

(2000) 06 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 41400 of 1993

J. Satyappa

APPELLANT

Vs

Tungabhadra Gramin Bank, Bellary

RESPONDENT

Date of Decision : 07-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 6 KarLJ 607

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri P.S. Rajagopal, for the Appellant; Sri Sundaraswamy, Sri S. Ramdas and Sri Anand, for the Respondent

Judgement

1. The petitioner is an employee of the respondent-Bank which is a Rural Gramin Bank sponsored by the Canara Bank. He is before this Court questioning the correctness of the order passed by the respondent dated 5-10-1993 issued by the General Manager of the respondent-Bank stating that his request for payment of subsistence allowance as per the Industrial Bipartite Settlement does not apply for payment of subsistence allowance to him when the disciplinary proceedings are pending against him during the period of his suspension and further stated that the payment of subsistence allowance is governed by the Regulation 30(4) of the Tungabhadra Gramin Bank Staff Service Regulations, 1982 (hereinafter called as the "Regulations" in short), by urging various facts and legal grounds.

2. To consider the rival contentions of the learned Counsel appearing on behalf of the parties, the relevant undisputed facts are stated as hereunder. The petitioner-employee was kept under suspension pending Disciplinary proceedings against him vide the order of suspension dated 1-9-1992 issued by the Chairman of the respondent-Bank. In the suspension order, it has been specifically mentioned that he will be paid subsistence allowance as per Regulation 30(4) of the Regulations. It is also an undisputed fact that he has been continued in

suspension from 1-9-1992 till he was reinstated on 10-2-1998 by revoking the suspension order. The disciplinary proceedings were initiated against him by issuing two charge-sheets dated 8-2-1993 and 10-3-1993 making certain allegations of misconducts alleged to have been committed by him in respect of which the proceedings are concluded and penalties are imposed upon him which are not the subject-matter of this writ petition.

3. The case sought to be established by the learned Counsel Mr. P.S. Rajagopal appearing on behalf of the petitioner is that in pursuance of the order passed by the Apex Court in the writ petitions (Civil Nos. 7149 to 7150 of 1982 and 132 of 1984), the Central Government constituted National Industrial Tribunal (hereinafter referred to "NIT" in short), as it has opposed the prayers in the said writ petitions. The Apex Court has passed an order on 1-9-1987 on the basis of submission made by the learned Counsel on behalf of the Central Government that it had agreed to appoint the National Industrial Tribunal to decide the question relating to the pay, salary and other benefits payable to the employees of the Regional Rural Banks constituted under the Regional Rural Banks Act, 1976. In terms of the order of the Supreme Court, the Central Government appointed National Industrial Tribunal consisting of Former Chief Justice of Andhra Pradesh High Court Shri S. Obul Reddi for adjudication of the dispute referred to above. The dispute which was referred to the Tribunal by the Central Government which reads thus.--

"Dispute relating to pay, salary, other allowances and other benefits payable to the employees of the Regional Rural Banks in terms of the pleadings of the parties in the Writ Petition (Civil) Nos. 7149 and 7150 of 1982 and No. 132 of 1984 filed in the Supreme Court of India".

4. As per the order of reference made to the "NIT", it is stated that its decision after publication of the award in the Gazette of India shall be final and binding on the parties. After the order of reference was made to the "NIT", the dispute between the parties was adjudicated and an award was passed on 30-4-1990 giving effect to the benefits of the award with retrospective effect from 1-9-1987. The learned Counsel for the petitioner has placed reliance upon the terms of the award at Paragraphs 4.425, 4.427, and 4.428, which clauses are extracted in this order for proper appreciation and consideration of the case of the parties.--

"4.425. What flows from my findings is that the officers and other employees of RRBs will be entitled to claim parity with the officers and other employees of the Sponsor Banks in the matter of pay scales, allowances and other benefits. What stems from this finding is the date from which effect should be given to the award. I have given my anxious consideration as to the date from which the award should be given effect. The Writ Petition Nos. 7149 and 7150 of 1982 and 132 of 1984 were not filed at one and the same time. They were filed on different dates. Petitioners in W.P. Nos. 7149 and 7150 of 1982 claimed reliefs from the date of establishment of RRBs. Petitioners in W.P. No. 132 of 1984 did

not specify any date but in their claim statement filed before me they have asked for effect being given from the date of writ petition i.e., 16-9-1984. I think it would be proper, just and reasonable, if I direct that the award shall be given effect from the 1st day of September, 1987, the date on which the Supreme Court passed the order directing the Central Government to constitute the Tribunal.

4.427. Having regard to the above, in order to eliminate the anomalies and bring about uniformity in the pay scales in all the RRBs at least to the extent of each State, I find that they will be entitled to all the allowances, benefits which the State Government servants of comparable level and status are entitled to. They will, therefore, be only entitled to claim the difference in allowances and other benefits, so as to bring about uniformity with the State Government employees in all matters of pay scales, allowances, benefits, etc., till 31st day of August, 1987.

4.428. So far as the equation of posts and the consequent fixation of the new scales of pay, allowances and other benefits for officers and other employees of the RRBs on par with the officers and other employees of comparable level in corresponding posts in Sponsor Banks in corresponding posts of comparable level, it is a matter which has to be decided by the Central Government in consultation with such other authorities as it may consider necessary. This will also include the pay scales, benefits, other allowances and fitment of sub-staff of the RRBs with the sub-staff of Sponsor Banks. This award is accordingly passed and it shall cover all the existing RRBs. The award shall be given effect to from 1st day of September, 1987".

5. It is further rightly submitted by the learned Counsel for the petitioner that the said award was accepted by the Central Government and the same was published in the Gazette of India on 22-2-1991. After the aforesaid award was passed by the National Industrial Tribunal, the Equation Committee was constituted by the Government of India to find out the posts in the Rural Regional Banks and Nationalised Banks who are Sponsor Banks for the purpose of equating the posts with a view to extend the terms and conditions of the award in terms of Sastry and Desai awards and Industrial Bipartite Settlement dated 8-9-1983. It is further submitted that the posts of the respondent-Bank in respect of Clerical cadre are equivalent to the same cadre in the Sponsor Bank, after it was equalised and held the posts are equivalent. Therefore the learned Counsel for the petitioner submits that the terms and conditions of the awards referred to above shall be read into the Regulation 30(4) of the Regulations with regard to the payment of subsistence allowance to the employees of the respondent-Bank whose posts are equalised on par with the posts of Sponsor Bank when they are kept under suspension either pending disciplinary proceedings or for any other reason whatsoever.

6. The learned Counsel for the petitioner further submits that having regard to the Equation Committee report submitted to the Central Government holding

that the clerical cadre of the Rural Regional Banks and the Clerks of the Nationalised Banks are similar and that the service conditions including the payment of subsistence allowance to the employees of the RR Banks is governed by Paragraph 557 of the Sastry award, Paragraph 17-14 of Desai award and Paragraph 5 of the Industrial Bipartite Settlement dated 8-9-1983. He submits that the said awards and settlement are more beneficial regarding payment of subsistence allowance to the petitioner and the same has not been extended to him by the respondent as they have issued the impugned letter at Annexure-F taking untenable contentions that the payment of subsistence allowance is governed by him as per the Regulation 30(4) of the Regulations referred to above and further, reliance is placed upon the implementation circular issued by the Ministry of Finance, Government of India represented by the Finance Department dated 22-2-1991 and another Circular at Annexure-R3, dated 20-3-1993 issued by the National Bank for Agricultural and Rural Development (in short called "NABARD").

7. The learned Counsel for the petitioner submits that the stand taken by the respondent-Bank in not extending the subsistence allowance to the petitioner as per terms and conditions of the award, and in terms of the awards and the settlement referred to above is bad. Hence he would contend that the impugned letter at Annexure-F suffers from error in law and the same is liable to be quashed by this Court in exercise of its power under Article 226 of the Constitution of India.

8. The learned Senior Counsel Mr. S. Ramdas appearing on behalf of the respondent-Bank sought to justify the impugned letter issued by it, contending that the employees working in the respondent-Bank are governed by the statutory regulations framed by the Board of Directors of the respondent-Bank in exercise of its power u/s 30 of the Regional and Rural Banks Act, 1976 and further submitted that as per Annexure-R1, the implementation letter issued by the Government of India represented by the Finance Department and Annexure-R3 which is the clarificatory letter issued by the NABARD, it makes it very clear that the subsistence allowance is not the subject-matter of the dispute referred to the "NIT" by the Central Government for its adjudication and further the implementation of the award letter communicated by the Union of India at Annexure-R1 and Annexure-IV to it makes it very clear extending the allowance and other benefits to the employees working in the RRBs from the appointed date, namely 1-9-1987. Therefore he would submit that respondent 1 makes it very clear that the claim of the employees regarding subsistence allowance is not either one of the terms of reference or the terms and conditions of the award passed by the National Industrial Tribunal. Therefore the claim of the petitioner for payment of subsistence allowance on par with the employees working in the Sponsor Bank and placing reliance on the Sastry and Desai awards and Industrial Bipartite Settlement is not tenable in law. Secondly he has contended that the clarificatory circular at Annexure-R3 makes the decision and stand taken by the Bank is clear and justifiable in law. Therefore it is urged by the learned Senior

Counsel that the respondent-Bank is not liable to pay subsistence allowance on par with the employees of the Sponsor Bank and further he has placed reliance on the unreported Division Bench judgment of this Court rendered in W.A. No. 312 of 1994, dated 1-2-1994 in support of stand taken by the respondent-Bank.

9. After hearing the rival contentions at the Bar, the following point would arise for consideration of this Court.--

Whether the petitioner/employee of the respondent-Bank, whose post was equalised by the Equation Committee with the posts of Sponsor Bank, is entitled to claim the subsistence allowance in terms of the relevant paragraphs of Sastry and Desai awards and the Industrial Bipartite settlement dated 8-9-1983 pursuant to the terms and conditions of the award passed by the National Industrial Tribunal.

10. For the purpose of answering the above said point, I have now considered the rival contentions urged by the learned Counsel appearing on behalf of the parties and perused the order of reference made by the Union of India in pursuance of the order passed by the Apex Court in the writ petitions (civil) referred to in the preceding paragraphs of this order. I have also perused the terms of reference made by the Union of India to the National Industrial Tribunal constituted by it for adjudication of the order of reference made to it. I have also perused and considered the relevant terms and conditions of the award namely 4.425, 4.427 and 4.428 which are extensively extracted in this order. It is not in dispute that the award passed by the National Industrial Tribunal with regard to the pay, salary, other allowances and other benefits payable to the employees of the Regional Banks in terms of the employees working in the Sponsor Bank which is one of the Nationalised Banks. It is also not in dispute that the terms and conditions of the award passed by the National Industrial Tribunal after adjudication of the dispute between the parties are binding upon them including the respondent-Bank since it is sponsored by the Canara Bank, which is one of the Nationalised Bank.

11. By careful perusal and reading of Clauses 4.425, 4.427 and 4.428 of the award passed by the NIT, it is seen that the dispute between the employees of the Regional Rural Banks and the Nationalised Banks regarding pay, salary and allowance and other service conditions to be extended on par with the employees of RR Banks was adjudicated by it as per the terms of reference made to it by the Union of India on the basis of material evidence on record. It is also not in dispute that, the Union of India constituted Equation Committee to find out the different categories of employees working in the Regional Rural Banks and with reference to the nature of work and Sponsor Nationalised Banks for the purpose of equating the posts to extent the benefits to its employees in terms and conditions of the award passed by the NIT referred to above. It is not in dispute that clerical posts in the RRBs and clerical posts in the Sponsor Nationalised Banks are one and the same is the finding recorded by the Equation Committee and therefore it has equated the posts of that cadre as one and same on the

basis of the similar nature of work which has been rendered by them in their respective Banks. The next question that is required to be examined and considered in this case having regard to the rival submissions made at the Bar is, whether the terms and conditions of the award particularly clauses referred to above would cover the payment of subsistence allowance on par with the employees of the Sponsor Nationalised Bank therefore, they are entitled to the payment of subsistence allowance in terms of Sastry and Desai awards and Industrial Bipartite Settlement dated 8-9-1983. By reading the clauses referred to supra and having equalised the post of petitioner on par with the similar post in the Sponsored Bank is one and the same is an undisputed fact.

12. The posts of clerk in the respondent-Bank and in the Sponsor Bank are one and the same, is an undisputed fact and therefore the petitioner is entitled for the payment of subsistence allowance as per the terms and conditions of the award passed by the "NIT", in terms of Sastry and Desai awards and Industrial Bipartite Settlement 8-9-1983 regarding the payment of subsistence allowance to the petitioner. It is an undisputed fact that the provisions of the awards referred to above and settlement for payment of subsistence allowance payable to its employees for the period of suspension is 1/3 for the first three months and thereafter 1/2 of the pay and allowances provided that after one year period of suspension full pay and allowance shall be payable to the employee if the enquiry was not delayed at the instance of an employee. It is also not the case of respondent-Bank that the enquiry is delayed at the instance of the petitioner. Therefore the respondent-Bank was not justified in issuing the impugned letter stating that the petitioner is not entitled for subsistence allowance as stipulated under Regulation 30(4) without considering the terms and conditions of the award of "NIT", which is binding upon the respondent-Bank and the post of the petitioner is undisputedly equated to the post of clerks in the Sponsor Bank and applying the clarificatory letter issued by the Government of India at Annexure-R3 interpreting the allowance referred to in the award is wholly untenable in law as the same is contrary to the order of reference to the NIT and the terms and conditions of award, it makes unequivocally clear even with regard to the payment of subsistence allowance to the employees of RRBs whose posts are equalised on pay with the posts of Sponsor Banks.

13. The payment of subsistence allowance covers with the clauses referred in the terms and conditions regarding allowances and other service conditions of the employees in the Sponsor Nationalised Bank is applicable to the petitioner. This Court has also considered the submission and the reliance placed on the circulars by the Senior Counsel on behalf of respondent-Bank at respondent 3 wherein the clarificatory letter issued by the Union of India represented by Department for implementation of the NIT award read with Committee recommendations working group report of Regional Banks, the various aspects referable to in the said clarificatory letter issued by the Union of India do not deal with the subject of payment of subsistence allowance on par with the employees working in the Sponsor Banks as per Sastry and Desai awards and the Bipartite Settlement. The

above said document is understood as the clarificatory letter issued to the respective Chairman and Managing Director of the Sponsor Banks except UPGB. To examine as to whether the petitioner, as a matter of right is entitled to the claim of subsistence allowance on par with the Sponsor Banks, this Court has to read the terms and conditions of the award extracted in this judgment referred to above. By reading the said clauses, it would make very clear that the allowances and other service conditions which are paid to the employees of Sponsor Banks includes the payment of subsistence allowance. The payment of subsistence allowance is the conditions of service which is being paid to the employees of Sponsor Banks under the various clauses of the Sastry and Desai awards and Bipartite Settlement dated 8-9-1983. The NIT after adjudication of dispute on reference made to Clause 4.428 has made it very clear that, the fixation of new pay scales and other benefits for the officers and other employees of RRBs on par with the officers and employees of comparable level in the corresponding posts of Sponsored Banks and new pay scales of pay as are applicable to comparable level.

14. In Clause 4.428 of the terms and conditions of the award, the NIT has made it very clear and granted the benefit of pay scale and other service conditions on par with the officers and other employees at comparable level in corresponding posts in Sponsored Bank in their fitment into the new pay scale as are applicable to the officers of Sponsored Banks and in corresponding posts of comparable level. By reading the entire award, it makes unequivocally clear the payment also includes payment of subsistence allowance as it comes within the interpretation of other allowances and other service conditions, the payment of subsistence allowance and the conditions of service as enumerated in the regulations. Once the pay scale allowance and other service conditions has been asked to pay on par with the Sponsor Banks after equation of posts with that of RRB banks, it is not open for the Union of India to issue clarificatory letter as stated at Annexure-R3 and it is also not open for the respondent-Bank to contend that the petitioner is not entitled to claim subsistence allowance on par with the employees of the Sponsor Bank in terms of the award and the settlement referred to above. It is not for the Union of India represented by Finance Department for interpreting the clauses of terms and conditions of the award passed by the "NIT" which would make it very clear that the employees working in the RRBs including respondent-Bank are entitled to the pay scales and other service conditions including the subsistence allowance in terms of the award and the settlement applicable to the Sponsor Nationalised Banks. Therefore the question of issuing clarificatory letter interpreting the clauses of the award would not arise for the respondent-Bank, the interpretation of the terms and conditions of the award passed by the NIT by the Union of India would arise if they are not clear and they are ambiguous. In my considered view, after careful consideration of the entire award passed by "NIT" it makes very clear that, claim of the petitioner is perfectly legal and justifiable and therefore, the reasons upon which the respondent issued the impugned letter at Annexure-F rejecting the claim of

subsistence allowance to the petitioner in terms of Sastry and Desai awards and Industrial Bipartite Settlement is not tenable in law. Hence, the same is liable to be set aside.

15. For the reasons stated supra, this Court has to hold that, the terms and conditions of the award referred to above includes the payment of subsistence allowance payable to the petitioner and other employees of the respondent-Bank on par with the Sponsor Bank for the reason that the post of the petitioner and other similar posts of the employees of Sponsor Bank have been equalised by the Equation Committee appointed by the Union of India after the award passed by NIT referred to above was published in the Government of India Gazette.

16. In this view of the matter, the submission made by the learned Counsel for the petitioner placing reliance upon the award and the legal grounds urged for quashing the impugned letter at Annexure-F is well-founded and the same must be accepted. On the other hand, for the reasons stated supra, the legal submission made at the Bar on behalf of the respondent-Bank is not tenable in law. Hence, the same cannot be accepted.

17. For the reasons stated supra, the petitioner must succeed in this petition. Accordingly, I pass the following order.

The writ petition is allowed. Rule made absolute. The impugned order at Annexure-F is hereby quashed. Writ of mandamus is given to the respondent-Bank to pay the subsistence allowance to the petitioner in terms of the Sastry and Desai awards and the Industrial Bipartite Settlement dated 8-9-1983 and comply with the same. The difference of subsistence allowance in terms of Sastry and Desai awards and Industrial Bipartite Settlement shall be paid to the petitioner within six weeks from the date of his entitlement till 10-2-1998.