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WP.No.10469 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2024

Pronounced on : 20.11.2024

THE HON'BLE Dr. JUSTICE A.D. MARIA CLETE

W.P. No. 10469 of 2004

The Workmen of
Tamil Nadu State Apex Cooperative Bank Ltd.,
represented by the General Secretary
Tamil Nadu State Apex Cooperative Bank
Employee Union,
14, II Line Beach,
Chennai 600 001.

... Petitioner

Vs.

1.The Management of Tamil Nadu,
State Apex Cooperative Bank Ltd.,
233, NSC Bose Road,
Chennai 600 001.

2.The Presiding Officer,
Industrial Tribunal
City Civil Court Building
Chennai 600 104.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, calling for records on the file of the second



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respondent relating to the impugned Award of the second respondent dated 31.12.2002 in I.D.No.73 of 1999 and quash the same.

Appearance of Parties:

For Petitioners : Mr.Sundar Narayanan
For R1 : Mr. V.Govardhanan,
for M/s.Row and Reddy.
R2-Tribunal.

ORDER

Heard both sides.

2. The Petitioner Trade Union represents Tamil Nadu State Apex Cooperative Bank employees, a registered entity under the Tamil Nadu Cooperative Societies Act. Aggrieved by an award passed by the Industrial Tribunal in I.D. No. 73 of 1999 on 31.12.2002, The Tamil Nadu State Apex Cooperative Bank Employees Union General Secretary filed this writ petition on 29.12.2003 under Article 226 of the Constitution of India. The writ petition was admitted on 20.04.2024.



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3. The primary grievance pertains to a pay anomaly where directly recruited Assistants are allegedly paid less than their juniors, promoted Assistants, from the sub-staff cadre in violation of settlement clauses. This is a common issue wherever there are two methods of appointment to a post: one by promotion and the other by direct recruitment. An ongoing conflict often arises when an employee is promoted from a feeder category, and another is appointed directly.

4. The Bank's staff regulation provides for rectifying pay anomalies when a senior employee's pay falls below that of a junior following promotion. In 1985, 70 Assistants were directly recruited at a basic pay of Rs.1,650 with seniority numbers ranging from 0417 to 0486. In 1991, a settlement introduced promotional opportunities for sub-staff with SSLC qualifications and 10 years of experience. Promoted employees were to be placed below directly recruited Assistants in seniority. Subsequently, certain sub-staff employees were promoted to the Assistant cadre and their pay was fixed at levels equal to or above the directly recruited Assistants, creating a pay anomaly. In 1992,



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discrepancies began when promoted Assistants like G. Kaliaperumal and K. Sethumanickam were given higher basic pay increments (Rs.1915) than the 70 directly recruited seniors (Rs.1755). In 1993, further discrepancies arose when V.R. Chozhan, initially junior to the promoted Assistants, was promoted and his basic pay set at Rs. 2200. Subsequent refixations led to anomalies, leaving the directly recruited Assistants disadvantaged. In 1996, the Union raised the issue with the management through multiple representations requesting the anomaly be rectified by stepping up the pay of directly recruited Assistants to match their juniors. The management refused, claiming no anomaly existed. In 1999, the dispute escalated to the Industrial Tribunal after conciliation failed. The Industrial Tribunal dismissed the claim on 31.12.2002. In 2002, the Industrial Tribunal dismissed the union's claim, reasoning that the settlement governing pay adjustments applied only to promotees, not directly recruited employees.

5. The Union contends that the Tribunal erroneously restricted the application of the settlement to promoted Assistants and ignored the



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documentary and oral evidence submitted. The Union claims that directly recruited Assistants were seniors based on the date of entry and should not be paid less than promoted juniors. The Promoted Assistants, without acquiring additional qualifications or experience, were granted higher pay than directly recruited Assistants who possess professional qualifications. The petitioner submits that Regulation No 3 of the settlement dated 29.5.1991 mandates rectification of such anomalies by stepping up the pay of seniors. The management's actions contradicted staff regulations and the principle of pay parity. Arbitrary refixations for promoted Assistants were unjustified and violated the principle of "equal pay for equal work.". The Tribunal failed to interpret the settlement correctly, which does not explicitly exclude directly recruited Assistants from benefiting from pay rectification. The writ petitioner wants to step up the basic pay of the 70 directly recruited Assistants on par with promoted juniors, effective from June 1992, with interest at 18%.

6. The respondent side contends that Promoted Assistants (e.g., G. Kaliaperumal and K. Sethumanickam) joined the bank in the 1970s, making



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them seniors to directly recruit Assistants (1985 entrants) in service terms. The pay structure for directly recruited Assistants was determined per settlement guidelines. Adjustments for promoted Assistants were made to address anomalies within their cadre and were justified based on length of service. The provisions cited by the union pertained only to promoted Assistants and not directly recruited Assistants. The claims lack merit, as no pay anomaly exists for directly recruited Assistants relative to promoted Assistants.

Discussion:

7. The relevant facts of the case, necessary for the disposal of this petition, are as follows: M/s. V.R.Chozhan, G.Kaliaperumal, K.Sethumanickam, and N.K. Mandagopal were appointed as sub-staff on 28.08.1974, 05.12.1974, 09.01.1975, and May 1975 (specific date not provided), with basic pay of Rs.1655, Rs.1595, and Rs.1595, respectively.

The table below clarifies their dates of joining:

Name of Employee	Date of Joining
1. V.R. Chozhan	28.08.1974
2. G. Kaliaperumal	05.12.1974
3. K. Sethumanickam	09.01.1975
4. N.K. Mandagopal	May 1975



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Among the four, V.R. Chozhan was the senior. Later, 70 directly recruited Assistants joined in September 1985. According to clauses of the 12(3) of the settlement dated 29.05.1991, 10% of Assistant posts were reserved for service candidates from subordinate/Junior Assistant ranks who satisfied the minimum qualification of S.S.L.C. and had ten years of experience. Following this clause, G. Kaliaperumal and K. Sethumanickam were promoted as Assistants on 17.08.1991 and 08.11.1991 with a basic pay of Rs. 1755, the same as that of the 70 directly recruited Assistants.

8. The sub-staff V.R. Chozhan was promoted to Junior Assistant on 01.06.1992 with a basic pay of Rs. 1915/-, and N.K. Madanagopal was promoted to Junior Assistant on 26.06.1992, with his basic pay also fixed at Rs. 1915/-. The Bank refixed/stepped up the salary of G. Kaliaperumal and K. Sethumanickamequivalent to N.K.Madanagopal, since he was junior to them in the lower post, and drawn more pay than their senior, that too in the lower post of Junior Assistant. This resolved the pay disparity between the senior and junior employees.



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9. On 15.11.1993, the sub-staff V.R. Chozhan was promoted to Assistant from Junior Assistant with a basic pay of Rs. 2200. The Bank again stepped up the pay of G.Kaliaperumal and K. Sethumanickam, equivalent to V.R. Chozhan from Rs. 2075 to Rs. 2200, stating that V.R. Chozhan was junior was junior in the promoted position of Assistant. V.R. Chozhan was not junior to G. Kaliaperumal and K. Sethumanickam in the lower cadre of sub-staff. There is some justification for stepping up the salaries of G. Kaliaperumal and K. Sethumanickam equivalent to the salary of M.K.Madanagopal because he was junior to them in the lower post. The Petitioner Union did not challenge the correctness of the step-up of salaries of G.Kaliaperumal and K.Sethumanickam equivalent to V.R.Chozhan who was senior to them in the cadre of sub-staff, instead, the Petitioner Union prayed for the same step up to the 70 direct recruited Assistants.

10. The petitioner union relies on Regulation No. 3 of the Bank entered with the union, the settlement dated 29.05.1991 runs as follows:



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“If the basic pay of an employee either immediately or after promotion of his junior to a higher grade is less than his junior who was drawing the same basic pay or less than his basic pay in the lower post, the basic pay of the senior in the higher post shall be stepped up by advancing his increment/increments with effect from the date of his promotion/ increment month of the junior.”

11. A plain reading of this clause makes it clear that it does not apply to direct recruits, it speaks about the situation if the Junior in the lower post gets equal or lesser pay than a senior employee; in such case, upon promotion, the senior's pay should be stepped up to equalize with the pay of junior. In this instance, directly recruited Assistants did not serve in the lower post, which means that this clause does not apply to them. The petitioner's contention is not sustainable. In service matters related to the implementation of pay revisions, differences in methods for determining pay in promotional positions can lead to disparities. For example, if a senior employee receives a promotion before advancing to the selection grade, while a junior employee is promoted after moving to the selection grade, the junior may end up with a higher salary than



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the senior. In such cases, the pay of the senior employee will be stepped up to the junior employee to ensure equalization. This is referred in T.N.F.R. 22 B however Ruling No 6 says that

“(6) in the case a Government servant already in service in a post is appointed to another post through the Tamil Nadu Public Service Commission by direct recruitment or when the mode of his appointment to the new post is by direct recruitment, the Government servant concerned should be allowed to draw the minimum of the time scale of pay or as provided in the service rules relating to such appointments and fixation of pay under Fundamental Rule 22 of 22-B is not admissible.” [G.O.Ms.No. 889, Finance (F.R.I), dated 12th August 1976]

12. The Government of India also in step- up pay issued guideline in an office memorandum, DoP&T's O.M No.4/4/92 Estt(Pay-I) dated 04.11.1993 observed as follows:

(f) When an employee is promoted from a lower post to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR22(1)(a)(I) read with Rule 13 of CCS(RP) Rules, 2016 and due to his higher stage than that of a



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senior direct recruit appointed to the same higher grade and whose pay is fixed under different set of rules. For example a Senior Secretariat Assistant (SSA) on promotion to the post of Assistant Section Officer (ASO) gets his pay fixed under FR22(1)(a)(I) with reference to the pay drawn in the post of SSA whereas the pay of ASO(DR) is fixed under Rule 8 of CCS(RP) Rules, 2016 at the minimum pay or the first Cell in the Level, applicable to ASO to which he is appointed. In such a case, the senior ASO(DR) cannot claim pay parity with that of the promote junior ASO.”

These guidelines clarify that a direct recruit's salary cannot be stepped up to equalize with those promoted within the same cadre. The stepping-up procedure was established to ensure that a junior employee does not earn more than a senior employee at any time for no fault on his part.

13. The petitioner relies on the case of **Dr. S.M. Ilyas and Others vs. Indian Council of Agricultural Research and Others (1993) 1 SCC Page 182**. In that case, when the ICAR decided to pay higher salaries to scientists as recommended by the UGC, the scientists in Grades 2 and 3 were divided into two groups. Scientists who had served more than 16 years in the Agricultural



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Research Service (ARS) were placed on a higher pay scale, while those who had served up to 16 years were placed on a lesser pay scale. Similarly, in Grade 2, scientists who had served in the ARS for more than 8 years were placed on a higher scale, and those who had served for up to 8 years were placed on a lower scale. Consequently, Grade 2 scientists were categorized into two groups: Senior Scaled Scientists and Selection Grade Scientists. Likewise, Grade 3 scientists were classified into Selection Grade Scientists and Principal Scientists. In both Grades 2 and 3, there were directly recruited scientists and promoted scientists. In determining the higher pay scale for the former Grade 2 and 3 scientists, the department considered only the total length of service in the ARS, ignoring the length of service in Grades 2 or 3. This led to an anomalous situation where many directly recruited scientists faced disadvantages. Ultimately, it was determined that the notification was flawed. In our case, we have a mix of directly recruited Assistants and promoted Assistants. They are not further segregated. The salaries of those Assistants who were promoted from the Junior Assistant level were stepped up to equalize



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with the newly promoted Assistants. Therefore, this citation is distinguishable from the circumstances we are dealing with here.

14. The petitioner's side referenced another case of **P. Savitha and Others vs. Union of India, Ministry of Defence Production, New Delhi and Others (1985 Supp SCC94)**. In this case, the implementation of the 3rd Pay Commission resulted in the Senior Draughtsmen being divided into two groups, each with different pay scales. Among the Senior Draughtsmen, 50% were assigned to a lower pay scale, while the other 50% were placed on a higher pay scale based solely on seniority. This decision was challenged by a promoted Senior Draughtsman. The Supreme Court ruled that, in the absence of any argument from the department, the Senior Draughtsmen in the advantageous group did not perform more onerous or different duties compared to those in the other group. Consequently, the government's order was quashed on the grounds of discrimination among individuals holding identical positions and performing identical duties.



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15. Another citation referenced by the petitioner is **Roshan Lal Tandon vs. Union of India AIR 1967 SC 1889**. In this case, the Supreme Court held that once the promoted employees and direct recruits were appointed to Grade 'D,' they formed an integrated class. Consequently, no discrimination could occur favouring recruits from one source over those from another source concerning promotions to Grade 'C.' Therefore, all the Supreme Court citations relied upon by the petitioner relate to the distinction within the already integrated group of direct recruits and promotees.

16. The petitioner's side referenced a Kerala High Court judgment in the case of **T. Krishnan Unni vs. Chairman and Managing Director (1995 SCC Online Ker 378)**. In this ruling, the High Court stated that once promoted and direct recruits are integrated into a single group, it is unjustified to deny direct recruits a higher pay scale without any valid basis. However, this citation does not apply to the facts and circumstances of the current case.



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17. It is clear from the records that V.R. Chozhan is not junior to G. Kaliyaperumal and K. Sethumanickam; in fact, he was senior in a lower position (Sub staff). Therefore, the stepping up of pay for G. Kaliyaperumal and K. Sethumanickam equivalent to their senior is not in line with Rule 21. Although the petitioners did not challenge the management's order dated 07.10.1996 (Ex W5), they still seek the same benefits. It is well established that equality cannot be based on wrongdoing, and no individual can claim as a matter of right to receive the same treatment as another who has benefited from an incorrect or rule-violating pay increase. Such negative equality cannot be enforced by issuing a writ of Mandamus under Article 226 of the Constitution of India. Therefore, the contentions raised by the petitioner's counsel in this regard are un-sustainable.

18. The respondent side argues that although V.R. Chozhan was senior to G. Kaliyaperumal and K. Sethumanickam in the lower position, the latter two were promoted before V.R. Chozhan. All three individuals served for nearly the same number of years. Considering the long service and experience of G.



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Kaliyaperumal and K. Sethumanickam, their salaries were stepped up to equalize with the pay of V.R. Chozhan. However, it is important to note that this step up made by the respondent does not align with the established rules.

The Apex Court observed in **Randhir Singh Vs. Union of India (1982) 3 SCR 298** as follows:

“It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them”.

19. In our case, the difference in pay between 70 direct recruits and the two promotees, based on their length of service and experience, constitutes a reasonable classification. Therefore, the petitioner union's argument for "equal pay for equal work" is not valid given the specific circumstances of this case.



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The concept of equal pay for equal work does not apply to service matters; otherwise, provisions for annual increments and awarding selection grades after ten years, due to a lack of promotional opportunities, would be rendered meaningless. Thus, granting higher pay to senior employees who have served longer than their junior counterparts is a reasonable classification.

20. Based on the above discussion, this Court finds no grounds to interfere with the impugned order passed by the 2nd Respondent. Therefore, this writ petition is dismissed. No costs.

20.11.2024

Internet: Yes/No

Index: Yes/No

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To

The Presiding Officer,
Labour Court,
Coimbatore.



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Dr.A.D. MARIA CLETE,J

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Pre-Delivery Order made in
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