person as a member of a particular union is vested with such union, over which the bank has no say.

(b) Any change made in the mandate by an employee between 7th and 14th of every month, more particularly, in respect of his claim of membership over a particular Union, shall be informed by the 1st respondent Bank to such Union, before making deduction, based on such request made by such employee.

(c) The 1st respondent Bank will inform the union on or before 20th of every month. Such Union shall in turn, communicate the respondent Bank regarding the status of the employee on or before 25th of every month.

(d) Based on the communication received from the Union, the respondent Bank shall make deduction accordingly.

10. In view of the disposal of these writ petitions, the impugned circulars shall be read in line with the above orders passed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

vsi

To

1. The Managing Director and CEO,
Head Office, 112, J.C. Road,
Bengaluru - 560 002.

2. General Manager,
Human Resources Wing,
Industrial Relations Section,
Canara Bank, Head Office,
112, J.C.Road, Bengaluru - 560 002.

3. The Secretary,
Government of India,
Ministry of Finance,
Department of Financial Services,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi - 110 001.

+2cc to M/s.T.S.Gopalan & Co, Advocate SR.No.137

+2cc to Mr.K.M.Ramesh, Advocate SR.No.114

W.P.Nos.34160 & 34258 of 2019

RSV(CO)
GMY(03/02/2020)