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W.A.No.1653



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.1653 of 2022
and
CMP.Nos.11323 and 23230 of 2022

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,
(Redg.No.3427/Delhi),
Parliament Street Branch, PTI Building,
4, Parliament Street,
New Delhi - 110 001.

3. K.Bhavanisankar

.. Appellants

Versus

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

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



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

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

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 24.06.2022 made in WP.No.11991 of 2014.

For Appellants : Mrs.R.Vaigai, Senior Advocate
for Mr.Anna Mathew

For R1 & R2 : Mr.Om Prakash, Senior Advocate
for Mr.K.Chandrasekaran

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellants / writ petitioners have preferred this intra-court appeal, as against the order dated 24.06.2022 passed by the learned Judge in W.P. No.11991 of 2014.

2. The necessary facts leading to the filing of this appeal are as follows:

2.1. The appellants are registered Trade Unions consisting of the Officers' Association of all Public Sector Banks, State Bank of India, all the Scheduled Commercial Banks and Regional Rural Banks and represent more than 90% of the

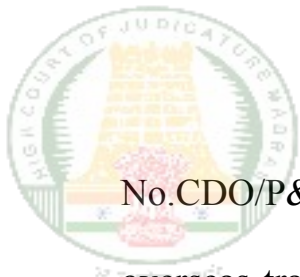


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officers in the said Banks. As early as on 18.09.1982, the Indian Bank's Association issued a Circular pursuant to bilateral discussions with the appellants, permitting Leave Travel Concession (LTC) facility to cover foreign travel also, subject to eligibility, within the country for the Bank Officers. This practice was continued and it was reiterated by the third respondent's Circular dated 08.10.2008. All the Public Sector Banks, State Bank of India and Scheduled Commercial Banks have implemented and extended this facility to their officers. The appellants further stated that the LTC to the Bank Officers is governed by Rule 44(1) of the State Bank of India Officers Service Rules, 1992 contained in Chapter 17, Rules 17.4 and 17.18, permit visit to a foreign country by the officer as part of the LTC facility. The appellants' members working in the respondent Banks are thus availing the foreign travel facility along with their families to visit foreign countries, falling within the Four Year Block Period. On 27.04.2010, the third respondent consisting of the representatives of all Banks and the second appellant herein signed a Bipartite Settlement with effect from 01.11.2007 with regard to various conditions of service, wherein existing terms were revised and the fare eligible under LTC was agreed upon. The officers continued to get the facility of foreign travel being covered by LTC.

2.2. While so, the third respondent *vide* its letter No.CIR/HR & IR/F/2014-

15/9195 dated 07.04.2014 and the first respondent *vide* its e-Circular bearing



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No.CDO/P&HRD-PM/7/2014-15 dated 15.04.2014 informed that LTC covering overseas travel facility was withdrawn with immediate effect and the officers were not entitled to visit overseas Countries / Centres as part of L.T.C./H.T.C. (Home Travel Concession). The appellants sent separate representations dated 16.04.2014 requesting the authorities to stop the implementation of the letter and e-circular dated 07.04.2014 and 15.04.2014, respectively. Since the same have not evoked any response, they filed a writ petition in W.P.No.11991 of 2014 seeking to set aside the impugned letter dated 07.04.2014 and e-Circular dated 15.04.2014 and also for a consequential direction to the respondents to continue the LTC/HTC facility to cover foreign travel as provided to the officers of the respondent Bank and members of the third respondent prior to 07.04.2014.

2.3. On 25.04.2014, when the aforesaid writ petition was taken up for consideration, the learned Judge granted an order of interim stay, after recording an affidavit of undertaking filed by the appellants stating that if the writ petition is dismissed, the amount paid towards LTC with regard to foreign travel will be refunded by the individual officers concerned. Subsequently, on 16.02.2015, the learned Judge modified the said interim order to the effect that '*any amount paid to the appellants 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; and it was made clear that if the writ petition is dismissed, the employees are liable*



to pay tax on the amount paid by Bank'. Thereafter, the writ petition was finally heard and was ultimately, dismissed on 24.06.2022. Pursuant to the same, the respondents are taking steps to recover the LTC amount paid to the appellants/Bank officers. In the circumstances, the appellants are before this court with the present appeal.

3. The learned senior counsel for the appellants has submitted that the benefit of LTC to enable foreign travel was introduced vide Circular / letter dated 18.09.1982. The State Bank of India Officers' Service Rules 1992 have been framed in exercise of the powers conferred by Sub-Section (1) of Section 43 of the State Bank of India Act, 1955 ("SBI Act" in short). Section 43 of the SBI Act empowers the Bank to appoint Officers and determine the terms and conditions of their service; Section 43 of the SBI Act is in contrast with Section 50 of the SBI Act, which empowers the Bank to make regulations but only with previous sanction of the Central Government and the Reserve Bank of India. The rules framed under section 43 are not subordinate legislation, which can be framed only under section 50, but are nevertheless statutory in character; and thus, the provisions for LTC on foreign travel have been statutorily provided. Continuing further, the learned senior counsel submitted that the benefit of LTC on foreign travel arose out of bilateral negotiations and agreement between the Appellants and the Respondents at the industry level. It is also submitted that a benefit which has been implemented for



nearly 30 years, cannot be unilaterally withdrawn by the respondents, that too, without following the principles of natural justice. According to the learned senior counsel, the principles of natural justice apply even to administrative decisions not governed by statutory law. However, the learned Judge erred in dismissing the writ petition filed by the appellants by the order impugned herein. To substantiate her contentions, the learned senior counsel placed reliance on the various decisions of the Hon'ble Supreme Court. Finally submitting that the undertaking given by the appellants herein before the writ court on 25.11.2014 will not operate against them, the learned senior counsel prayed for setting aside the order of the learned Judge and allowing this appeal.

4. On the contrary, the learned counsel for the respondents 1 and 2 has submitted that the foreign travel as part of LTC by the Officers of State Bank of India was not by virtue of any settlement between the Management of Bank and Officers of the Association or under any rules applicable to the officers, but was by way of administrative directions / decisions and hence, the same does not have any statutory force so as to enable the appellants to seek a relief for setting aside the Circular withdrawing such concession. Taking note of the same, the learned Judge has correctly dismissed the writ petition filed by the appellants by the order impugned herein, which does not require any interference at the hands of this court.

It is also submitted that the learned Judge, vide order dated 25.04.2014 stayed the



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impugned Circular dated 07.04.2014 based on the undertaking given by the appellants that if the writ petition is dismissed, the amount paid towards LTC to cover the foreign/overseas travel will be refunded by the individual officers concerned and hence, the appellants are liable to be refunded the amounts received towards foreign travel, in view of the dismissal of the writ petition.

5. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6. Before the writ court, the appellants challenged the decisions of the third respondent in its letter dated 07.04.2014 and the first respondent in its e-circular dated 15.04.2014 with respect to withdrawal of the LTC facility covering overseas travel, which was previously granted to the officers of the respondent Bank and members of the appellants.

7. By order dated 24.06.2022, which is impugned in this appeal, the learned Judge dismissed the writ petition, on the following three grounds:

(i) 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 and that, the said Rule has not been amended so far. As such, the extension of benefit to



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travel abroad granted by the State Bank of India itself is not in consonance with the terms of Rule 44. Therefore, it has 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 accordingly, it cannot have any statutory force.

(ii) 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 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. Hence, it cannot be stated that 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.

(iii) The principles of natural justice cannot be adopted in a straitjacket formula, but are to be applied with reference to the facts and circumstances of the case. In the given factual matrix, providing an opportunity is a futile exercise and 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.



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8.1. At the outset, this court is inclined to deal with the third ground viz., the letter and circular of the respondent authorities, withdrawing the overseas facility granted to the officers, which were impugned in the writ petition, are in violation of the principles of natural justice.

8.2. It is the specific case of the appellants that LTC on foreign travel has been conferred upon the officers of the respondent Banks from the year 1982 based on bilateral negotiations and industry level settlements and they have also been incorporated in the service Rules and HR manuals and therefore, the said benefit, which has been implemented for nearly 30 years, cannot be unilaterally withdrawn by the respondents. Thus, according to the appellants, the decision of the respondent authorities withdrawing such benefit, adversely affect the officers of the Banks.

8.3. It is seen from the records that on 07.04.2014, Indian Bank's Association took a decision to withdraw the LTC facility covering overseas travel and the same was not preceded by any notice or discussion with the parties. It is also seen that the respondent Bank followed the decision of the Indian Bank's Association by its Circular dated 15.04.2014 and thereafter, instructions came into force with immediate effect. Thus, it is an admitted fact that before issuing such letter and circular, no notice was served on the appellants and no opportunity was provided on them.



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8.4. However, the learned Judge has observed that 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.

8.5. This Court is of the considered view that an opportunity would have been given to the appellants 1 and 2 – Union representing the Officers, while withdrawing such facility, as the said facility was granted to the officers right from the year 1982 and further, its terms were revised in the year 2007 by way of negotiation, and it was enjoyed by the officers, till 2014. Therefore, the letter and circular impugned in the writ petition are naturally in violation of the principles of natural justice.

8.6. The Hon'ble Supreme Court in ***Prakash Ratan Sinha v. State of Bihar*** [2009 (14) SCC 690] has held that "*when there were disputed facts, the respondents without affording an opportunity of hearing, could not have taken any administrative decision unilaterally and therefore, the Division Bench of High court was not justified in concluding that under the "useless formality theory" the rules of natural justice need not have been followed by the respondents*".

8.7. In the light of the legal proposition and having regard to the admitted fact that no opportunity was provided to the appellants before withdrawing the overseas facility granted to them, which is in violation of the principles of natural



justice, this court is inclined to set aside the letter dated 07.04.2014 and the circular dated 15.04.2014 and remand the matter to the authorities to take a decision afresh, after issuing due notice and providing an opportunity of hearing to the appellants, in accordance with law.

8.8. In such view of the matter, this court is not expressing any opinion on the other two grounds, on the basis of which, the learned Judge passed the order impugned in this appeal.

9. Accordingly the impugned order passed by the learned Judge in the writ petition is set aside and consequently, Circular Letter No.CIR/HR & IR/F/2014-15/9195 dated 07.04.2014 issued by the third respondent and e-Circular bearing No.CDO/P&HRD-PM/7/2014-15 dated 15.04.2014 issued by the first respondent are also set aside and the matter is remanded to the respondent authorities for fresh consideration. The respondent authorities are directed to grant opportunity of hearing to the appellants 1 and 2, viz. All India State Bank Officers Federation, Chennai and All India Bank Officers Confederation, New Delhi, who represent the Bank Officers and thereafter take a decision with respect to grant of LTC to cover foreign travel, on merits and in accordance with law. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.



10. The writ appeal is disposed of in the above terms. No costs. Consequently,

connected miscellaneous petitions are closed.

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[R.M.D., J.] [M.S.Q., J.]
08.06.2023

Index : Yes / No

Internet : Yes / No

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To

1. State Bank of India,
Represented by its Chairman,
Corporate Center, Madame Cama Road,
Mumbai.
2. The Deputy Managing Director & Corporate
Development Officer, State Bank of India,
Industrial Relations Department,
Corporate Center,
Madame Cama Road, Mumbai.
3. Indian Banks' Association,
Rep.by its Chief Executive,
World Trade Center Complex,
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MOHAMMED SHAFFIQ, J

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