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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.15253 of 2020

and

W.M.P.Nos.19078 to 19080 of 2020

Sulochana, W/o Renganathan

...Petitioner

Vs.

1. The General Manager,
Personnel Administration Department (HR),
Indian Overseas Bank,
Central Office, Chennai.

2. The Chief Regional Manager,
Indian Overseas Bank,
Regional Office, Bangalore Region,
Bangalore.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to direct the respondents to call for the records in pursuant to the recovery order passed by the first respondent and issued through the second respondent through e-mail, dated 28.08.2020.

For petitioner : M/s.J.Madhu

For respondents : Mr.K.Srinivasamurthy,
Standing Counsel

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to direct the respondents to call for the records in pursuant to the recovery order passed by the first respondent and issued through the second respondent through e-mail, dated 28.08.2020.



2. The petitioner herein was selected by the first respondent and was appointed as Probationary Officer at Nilagiirivattam Branch in Thanjavur Region on 08.07.2013. On 04.06.2017, she requested the respondents to transfer her to Bangalore Region in order to enable her to join her spouse. Accordingly, she was transferred to Bangalore Region and joined duty on 14.08.2017. She served in the respondents-Indian Overseas Bank (IOB) as Assistant Manager-I line. In the year 2018, she had participated in promotion process from JM-I to MM-II and was a wait-listed candidate. On 17.10.2018, she received promotion-cum-transfer order, transferring her back to Thanjavur Region. Since it was within one year from the date of joining in Bangalore Region and also considering her family situation, she made a representation through e-mail to the respondents on 20.10.2018, to retain her in Bangalore Region itself. However, she had not received any reply to her said representation and again, on 12.11.2018, she submitted a representation to the respondents offering her willingness to forego the promotion given to her on 17.10.2018 as MM-II.

3. It was later found that she had wrongly received the salary in the promoted post, though she had not obeyed posting her at Thanjavur for the period in question and recovery was ordered, which is the subject matter of challenge in the present Writ Petition.

4. On notice, learned Standing Counsel entered appearance for the respondents-IOB and filed a detailed counter affidavit.

5. In the counter affidavit, the following averments are made denying the right of the petitioner to receive the salary in the promoted post. It is useful to extract paragraphs 7 to 10 of the counter affidavit:

"7. For completion of facts, I submit the Petitioner was appointed as JMG I on 8.7.2013 and posted at Tanjavur. In 2017 she put in a request for transferring her to Bangalore stating that she got married and the same was considered favourably. She is working in Bangalore from 14.08.2017. In 2018 the promotion process to the next higher grade MMGS II commenced. With regard to posting on promotion she opted to Salem, Tanjavur and Trichy. On 17.10.2018 the promotion order was issued promoting her and posting her to Tanjavur (one of the place of her choice). The promotion was to effect from



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1.10.2018 and she has to report at the place of posting on or before 29.10.2018 failing which it was made clear that her promotion stands cancelled.

8. On 29.10.2018 the petitioner gave a letter giving up her promotion which fact is very important and which letter has not been filed along with the Writ Petition. Therefore she continued to be at Bangalore. But unfortunately the Computer system was not updated and she was paid the salary and emoluments of MMGS II from 1.10.2018 and also the increment. This was noticed in July/August 2020. Therefore the Bank by communication dt.28.08.2020 informed that the payment made based on MMGS II was by mistake and excess payment would be deducted by instalments. At that stage she has approached this Hon'ble Court.

9. For the reasons best known, the Petitioner has failed to file the crucial document viz. her letter dt.29.10.2018 in which she had given up her promotion. That apart in the promotion order dt.17.10.2018 itself it was made clear that if she did not join duty at Tanjavur, the place of posting on promotion, the promotion is deemed to have been cancelled. In the light of the above there is no merits in the Writ Petition. Her claim that she has been doing work as MMGS II is totally erroneous.

10. In fact when she was paid the arrears w.e.f. from 1.10.2018 based on MMGS II scale of pay in February 2019 in all fairness she should have informed the Bank that she had declined the promotion by letter dt.29.10.2018 and the arrears payment was erroneous. Far from doing this she is trying to justify the erroneous excess payment claiming that she has performed as MMGS II."

6. To the above counter affidavit, a reply affidavit has been filed by the petitioner, to which, a rejoinder affidavit has also been filed by the respondents-IOB.

7. The learned counsel appearing for the respondents-IOB submitted that, in view of the above averments made in the



counter affidavit, the petitioner is not entitled to maintain the present Writ Petition, as she had wrongly and illegally received the pay package applicable to the promoted post. Admittedly, the petitioner had declined the promotion by letter dated 29.10.2018 itself. Therefore, the payment erroneously made, was sought to be recovered and there is nothing wrong in the action initiated by the respondents-IOB towards recovery of the excess payment made illegally to her.

8. This Court is entirely in agreement with the submissions made by the learned counsel appearing for the respondents-IOB. The petitioner having been paid salary applicable to the higher post, ought to have informed the respondents on her own. On the other hand, she had appropriated excess amounts, which were not due and payable to her during the relevant period. Instead of accepting the wrong payments made to her, she has audaciously come up with the present Writ Petition seeking to challenge the recovery order.

9. The fact of the matter is that the petitioner has declined to accept the promotion due to her family reasons and on the other hand, she has received salary for the promoted post, which she declined and refused to join the transferred place at Thanjavur.

10. The petitioner cannot be allowed to approbate and reprobate and she cannot be allowed to have the cake and eat it too. The challenge in the Writ Petition is therefore to be discountenanced both in law and on facts.

11. For the above said reasons, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

1. The General Manager,
Personnel Administration Department (HR),
Indian Overseas Bank,
Central Office, Chennai.



2. The Chief Regional Manager,
Indian Overseas Bank,
Regional Office, Bangalore Region,
Bangalore.

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+1 CC to M/s.J. Madhu, advocate sr 64435
+1 CC to Mr.N.G.R. Prasad, advocate sr 64583.

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NRL (CO)
SP (27/12/2021)