
(2000) 07 PAT CK 0081
In the Patna High Court
Case No : C.W.J.C. No. 8714 of 1996

Diwakar Prasad

APPELLANT

Vs

Nalanda Gramin Bank and Another

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 3 BLJR 1991

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved by the order contained in letter No. STF/DP/0-14/1077/92 dated 30.7.1992 (Annexure-6) issued by the General Manager, Nalanda Gramin Bank, Biharsharif (hereinafter to be called as "the Bank"), by which his date of increment has been modified and extended from the 15th of January to the 9th of July of every succeeding year and consequently, the petitioner has been directed to refund the excess amount by way of salary withdrawn by him. He has further prayed to issue a writ in the nature of mandamus directing the respondent-Bank to give pay protection to him, so that his salary should not be less than his juniors.

2. In short, the relevant facts are that the petitioner, along with others, was appointed in the official cadre of the Bank in the year 1982 and joined the Bank on the 20th of May, 1982 in the pay-scale of Rs. 1,000-1,820/-. Accordingly, his date of increment was initially fixed in the month of May of the succeeding years. Some of the officers of the same batch joined the service of the Bank in January 1983 and their date of increment was fixed in January of the succeeding years. In the month of May 1983, the petitioner took leave without pay from the 21st of May, 1983 to the 11th of November, 1983 (i.e. 175 days) and, accordingly, the date of increment of the petitioner was shifted to the 12th of November in view of Regulation 52(3) of the Staff Service Regulations, 1980 of the Bank

(hereinafter to be called as "the Regulations") which provides that "No pay and allowance admissible during the period of extraordinary leave and the period spent on such leave shall not count for increment."

3. In the year 1989, the pay-scale of the officials of the Bank was revised with effect from the 1st of January, 1986 and the petitioner along with his batch-mate, was placed in the pay-scale of Rs. 2,200-753,800-4,000/-. The date of increment, however, remained unchanged and as such due to the said revision, the salary of the officers of the 1982 batch became less than the salary of the officers who joined after the 1st of January, 1983. To avoid this anomaly with respect to those officers of the 1982 batch who joined before January 1983, decision was taken by the respondent-Bank to change their date of increment and it was thus shifted back to the 15th of January in the cases of all. Consequently, the petitioner drew his salary accordingly. However, in the case of the petitioner the respondent-Bank later issued the impugned order dated the 30th of July, 1992 contained in Annexure-6 fixing the 9th of July as due date of his increment.

4. It may be relevant to mention here that earlier the petitioner's date of increment was also shifted to the 15th of January vide order contained in Annexure-5, but by the impugned order (Annexure-6), it was extended to the 9th of July and consequently, the respondent-Bank has passed the impugned order for recovery of the alleged excess payment made to the petitioner on account of wrong fixation of the date of his increment. Grievance of the petitioner is that the principle of pay protection has been accepted by the Bank in the cases of others, but the same has not been applied in the case of the petitioner, inasmuch as, by the said revision of scale, he has been arbitrarily placed at the pay less than his juniors who joined in January 1983.

5. A counter-affidavit has been filed on behalf of the respondent-Bank, in which the said stand of the petitioner has been emphatically denied and it has been stated that the correct fact is that the officers at Serial Nos. 14 to 40 of the Gradation List (Annexure 1) which includes the petitioner also, are all officers recruited in the same batch, but had joined on different dates; some in the year 1982 and some in the year 1983 and their inter se seniority has been reckoned with respect to their rank at the time of their recruitment. It appears that the Bank has taken this stand as the petitioner in this writ petition has tried to allege that those joined in January 1983, were not of the same batch to which the petitioner belonged and that they were of fresh batch. However, the learned Counsel for the petitioner, realising the said mistake, has not disputed the fact that the persons at Serial Nos. 14 to 40 in the said Gradation List (Annexure-1) belonged to the same batch, but contended that those who joined after the petitioner in January 1983 and were juniors to him, were getting less pay than him even after the date of his increment was shifted on account of extraordinary leave during the period 21st of May, 1983 to the 11th of November, 1983.

6. It has been submitted by the learned Counsel for the petitioner that the

impugned order (Annexure-6) is wholly misconceived, arbitrary and violative of Article 14 of the Constitution of India and is thus, fit to be quashed. According to the learned Counsel for the petitioner, by extending the date of increment of the petitioner to the 9th of July by the respondent-authorities, have reduced the pay of the petitioner and the petitioner would be getting even less than his juniors were getting before the said revision of scale, which amounts arbitrary reduction of pay.

7. The learned Counsel for the respondent-Bank has submitted that there is no substance in the submission of the learned Counsel for the petitioner. In fact, keeping in view the period of extraordinary leave the Bank shifted back the date of increment by four months in the case of all the officers of the same batch who joined before January 1985 to remove the anomaly and accordingly, the date of increment of the petitioner was also shifted to the 9th of July as his due date of increment was November. Though it is not disputed by the learned Counsel for the respondents that before revision of pay the petitioner was getting more pay than his juniors who joined in January 1983 and after revision they are getting more pay than the petitioner, but according to him, there is nothing wrong in the impugned decision of the respondent-Bank because of the shifting of the date of increment of the petitioner on account of extraordinary leave availed by him. This Court finds it difficult to accept the said submission of the learned Counsel for the respondents. This Court fails to appreciate as to how that will lead to grant of lesser pay to the petitioner after revision when he was getting more before revision. It is true that the Bank has removed the anomaly in the pay after revision of scale in so far as it relates to those who joined in January, 1983 vis-a-vis those who joined in May 1982, but in the case of the petitioner by shifting his date of increment to July, the anomaly as against those who joined after him and are junior and was getting less pay than him at the time of revision, has been allowed to remain, inasmuch as in the case of those who joined in January 1983, their dates of increment were fixed as 15th of January after revision and the same was also followed in the cases of those who joined in May 1982; whereas in the case of the petitioner it has arbitrarily been fixed in July whereby his pay in the revised was reduced to less than those who joined in January 1983. In the case of officers who joined in January 1983, they have been given increment in the revised scale in January 1986 itself; whereas the petitioner has been given increment in July 1986. Thus, in my opinion, it has rightly been submitted by the learned Counsel for the petitioner that the impugned order (Annexure-6) is wholly arbitrary and violative of Article 14 of the Constitution of India.

8. Accordingly, this writ application is allowed, the impugned order dated the 30th July, 1992 contained in Annexure-6 is hereby quashed and the respondent-Bank is directed to fix the same date of increment, i.e., 15th of January even in the case of the petitioner as has been fixed in the cases of his juniors of the same batch. The respondents are further directed to refund the amount, if any, recorded from the petitioner pursuant to the impugned order (Annexure-6). In

the circumstances of the case, however, there shall be no order as to costs.