



W.A.No.292 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 20.06.2024

PRONOUNCED ON : 03.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.292 of 2020
and
CMP.No.4928 of 2020

1. State Bank of India
Rep. by its Chairman,
Corporate Office,
New Administrative Buildings,
P.B.No.12, Madam Cama Road,
Mumbai-400 021.
2. The Circle Development Officer,
State Bank of India,
Local Head Office,
16 College Lane, Chennai-600 006.

... Appellants

Vs.

1. M.L.Johnson (Ex-SBI, Chennai)
2. G.Suyamprakasam
3. Union of India,
Rep. by the Secretary to Government,
Ministry of Finance,
Department of Economic Affairs (Banking Division)
New Delhi.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 27.11.2019 passed in W.P.No.22846 of 2004.

For Appellant : Mr.S.Ravindran
Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondents : Mr.N.G.R.Prasad
for Mr.V.Govaradhan
for M/s.Row and Reddy for R1 & R2
R3-No Appearance

J U D G M E N T

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The appellants herein are the respondents 2 and 3 before the Writ Court. The Writ petitioners are arrayed as the respondents 1 and 2 herein. The first respondent in the writ petition is arrayed as the 3rd respondent in the Writ Appeal.

2. The intra-Court appeal has been filed against the order passed by the learned Single Judge vide order dated 27.11.2019 granting the relief as prayed for by setting aside the impugned pay fixation dated 19.06.2004.

3. For convenience sake the parties will be referred to according to their litigative status before the Writ Court.



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4. The brief facts which are necessary for the disposal of the instant intra-Court appeal is that; the writ petitioners admittedly are the Short Service Commissioned Officers released from Army Service. After their Army service, they joined the respondent-Bank as the Security Officers in Junior Management Grade. They were appointed in the Bank with a scale of pay of Rs.700-4-900-5-1100-1800. However, their last pay drawn in the Army was Rs.1,200/-. It appears that in pursuance of the representation given by the petitioners, their pay were revised by protecting their last drawn pay of Army qua Rs.1,200/-. The above fixation was made based upon the Bank Circular No.104 dated 12.12.1984.

5. However, within a short span of time, the respondent-Bank issued a Staff Circular dated 30.09.1985 thereby reduced the pay fixation from Rs.1200/- to Rs.900/- with effect from 28.03.1983. Such reduction was challenged through the first round of litigation, and as per the order made in the earlier Writ Appeal in WA.No.971 of 2006, these petitioners were given opportunity to explain as to why the pay should not be reduced.

6. After hearing the petitioners, the respondents 2 and 3 vide order dated 19.06.2004 have again confirmed their earlier stand and reduced their



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basic pay from Rs.1,200/- to Rs.900/-, which order was under challenge in the impugned writ petition.

7. The Writ Court, by relying upon the Bank Staff Circular No.104 dated 12.12.1984 has set aside the impugned order dated 19.06.2004 and directed to fix the pay at Rs.1200/-. The said order of the learned Single Judge is under challenge in the instant Writ Appeal

8. Mr.S.Ravindran, learned Senior Counsel appearing on behalf of the appellants/respondents 2 and 3 would contend that, the writ petitioners released from Army as Short Service Commissioned Officers. However, the writ Court has relied upon the circular dated 12.12.1984 which is applicable to the Ex.Army man/Permanent Commissioned Army man. It is the contention of the learned Senior Counsel that the Government has directed the Bank to fix two different types of pays. One for Ex.Service Army man, and another for Short Service Commission Army man.

9. It is the further contention of the learned Senior Counsel Mr.S.Ravindran, that the protection of pay as claimed by the writ petitioners/respondents 1 and 2 is applicable only to the Ex-Service man. Whereas, the petitioners are admittedly Short Service Commissioned Army men. Therefore, the Circular, which was wrongly relied by the Bank cannot



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be taken as advantage by the respondents. Thus, it is the contention of the learned Senior Counsel that after came to know about their inadvertent mistakes they have modified the pay to the petitioners in accordance with the applicable Circulars. Therefore, the learned Senior Counsel would submit that the order passed by the learned Single Judge is erroneous and liable to be interfered with.

10. Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the respondents 1 & 2 would vehemently contend that the order of the learned Single Judge is well merited, and that the learned Single Judge has followed the correct circulars. Apart from that, it is also the contention of the learned counsel for the respondents 1 & 2/writ petitioners that the Circular which relied by the appellant-Bank would take effect only from 01.11.1984. Whereas these petitioners have joined in the Bank during March 1983. Therefore, the Circular which had relied by the appellants/respondents 2 & 3 is not applicable to the petitioners. Hence, would contend that the order passed by the learned Single Judge does not require any interference and prayed to dismiss the Writ Appeal.

11. We have given our anxious consideration to either side submissions.



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12. From the submissions of either side, the entire gamut of the issues revolve around, as to the application of correct Circular qua between Circular No. 104 dated 12.12.1984 and Circular No. 46 dated 30.09.1985. It is not in dispute that these petitioners are the Short Service Commissioned Officers.

13. The learned Senior Counsel appearing for the appellants/respondents 2 & 3 would draw the attention of this Court in respect of the Circular No.104 dated 12.12.1984. No doubt according to the said Circular No.104 dated 12.12.1984, a pay protection was given to the Ex.Service men, by protecting their last drawn Army Pay. However, the learned Senior counsel would submit that the word “Ex.Service man” would only denote a member released from permanent Commission. Whereas, the Short Service Commissioned Officers though loosely called as an Ex.Service man, will not strictly come under the Ex.Service man referred under the Circular No.104 dated 12.12.1984.

14. In order to distinguish the permanent Commission and Short Service Commission, the learned Senior Counsel relied upon the printout from the Indian Army, Government of India website. However, there is no serious dispute in respect of the status of the petitioners. Even according to the affidavit of the petitioner, they were served in Army as Short Service



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Commissioned Officers. In the disputed fitment order, by virtue of Staff Circular No.PER:46:85 dated 30.09.1985, the fitment has been revised to Rs.900/- However, it is the contention of the learned counsel for the respondents 1 & 2/writ petitioners that the Circular No. 46:85 would come into operation only from 01.11.1984. Therefore the application of this circular is not applicable to the writ petitioners as they joined prior to this Circular. Though the above Circular had such reference, the very circular has further reference and explanation that such reference would only indicate that the cut of date to get the monetary benefits from 01.11.1984.

15. For ready reference, we deem it appropriate to extract the relevant portion of the Circular No.46:85 so as to vindicate the above finding.

“TO: ALL OFFICES IN MADRAS CIRCLE

EX-ECOs/SSCOs – FIXATION OF PAY

ON RE-EMPLOYMENT IN PUBLIC SECTOR BANKS

1. Existing Instruction

.....

2. Revised Instruction:

We have been advised by the Government of India vide their letter F.No.201/3/85-SCT (B) dated March 19, 1985 that the Ex-ECOs/SSCOs who joined the pre-commissioned training or were commissioned after January 10, 1968 may also be granted



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advance increment equal to the member of completed years of service rendered by them in armed forces. According to Indian Bank's Association guidelines the aforesaid Government directives be implemented in the Bank ensuring that the revised basic pay arrived at after adding increments to the extent of number of completed years of service in the armed forces is limited to the stage where it will be equal to or just below the last pay drawn in the armed forces. The Executive Committee of the Central Board at its meeting held at August 29, 1985 has approved that the aforesaid fitment formula be implemented in the Bank.

3. Further Instruction:

The aforesaid fitment formula will be effective from November 1, 1984. In other words, pay fixation of Ex-ECOs/SSCOs as per Government directives will be notionally, made from the date of appointment in the Bank, and arrears, if any, will be paid from November 1, 1984. In some cases the implementation of the above fitment formula may result in reduction of salary and allowances being paid now to the Ex-ECOs/SSCOs. on account of different fitment formula to be followed now as per Government directives. It has been decided that no recovery be made from those whose salary and allowances get reduced as a result of the aforesaid Government directives for the period prior to November 1, 1984 since when the revised formula is applicable.

4. ”

(emphasis supplied by this

Court)



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16. It is settled principle of law that the High Court under the power of judicial review cannot go into the administrative realm and the policy decision of the Government/employer. It has been time and again held by the Supreme Court that granting pay scale is purely an executive function and the Court should not interfere with the same. It has been further held that the applicability of the principles in respect of fitment must be left to be evaluated and determined by an expert body. Therefore, emphasised that in these type of matters, the Writ Court should restrain from interfering. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court of India in ***State of Bihar and Ors., Vs. The Bihar Secondary Teachers Struggle Committee, Munger and others*** reported in ***AIR 2019 SC 2521***.

17. Here, the main contention of the learned counsel for the respondent/appellant is that the Circular which relied by the writ petitioners is not applicable. Whereas, the circular, which has been referred elsewhere in this order has demonstrated that the circular No.46:85 is applicable to the petitioners. Therefore, the relevant Circular to be applied for the petitioner who are short service Commission Officers is Staff Circular No.PER:46:85 dated 30.09.1985 and it has been rightly applied by the



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appellants/respondents 2 & 3 herein. As rightly contended by the appellants/respondents that the initial fitments which contains the pay protection based upon the Circular dated 12.12.1984 *ipso facto* is not applicable to the writ petitioners herein as the Circular dated 12.12.1984 in Staff Circular No.104, is only applicable to the Ex.Service man qua Permanent Commission Army man.

18. However, the writ Court without going into the difference between Short Service Commission and Permanent Commission has proceeded to wrongly apply the circular pertains to the Permanent Commission Army man, to the petitioner who are admittedly Short Service Commission Army man. Therefore, we are of the firm view that the order of the learned Single Judge is not in consonance with the applicable Circular viz., Circular No.PER:46:85 dated 30.09.1985. Therefore, we are of the firm view that the order passed by the respondents 2 & 3/appellants dated 19.06.2004 is in accordance with applicable rule and the same is liable to be confirmed by allowing this Writ Appeal.



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19. In the result, the Writ Order impugned dated 27.11.2019 made in WP.No.22846 of 2004 is set aside and consequently, the Writ Appeal is allowed. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
03.07.2024

kmi

Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

1. The Secretary to Government,
Union of India,
Ministry of Finance,
Department of Economic Affairs (Banking Division)
New Delhi.



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S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

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