
(2014) 09 CAL CK 0078
In the Calcutta High Court
Case No : WP No. 24421(W) of 2005

Rabindranath Murmu

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Citation : (2015) 1 CALLT 274 : (2015) 2 WBLR 949

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Malay Kumar Bose, Nandini Mitra and Sanjay Kumar Saha, Advocate for the Appellant; Ashim Kumar Routh, Sudeep Pal Chowdhury and Indrajit Bhattacharjee, Advocate for the Respondent

Final Decision : Allowed

Judgement

Arindam Sinha, J.—The petitioner nos. 1 to 5 are officers of Bangiya Gramin Vikash Bank which was earlier known as Mallabhum Gramin Bank (hereinafter referred to as the said Regional Rural Bank). The petitioner nos. 6 and 7 are respectively the Officers' Union and the President thereof of the said Regional Rural Bank. The Sponsor Bank of the said Regional Rural Bank is United Bank of India. They have prayed, inter alia, for issuance of writ of mandamus directing withdrawal of circular dated 21st October, 2005 issued by the said Regional Rural Bank on the subject of implementation of revised pay scales and payment of increased salary thereof to the officers and workmen in terms of Government of India, Ministry of Finance order dated 06th October, 2005.

2. Mr. Basu, learned senior advocate appeared on behalf of the petitioners and submitted, by this circular the fitment given to officers of the said Regional Rural Bank in effecting parity with the officers of the said Sponsor Bank was sought to be undone. Referring to the affidavit-in-opposition affirmed by the respondent No. 6 on behalf of the respondent nos. 4 and 5, Mr. Basu submitted it was the case of the respondent No. 5 that in the matter of two writ petitions filed before the Supreme Court of India, the order was made on 1st September, 1987 to the

effect the Central Government shall constitute a National Industrial Tribunal and refer salary structure of Regional Rural Bank employees who were demanding parity with employees of their Sponsor Banks on the principle of equal pay for equal work, to it. Pursuant to the said order the Government of India by its notification dated 26th November, 1987 appointed the National Industrial Tribunal (NIT) and referred the dispute to it. The NIT pronounced its award on 30th April, 1990 but as regards equation of posts and fixation of pay, allowances and other benefits the said Tribunal directed that was a matter which had to be decided by the Central Government in consultation with such authorities as it may consider necessary. Following such direction the said award could not be implemented, so the Government constituted an Equation Committee (NIT Cell) to make appropriate recommendations. The Equation Committee (NIT Cell) arrived at decisions which were reported on 16th March, 1991. Such decisions also covered the cases of employees/officers promoted after the appointed date, i.e. 1st September, 1987 (the date of order made by the Hon''ble Supreme Court as aforesaid). The said decisions were reconsidered by the Equation Committee (NIT Cell) on 30th April, 1993.

3. It is the petitioners' case that on receipt of Government of India order dated 22nd February, 1991 instructing implementation of the award of the NIT and pursuant to clarifications dated 30th April, 1993, made by the Equation Committee (NIT Cell), the said promotee employees fixation of pay in Sponsor Bank pay scale of clerical cadre as on the said appointed date, i.e. 1st September, 1987, was made. The respondent nos. 4 and 5 having duly implemented the same, in the year 2005 sought to illegally undo the same. The petitioners' grievance is that such fitment was sought to be undone by the impugned circular which was without jurisdiction or authority and liable to and should be quashed.

4. Mr. Basu relying on the said Government of India order dated 22nd February, 1991 drew attention to clauses 8,9,15 and 16 thereof to further submit it was pursuant to this Government order the fitment was given to the petitioners who were promotees immediately after the said appointed date. Such fitment could not be altered. Any attempt to do so would in the least tantamount to an interpretation and clarification of the bipartite settlement and equation of fitment given pursuant to the said order and necessarily could only be done or obtained from the Ministry of Finance (Banking Division), Government of India through NABARD. The respondent bank thus could not have issued the impugned circular and in doing so had acted without jurisdiction or authority.

5. Mr. Routh, learned advocate appeared on behalf of the respondent nos. 4 to 7 and submitted the impugned circular was issued in rectification of mistake made earlier and thereby no legal right of the petitioners could have been infringed.

6. The Government of India by its said order dated 22nd February, 1991 had accepted the order of NIT dated 30th April, 1990 and the recommendations of the Equation Committee (NIT Cell) dated 16th January, 1991. That order

provided the procedure regarding fitment into new scales of pay of employees/officers of Regional Rural Banks in the corresponding posts to comparable level under Sponsor Banks as on 1st September, 1987. Few of the relevant provisions in the said order are reproduced below:-

"4(v) While the fitment in the above manner should not normally result in reduction in total emoluments drawn earlier by any employee/officer at any level, there may still be a situation where an employee/officer after his fitment into the new scales of pay as above may get total emoluments lower than the total emoluments he was drawing immediately prior to the appointed date i.e. 1.9.1987 in the RRB scales of pay. In such circumstances, the concerned employee/officer shall be paid personal allowance to the extent of difference which should be adjusted to the extent of half of the increase in Basic Pay or DA or both, accrued to the concerned employee/officer after 1.9.1987. An example or working out the personal allowance is given below:

"4(vi) The separate cadre of Sr. Clerk-cum-Cashiers and Field Supervisors existing in RRBs on the appointed date were abolished from that date. If Junior Clerks-cum-Cashiers were promoted as Sr. Clerks-Cum-Cashiers and Field Supervisors as officers/Branch Manager after the appointed date (1.9.1987), then the Pay + DA in the promoted post is protected by grant of personal allowance. Personal allowance so granted should be adjusted in the manner indicated in paragraph 4(v) above."

"8) In respect of the employees/officers promoted after the appointed dated i.e. 1.9.1987, the basic fitment as on 1.9.1987 be in accordance with the instructions given above. Thereafter the fitment in the higher post be effected in accordance with the practice prevailing in sponsor banks."

"16) Any interpretation/clarification of the Equation and fitment should be obtained from Ministry of Finance (Banking Division), Government of India, New Delhi, through NABARD."

7. The respondent nos. 4 and 5 had stated in their affidavit, inter alia, as follows:-

The Bank accepted recommendation of the NIT Cell and issued fitment slip to each and every employee. At that time the fitment of all the Senior Clerk-cum-Cashiers promoted to Field Supervisor as on 02.12.88 & 11.04.89 i.e. after the appointed date 01.09.87 was rightly made at initial stage i.e. at Basic Pay of Rs. 2100/- (OJM) as on date of their promotion.

A copy of the fitment slip of the petitioners is annexed hereto and marked with the Letter C-1.

1) Subsequently Bank has received the NABARD letter NB.IDD.RRCBD No. C-4559/316 (Gen)-92/93 dated 20.03.93. Although NABARD letter dated 20.03.93 did not contain any fitment formula for such promotee employees, the aforesaid NIT Cell met on 30.04.93 and reconsidered the earlier fitment of those

promotee Field Supervisors and wrongly recommended their fitment at 2nd, 3rd and 4th stage of OJM-I Scale instead of initial stage of OJM-I Scale as fixed initially as on date of their promotion upon receipt of GOI Order dated 22.02.91. Para 8 of GOI Order dated 22.02.91 states that "In respects of the employee/officer promoted after the appointed date i.e. 01.09.87 the basic fitment as on 01.09.87 be in accordance with the instruction given above. Thereafter the fitment in the higher post be effected in accordance with the practice prevailing in Sponsor Bank". Sponsor Bank follows fitment formula prescribed by the IBA from time to time. In the instant case the NIT Cell during their meeting dated 16.03.91 considered the fitment formula as contained in IBA Circular dated 08.08.90 while fixing the Basic Pay of the SCCs promoted to FSs on 02.12.88 and 11.04.89 i.e. after the appointed date-01.09.87. The initial fitment based on recommendation of the NIT Cell in their meeting dated 16.03.91 was in conformity with the GOI Order dated 22.2.91. A copy of the revised fitment slip of the petitioners is annexed hereto and marked with the Letter C-2."

8. The respondent No. 5 had issued an order dated 18th October, 2005 relevant portion of which is reproduced below:

"Anomaly in pay fixation as per ROPA" 80 in respect of officers appointed as Branch Manager, allowing one to four additional increments, pay fixation of SCCs allowing increments in consideration of weightage on seniority as per Revision of Salary at par with Sponsor Bank have since been reported.

In order to ascertain the actual position and also to fix basic pay as per VIII Bipartite settlement/wage revision a Committee comprising of following officers is constituted to examine the aforesaid fitment and to submit observation for taking further action in this regard, if required."

9. It is thereafter the impugned circular providing guidelines in implementation of revised pay structure including payment of increased salary of officers with effect from 1st November, 2002 at par with Sponsor Bank was issued. Guideline No. 8 (ii) is reproduced below:

"8 (ii) Excess salary drawn (for wrong computation/non-adherence to instructions of fitment slip) would be recovered with commercial rate of interest (i.e. 15% p.a) and concerned DDO shall also be held personally liable for such excess payment. This does not preclude the management to take any other action against the erring officer/employee as may deem fit."

10. This court finds the case of the respondent bank to be that the recommendations of the fitment formula by the Equation Committee (NIT Cell) as decided in their meeting dated 16th March, 1991 was correct. The said respondent, however, contended the clarification dated 30th April, 1993 of the said Equation Committee (NIT Cell) on reconsideration of their earlier recommendations for fitment of those promotee Field Supervisors resulted in issuance of wrong recommendation of their fitment at 2nd, 3rd, and 4th stage of Officer Junior Manager -I scale instead of initial stage of Officer Junior Manager-I

scale. This anomaly was detected and the impugned circular issued in rectification.

11. The facts are the Government of India by its order dated 22nd February, 1991 had accepted, inter alia, recommendations of the Equation Committee (NIT Cell) dated 16th January, 1991. Subsequent thereto NABARD by its letter dated 20th March, 1993 to the Sponsor and Regional Rural Banks in the matter of implementation of NIT award read with the said recommendations of the Equation Committee (NIT Cell) as instructed by the said Government of India order dated 22nd February, 1991, had addressed certain operational problems which had cropped up as heterogeneous pay scale, allowances etc. of the Regional Rural Banks employees were sought to be converted into near homogenous pay scale, allowances etc. of their Sponsor Banks. It does not appear by that letter the Government of India through NABARD had required the Equation Committee (NIT Cell) to reconsider its recommendations dated 16th March, 1991 regarding fitment.

12. The respondent nos. 4 and 5 have stated in their affidavit and annexed copies of documents to show the said Regional Rural Bank had accepted the recommendations dated 16th March, 1991 of the Equation Committee (NIT Cell) in issuing fitment slips to the petitioners as annexed thereto and marked C-1. The said respondents further stated in their affidavit, revised fitment slips of the petitioners were issued, copies of which are annexure C-2 to the said affidavit. It appears from the revised fitment slips dated 19th November, 1993, the same do not refer or were pursuant to any recommendation dated 30th April, 1993 made by the Equation Committee (NIT Cell) on reconsideration as alleged by the said respondents. NABARD's letter dated 20th March, 1993 is referred to and the basis of issuance of such revised fitment slips.

13. In the circumstances the said Regional Rural Bank in altering the fitments by issuance of the impugned circular purportedly in rectification of mistake made, cannot be said to have had authority to do so. It is not the case of the said Regional Rural Bank there was an error made by it in implementing the fitment formula as would appear from the revised fitment slips issued by it. On the contrary it is their positive case anomalies had been detected in the matter of fitment attributed to wrong recommendation made by the Equation Committee (NIT Cell) on reconsideration made by it on 30th April, 1993. This court has not been able to find any such recommendation or reference thereto in the said revised fitment slips. The fitment thus given to the petitioners was in implementation of the said Government of India order dated 22nd February, 1991 as duly revised on instructions of NABARD. Any subsequent alteration to such fitment, if required to be made, would necessarily be a matter which would relate to interpretation and clarification of the equation of fitment and must be obtained from the Ministry of Finance (Banking Division), Government of India through NABARD as provided under clause 16 of the said Government of India order dated 22nd February, 1991.

14. For the reasons aforesaid the writ petition succeeds. The impugned circular dated 21st October, 2005 and corrigendum thereto are set aside and quashed. There will, however, be no order as to costs.

15. Urgent photostat certified copy of this order, if applied for be made available to the parties on their usual undertaking.