

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.13115 OF 1997

Mr.C.Ramaraj ... Petitioner

-Vs-

1. The Chairman & Managing Director,
Vijaya Bank, Head Office,
41, M.G.Road, Bangalore-560 001.

2. Chief Manager,
Vijaya Bank, HO,
Bangalore-560 001.

3. Chief Manager,
Vijaya Bank,
46, Moore Street,
Chennai-600 001.

4. Chief Manager,
Vijaya Bank,
Zonal Office,
Chennai-600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Mr.Ashok Menon

For respondents: Mr.C.Seethapathi

:O R D E R

The above Writ Petition has been filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari to call for the
records of the respondents pursuant to the order of the second respondent
dated 12.2.1997 under Ref:PER:EST:325:143:97 and to quash the same as illegal
and invalid.

2. In the affidavit filed in support of the above writ petition, the
petitioner would submit that he was employed as an Armed Guard in the Vijaya
Bank, Moore Street, Chennai-1 from 13.11.1987 and when he joined, he was given
a basic pay of Rs.980/= and accordingly his basic pay as on 1.11.1992 was

Rs.2290 and on 1.11.1993 it was 2450/= and on 13.11.1996 it was Rs.2720/=; that without any notice whatsoever, he received a communication dated 12.2.1997 from the second respondent stating that as per some circular dated 3.3.1994, his basic pay was modified as per fitment accorded to him and the basic pay was to be regularised as follows:

- a) as on 13.11.1987: Rs.890/= (instead of Rs.980/=)
- b) As on 13.11.1992: Rs.2070/= (As against Rs.2290/=)
- c) As on 13.11.1993: Rs.2210/= (as against Rs.2450/=)
- d) As on 13.11.1996: Rs.2450/= (As against Rs.2720/=)

The petitioner would further submit that the said letter went on to say that the excess amount paid from 13.3.1992 would be recovered from his salary in ten equal monthly instalments commencing from February, 1997; that the Vijaya Bank Employees Association thereafter approached the Assistant Labour Commissioner (C) Bangalore, in order to protest against such reduction in the basic pay as per the alleged fitment and the learned Assistant Labour Commissioner has accepted the Association's representation and advised both the Management and the Association to attend to a conciliation proceeding at his office on 28.2.1997 and they are still pending.

3. The petitioner would further submit that on 10.7.1997, the fourth respondent addressed the third respondent to the effect that the refitment in the salary bill for the petitioner for the month of July 19 97 had to be proceeded with, without fail, but the excess paid till 3 0.6.1997 need not be recovered till the disposal of the Writ Petition No.1497 of 1997 pending before the Andhra Pradesh High Court; that this letter was followed by another letter dated 18.8.1997 from the fourth respondent to the third respondent stating that refitment had to be given effect to in the month of August, 1997 without fail and communicated them and hence he has come forward to file the above writ petition.

4. In the counter affidavit filed on behalf of the respondents, they would submit that the service conditions of the Award Staff in the Bank are governed by Sastry Award as modified by Desai Award and subsequent Bipartite settlements entered into at the industry level between the Indian Banks Association (IBA) representing the management of member Banks and All India Workmen Unions; that the Awards and Settlements do not contain any provision for protecting the last drawn salary of ex-servicemen retiring from the service and securing reemployment in the Bank; that the service and recruitment conditions of those ex-servicemen who retired prior to the age of 58 years and recruited by the Banks were subject to the rules and instructions issued by the Government and in order to protect the basic pay and dearness allowance last drawn, the Government has formulated a scheme adopted by the bank vide circular No.74/85 dated 25.5.1985 which provided that the basic pay fixed at the Bank plus dearness allowance thereon should be the same or slightly higher than his last drawn pay in the defence service.

5. The respondents would further submit that it was mentioned in Circular No.74/85 that the fixation of pay shall be effected as on 28.1.1983; that in the case of ex-servicemen who joined the Bank prior to 28.1.1983, the fitment as mentioned in the circular will be made notionally and arrears will

be disbursed only from 28.1.1983; that subsequently, the Bank issued a Circular No.82/86 dated 17.3.1986 revising the effective date of fixation of pay to 15.4.1980 i.e. the date of nationalisation of Bank from 28.1.1983; that in the said circulars, the re-employment of pensioners is classified into three categories and in accordance with the guidelines contained in the said circular, the pay of ex-servicemen who joined the bank as Armed Guards, Substaff, Cashier etc. was fixed read with the provisions contained in the bipartite settlements.

6. The respondents would further submit that as per the provision contained in the bipartite settlement entered into between the All India Union of Employees with IBA, certain category of employees are entitled for a special allowance keeping in view the discharge of certain additional duties and functions requiring greater skill/ responsibility; that the employees would be entitled to special allowance so long as they discharge such work or perform such duties which attract such special allowance; that by oversight, the special allowance attached to the said Post was not taken into consideration for protecting the salary for re-employed ex-servicemen in the bank as per circular No.74/85 read with Circular No.82/86; that the special allowance attached to the said post has got the nomenclature of basic pay and is taken into account for calculating Dearness Allowance, contribution to Provident Fund and Payment of HRA; that when this fact came to the notice of the IBA, clarification dated 15.3.1992 was issued by the IBA to all the Banks that it would be necessary to ensure that the basic pay plus dearness allowance and the special allowance for armed guards/watchmen are taken into account while protecting the last drawn basic pay and dearness allowance thereon at the time of retirement/ discharge from the service of armed forces as the special allowance is in the nature of basic pay; that since some of the banks were not clear on reopening of the cases in which the fixation had been done without taking into consideration the special allowance, the IBA took up the matter with the Government and a further clarification dated 8.9.1993 was issued by the IBA and had conveyed its approval of pay fixation with prospective effect based upon which, the respondent Bank had issued the Circular No.51/94 dated 3.3.1994 setting out the mode and method of refixation of basic pay and recovery on the following lines:

1. Pay fixation for Armed Guards will be made prospectively i.e. only in respect of Armed Guards who joined the Bank on or after 13.3.1992 and excess payment, if any made to them will be recovered.
2. The pay fixation for Armed Guards who joined the Bank prior to 13.3.1992 will also be refixed by re-opening their cases but recovery of excess payment, if any made to them upto 13.3.1992 will be waived and excess payment, if any, made to them from 13.2.1992 shall be recovered and
3. the above decision shall also be applied to those ex-servicemen who are appointed in other special allowance carrying posts like Stenographers, watchmen, drivers etc.

7. The respondents would further submit that while the respondent Bank was eager to implement the Circular 51/94, the workmen and Unions started giving dissent and due to representations received seeking reconsideration of the issue, the respondent Bank could not take action for sometimes and at that

stage, the respondent Bank received a reminder from the Government of India dated 26.8.1996 advising it to implement the Circular No.51/94 and in the meantime, the Vijaya Bank Workers Organisation, the majority Union, filed W.P.No.1474/1997 in the Andhra Pradesh High Court seeking to issue a writ of Mandamus to declare Circular No.51/94 as illegal and an interim order was passed therein restraining the Bank from recovering the excess salary paid, subject to the petitioner's undertaking to deposit the arrears within six weeks, if the petition fails.

8. The respondents would further submit that thereafter, the other award staff Union in which the petitioner is a member viz. the Vijaya Bank Employees Association raised an Industrial Dispute before the Assistant Labour Commissioner (C), Bangalore challenging the implementation of the circular and sought for suspension of the circular and also for maintenance of status-quo; that due to the objections from the workers' Unions, the Circular No.51/94 was not implemented between 3 .3.1994 and 12.2.1997 and after the reminder by the Government of India, the respondents have issued the impugned communication dated 12.2 .1997 to all the ex-servicemen whose pay had to be refixed; that however, due to the pendency of the Industrial Dispute and the writ petition at Hyderabad, there was some administrative delay in implementing the impugned communication and the refitment of the petitioner's salary was done w.e.f. August 1977; that on 28.8.1997, the counsel for the petitioner issued a telegram to the third respondent about the order of stay of recovery passed by this Court and accordingly, the petitioner was disbursed his refitted salary of Rs.4650.76 on 29.8.1997 and this salary for the month of August did not include any deduction towards arrears of the excess.

9. The respondents would further submit that the petitioner was confirmed in the services of the Bank w.e.f. 13.5.1988 and he submitted his particulars as per Circular letter No.82/86 on 14.10.1988 and enclosed a certificate showing the pay and allowances paid to him on the date of discharge from the army i.e. on 31.8.1987 and based on the particulars furnished by the petitioner, his pay was fixed in terms of the IBA guidelines/Government directives which was in force at the relevant point of time and the same was communicated vide letter No. PER/PAS/KB/8578/88 dated 4.11.1988; that it is specifically mentioned in Para 7(a) of the said communication that the refixation is subject to changes in the refixation formula as may be communicated by the Government from time to time and consequent recovery thereof.

10. Regarding the allegation of the petitioner that he had no notice of refitment of his salary prior to the impugned communication, the respondents would submit that just as all other ex-servicemen who were affected by the proposed refitment had been put on notice about the proposal to include special allowance as part of basic pay as per the circular No.51/94.

11. The respondents would submit that the above writ petition is not maintainable since the petitioner is a 'workman' as defined under the Industrial Disputes Act, 1947 and an effective and exclusive remedy has been provided to the petitioner as per statute and the provisions of the Act cannot

be bypassed or overlooked and further the petitioner's Union has already raised an industrial dispute through his Association before the Assistant Commissioner of Labour (C) Bangalore, challenging the circular No.51/94 and consequent pay reduction which is the very same subject matter of the above writ petition; that the respondent Bank has acted fully as per the guidelines and instructions issued by the Government of India and unless the Union Government changes its decision on the issues, the respondent Bank has no option but to implement the circular No.51/94 and moreover, what is sought to be done is only the correction of an error in computation of the petitioner's salary and it is not as though the petitioner is being deprived of his rightful dues and the petitioner cannot be allowed to enjoy the excess salary paid on account of an error in computation of basic pay and the respondent dealing in public funds has a duty to ensure that the funds are properly dealt with and excess payments recovered. On such grounds, the respondents would pray to dismiss the above writ petition.

12. During arguments, the learned counsel for the petitioner, besides reiterating the case of the petitioner as submitted in the affidavit filed in support of the above writ petition, would also submit that when the pay of the petitioner was protected, the suo motu reduction of the same by the respondents is arbitrary and would cite a judgment of the Honourable Apex Court delivered in BHAGWAN SHUKLA vs. UNION OF INDIA AND OTHERS reported in (1994) 6 SCC 154 wherein when the pay of the employee which was fixed on promotion, was reduced on ground of having been wrongly fixed initially, the Honourable Apex Court has held:

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Therefore, the impugned order by which the pay of the appellant fixed on his promotion as Guard-C from the post of Trains Clerk was sought to be reduced is not sustainable."

13. Further submitting that in the impugned order, the respondent Bank has informed that the excess amount paid from 13.3.1992 would be recovered from his salary in ten equal monthly instalments commencing from February, 1997 and what is the sanctity of the said date is not explained by the respondents and would submit that no rationale appeared for fixation of such a cut-off date. At this juncture, the learned counsel for the petitioner would cite a judgment of the Honourable Apex Court delivered in STATE BANK OF INDIA vs. L.KANNAIAH & OTHERS reported in 2003(6) Supreme 374 wherein when maximum age limit was prescribed for the purpose of induction into pension fund by fixing a cut-off date, the Honourable Apex Court has held:

"The reason for prescribing the maximum age limit of 35 or 38, as the case may be, for the purpose of induction into pension fund appears to be that the employee would be able to render minimum service of 20 years as contemplated by Rule 22 of the Pension Fund Rules. However, there does not appear to be any rationale or discernible basis for fixing the cut off date as 1.1.1965,

notwithstanding their earlier confirmation in Bank service. True, a new benefit has been conferred on the ex-servicemen and therefore a cutoff date could be fixed for extending this new benefit, without offending the ratio of the decision in D.S.NAKARA AND OTHERS vs. UNION OF INDIA (AIR 1983 SC 130); but, there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation had put in more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counteraffidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefits to ex-servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ with that view."

Citing the above judgments, the learned counsel for the petitioner would pray for the relief extracted supra.

14. In reply, the learned counsel for the respondents besides reiterating the contents of the counter-affidavit filed on behalf of the respondents, would submit that there is no basis for the petitioner's contention that the salary of the ex-serviceman is protected when he quits his service and joins the Bank; that the service conditions of the Bank employees are governed by Sastri Award and then by the Desai Award and therefore a bipartite settlement was entered into between the Bank and its employees and neither the Awards nor the bipartite settlement provide for protection of last salary drawn for exservicemen; that since respondent Bank is governed by the guidelines of the Government of India, Ministry of Finance/Banking Division on whose instructions the IBA has issued the Circular No.51/94, dated 3.3.1994 thereby requiring all the Banks to re-fix the pay of certain categories of the employees, the respondent Bank has accordingly re-fixed the pay and the excess payment is also ordered to be recovered; that the petitioner's pay was fixed in terms of the IBA guidelines/Government directives which was in force at the relevant point of time and the same was communicated vide letter No.PER/PAS/KB/8578/88 dated 4.11.1988; that it is specifically mentioned in Para 7(a) of the said communication that the refixation is subject to changes in the refixation formula as may be communicated by the Government from time to time and consequent recovery thereof; that the petitioner cannot take advantage of a mistake committed by the Bank while fixing his pay; that only to rectify the mistake committed by the Bank in fixing the pay of the petitioner, the impugned order was issued re-fixing his pay and ordering recovery of the excess payment. Regarding the contention of the learned counsel for the petitioner that there is no basis to fix the cut-off date as 13.3.1992, the learned counsel for the respondent would submit that it is beyond the scope of the writ petition. Regarding the other contention of the learned counsel for the petitioner that no opportunity was afforded to the petitioner before issuing the impugned order, the learned counsel for the respondent would submit that since it is only an excess payment that was already effected to the petitioner by mistake, was sought to be corrected and recovery effected, the question of issuing any notice would not arise. On

such grounds, the learned counsel for the respondent would pray to dismiss the above writ petition.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and for the respondents as well, this Court is able to assess that against the reduction of his basic pay and the order of recovery of the excess amount paid to him from 13.3.1992 from out of his salary in ten equal monthly instalments commencing from February, 1997, as per the impugned order, the petitioner has come forward to file the above writ petition seeking to quash the impugned order dated 12.2.1997.

16. It further comes to be seen that the Vijaya Bank Employees Association has approached the Assistant Labour Commissioner (C), Bangalore as against such reduction in the basic pay in accordance with the alleged Fitment and the learned Assistant Labour Commissioner accepting the said Association's representation advised both the Government and the Association to attend a Conciliation Proceeding at his office on 28.2.1997 and during the pendency of the said Conciliation Proceeding, the petitioner has come forward to initiate the above writ proceeding before this Court.

18. It further comes to be seen from the averments of the writ petition that the 4th respondent addressed the third respondent on 10.7.19 97 to the effect that the refitment in the salary bill for the petitioner for the month of July 1997 had to be proceeded with without fail but the excess paid till 30.6.1997 need not be recovered till the disposal of the writ petition No.1497 of 1997 pending before the Andhra Pradesh High Court. This Court is not apprised of anything by the petitioner as to the result of the Conciliation Proceeding as advised by the Assistant Labour Commissioner calling for both the parties to attend to his office for a Conciliation Proceeding on 28.2.1997 or even the writ petition filed in W.P.No.1497 of 1997 in the Andhra Pradesh High Court and therefore this Court is totally kept in dark so far as these proceedings are concerned. Moreover, any order passed by this Court without ascertaining the result of those proceedings may lead to conflicting decisions rendered. Since being an industrial dispute that has arisen in between the Management and the workmen, without resorting to the procedures laid down by the statutory laws of the land praying to invoke the extraordinary jurisdiction of the Article 2 26 of the Constitution of India conferred on this Court is neither proper nor desirable and therefore it is only appropriate on the part of the petitioner to invoke the regular statutory remedy and after exhausting them all, still if the dispute is not resolved, then only the question of approaching this Court would arise and hence the following order:

In result, the above Writ Petition, for the reasons assigned, does not merit acceptance and the same is dismissed as such with liberty to the petitioner to exhaust the alternative remedies open for him under statutes, prior to seeking the constitutional remedy.

No costs.

Index: Yes

Internet: Yes

Rao

To

1. The Chairman & Managing Director,
Vijaya Bank, Head Office,
41, M.G.Road, Bangalore-560 001.

2. The Chief Manager,
Vijaya Bank, HO,
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