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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.10.2021

JUDGMENT PRONOUNCED ON: 25.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.279 of 2019

and

C.M.P.Nos.9482 & 20165 of 2019

1.Canara Bank,
Rep., by its Managing Director,
Registered Office, Manipal,
Karnataka - 576 104.

2.The General Manager,
Personnel Department,
Canara Bank,
Registered Office, Manipal,
Karnataka - 576 104.

3.The General Manager,
Canara Bank, Regional Office,
Armenian Street,
Chennai - 600 001.

.. Appellants/Defendants

[Appellants 1 to 3 substituted vide order dated 22.10.2021
in C.M.P.No.17711 of 2021 in A.S.No.279 of 2019]

-vs-

G.Raj

.. Respondent/Plaintiff

Prayer :- Appeal filed under under Section 96 of Civil
Procedure Code to set aside the Decree and Judgment of XVIII
Additional City Civil Court, Chennai dated 26.09.2018 in
O.S.No.1317 of 2016.

For Appellants : Mr.T.Raghunathan
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.M.Ramamoorthi



JUDGMENT

The defendants are the appellants before this Court challenging the judgment and decree, dated 26.09.2018 passed by the learned XVIII Additional Judge, City Civil Court, Chennai.

2.The parties for the ease of the understanding will continue to be referred in the same litigative status as before the trial court.

Plaintiff's case :-

3.The suit in O.S.No.4555 of 2012 was originally filed before the XV Assistant City Civil Court, Chennai, which was later transferred to the file of the XVIII Additional City Civil Court, Chennai and renumbered as O.S.No.1317 of 2016.

4.The plaintiff had filed the suit for the following reliefs:-

"(a) For a Mandatory Injunction, directing the defendants to give notional increments to the plaintiff for the period of his non employment i.e., from 31.05.1991 to 30.12.1996 and calculate his salary by arriving at the giving effect to notional increments for the periods in November, 1991, November, 1992, November, 1993, Computer increment in 1993, November, 1994, November, 1995 and November, 1996 and fit the plaintiff in appropriate pay scale on and from 30.12.1996, the date on which the plaintiff was reinstated in service as per the orders of the Honourable High Court dated 05.12.1996 passed in W.P.No.17225 of 1991 and credit into the plaintiff's account the actual amounts payable to him;

(b) For a consequential Permanent Injunction, restraining the defendants, their men, agents, servants, legal representatives, heirs or any one claiming under them from withholding the difference of monetary benefits payable to the plaintiff after giving notional increments to the plaintiff for the period of his non employment i.e., from 31.05.1991 to 30.12.1996 and calculate his salary by arriving at the giving effect to notional increments for the periods in November, 1991, November, 1992, November, 1993, Computer increment in 1993, November, 1994, November, 1995 and November, 1996



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and after fitting the plaintiff in appropriate pay scale on and from 30.12.1996, the date on which the plaintiff was reinstated in service as per the orders of the Honourable High Court dated 05.12.1996 passed in W.P.No.17225 of 1991; and

(c) For the costs of this suit."

5.The genesis for the suit is the order passed by this Court in W.P.No.17225 of 1991 in and by which, the order dismissing the plaintiff from service was set aside and the respondents therein were directed to reinstate the plaintiff in service without backwages, but with continuity of service. The issue involved in this suit is whether "continuity of service" would entitle the plaintiff to the notional increments for the period the plaintiff was dismissed from service and reinstated by orders of this Court.

6.The case of the plaintiff is that since the respondents therein, who are the defendants herein, had not complied with the order in W.P.No.17225 of 1991, he was constrained to file W.P.No.25792 of 2010 for a mandamus that his representation dated 01.11.2010 be considered by the defendants and orders be passed. This Court had allowed the writ petition on 19.07.2011 directing the defendants to consider the representation in the light of the orders passed in W.P.No.17225 of 1991.

7.On 28.09.2011, the defendants had informed the plaintiff that the difference in superannuation benefit works to Rs.71,308/- and the basic pension was fixed at Rs.16,650/- on the basis of the last drawn salary worked out at a sum of Rs.48,860/-. The basic pay was Rs.30,600/-. The defendants by a communication dated 04.10.2011, had informed the plaintiff that his entire arrears works out to a sum of Rs.4,33,171.91 and the difference in leave encashment a sum of Rs.6,185.67. The plaintiff therefore, issued a legal notice dated 11.10.2011, calling upon the defendants to issue a calculation memo in respect of the appropriate fitment due to him on reinstatement. On 16.10.2011, a reply was received from the defendants with a calculation memo. On perusing the reply, the plaintiff immediately sent a rejoinder dated 21.10.2011 bringing to the notice of the defendants that his notional increments have not been taken note of. He had stated that since he was dismissed from service on 31.05.1995, and re-instated on 30.12.1996, the annual increment which fell due in the month of November of every year viz., November, 1991, November, 1992, November, 1993, November, 1994, November, 1995 and November, 1996 and the



computer increment in the year 1993 should be given to him. The plaintiff had made it clear that he was not entitled to the backwages, but he was entitled to the notional increments for the aforesaid period. On 21.10.2011, the plaintiff had issued a notice calling upon the defendants to fix his notional increment and fit him in the appropriate scale with effect from 30.12.1996. Since the defendants had not complied with the order, the plaintiff has come forward with the present suit. Written Statement of the defendants :-

8.The defendants, in their written statement, had stated that the plaintiff had entered the services of the defendant-Bank on 24.10.1973 as a Clerk and had gone up the ladder and on 03.06.1985, he had been promoted as an Assistant Manager. On 21.07.1990, an enquiry was ordered against him for fudging the food bills. In the enquiry, the Enquiry Officer submitted a report holding the plaintiff guilty and by order dated 31.05.1991, he was dismissed from the services of the Bank. In the Departmental appeal, the order was confirmed and challenging the same, the plaintiff had filed W.P.No.17225 of 1991. This Court held the dismissal to be disproportionate to the offences and ordered his reinstatement, however without backwages, but with continuity of services. The Court had also held that the plaintiff would not be eligible for promotion for five years. On 05.12.1996, the defendant-Bank had reinstated the plaintiff and posted him in the same post, as he was on the date of his dismissal and posted him in the Civil Lines Branch at Moradabad. The defendant-Bank thereafter, fixed his basic pay in the revised scale taking into account the notional increment that had fallen due. During this period, one advance increment was given and the basic pay was fixed at Rs.6,900/-.

9.Once again, the plaintiff had participated in an illegal strike on 28.06.2000 and on 06.11.2000, a charge sheet was issued to him. On 23.01.2001, he was imposed with the punishment of reduction in basic pay for two stages for one year without cumulative effect and without affecting the pension. The plaintiff had preferred a Departmental appeal on 16.02.2001 and by order dated 27.02.2001, the Appellate Authority had reduced the punishment to reduction in basic pay for one stage for one year.

10.The defendants would submit that thereafter, the plaintiff had filed W.P.No.45137 of 2002, for a direction seeking his proper fitment. The writ petition was allowed and by communication dated 19.03.2003, the defendants were informed that the plaintiff had been properly fitted. Yet another writ



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petition in W.P.No.14720 of 2003 was filed by the plaintiff stating that his basic pay had not been restored though the punishment was for a one year period and had expired on 23.01.2002. Pending the writ petition, the basic pay was restored and consequently, by order dated 19.10.2010, the writ petition was closed.

11.Once again on 23.08.2004, the plaintiff was punished for improper conduct and was charge sheeted on 06.10.2004. After departmental enquiry, the Enquiry Officer had submitted a report on 07.02.2005 holding the charges as proved. On 10.03.2005, the plaintiff was imposed with punishment of reduction in basic pay for two stages and it was also held that the plaintiff would not be entitled to increment for this period. By reason of this reduction of basic pay, the future increments of the plaintiff were postponed and the period of suspension was not being treated as 'duty'. The punishment also specified that the plaintiff would not be entitled to backwages or to notional increments/consequential benefits. In appeal, the punishment was confirmed by orders dated 23.06.2005. In the interregnum, the plaintiff was promoted to Scale-II and was fitted in the revised scale. The defendants would submit that in all these proceedings and the revised scale of pay, the plaintiff had acquiesced and accepted the same. Ultimately he had retired on 31.08.2010 and on 05.11.2010, he had filed W.P.No.25792 of 2010, which was ordered on 19.07.2011. The defendants would submit that pursuant to the orders of the Court, the representation of the plaintiff dated 01.11.2010 was considered and a detailed order was passed despite which, the plaintiff has come forward with the instant suit. The defendants have also pleaded limitation stating that once the defendants had acquiesced to the order dated 19.03.2003, the present suit filed in the year 2012, was clearly barred by limitation. The defendants had also pleaded that the suit is nothing but a suit for recovery of money and by an as astute drafting, the plaintiff has packaged the relief into one for mandatory injunction. Therefore, the suit has to be dismissed.

12.Pending the suit, it appears that the plaintiff had filed an application for amending the plaint in I.A.No.5994 of 2015 seeking certain routine amendments and also quantifying the sum payable to him as Rs.10,01,000/- in the place of the earlier relief claiming "actual amounts due to him" by the defendants. Necessary Court fee was also paid for this amount. The amendment was also ordered on 16.07.2015.

13.The learned XVIII Additional Judge, City Civil Court,



Chennai, on perusing the pleadings, had framed the following issues:-

"1.Whether the plaintiff is entitled to mandatory injunction, to direct the defendants to give notional increments to the plaintiff?

2.Whether the plaintiff is entitled to a consequential permanent injunction, restraining the defendants, their men, agents, servants, legal representatives, heirs or anyone claiming under them from withholding the difference of monetary benefits payable to the plaintiff? and

3.Whether the plaintiff is entitled to pay the cost?"

Trial Court :-

14.The parties went to trial on the said issues. The plaintiff had examined himself as P.W.1 and Ex.A1 to Ex.A31 were marked on his side. On the side of the defendants, the Senior Manager of the defendant-Bank was examined as D.W.1 and Ex.B1 to Ex.B35 were marked. Ultimately, by judgment dated 26.09.2018, the learned XVIII Additional Judge had decreed the suit directing the defendants to give the notional increment for the period of the plaintiff's non-employment, fit him in the appropriate pay scale on and from 30.12.1996 being the date when he was reinstated in service and to pay him a sum of Rs.10,01,000/-. An order of permanent injunction was also granted to the plaintiff. Challenging the said judgment and decree, the defendants are before this Court by way of this appeal suit.

Submissions :-

15.The main argument advanced by Mr.T.Raghunathan, learned counsel appearing on behalf of the appellants/defendants was that the order directing reinstatement with continuity of service will not entitle the plaintiff to claim notional increment, as the same was not specifically directed to be granted to the plaintiff in the order in W.P.No.17225 of 1991. The second argument was on limitation. He would invite the attention of this Court to para 8 of the plaint wherein, the plaintiff had narrated the cause of action for filing the suit and the learned counsel would submit that a perusal of the same would indicate that the first request for grant of notional increment was made in the year 2002 and was rejected and therefore, the cause of action would arise on the said date. Despite the defendants raising the issue of limitation, the learned Judge has not framed an issue on the ground of limitation. That apart, after the suit had been amended,



additional issues had not been framed. The defendants would also contend that the plaintiff's right to claim notional increment commenced on 30.12.1996.

16. The learned counsel for the appellants had relied upon the following judgments in support of his argument that continuity of service will not entail notional increments:-

(i) A.P.SRTC and Another vs. S.Narsagoud [(2003) 2 SCC 212];

(ii) Rajasthan State Road Transport Corpn. And Others vs. Shyam Bihari Lal Gupta [(2005) 7 SCC 406]

(iii) A.P.State Road Transport Corporation and Others. vs. Abdul Kareem [(2005) 6 SCC 36]

(iv) J.K.Synthetics Ltd. vs. K.P.Agrawal and Another [(2007) 2 SCC 433]

(v) I.Laxma Reddy vs. Andhra Pradesh State Road Transport Corporation and Others [(2007) 13 SCC 415]

(vi) V.V.G.Reddy vs. Andhra Pradesh State Road Transport Corporation, Nizamabad Region and Another [(2009) 2 SCC 668]

17. He would further contend that even according to the pleading of plaintiff, his right to claim notional increment has arisen on the date of his reinstatement on 19.03.2003 under Ex.A14, as the other claims had been rejected. Therefore, the cause of action had arisen on the said date and therefore, considering Article 113, the suit filed in the year 2012 was squarely barred by limitation. He would rely on the following judgments in support of his proposition:-

(i) Balakrishna Savalram Pujari Waghmare and Others vs. Shree Dhyaneswar Maharaj Sansthan and Others [1959 Supp (2) SCR 476];

(ii) Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Ltd., and Another [(2019) 9 SCC 158];

(iii) M.R.Gupta vs. Union of India and Others [(1995) 5 SCC 628] and

(iv) Union of India and Others vs. Tarsem Singh [(2008) 8 SCC 648.

18. Even assuming that the claim is not barred by limitation, however, relying on the judgment in Tarsem Singh (supra) Mr.T.Raghunathan, learned counsel would contend that the plaintiff would be entitled to salary for three years reckoned prior to the filing of the suit alone. The other argument put forward is that the plaintiff, who has come forward with a case that he has not been given the notional increment, has not filed any document whatsoever to prove the notional increment that was due to him along with the supporting documents. By way of



amendment, the plaintiff has arrived at a figure of Rs.10,01,000/-, no document has been filed to prove how the plaintiff had arrived at the sum of Rs.10,01,000/-. Therefore, it is his contention that the trial court has totally misdirected itself and in the absence of proof, ought to have dismissed the suit. However, the learned counsel, by way of abundant caution, has made an alternate prayer that in case, the Court were to find in favour of the plaintiff, then the payment of arrears should be restricted to a period of three years just prior to the filing of the suit.

19.Per contra, Mr.M.Ramamoorthy, learned counsel appearing on behalf of the plaintiff would contend that the argument with reference to the limitation is per se fallacious. The cause of action is a recurring one and every payment of the pension without properly fixing the pay scale gives a rise to a fresh cause of action. This Court had directed the defendants to consider the representation and no plea of limitation was raised then. Therefore, he would raise the plea of estoppel. He would also invite the attention of this Court to Ex.A5, a letter from the Bank dated 04.10.2012, which is pursuant to the order dated 19.07.2011 in W.P.No.25792 of 2010 wherein, the defendants had stated that they have released the increment by arriving at the notional annual increment for the period from 31.09.1995 to 31.12.1996. The letter would also highlight that the defendants had taken into consideration the wage revision at the relevant point of time by adding the notional increment for the above period for the purpose of continuity of service. He would therefore, submit that the plea of limitation cannot be taken at this stage. Learned counsel would once again rely upon Ex.A5 wherein the defendants have themselves stated that they have released the increment by arriving at a notional annual increment and have also taken into account the wage revision. In the light of this categorical admission in Ex.A5, the defendants cannot turn around now and state that the plaintiff was not entitled to notional increment. He would submit that the dispute now is with reference to the quantum of the notional increment and not on the right of the plaintiff to claim notional increment. Even in their counter before this Court in W.P.No.25792 of 2010, the defendants have not raised the defence that the plaintiff was not entitled to notional increment. In the affidavit filed in support of the said petition, the plaintiff had set out very clearly the fact that he was entitled to the notional increment as well as the fitment in the appropriate scale of pay. To this, the defendants had not filed a counter denying the right of the plaintiff to claim notional increment. Therefore, the argument in this regard is absolutely



unsustainable and made for the first time in the suit. As regards the argument that it is for the plaintiff to prove his case, the learned counsel would submit that the plaintiff has under Ex.A19, set out the details of the claim, which has not been refuted by the defendants. Under Ex.A19, the plaintiff has calculated the annual pay fixed as per the fitment and the difference that was payable from 1996 to 2000. Therefore, it is his argument that the plaintiff has provided the calculation and it is for the defendant, who has all the records to verify the same and arrive at the figure. He would rely on the judgment reported in R.Alagrisamy vs. State of Tamil Nadu and Others [2018 (1) CWC 289] in support of his case that a duty in a post on a time scale accounts for increment in that time scale. He would rely on the judgments reported in Lalappa Lingappa and Others vs. Laxmi Vishnu Textile Mills Ltd. and Others [1981 1 LLN 347 (SC)], Venjaramood Cooperative Rubber Marketing Society Ltd. vs. Nazimuddin [2007 (4) LLN 304 (ker)], and Management, Rural Unit for Heath and Social Affairs (Ruhsa) and Another vs. Presiding Officer, Labour Court, Vellore [2009 (4) LLN 221] in support of his argument that continuity of service includes the right to claim the increments notionally and for other wage revision that had taken place during the period of dismissal. He would further contend that D.W.1 in her cross examination stated that the bank understood the term "continuous service" as one relevant for the pension benefits and it was only the pension benefits, which were taken into account. She has also admitted that after the plaintiff's reinstatement, his salary had not been fixed for which a petition had been received from the plaintiff. It was also submitted that Ex.B7 was a letter which only related to the wage revision. He would submit that this is a clear admission on the part of the defendants about the error in their calculation. He would also rely on the judgment of this Court reported in Management, Rural Unit for Heath and Social Affairs (Ruhsa) (supra). He would therefore, submit that the defendants have not made out any case for setting aside the judgment in O.S.No.1317 of 2016 and therefore, the appeal should be dismissed.

Points for consideration :-

20.After hearing the learned counsels on either side, the points that emerge for consideration are as follows:-

- (a) Whether the suit is barred by limitation?
- (b) Whether the plaintiff is entitled to a notional increment on account of the order in W.P.No.17225 of 1991? and
- (c) Whether the plaintiff is entitled to



the decree without proving the same?

Limitation :-

21. An argument had been put forward by the plaintiff that the issue regarding limitation had not been framed by the trial court. However, though an issue had not been framed, the learned XVIII Additional Judge, City Civil Court, Chennai has considered the question of limitation in a very great detail and has referred to the judgment submitted by both sides to hold that the suit is not barred by limitation.

22. The defendants have contended that the suit is barred by limitation, since the claim of the plaintiff had been rejected as early as in the year 2007 under Ex.A14 dated 19.03.2003 and the suit filed in the year 2012 is therefore, barred by limitation by applying the provisions of Article 113 of the Limitation Act. The argument, at the first blush, though would appear very attractive has to definitely be rejected on the ground that the issue in question is that the plaintiff, by reason of the defendants not having calculated the notional increment, has been receiving a pension of a lower scale. The basic pay of the plaintiff which forms the basis for determining the pension has been erroneously fixed. Therefore, the same is a continuing cause of action every time the plaintiff receives his pension. Therefore, the period of limitation is extended periodically as per Section 22 of the Limitation Act. In the writ petition filed by the plaintiff in W.P.No.25792 of 2010, the plaintiff has clearly stated that his pension has been calculated at a lesser rate than what should be paid to him. Therefore, it is a continuing wrong. Consequently, the same had cascading effect on the other emoluments payable to him. The plaintiff has further submitted that he has not been fitted in the appropriate time scale of pay as per the order in W.P.No.17225 of 1991. The plaintiff has also claimed the benefit of Bipartite wage settlement apart from referring to the regulations of the Bank for seeking a refixation of his salary. The defendants had not taken out the plea of limitation in any of the earlier proceedings and this Court on 19.07.2011, has passed the following order:-

"8. The fact remains that the petitioner was originally dismissed from service pursuant to the issuance of charge memo and the enquiry conducted by the respondents. However, the petitioner, after exhausting the alternative remedy of preferring an appeal, filed a writ petition before this Court in W.P.No.17225/1991 and this Court passed an order dated 29.10.1996,



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modifying the punishment of dismissal from service to one of reinstatement without backwages and the promotion of the petitioner has been withheld for a period of five years but with continuity of service. As a matter of fact, pursuant to the orders of this Court, the respondents reinstated the petitioner, but the grievance of the petitioner is to the effect that he has not been paid the salary by calculating the salary on the basis of continuity of service.

9.It is seen that the petitioner has given several representations dated 25.07.2002, 12.12.2009, 20.09.2010 and lastly on 01.11.2010. Though it is claimed by the respondents that the salary of the petitioner was fixed as per the orders of this Court, the petitioner highlighted certain factors and stated that he has not been fixed with correct pay by giving effect to continuity of service as directed by this Court in W.P.No.17225/1991.

10.Therefore, this Court is constrained to direct the third respondent herein to consider the latest representation of the petitioner dated 01.11.2010, seeking for the relief of fixation of salary by giving continuity of service, in the light of the order passed by this Court dated 29.10.1996 in W.P.No.17225/1991 and pass orders on merits and in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order."

Therefore, it is clear that the suit is not barred by limitation and is well within time. The Hon'ble Supreme Court in the judgment in Tarsem Singh (supra), has held as follows on the issue of "continuing wrong":-

"4.The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna Savalram Pujari Waghmare vs. Shree Dhyaneswar Maharaj Sansthan [AIR 1959 SC 798] explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the



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Limitation Act, 1963):

"31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

Therefore, the 1st point for consideration is answered in favour of the plaintiff.

Notional Increments :-

23.As regards the contention that the plaintiff is not entitled to the notional increment, the defendants had placed reliance on the judgment in J.K.Synthetics Ltd. (supra) wherein, the learned Judges have said that on a reinstatement, a workmen cannot claim continuity of service as also backwages. However, the subsequent Bench of the Hon'ble Supreme Court in the case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Others [(2013) 10 SCC 324] has declared the ratio laid down in J.K.Synthetics Ltd. (supra) case as contrary to the ratio that has been laid down in the judgments of the three Judges Benches [(1979) 2 SCC 880 and (1980) 4 SCC 443] and held that it cannot be treated as good law as that of the judgment is against the very concept of reinstatement of an employed workman.

24.The learned counsel for the defendants has also placed reliance on the judgment reported as A.P.SRTC vs. S.Narsagoud (supra) where, the Hon'ble Judges have laid down the following ratio:-

"9.We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a



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specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

25. However, while expressing their opinion, they have clearly spelt out the basis upon which the ratio has been laid i.e., "an unauthorised absence from duty". The case on hand is not one of an unauthorised absence but an absence on account of the fact that the plaintiff has been kept out of service by the defendant-Bank.

26. In the judgment of the later Bench of the Hon'ble Supreme Court in V.V.G.Reddy (supra), the learned Judges had referred to the judgment in S.Narsagoud (supra) but had observed that in the case before them, the appellant had not been directed to be reinstated in service by reason of an award holding the termination to be wholly illegal but was one passed by reason of a compromise entered between the Management and the delinquent. The facts would therefore, not apply to the facts of the instant case. Further, the defendants, vide their letter dated 04.10.2011 (Ex.A5 = B32), are estopped from taking the plea that the plaintiff is not entitled to notional increments considering the fact that after his reinstatement, the defendants have themselves fixed the basic pay in the revised scale taking into account the notional increment that has fallen due and have also given an advance increment whereby, the basic pay was revised. Therefore, it is clearly evident that the defendant-Bank had understood "continuity of service" to include "notional increments and revision of pay scale". Therefore, the fixation of the scale of pay as in Ex.A5 = Ex.B32. Further, the arguments that is sought to be advanced on the side of the defendants is that the plaintiff is claiming annual increments for the period in which he was not employed viz., for the period from 01.06.1991 to 29.12.1996. However, a perusal of the claim of the plaintiff would show that the plaintiff had only sought for a notional increment so that the plaintiff may be fitted into the appropriate scale of pay. The plaintiff has not claimed for the payments due during this period. There were two bipartite settlements between the defendant-Bank and their workmen during this period, the benefit of which is also to



enure to the benefit of the plaintiff. Therefore, in the light of the discussion of the judgments referred supra and in the light of Ex.A5 = B32, I am of the view that the plaintiff has proved his case of being entitled to notional increment and therefore, the finding of the Court below in this regard is correct and does not require any reconsideration and point for consideration No.2 is also held in favour of the plaintiff.

Proof for the claim :-

27.Coming to the issue of regarding the proof for the claim, the plaintiff has submitted Ex.A19 to show the amounts that were payable to him. The learned counsel for the defendants had vehemently argued that it is not possible for the defendant-Bank to collect all the details of the plaintiff, since he had been transferred to various places. Such an argument by a Nationalised Bank, having its branches all over, is totally puerile and absurd.

28.A perusal of Ex.A5 = B32 would show that the Bank has claimed that they have calculated the notional increment. A question would then arise as to what were the documents that were perused by the Bank to arrive at that figure. It is therefore, clear that this argument which is taken up for the first time in this appeal is made with the mala fide intentions. The plaintiff has by virtue of an amendment restricted his claim to a sum of Rs.10,01,000/- towards arrears. It is for the Bank who holds the records to fix the pay scale of the plaintiff. It beats logic as to how the defendant-Bank claims that it is not possible to fix the pay scale when they are aware of the last drawn scale of pay of the plaintiff as on the date of dismissal from where they have to work out the notional increment and thereby, re-fix the basic scale. Further, this exercise has been done by them under Ex.A5 which figure the plaintiff disputes. Therefore, on this issue also, the point is answered in favour of the plaintiff.

29.In fine, I do not find any reason to interfere with the well considered judgment of the trial court and consequently, the Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

abr



To

The XVIII Additional City Civil Court,
Chennai.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.T.S.Gopalan & Co, Advocate SR.No.4478

A.S.No.279 of 2019

GJ(CO)
GN(23/02/2022)