(2003) 11 MAD CK 0101

In the Madras High Court

Case No : W.A. No. 211 of 1999

Canara Bank Officers Association APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Citation : (2003) 11 MAD CK 0101

Hon'ble Judges : V.S. Sirpurkar, J;S. Sardar Zackria Hussain, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for the Appellant; V. Karthick, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—This is an appeal against the dismissal of the appellants/ petitioners'' writ petition before the learned single Judge wherein they had challenged the dismissal of their representation wherein, they had prayed for the enhanced basic salary of Rs.860/-. In the writ petition, they had also sought a declaration that such benefit of the enhanced salary should be given to the second petitioner and 110 officers like him, who were appointed in pursuance of an advertisement dated 14-5-1979. The claim was on the basis of the contention that such relief was given to the officers who were appointed in pursuance of an advertisement issued on 1-9-1977 and who were the trainee officers on the crucial date of 1-7-1979 and were appointed as Probationary Officers with effect from 9-8-1979. It is to be seen that on 1-7-1979, the Pillai Committee''s recommendations came into force and so also the regulations governing the service conditions of the Canara Bank. It was an admitted position that the persons like the second petitioner came to be appointed only on 30-1-1980 in pursuance of the second advertisement dated 9-5-1979. In short, a parity was claimed with the officers, who were appointed in pursuance of the advertisement dated 18-11-1977, on the ground that even those officers were appointed as Probationary Officers after 1-7-1979 i.e. on 9-8-1979 and the petitioner was also appointed after that date but, whereas the other officers were given the basic scale of pay starting from Rs.860/-, the petitioner was fixed in the basic scale starting from Rs.700/- and that was discriminatory.

2. Learned single Judge did not accept this position and finding that the petitioner''s case could not be compared with that of the other officers who were earlier appointed on 9-8-1979, the petition came to be dismissed. Aggrieved by this, the second petitioner as also the Canara Bank Officers Association come before us.

3. Following are the basic facts: The first advertisement for the post of Officers in the respondent Bank came on 1-11-1977. It provided that such selected persons would be appointed initially as the Trainee Officers on a remuneration of Rs.600/- per month and after successful completion of the training period, they would be appointed on probation for a period of one year on the basic pay of Rs.470/- per month plus the admissible allowances and their total salary would be between Rs.1192/- and Rs.1312/- per month, depending upon their place of posting. Some persons were selected and ultimately these persons came to be appointed on 9-8-1979 on probation on the basic salary of Rs.470/- per month. However, this minimum limit of Rs.470/- was held commensurate to Rs.860/- and their pay fixation was accordingly made on that basis. The second advertisement was issued on 14-5-1979 where also, it was provided that the period of training would be six months whereas, after six months they would be put on the probation of six months on the initial pay of Rs.1470/- per month and their total emoluments would vary from Rs.1260/- to Rs.1382/- per month, depending on the place of their posting. In pursuance of this advertisement, about 110 persons like the petitioner were appointed and their appointment order came to be passed on 30-1-1980. The persons like the petitioner, however, were not required to undergo any training and they were straight away appointed on probation of Rs.470/- per month. It was further provided in this advertisement that inasmuch as the terms and conditions of service and emoluments of officers are likely to be revised in which event the appointment will be subject to such terms and pay scales as may be operative at the time of appointment. It is noteworthy that the Government had appointed a Committee to consider the wage structure of the bank officers, which was called Pillai Committee and the recommendations of the said Committee, in case of Canara Bank, came into force from 1-7-1979, on which date, the regulations governing the service conditions of the Canara Bank officers were also passed and made applicable.

4. Persons like the petitioner, in their appointment order, was specifically given the basic pay of Rs.700/- per month plus dearness allowance of Rs.399/- and the total salary was Rs.1099/-, which appointment order was accepted by the persons like the petitioner without demur. It is only thereafter that the petitioner started making representations to his employer that as per the advertisement his basic pay was Rs.470/- per month and as per the table of parity, the basic of Rs.470/- per month was equalised to Rs.860/- per month and, therefore, he was bound to be given the fixation of the salary treating his basic pay to be Rs.860/-

and, therefore, he was bound to be given the fixation of the salary treating his basic pay to be Rs.860/-, which was commensurate to Rs.470/- per month.

5. The respondent Bank took the position that after the Pillai Committee''s recommendations were made applicable and after the Bank''s regulations governing the service conditions of the officers were also made applicable on 1-7-1979, such new entrants as the petitioner were to start only on the basic pay of Rs.700/- and as per the Pillai Committee''s recommendations the commensurate pay was Rs.1380/- per month and, accordingly, he was rightly given that pay as a Grade III Officer in Scale I.

6. The petitioner merely fired representations after representations and finding that they were of no consequence, for the first time, filed W.P. No.15051 of 1990. This petition was filed by two persons, the first being the Canara Bank Officers'' Association and the second being the petitioner himself thereby, the prayer of the petitioners is that all the 110 officers, who had joined in pursuance of the second advertisement in the year 1980, should be given the fitment on the basis of the basic salary of Rs.860/- and not on Rs.700/- as was done in his case. The basic claim of the petitioners was that even the officers who were given the benefit of Rs.860/- per month as their initial pay were only the Trainee Officers on 1-7-1979 and came to be appointed after that date but were given Rs.860/- per month whereas the officers like the second petitioner, who were identically circumstanced and were appointed after 1-7-1979 were, however, fixed only on Rs.700/- per month. The petitioners went to the extent of saying that the benefit of Rs.860/- per month should not have gone to those officers and if that benefit was given ignoring the fact that they were only the Trainee Officers on 1-7-1979 and came into service only after that crucial date then, there was no reason to deny this to the persons like the second petitioner, who were equally circumstanced as having been appointed after 1-7-1979 like their counterparts.

7. Learned single Judge dismissed the claim of the petitioners firstly holding that there could be no comparison between the second petitioner and his counterparts, who were appointed in pursuance of the advertisement dated 1-11-1977. It was pointed out by the learned single Judge that the second petitioner had no nexus with the Bank whatsoever excepting that the date of advertisement was 14-5-1979 whereas his counterparts had a definite nexus with the bank and were the Trainee Officers on the date when the Pillai Committee''s recommendations were made applicable, i.e. on 1-7-1979. The learned Judge also found that the two advertisements were not identical and there was a clear-cut notice given in the second advertisement that the terms of salary could be even revised in pursuance of the pending exercise of revision of pay by Pillai Committee. The learned Judge found that the second petitioner and the officers like him fell in entirely different category and, therefore, the petitioners were not entitled to the relief that they claimed.

8. The main thrust of the argument of the learned counsel, Mr. Prasad, was that the petitioners were identically circumstanced with their counterparts, who were

selected in pursuance of the earlier advertisement inasmuch as both the categories of the officers were appointed only after 1-7-1979, i.e. after the Pillai Committee''s recommendations were accepted and were made applicable to the Canara Bank and also when the service regulations came into force. Learned counsel argues that the date 1-7-1979 was crucial because it is on the basis of the Pillai Committee''s report that the pay-structure was revised from that date. He points out that even the earlier officers though they were selected in pursuance of the earlier advertisement were appointed only after 1-7-1979 because their probation started only thereafter. Our attention was invited to the appointment order passed in case of one N. Rajendran, dated 9-8-1979. The said appointment order suggests that the original appointment was made on the basic pay of Rs.470/-, which, by the Pillai Committee recommendations, was equated to Rs.860/-. Our attention was invited to a table showing the parity and there is no doubt that in the said table, the basic pay of Rs.470/- has been revised to Rs.860/-. It appears that this table was meant for Officers Grade IV and their fitment in Scale I was shown. Learned counsel also points out that the petitioner was a Grade IV officer, whose fitment started the basic pay of Rs.470/- and, therefore, he was bound to be given the basic pay of Rs.870/-, which was the commensurate pay.

9. In the first place, this argument was resisted by the learned counsel for the Bank, Shri Karthick, who pointed out that the petitioner and the persons with whom he sought the comparison were never equally circumstanced or identically circumstanced. It has been pointed out by Mr. Karthick, that there is a basic difference in the two advertisements. It will be, therefore, proper to see the advertisements.

10. When we closely look at the two advertisements, it is apparent that the first advertisement offers the training for six months on a remuneration of Rs.600/- per month and suggests that thereafter, there will be an appointment on probation. In the second advertisement also, there is a provision for six months'' training but, no provision for any specified remuneration of Rs.600/- per month. Learned counsel for the petitioner, however, points out that in this second advertisement, it is pointed out that the concerned persons were to be appointed as Grade IV Officers in the scale of Rs.470-1170. It is on this basis, that the argument is developed that those who were appointed on the basis of the first advertisement were also Grade IV officers and their basic pay of Rs.470/- was equated to Rs.860/-. The argument is very attractive. However, it lacks substance because in the second advertisement, there is a specific clause (Cl.K) which suggests the terms and conditions of service and emoluments of officers were likely to be revised in which event the appoint would be subject to such terms and pay scales as may be operative at the time of appointment.

11. Shri Karthick for the respondent Bank points out that such revision was effected almost immediately after the said advertisement with effect from 1-7-1979, i.e. barely one and a half months after the advertisement. He further

points out that on that basis, the officers who were to effect the initial entry had to start on the basic pay of Rs.700/-, which basic pay was equated to Rs.1380/-. Learned counsel points out further that accordingly in his appointment order, which came on 30-1-1980, the second petitioner was appointed as a Probationary Officer straight away even without a training and he was to remain on probation for two years. Learned counsel, therefore, says that in the advertisement itself a specific notice was given to the petitioner that he would be bound by the changes to be effected because of the revision of pay exercise, which was in progress at that time whereas, such was not required to be given in the first advertisement because, at that time, there was no such exercise going on and even the training of such person was on in which, the concerned officers got Rs.600/- per month by way of remuneration. Learned counsel further points out that therefore in respect of those officers who actually were connected with the Bank prior to 1-7-1979 were alone the persons who could get Rs.860/- as the basic pay instead of Rs.470/-, which was the initial offer. Learned counsel also pointed out that after 1-7-1979, the petitioner could not said to be a Grade IV officer though in the advertisement, the post was nomenclatured as Grade IV officer. Learned counsel is at pains to point out that the appointment order of the petitioner describes as the Probationary Officer and paragraph 3 specifies that, he would be bound by the Canara Bank Officers'' Service Regulations, 1979 and other regulations. It is, therefore, obvious that though in the said advertisement the job of the petitioner was described as Officer Grade IV in the scale of Rs.470-1170, he was actually appointed as Grade III officer in Junior Management Scale I, which was the initial entry post as per the said Canara Bank Service Regulations. We have been taken through those regulations by the learned counsel to show that the initial entry in the officers grade would be described as Grade III officers in the Junior Management Scale I who would draw the basic pay of Rs.700/- per month. It is, therefore, clear that the argument that the petitioner was identically circumstanced as his counterparts is not correct.

12. It is also to be noted that the petitioner accepted the appointment order dated 30-1-1980 without any demur and raised the objection for the first time in the year 1990 by way of a writ petition though in between this period, he kept on representing to the bank. We have to, therefore, classify the officers in two categories, i.e. (i) who had some nexus with the bank and who were called Grade IV officers and had actually started getting remuneration (though as the Trainee Officers) and (ii) the other category would be of those officers, who were not in any way connected with the bank, in any capacity, either as Trainees or probationers and for the first time stepped into the bank as the officers after the Canara Bank Service Regulations and the Pillai Committee Recommendations were made applicable. As per those regulations, the officers who came afterwards had to be fitted in the juniormost grade. Our attention was invited to the grades of the pay and hierarchy, which clearly suggests that the initial entry has to be in the junior management grade that too, by way of a probation for

which initial scale of pay would be Rs.700/-. It is also obvious that on the day when these regulations came to be made applicable, the persons who were appointed in pursuance of the first advertisement in 1977 were on the verge of completing the training and as such, were granted a fitment meant for Grade IV officers as that class of officers was then in existence in the respondent bank. The two categories of the officers are, therefore, quite separate and distinct and, therefore, they are not comparable. The finding by the learned single Judge in that behalf is a correct finding and we affirm the same.

13. Shri Prasad, however, argued that the trainee officers could not be said to be connected with the respondent bank because their service could start only from the day when they were appointed as the Probationary Officer and in fact, they were appointed as such only after 1-7-1979 and, therefore, they also should have been fitted as the Grade III officers as per the new service regulations on the basic salary of Rs.700/- but, however, they were favourably treated to be the existing officers and their initial salary of Rs.470/- on which they would have ordinarily started their service was held to be commensurate to Rs.860/-. For relying on the proposition that such trainee officers cannot actually be held to be in-service candidates, Mr. Prasad very heavily relied on the Supreme Court judgment reported in Shri Devendra, Management Trainee and Others Vs. Punjab National Bank, . He suggested that the bank could never have treated the Trainee Officers as the persons in-service and, therefore, could not have offered Rs.860/- per month to them commensurate to their basic pay of Rs.470/- per month because, admittedly, they were not in the service of the bank on 1-7-1977 and if they were wrongly given that advantage the same should also be given to the petitioner.

14. The argument is wholly incorrect. We have seen the aforesaid Supreme Court decision ourselves. There is no doubt that the Supreme Court has observed that a person could never be said to be in service, when he is a trainee. There can be no question of that proposition of law. However, it will have to be taken into consideration that merely because some other persons were treated as the employees and were given the commensurate fitment, treating them as the existing employees, the subsequently appointed persons cannot claim that right. We have already pointed out that two categories were quite different and distinct and in case of the petitioner, there was a specific notice given that in the event of revision of pay, he will be governed by the revised pay structure. It cannot be denied that the petitioner has actually been given the pay as per the revised pay structure. Therefore, merely because some other persons were not identically placed like the petitioner were given the commensurate pay, treating them to be existing officers, the petitioner cannot claim that benefit. We specifically enquired from the learned counsel for the petitioner as to whether he intended to have a finding from us that the counterparts of the petitioner were wrongly treated as the existing employees in Grade IV and further were wrongly granted the commensurate pay of Rs.860/- to the initially offered pay of Rs.470/-. Learned counsel very fairly suggested that that was not his intention but claimed that the

similar treatment was bound to be given to the petitioner. The argument would have been correct had the petitioner been in an identical position but, he is not so and we have shown it on the basis of the difference in the advertisements and further on the basis of the application of the Canara Bank Service Regulations, which governed the petitioner''s service conditions he having been stepped into the bank as an officer only after 1-7-1979. In our opinion, the bank did not do any wrong if it treated the persons appointed in the year 1977 as the existing staff of the bank because the Canara Bank Employees'' Pension Regulations specifically provide that the period spent by an employee on training in the bank immediately before his appointment shall count as the qualifying service and thus the persons appointed pursuant to the advertisement issued in the year 1977 would be entitled to count six months training period as the qualifying service. In that sense, they also became the employees in the service of the bank to whom the bank could have treated as the existing employees. Such was not the position in the aforementioned Supreme Court case in the sense that there the in-service employees, who were erstwhile clerks and were selected as the officers had sought the salary in the officer Grade even during their training period. In our opinion, the factual position is quite different and the learned single Judge has correctly dealt with this aspect.

15. We are, therefore, of the opinion that the judgment of the learned single Judge dismissing the writ petition is correct and the appeal has no merits. It is dismissed but, without any orders as to the costs.

