IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.25573 of 2019 and
W.M.P.No.25113 of 2019

P.G.Shankar

... Petitioner

Vs.

1.The Managing Director & CEO,
Indian Overseas Bank,
Central Office,
Anna Salai, Chennai 600 002.

2.The Assistant General Manager,
Human Resources Management Department,
Indian Overseas Bank,
763, Anna Salai, Chennai 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in Ref.No.HRMD/Sup/177/37/209-20 dated 07.06.2019 and quash the same and direct the respondents to refund to the petitioner the illegal deductions made with interest while continuing to pay FPA from January 2016 with terminal benefits including pension every month reckoning the FPA.

For Petitioner : Mr.Vasudevan

For Respondents : Mr.K.Srinivasamurthy

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order passed by the second respondent in Ref.No.HRMD/Sup/177/37/209-20 dated 07.06.2019 and quash the same and direct the respondents to refund the illegal deductions made with interest while continuing to pay FPA from January 2016 with terminal benefits including pension every month reckoning the FPA.

2. Heard Mr.Vasudevan, learned counsel for the petitioner, Mr.K.Srinivasamurthy, learned Standing Counsel for the respondents and perused the materials available on record.

3. The petitioner had suffered recovery from his salary on the allegation that he is not entitled to get fixed personal allowance (hereinafter referred as FPA) as per the 10^{th} bipartite settlement, as he has joined the first respondent Bank only in the year 1996.

4. The learned counsel for the petitioner submitted that the petitioner was originally employed in the Bharat Overseas Bank as a Manager Grade III. He was drawing FPA allowance also. Later, he was promoted to the post of Chief Manager in the year 2005. In the year 2007, Bharat Overseas Bank was merged with Indian Overseas Bank and during that time, he was offered with FPA and other benefits which he already availed from Bharat Overseas Bank. Till 2016, he was paid with FPA. From the year 2016, the respondent Bank unilaterally stopped paying FPA and started to recover FPA paid to the petitioner from 2007 in monthly instalments from his pay. The representation made by the petitioner for reimbursement and to extend him the benefit of FPA from the year 2016 was also rejected and the impugned order has been passed. The petitioner claims that he is entitled to get FPA because he is eligible to get the same in view of the merger.

5. The learned Standing Counsel for the respondents submitted that as per the circular memo entered on 17.07.1995, one advance increment on account of computerisation is allowed to be paid only to those officer employees who were in service as on 01.11.1993. As the petitioner has joined only in the year 1996, he is not eligible to get the advance increment.

6. The learned counsel for the petitioner further submitted that the petitioner was being paid with FPA when he was working as an officer in Bharat Overseas Bank. Even though he joined in 1996, after merger, he is eligible to draw whatever benefits was given to him while he was working with Bharat Overseas Bank.

7. The learned Standing Counsel for the respondents further submitted that Bharat Overseas Bank has permitted the petitioner to draw FPA by mistake and the petitioner cannot expect the same mistake to be continued by merged bank *viz*., Indian Overseas Bank.

8. The merger had happened in the year 2007. Even after merger, the Indian Overseas Bank also continued to pay FPA to the petitioner until the year 2016. Now, it is claimed by the learned Standing Counsel for the respondents that only in the year 2016, the respondent Bank noticed that the petitioner is being paid with FPA for which he is not eligible. The petitioner did not suppress any material fact in order to draw that special increment called FPA.

9. As per the notification issued subsequent to the merger, it is stated that the officers on merger will be entitled to draw the same benefits which they have been availed in the original bank. But so far as the joint notes is concerned, it is not in respect of any particular bank, but it is entered by all Indian Bank Officers Association and Indian Bank Association. So whatever salary revision that was agreed by the staff in the said agreement would be applicable to the officers of all the Banks. However, the Bharat Overseas Bank appears to have extended FPA to the petitioner unmindful of the fact that he joined after the crucial date of 01.11.1993. But the petitioner has got nothing to do with the above payment and he did not suppress any material facts. If any excess payment is made by mistake, the same cannot be recovered in the following circumstances as per the position settled down by the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) etc.*** reported in ***(2015) 4 SCC 334*** , which has settled the position on this point as below:-

*"**18.** It is not possible to postulate all situation of*

hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) in any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's

right to recover."

10. In the instant case also, the recovery has been made after five years from the date of allowing the petitioner to get FPA. However, it will not entitle the petitioner for subsequent period from 2016 when the respondent Bank got alerted and stopped granting FPA. Since the recovery is not in accordance with law in view of the position of law settled down by the Hon'ble Supreme Court, the same should be refunded by the respondent Bank. Only on these limited aspect, the impugned order is liable to be set aside.

11. In the result, this Writ Petition is partly allowed and the impugned order dated 07.06.2019 is set aside in so far as it relates to the recovery alone and the respondents are directed to refund the recovered amount to the petitioner within a period of four weeks from the date of receipt of a copy of this order. So far as the petitioner's entitlement to get FPA from 2016 is concerned, this Writ Petition is partly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2025

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

To

1.The Managing Director & CEO,
Indian Overseas Bank,
Central Office,
Anna Salai, Chennai 600 002.

2.The Assistant General Manager,
Human Resources Management Department,
Indian Overseas Bank,
763, Anna Salai, Chennai 600 002.

R.N.MANJULA, J.

gsk

W.P.No.25573 of 2019 and
W.M.P.No.25113 of 2019

21.02.2025