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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.11991 OF 2014

AND

M.P.NO.2 OF 2014 AND M.P.NO.1 OF 2015

AND

W.M.P.NO.8869 OF 2018

1. All India State Bank Officers Federation
(Regn No.727/MDS)
Represented by its Vice President,
No.22, Rajaji Salai,
Chennai - 600 001.

2. All India Bank Officers' Confederation,
(Regd.No.3427/Delhi)
Parliament Street Branch,
PTI Building,
4, Parliament Street,
New Delhi - 110 001.

3. K.Bhavanisankar

... Petitioners

.Vs.

1. State Bank of India,
Represented by its Chairman,
Corporate Centre,
Madame Cama Road,
Mumbai.

2. The Deputy Managing Director &
Corporate Development Officer,
State Bank of India,
Industrial Relations Department,
Corporate Centre,
Madame Cama Road, Mumbai.

3. Indian Bank's Association,
Rep.by its Chief Executive,
World Trade Centre Complex,
Centre 1, 6th Floor, Cuffe Parade,
Mumbai - 400 005.



4. The Commissioner of Income Tax(TDS)
Room No.123, 1st Floor, Tower-1,
BSNL Building, 18, Greams Road,
Thousand Lights, Chennai - 6.

[R4 impleaded as per order dated
07.03.2018 as per order dated 07.03.2018
in W.M.P.No.5662 of 2018 in
W.P.No.11991 of 2014]

... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to quash the impugned Circular Letter No.CIR/HR & IR/F/2014-15/9195 dated 07.4.2014 issued by the 3rd respondent read with the e-Circular bearing No.CDO/P&HRD-PM/7/2014-15, dated 15.4.2014 issued by the 1st respondent and singed by the 2nd respondent herein, after calling for the concerned records from the respondents and consequently direct the respondents to continue the LTC/HTC to cover foreign travel as provided to the officers of the respondent bank and members of the 3rd respondent prior to 07.4.2014.

For Petitioners : M/s.R.Vaigai
Senior Advocate
For M/s.Anna Mathew

For Respondents

For R1 and R2 : Mr.Om Prakash
Senior Advocate
For Mr.K.Chandrasekar

For R4 : Mr.S.Rajesh
For Mr.Karthik Ranganathan

For R3 : No appearance

ORDER

The writ on hand has been instituted, questioning the validity of the Circular dated 07.04.2014 issued by the third respondent read with the e-Circular dated 15.4.2014 issued by the 1st respondent. Further, a direction is sought for to continue the LTC/HTC to cover foreign travel as provided to the



travel being covered by L.T.C On 12.07.2012, the 3rd respondent issued another letter, clarifying the fares, the officers are entitled to. The letter was marked to the petitioners, who are parties to the Bipartite settlement.

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7. The petitioners state that on 07.04.2014, the Indian Bank's Association unilaterally took a decision to withdraw the L.T.C covering overseas travel. The decision was not preceded by any notice or discussion with the petitioners, the respondent Bank followed the same, by its Circular dated 15.4.2014, informing that it has decided to withdraw the facility and the officers were not entitled to visit overseas countries/ centres as part of LTC or HTC (Home Travel Concession). The instructions came into with immediate effect.

8. The petitioners sent separate protest letters dated 16.4.2014, representing that it was highly arbitrary on the respondents' part to withdraw the facility unilaterally and without any due notice and discussion with the petitioners. The unilateral decision causes irreparable injuries to the members of the petitioner's federation.

9. The petitioners state the Leave Travel Concession is a precious facility obtained by the officers and is part of their right to welfare to be provided by the employers for rendering dedicated service to the bank. Thus, the said facility cannot be denied to the officers unilaterally by the respondents. It is stated that similar provisions are available in the Banking Companies (Acquisition and takeover of undertakings) Act, 1970, entitles officers of other Banks to be officer Directors in their Banks.

10. The respondents/State Bank of India disputed the contentions raised by the petitioners in their counter affidavit. The respondents state that State Bank of India is a body corporate constituted under the State Bank of India Act, 1955, carrying on business of banking with its Corporate Centre at State Bank Bhavan, Madam Cama Road, Mumbai - 400 021 and its offices and branches all over India.

11. The employees of the State Bank can be broadly classified under two categories viz., (i) Award Staff, who are governed by the Industrial Disputes Act, 1947, and (ii) Officers, who perform managerial and supervisory functions. The State Bank of India Officers' Service Rules, 1992, have been made by the Central Board of the State Bank of India in exercise of powers conferred by Section 43(1) of the State Bank of India Act, 1955, determining terms and conditions of the appointment and services of Officers in the State Bank, which have the force of law. Rule 44 of the State Bank of India Officers' Service



Rules, 1942, which is relevant for the purpose of this case, deals with Leave Travel Concession and Leave Encashment. A cursory perusal of the said Rule would clearly indicate that the Leave Travel Concession facility has been extended to the Officers of State Bank for travel during each Block period of two years either to their respective home towns in India or to the designated place of travel in India, and the said Rule does not contain any provision or even recognise any right for travel to any place outside India or to any foreign country.

12. The facility was only by way of non-statutory circulars dated 20.08.1981 and 18.09.1982 issued by Management of State Bank and the Indian Banks' Association respectively that guideline instructions had been supplemented to the effect that while availing the benefit of Leave Travel Concession, an Officer of State Bank may be reimbursed of the actual charge for his entire journey within and without India, or the cost of fare, to his home town/designated place by the shortest route by his entitled class whichever is lower, so long as the Officer's place of domicile or designated place is anywhere in India and he actually visits the place so designated. This position has been reinforced in the Circulars dated 29.11.2006 and 04.04.2007 issued by the Management of State Bank and in the Circulars dated 08.10.2008 and 12.07.2012 issued by the Indian Banks' Association, emphasizing that while availing the Leave Travel Concession facility, an Officer may travel to a foreign land enroute to his designated place, which has to be necessarily in India. It is also a matter of fact that the eligible amount reimbursed to an Officer under the Leave Travel Concession facility has been all along limited to the actual fare/hire charges or the cost of fare to his home town/designated place by the shortest route by his entitled fare, whichever is lower, in short, the Leave Travel Concession facility contemplated travel only to a specified destination in India, and visit to a foreign land enroute had been only incidentally permitted, while ensuring that no extra financial commitment is incurred for the same.

13. The Indian Banks' Association by Circular dated 07.04.2014 advised as follows:

".....different Banks have issued different administrative guidelines for availing LTC/HTC and reimbursement of expenses incurred in this regard. The matter was also discussed in a review meeting of all CMDs of PSBs, held with the Secretary, Department of Financial Services, Government of India, on 05.03.2014. The Secretary, DFS suggested that IBA should examine the matter and issue uniform guidelines to be followed by all PSBs to



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the State Bank of India Officers Service Rules, 1992. The benefit of visiting foreign centres enroute while availing LTC facility for destinations in India had not been extended pursuant to any bilateral discussions between the Management of State Bank and the authorised representatives of the Officers' Association as sought to be wrongly projected by the Petitioners and as such, it is far fetched by the Petitioners to claim that the withdrawal of that benefit, which is impugned in this Writ Petition, could not have been done without negotiations with the authorised representatives of the Officers' Associations. Further, inasmuch as there is nothing pertaining to providing or continuing for any benefit of visiting foreign centres enroute while availing LTC facility for destinations in India in the Joint Note dated 27.04.2010, the reliance placed by the Petitioners on the same cannot improve their case for its continuance in any manner. The respondents state that the negotiations conducted by the Management of State Bank of India with the authorised representatives of Officers' Associations cannot be treated on par with settlements arrived by the Management with the workmen governed by the Industrial Disputes Act, 1947, for all purposes and intent. The Leave Travel Concession facility for destinations in India as statutorily incorporated in Rule 44 of the State Bank of India Officers' Service Rules, 1992, which does not expressly include for travel to any place outside India or to any foreign country, continues to be in operation and hence, the Petitioners are not prejudiced by the mere withdrawal of the benefit of visiting centres enroute while availing LTC facility for destinations in India that had been extended only through non-statutory circulars.

18. The respondents have stated that the judgment relied on by the petitioners in the case of All India Bank Officers Confederation -vs- Union of India reported in [(1989) 4 SCC 90] does not have any relevance to the matter in issue in this case.

19. Further reference made to Pari materia in the Banking Companies (Acquisition & takeover of Undertaking) Act, 1970, in respect of other Nationalized Banks may not have any direct application with reference to the benefit of LTC in the present case.

20. The State Bank of India contended that the HR Hand Book relied on by the petitioners is a compilation of the rules and administrative circulars issued for easy reference and the same cannot be construed as entirely statutory in character. Chapter 17 of the HR Hand Book, which speaks about permission to an Officer to visit a foreign country in paras 17.4 and 17.18 thereof is only a reference to the guidelines issued in the administrative Circulars and does not arise from any statutory



right conferred under Rule 44(1) of the State Bank of India Officers Service Rules, 1992. The benefit of visiting foreign centres enroute while availing LTC facility for destinations in India had not been extended pursuant to any bilateral discussions between the Management of State Bank and the authorised representatives of the Officers' Association as sought to be wrongly projected by the Petitioners and as such, it is far fetched by the Petitioners to claim that the withdrawal of that benefit, which is impugned in this Writ Petition, could not have been done without negotiations with the authorised representatives of the Officers' Associations. There is nothing pertaining to providing or continuing for any benefit of visiting foreign centres enroute while availing LTC facility for destinations in India in the Joint Note dated 27.04.2010, the reliance placed by the Petitioners on the same cannot improve their case for its continuance in any manner. The negotiations conducted by the Management of State Bank of India with the authorised representatives of Officers' Associations cannot be treated on par with settlements arrived by the Management with the workmen governed by the Industrial Disputes Act, 1947, for all purposes and intent. Be that as it may, the Leave Travel Concession facility for destinations in India as statutorily incorporated in Rule 44 of the State Bank of India Officers' Service Rules, 1992, which does not expressly include for travel to any place outside India or to any foreign country, continues to be in operation and hence, the Petitioners are not prejudiced by the mere withdrawal of the benefit of visiting centres enroute while availing LTC facility for destinations in India that had been extended only through non-statutory circulars.

21. The 4th respondent/Commissioner of Income Tax filed an affidavit, stating that originally an interim stay of operation of the impugned Circulars issued by the respondents was granted by this Court by order dated 25.04.2014 on the undertaking given by the petitioners that later if the writ petition is dismissed, the amount paid towards LTC to cover foreign/overseas travel will be refunded by the individual officers concerned. However, thereafter, on 16.02.2015, this Hon'ble Court explained the interim order granted by this Court to the effect that any amount paid to the petitioner towards LTC or reimbursement of LTC pursuant to the impugned order would not amount to income, so as to enable the Bank to deduct tax at source. If the writ petition is dismissed, the employees are liable to pay tax on the amount paid by the Bank.

22. The 4th respondent states that the Income Tax Act, 1961 is a Special Act and a code by itself and the liability for deduction of Tax at Source has to be decided in accordance with the provisions of the said Act. Section 10(5) of the Income Tax Act, 1961, specifically stipulates that "in the case of an



individual, the value of any travel concession or assistance received by, or due to, him from his employer for himself and his family in connection his proceeding on leave to any place in India (emphasis supplied) shall no be included in computing the total income of the previous year of any person. The words used in the said sub-section specifically state "place in India". Therefore, when travel concession or assistance is received by the employee for visit to a place outside India, such amount is not exempt from the computation of total income of the employee. Such amount received by the employee would amount to perquisite and liable to deduction of tax at source at the hands of the employer. However, this Hon'ble Court in the interim order dated 16.02.2015, observed that any amount paid towards LTC or reimbursement of LTC would not amount to income and that therefore, the Bank need not deduct tax at source. Therefore, the interim order dated 16.02.2015 ought to be vacated.

23. The Statutory Appellate Authorities [Income Tax Appellate Tribunal and Commissioner of Income Tax (Appeals)] have held that no exemption is available under Section 10(5) of the Income Tax Act, 1961 in case of travel outside India and the employer is liable to deduct tax at source on Leave Travel Concession/Leave Fare Concession, if the same is claimed by the employees for travel to foreign destinations.

24. The 4th respondent has stated that the issues between the Bank Employees Federation and the Banks can have no bearing on the statutory provisions contained in the Income Tax Act, 1961. Even assuming that this Court holds that in the light of bilateral discussions between the Bank Employees Federation and the Banks, the employees are entitled to Leave Travel Concession on foreign travel, whether such Leave Travel Concession on foreign travel forms a part of income or excluded from income under the Income Tax Act, 1961 will have to be decided as per the provisions of the Income Tax Act, 1961. Such question can be determined only by the assessing officer of the Banks and the individual employees have no say in the same. The individual employees are entitled to take credit of the tax deducted at source by the banks or claim refund of the same, if their income is below the taxable limit or there has been an excess payment by them.

25. The learned Senior Counsel appearing on behalf of the petitioners contended that the benefit of LTC to foreign countries are being extended to the officers of the State Bank of India right from the year 1982. The benefit was granted based on the negotiations between the Officers Association and the Management. Once the benefits or advantages are conferred on the officials of the Bank after negotiation, then it is to be construed as a right and such a right cannot be taken away



unilaterally by the Respondent/Management. In the present case, the decision impugned had been taken unilaterally by the Management without affording any opportunity to the petitioners' Federation even to place their objections. However, the petitioners have submitted their objections, but the respondents have not considered the fact that the benefit of LTC to abroad is being continuing for several years. Thus, the impugned order is in violation of the principles of natural justice.

26. The learned Senior Counsel appearing on behalf of the petitioners, in this regard, relied on the judgment of the Hon'ble Supreme Court of India in the case of H.L.Trehan and others Vs. Union of India and Others reported in (1989) 1 Supreme Court Cases 76, wherein, the Hon'ble Apex Court of made the following observations:

"11.....It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provisions of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice."

27. Relying on the above of the judgment, the learned Senior Counsel reiterated that the order impugned was issued unilaterally, cancelling the benefits conferred on the officers of the State Bank of India and therefore, the said order is to be set aside.

28(a). The learned Senior Counsel for the petitioner further relied on the judgment of the Hon'ble Supreme Court in the case of Prakash Ratan Sinha Vs. State of Bihar and others, reported in (2009) 14 SCC 690, the Hon'ble Supreme Court of India held as follows:

"13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally



to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made."

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(b) In the case of Mahabir Auto Stores and Others Vs. Indian Oil Corporation and others, reported in (1990) 3 SCC 752, the Hon'ble Supreme Court of India held as follows:

"17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such "power" and not cases of exercise of a "right" arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix."

29. Relying on the above judgments, the learned Senior Counsel for the petitioners is of an opinion that even in case, where, there is no law in a particular subject, then also, the principles of natural justice operates and thus, in the present case, even in the absence of any bipartite agreement between the employer and employee, the principles of natural justice is to be followed as the advantage granted to the officers of the State Bank of India is sought to be withdrawn.

30. It is further contended on behalf of the petitioners that the benefit of LTC to abroad has been granted in the year 1982 onwards and there is no additional expenditure involved as the overall package is restricted to that of the LTC, for which, the officers are eligible to travel within India. As far as the contention of the Income Tax Department is concerned, the State Bank of India has contended that no payment was in fact made for the foreign travel and the employees were actually paid only for the shortest route permissible to visit their hometown as per Rule 44 of the State Bank of India Officers Service Rules, 1992. On the basis of the proceedings of the Commissioner of Income Tax, the State Bank of India was allowed to hold that no TDS was deductible on the amounts paid by the State Bank of India towards LTC/LFC, since the same is restricted to the designated place in India only. Based on the above stand of the State Bank of India, the petitioners state that employees do not claim any amount to cover the foreign travel nor does the Bank pay for the expenses incurred for any travel abroad. Therefore, the impugned order issued by the respondent-Bank is not justified and is



arbitrary.

31. The learned Senior Counsel appearing on behalf of the respondents/State Bank of India objected the said contentions raised by the petitioners by stating that different Banks issued different administrative guidelines for availing LTC/HTC and reimbursement of expenses incurred in this regard. The matter was also discussed in a review meeting of all CMDs of PSBs, held with the Secretary, Department of Financial Services, Government of India, on 05.03.2014. The Secretary, DFS suggested that IBA should examine the matter and issue uniform guidelines to be followed by all PSBs to prevent the misuse of the facility, if any, by the Officers/employees. Accordingly, the matter was deliberated in the meeting of Managing Committee of IBA held on 01.04.2014. The Committee decided that officers/employees shall not be entitled to visit overseas countries/centres as part of LTC/HTC. All the member Banks, are therefore, advised to do the needful accordingly.

32. The issue of visiting foreign destinations en-route while availing LTC/HTC has since been examined afresh on receipt of communication from IBA advising the decision of their Managing Committee meeting held on 01.04.2014 to the effect that the Officers/Employees shall not be entitled to visit overseas countries/centres as part of LTC/HTC.

33. The learned Senior Counsel, while narrating the facts, stated that Section 43 of the State Bank of India Act provides terms and conditions of the officers and employees of the Bank.

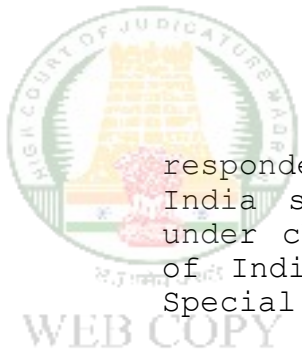
34. The Leave Travel Concession facility for officers of the Bank are provided in Rule 44 of the State Bank of India Officers Service Rules, 1992, which has got statutory force. On 20.08.1981, the Bank issued a circular of LTC, covering foreign travel, which has no statutory force. In view of the fact the LTC contemplates under Rule 44 does not provide any such travel covering foreign travel. Therefore, the Circular dated 20.08.1981 has no statutory force and it is a concession extended to the officers, which is otherwise not contemplated under Rule 44 of the State Bank of India Officers Service Rules. On 18.09.1982, IBA Circular on LTC to cover foreign travel, regarding reimbursement of actual charges for the entire journey within India or outside India or the cost of fare to his home town / designate place by the shortest route. The reimbursement will be limited to the actual fare or the cost of the fare to his own town by shortest route. The said Circular was issued on 29.11.2006, which is also non-statutory. The Bank further issued circular dated 04.04.2007, clarifying that the Leave Travel Concession / Home Travel Concession covering foreign, which is also non-statutory. On 07.04.2014, the IBA issued Circular withdrawing LTC overseas travel, which is impugned in this writ



35. Pertinently, the Department of Financial Services, Ministry of Finance, Government of India, in its memorandum dated 30.04.2014, addressed to Public Sector Banks and others to formulate LTC based on the principles published by the Government of India scheme. It is interalia specifically stated that travel to foreign destination including travel via foreign destination, while availing LTC facilities may not be allowed.

37. The learned Senior Counsel appearing on behalf of the State Bank of India reiterated that there is no bipartite agreement between the officers and the State Bank of India. The petitioners have not even filed a single document to establish that there is a bipartite agreement between the Management and the officers. The benefit of LTC alone is contemplated under Rule 44 of the State Bank of India Officers Service Rules and the said service rule does not provide any such LTC benefit to travel abroad. The benefit of travelling abroad is provided by way of an additional concession through circular, which has no statutory force. Such additional concession granted by the Bank had been withdrawn pursuant to the decision taken by the IBA in its meeting and based on the memorandum issued by the Ministry of Finance, not to provide LTC to travel abroad to the officers of the Public Sector Banks and others. When the benefits granted is not statutory in character and there is no statutory enforceability, then the said benefit is alone is withdrawn by the respondents and thus, there is no infirmity.

<https://hcservices.ecourts.gov.in/hcservices/>



respondents 1 and 2. On 13.01.2020, the Hon'ble Supreme Court of India stayed the operation and effect of the order presently under challenge that is TDS in the SLP filed by the State Bank of India against the Assistant Commissioner of Income Tax in Special leave Appeal (C) No.9876 of 2020.

39. With reference to the judgment relied on by the petitioners in the case of H.L.Trehan and others (cited supra), the learned Senior Counsel appearing on behalf of the respondents drew the attention of this Court that the said case pertains to the terms and conditions of service and right of pension gratuity and other connected matters. That apart, in the said case, under Section 3 of the Caltex [Acquisition of shares of Caltex Refining (India) Limited and of the Undertakings in India of Caltex India Ltd.] Act, 1977 (17 of 1977), which provides acquisition of shares of CORIL and for the acquisition and transfer of the right, title and interest of Caltex (India) Limited in relation to its Undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products. In the said context, the Hon'ble Supreme Court of India held that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice. The Court held that an opportunity of being heard is mandatory in such circumstances. The facts and circumstances of the said case cannot be compared with the present writ petition on hand. There, the entire companies were taken over by way of transfer of shares and certain rights conferred are sought to be altered. Therefore, the principles laid down in the said case by the Hon'ble Supreme Court of India cannot be directly applied to the present writ petition as here, there is no such violation of statutory rules or withdrawal of the rights conferred under the Service Rules or otherwise.

40. The learned counsel appearing on behalf of Income Tax Department reiterated that under Section 10 (5) of the Income Tax Act, the Travel Concession granted within the territory of India alone is exempted. However, the LTC to travel abroad is not exempted and therefore, liable for tax. In support of the said contention, learned counsel for the Income Tax Department relied on the judgment of High Court of Karnataka in the case of State Bank of India Vs. Assistant Commissioner of Income-Tax (TDS) reported in [2022] 138 Taxmann.com 102 (Karnataka) and the relevant portions are extracted below:

"18. The intention of the Legislature under Section 10(5) appears to be two fold. One is to provide some relaxation/refreshment to an employee, who can spend time with the family and gain knowledge about the places of visit i.e., to



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motivate the employees in discharging their regular duties efficiently with the refreshed mind after tour. Secondly, to encourage the tourism in India. Traveling abroad in the guise of LTC/LFC could not entitle for the exemption under Section 10(5) of the Act. The service conditions/circular issued by the Indian Banks' Association is not a statutory Circular and would not govern the department. It would have been different altogether if the employee has traveled to any place in India and then abroad, for example, from Bengaluru to Delhi, thereafter from Delhi to New York. In the instant cases, it is not so. The employees have directly traveled abroad and in the return journey, had visited the places in India. The itinerary confirms the same.

19. The charges towards the said tour received by the tour operator demonstrate that it is the consolidated charges for the entire journey. In such circumstances, in our considered view, the same cannot be split up to avail the benefit of LTC/LFC by the employee. The plea of bona fide belief put up by the assessee placing reliance on the Circular issued by the India Banks' Association is untenable since no clarification from the department was sought by the assessee on this aspect.

23. We have also perused the e-Circular referred to, by the learned counsel for the assessee dated 03.03.2015, where the interim order of the Hon'ble Madras High Court dated 16.02.2015 has been referred to. But in the present cases, journey was undertaken prior to 16.02.2015.

25. Having regard to Section 10(5) and Rule 2B, it is clear that leave travel concession is available for an employee to proceed on leave to any place in India [destination] and thereafter return to the place of origin in the shortest route but not with a foreign leg. Such an amount to be allowed as concession cannot exceed the air economy fair of the National carrier by the shortest route to the destination in India. We are of the considered view that no claim of exemption could be made, out of the total ticket package spent on overseas travel with part of the journey being within India by the employee."



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41. Relying on the said judgment, learned counsel for the Income Tax Department made a submission that S.L.P. filed. However, there is no stay granted by the Hon'ble Apex Court of India.

42. Considering the arguments as advanced by the respective learned Senior Counsels appearing on behalf of the petitioners and the respondents, State Bank of India and the learned counsel appearing on behalf of the Income Tax Department, the issues to be considered are;

(i) Whether the Circular, granting additional facility to the Officers of the State Bank of India to travel abroad has got any Statutory force or not?

(ii) Whether the cancellation of benefit of Leave Travel Concession to travel abroad resulted in infringement of service rights or in violation of service conditions of the officers of the State Bank of India or not?

(iii) Whether in the absence of any bipartite agreement or an express agreement between the parties, mere discussion resulted in extension of benefit to travel abroad under Leave Travel Concession scheme can be construed as a service condition or not?

(iv) Whether withdrawal of such additional facility to travel abroad, which is not contemplated under Rule 44 of the Officers Service Rules, without providing an opportunity will cause any prejudice or in violation of the principles of natural justice or not?

43. Let us now consider the Statutory provisions, granting the benefit of Leave Travel Concession and Leave Encashment to the officers of the State Bank of India.

44. Rule 44 of the State Bank of India Officers, Service Rules, 1992, contemplates Leave Travel Concession and Leave Encashment and Sub Rule-1 to Rule-44 provides that " (1) During each block of four years, an officer shall be eligible for leave travel concession for travel to his home town once in each block of two years. Alternatively, he may travel in one block of two years to his home town and in the other block to any place in India by the shortest route."



45. Further, definitions are also enumerated for the purpose of Rule 44 of the State Bank of India Officers, Service Rules, 1992.

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46. Perusal of the Rule reveals that the Leave Travel Concession to the Officers of the State Bank of India is confined only to "any place in India by the shortest route". When the Rule contemplates that the Leave Travel Concession is permissible to any place in India in the absence of amending the Rule to extend the benefit of Leave Travel Concession to abroad, the said Circular issued contrary to the terms of the Rule cannot be construed as a service right extended to the officers.

47. Pertinently, it is not in dispute that Rule 44 contemplates Leave Travel Concession and Leave Encashment to any place in India by the shortest route to the officers of the State Bank of India. Admittedly, the said Rule 44 has not been amended so far. When the Rule specifically contemplates that the travel is permissible to any place in India, extension of benefit to travel abroad granted by the State Bank of India itself is not in consonance with the terms of Rule 44. Therefore, it is to be construed as an additional facility or concession extended to the officers, which is otherwise not in consonance with the Statutory Rules in force and therefore, cannot have any statutory force.

48. The letter of the Indian Bank Association issued by its Assistant Personal Advisor dated 18th September 1982 reads as under:

"INDIAN BANKS' ASSOCIATION

PERSONNEL DEPARTMENT

Stadium House, Block.5 Veer Nariman Road,
Bombay - 400 020.

Phone Office : 222365 Grams INDBANKS
Telax No.011-5146

No.Pu/Set/25
Private and confidential
September 18, 1982
All Members of the Association,

Dear Sirs,

Leave Fare Concession - Reimbursement of fare
upto the Indian Border in the case of visits abroad.



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The Personnel Committee at its meeting held on 6th August 1982, considered the question whether the bank workmen who wish to go abroad on leave fare concession would be eligible for fare upto the permissible distance in India.

The Personnel Committee was of the view that so long as the employee's place of domicile or designated place is anywhere in India and he actually visits the place so designated, reimbursement may be made to him of actual charges for his entire journey within and without India or the cost of fare to his hometown/designated places, by the shortest route, by his entitled class, whichever is lower.

The above clarification would be applicable to officer staff also.

Please be guided accordingly.

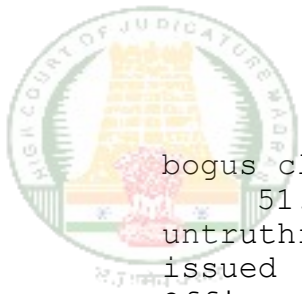
(S.Mohan Kumar)
Asst. Personnel Advisor

Copy forwarded with compliments for informations to:

1. All Members of the Managing Committee.
2. All Members of the Personnel Committee."

49. The plain reading of the above letter dated 18th September 1982, reveals that reimbursement of fair up to the Indian Border in the case of visit to abroad was permitted. The letter dated 04.04.2007 issued by the Deputy Managing Director and Corporate Development Office of State Bank of India states that the cost of inland travel in a foreign country may be reimbursed subject to overall ceiling of the entitlement of the officer. The above two letters of the Indian Bank Association and State Bank of India are unambiguous that there was no concrete or definite policy or facility to travel abroad has been incorporated in the State Bank of India Officers Service Rules 1992.

50. Absolutely, there was no bipartite agreement or settlement between the parties. The officers of the Bank are permitted to avail reimbursement facility by way of simple instructions. The ambiguity involved in such instructions normally result in untruthful claims by the officers, though not



bogus claims.

51. The State Bank of India itself encouraged such untruthful claims by way of such instructions, which is not issued in consonance with Rule 44 of the State Bank of India Officers Service Rules. For example, without travelling in a particular route within India and based on the ceiling fixed for reimbursement, the officer would be claiming reimbursement for the expenses met out in respect of the foreign travel.

52. In the case of Director General of Foreign Trade and Others Vs. Kanak Exports and Others reported in (2016) 2 SCC 226. The Hon'ble Supreme Court held as follows:

"101. We may state, at the outset, that the incentive scheme in question, as promulgated by the Government, is in the nature of concession or incentive which is a privilege of the Central Government. It is for the Government to take the decision to grant such a privilege or not. It is also trite law that such exemptions, concessions or incentives can be withdrawn any time. All these are matters which are in the domain of policy decisions of the Government. When there is withdrawal of such incentive and it is also shown that the same was done in public interest, the Court would not tinker with these policy decisions. There is so laid down by catena of judgments of this Court and is now treated as established and well grounded principle of law. In such circumstances, even the Doctrine of Promissory Estoppel cannot be ignored.

104. Therefore, it cannot be denied that the Government has a right to amend, modify or even rescind a particular Scheme. It is well settled that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call trial and error method and therefore its validity cannot be tested on any rigid prior considerations or on the application of any straight-jacket formula . In Balco Employees Union (regd.) Vs. Union of India and Ors. (2000) 2 SCC 333, the Supreme Court held that Laws, including executive action relating to economic activities should be viewed with greater latitude that laws touching civil rights such as freedom of speech, religion etc., that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrine or straitjacket formula and this is particularly



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true in case of legislation dealing with economic matters, where having regard to the nature of the problems greater latitude require to be allowed to the legislature. The question, however, is as to whether it can be done retrospectively, thereby taking away some right that had accrued in favour of another person?"

The Hon'ble Supreme Court of India upheld the Government's withdrawal of concessions in the above case.

53. With reference to the judgment relied on by the petitioners in the case of H.L.Trehan and others (cited supra), this Court is of the considered opinion that the general principles regarding the existing right conferred on the employees and advantage of the benefit enjoyed by the Government servants were taken into consideration by the Hon'ble Supreme Court of India. However, in the present case, a distinction is required with reference to the service conditions, or rights of the employees and also the concessions and facilities provided to such employees, which do not have statutory force in the eye of law. Thus, the principles cannot be applied in respect of the facts and circumstances of the case on hand.

54. Regarding the submission of the Income Tax Department, no doubt, the provisions of the Act are to be applied scrupulously. Under Section 10(5) of the Income Tax Act, Travel Concession within India alone is exempted. The Travel Concession, if extended to other countries, then the exemption Clause cannot be applied and the persons are liable to pay tax under the said provision. Thus, the Income Tax Department is empowered to invoke the provisions, if the Travel Concession is extended to abroad and in all such cases, they are liable to deduct TDS as applicable and by following the procedures as contemplated under the Income Tax Act.

55. Concessions or facilities extended by way of Administrative Instructions beyond the scope of the rules cannot be construed as an absolute right to the employees. Rule 44 of the State Bank of India Officers Service Rules, 1992, contemplates Leave Travel Concession and Leave Encashment only to "any place in India by the shortest route". Admittedly, the Rule was not amended. By way of an Administrative Instruction, the Leave Travel Concession was extended beyond the domicile of India to travel abroad. Thus, such an Administrative Instruction cannot have statutory force and it is an additional facility extended without any statutory backup. The writ petitioners have failed to establish that there is a bipartite agreement. Contrarily, they made a submission that there was a discussion between the office bearers of the association and the executives



of the State Bank of India. Such discussions would not confer any statutory right, unless it is reduced into an agreement or a settlement under the provisions of the Act or Rules. Therefore, it is unambiguous that the officers of the State Bank of India are eligible to avail the benefit of Leave Travel Concession and Leave Encashment in accordance with Rule 44 of the State Bank of India Officers Service Rules and any other additional benefit granted beyond the scope of the Rules cannot be claimed as an absolute right. Even now, Rule 44 remains as the same, providing right to travel within India by the shortest route and therefore, the Administrative Instruction/Circular, granting an additional facility by way of discretion to travel abroad is to be construed as concession/facility and cannot be construed as a service right, so as to enforce the same.

56. The Government of India, Ministry of Finance based on the letter addressed to Cabinet Secretary by the Chief Vigilance Commissioner had taken a decision and issued a circular dated 30.04.2014. The said letter reads as under:

"F.No.14/04/2013-VIG

Government of India

Ministry of Finance

Department of Financial Services

.....

dated April 30th, 2014

To;

CMDs of PSBs/FIs/PSCIs
Chairman of IRDA/PFRDA/NABARD
Governor, RBI

Chief Vigilance Officer of PSBs/Fis/PSCIs/IRDA/RBI/
PFRDA/NABARD

Subject: Rules and Guidelines for Leave Travel
Concession/Leave Travel Allowance.

1. Chief Vigilance Commissioner in his letter dated 08.10.2013 addressed to Cabinet Secretary, with a copy endorsed to Secretary, DFS has raised concern relating to irregularities observed in the leave travel concession/leave travel allowance (LTC/LTA) schemes prevalent in various public sector



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organisations including PSBs and suggested a review of the rules and guidelines for LTC/LTA in various organisations in the public sector and instruct the said organisations to take strict departmental action against the erring officials in specific cases of violation.

2. Pursuant to the above direction of CVC, the matter was examined in this Department and it was decided that PSBs/PSICs/FIs/NABARD/RBI/IRDA/PFRDA may be advised to formulate LTC/LTA schemes based on the principles of the GOI Scheme.

3. The LTC/LIA scheme in particular should cover following:

a) travel to foreign destinations, including travel via foreign destinations while availing LTC facility may not be allowed.

b) reimbursement of fare should be based on actual expenditure which in turn should not be beyond the entitled class of travel:

c) In case the officer travels in a class lower than his entitled class then his entitlement would be limited to the class of travel. If part of the journey is through a lower class then the entitlement would be proportionately reduced.

4. The conditions in para 3 above may be implemented with immediate effect.

5. The LTC/LTA scheme duly revised on above lines may be issued with prior approval of the respective Boards in a time bound manner.

(Mritunjay Singh)
Under Secretary to the Govt. of India."

57. When the Government of India specifically passed a memorandum that the Leave Travel Concessions to the officers of the Public Sector Undertakings and others to be restricted on par with the Government of India scheme, then there is a context and meaning with reference to certain foreign affairs and therefore, there is no infirmity in respect of the order impugned passed by the respondents in cancelling the concession extended to travel abroad under Leave Travel Concession facility. Rule 44 of the State Bank of India Officers Service Rules, 1992, regarding Leave Travel Concession and Leave



58. When the concession to travel abroad has been permitted without entering into bipartite agreement or through a Statute, question of granting an opportunity to the officers does not arise. Such an additional facility to travel abroad is a policy decision taken by the respondent / Management and such a policy has been withdrawn, taking note of the memorandum issued by the Government of India, Ministry of Finance and also based on the decision taken by the Indian Bank Association. Thus, the decision taken without providing an opportunity to the petitioners would not constitute violation of principles of natural justice nor their service rights are infringed. It is not as if every such policy is to be granted or withdrawn only after providing an opportunity to the employees. The service rights and the conditions of service alone is to be considered as an absolute right and the withdrawal of such service rights or the service conditions cannot be done unilaterally by the employer without affording opportunity to the employees. In the case on hand, the petitioners could not able to establish that the additional facility to travel abroad under the Leave Travel Concession is a service right or condition of service. Thus, the withdrawal would not infringe the rights of the employees nor caused any prejudice and thus, this Court do not find any perversity in respect of the decision taken for withdrawal of the additional concession granted to the officers of State Bank of India to travel abroad under Leave Travel Concession scheme. However, it is made clear that the officers are entitled to the Leave Travel Concession and Leave Encashment as contemplated under Rule 44 of the State Bank of India Officers Service Rules, 1992.

59. Regarding the ground raised on behalf of the petitioners that the principles of natural justice has been violated, this Court is of the considered opinion that natural justice principles cannot be adopted in a straitjacket formula. The principles are to be applied with reference to the facts and circumstances of the particular case. If no prejudice is caused to the person raising the ground of principles of natural justice, then the show cause notice or an opportunity became a futile exercise and non-issuance of show cause notice would not be a ground to vitiate the entire proceedings. Therefore, there cannot be any mechanical approach by the Courts, while applying the principles of natural justice for the purpose of setting aside the decisions of the authorities. Recently, the Three Judges Bench of the Hon'ble Supreme Court of India in the case of State of U.P Vs. Sudhir Kumar Singh and others in Civil Appeal No.3498 of 2020 dated 16.10.2020, considered the scope of



application of principles of natural justice with reference to the earlier judgments of the Hon'ble Supreme Court and laid down the principles as under:

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"38. Under the broad rubric of the Court not passing futile orders as the case is based on "admitted" facts, being admitted by reason of estoppel, acquiescence, non-challenge or non-denial, the following judgments of this Court are all illustrations of a breach of the audi alteram partem rule being established on the facts of the case, but with no prejudice caused to the person alleging breach of natural justice, as the case was one on admitted facts:

(i) Punjab and Sind Bank and Ors. v. Sakattar Singh (2001) 1 SCC 214 (see paragraphs 1, 4 and 5);

(ii) Karnataka SRTC and Anr. v. S.G. Kotturappa and Anr. (2005) 3 SCC 409 (see paragraph 24);

(iii) Viveka Nand Sethi v. Chairman, J&K Bank Ltd. and Ors. (2005) 5 SCC 337 (see paragraphs 21, 22 and 26);

(iv) Mohd. Sartaj and Anr. v. State of U.P. and Ors. (2006) 2 SCC 315 (see paragraph 18);

(v) Punjab National Bank and Ors. v. Manjeet Singh and Anr. (2006) 8 SCC 647 (see paragraphs 17 and 19);

(vi) Ashok Kumar Sonkar v. Union of India and Ors. (2007) 4 SCC 54 (see paragraphs 26 to 32);

(vii) State of Manipur and Ors. v. Y. Token Singh and Ors. (2007) 5 SCC 65 (see paragraphs 21 and 22);

(viii) Secretary, A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar and Ors. (2007) 13 SCC 352 (see paragraph 7)

(ix) Peethani Suryanarayana and Anr. v. Repaka Venkata Ramana Kishore and Ors. (2009) 11 SCC 308 (see paragraph 18);

(x) Municipal Committee, Hoshiapur v. Punjab



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State Electricity Board and Ors. (2010) 13 SCC 216 (see paragraphs 31 to 36, and paragraphs 44 and 45);

(xi) Union of India and Anr. v. Raghuwar Pal Singh (2018) 15 SCC 463 (see paragraph 20).

39. An analysis of the aforesaid judgments thus reveals:

(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."



60. The principles laid down by the Three Judges Bench of the Hon'ble Supreme Court of India is to be followed as a precedent as the principles regarding the application of the natural justice are enumerated. Accordingly, the facts and circumstances of each case is to be considered for application of natural justice principles and thus, the principles of natural justice alone would not be a ground to quash the decisions of the authorities in all cases in a routine manner, wherever, there is no notice or opportunity has been provided to a person. The admitted facts between the parties are also play a pivotal role in forming an opinion, whether not providing an opportunity vitiates the entire proceedings or caused any prejudice.

61. The Government of India Memorandum dated 30.04.2014 states that the Public Sector Banks have to adopt the LTC scheme of the Government of India. The letter itself reveals that there are certain reasons and implications in respect of allowing such Bank officials to travel abroad under the LTC scheme as it relates to External Affairs of the country. The said Circular of the Government of India was implemented by the Indian Bank Association and based on the said decision, the State Bank of India also issued the Circular, withdrawing the facility to the officers to travel abroad. Thus, the Government of India policy regarding the Leave Travel Concession to the officers of the Public Sector Banks also to be followed in the interest of public. The instructions earlier issued to facilitate the officers of the Bank to get reimbursement for foreign travel, which is not in consonance with Rule 44 of the State Bank of India Officers Service Rules, 1992 cannot be therefore, construed as an absolute right conferred on the officers of the State Bank of India nor there is a bipartite agreement or settlement exists between the parties. Thus, there is no infringement of service rights or violation of service conditions, as there is no withdrawal of benefit conferred to the officers of the State Bank of India under Rule 44 of the State Bank of India Officers Service Rules, 1992.

62. The concession and the facility extended to get reimbursement of the foreign travel expenses, was given by way of an additional facility through a letter and such letter was cancelled and the facility was withdrawn pursuant to the orders of the Government of India, Ministry of Finance and the Circular issued by the Indian Bank Association. The policy of the Government of India, Ministry of Finance is to be followed in the interest of public by all the Public Sector Banks, which was adopted by the Indian Bank Association.

63. This being the factum established, there is no further



scope for any discussion or negotiation with the officers of the State Bank of India as the withdrawal of such additional facility would not infringe the service rights or result in violation of service conditions of the officers of the State Bank of India. Providing an opportunity in such circumstances is a futile exercise and furthermore, the officers of the Bank are not prejudiced nor their service rights are violated. The executive actions regarding the foreign affairs should be viewed with greater latitude and the decision being taken by the State Bank of India is pursuant to the Government of India policy, which was adopted by Indian Bank Association.

64. Thus, this Court do not find any perversity or infirmity in respect of the decision taken by the State Bank of India based on the policy decision of the Government of India, which was adopted by the Indian Bank Association.

65. Thus, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

jeni/kak

To

1. The Chairman,
State Bank of India,
Corporate Centre,
Madame Cama Road,
Mumbai.
2. The Deputy Managing Director &
Corporate Development Officer,
State Bank of India,
Industrial Relations Department,
Corporate Centre,
Madame Cama Road,
Mumbai.



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3. The Chief Executive,
Indian Bank's Association,
World Trade Centre Complex,
Centre 1, 6th Floor, Cuffe Parade,
Mumbai - 400 005.
4. The Commissioner of Income Tax(TDS),
Room No.123, 1st Floor,
Tower-1, BSNL Building,
18, Greams Road,
Thousand Lights,
Chennai - 6.

+1cc to Mr.K.Chandrasekar, Advocate, S.R.No.39165
+1cc to M/s.Anna Mathew, Advocate, S.R.No.39582
+1cc to Mr.S.Rajesh, Advocate, S.R.No39786

W.P.NO.11991 OF 2014

PMK(CO)
PBS/06/07/2022