

(2011) 08 MAD CK 0406

In the Madras High Court

Case No : Writ Petition (MD) No. 6348 of 2007

R.M. Venkatachalam

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 08 MAD CK 0406

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; Pala. Ramasamy for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The Petitioner has approached this Court with a prayer, for issuance of a writ, in nature of certiorari, to quash the order, dated 23.06.2007, vide which, the salary of the Petitioner has been re-fixed retrospectively and recovery of excess payment ordered.

2. The Petitioner joined the service as "Sub-Staff" in the Indian Bank on 20.07.1972, and promoted as "Clerk" in the year 1983. While, working as "Clerk/Shroff" in Royapettah Branch, Chennai, he was placed under suspension, and charge memo for misconduct was issued, on 28th May 1990, and imposed a punishment of warning.

3. The stand of the Respondents is that the Petitioner accepted the charges and regretted his misbehavior, and prayed for mercy, and agreed that the period spent on suspension be treated as suspension period.

4. It was, on the undertaking of the Respondents that the suspension was revoked and the Petitioner was issued minor punishment of warning, by treating

the period of suspension as suspension period, but the Petitioner was allowed his normal annual increment during the period of his suspension.

5. The stand of the Petitioner is that Indian Bank Association, vide circular, dated 13th June 1992, advised the member banks to specify in the final order, as to whether during the suspension period, the delinquent employee should be granted annual increment or not, and if no such mention is made, the employee is entitled to annual increment. It was also clarified that penalties awarded prior to the date of issuance of advisory letter should not be re-opened.

6. On 15th July 1996, the Petitioner was given the last stage annual increment and fixed permanent allowance. As per the policy of the Bank, the Petitioner was also given first stagnation increment, when he reached the maximum pay scale, for clerical cadre, on 15th June 1999.

7. The Petitioner was, denied the 2nd stagnation increment, which according to the Petitioner, was due to him, on 15th July 2002.

8. The case of the Petitioner is that when representations were filed for release of 2nd stagnation increment, he was informed, on 6th December 2005, that the Petitioner was not entitled to increment during the period of suspension, and that his salary was required to be re-fixed retrospectively, with effect from 1989 and excess payment to be recovered.

9. The Petitioner challenged the order, by way of W.P. No. 19298 of 2006, which was allowed, and the Respondents were given liberty to proceed afresh, after giving show cause notice.

10. The Petitioner replied to the show cause notice, on 15th June 2007, but without considering the reply, the impugned order was passed, re-fixing the salary of the Petitioner with effect from 1989, and recovery of excess paid was also ordered.

11. The Learned Counsel for the Petitioner challenged the impugned order, by contending that the order is totally arbitrary and thus, hit by Article 14 of the Constitution of India.

12. The contention of the Learned Counsel for the Petitioner is that once, no order was passed, withholding the increment of the Petitioner, he was entitled to increments, in normal course. The Petitioner, therefore, was rightly released the annual increments. Secondly, in absence of any misrepresentation or fraud, on the part of the Petitioner, the amount paid could not be recovered even if paid wrongly.

13. In view of the fact that punishment of warning was awarded to the Petitioner, he was entitled to increment from due date, even if he was not so entitled during the period of suspension.

14. The Learned Counsel appearing on the behalf of the Respondents, however, support the impugned order, by contending that the impugned order cannot be

faulted with, as the Petitioner had admitted, his guilt before the enquiry officer, and it was on his undertaking, that the period of suspension be treated, as suspension period, that he was ordered to be reinstated by awarding minor punishment of warning.

15. It is also the contention of the Learned Counsel for the Respondents that once the Petitioner admitted the period to be treated as suspension period, he was not entitled to increment. This fact was within his knowledge, therefore, recovery could also be ordered, after re-fixing the salary retrospectively. In view of the Indian Bank Association Circular, dated 12th February 1987, clearly laying down that the person under suspension is not entitled to increment during his suspension period.

16. On consideration, I find no force in the contentions of the Learned Counsel for the Respondents.

17. An employee is entitled to annual increment as of a right, which can only be withheld, by specific order.

18. Once, there was no order, stopping the increment, by way of punishment, the Petitioner was entitled to annual increment for every year of service, rendered. Any other interpretation will defeat the very object of minor punishment, and the punishment of warning will stand converted into a major punishment of stoppage of increment with cumulative effect, which cannot be permitted.

19. The circular of the Indian Bank Association is misread by the Respondents, in coming to the conclusion that the Petitioner will not be entitled to increment during the suspension period.

20. The circular has to be read to lay down that during the period of suspension, delinquent may not be entitled to increments, but after the final order is passed and an employee is exonerated or given a minor punishment, he would be entitled to annual increment.

21. The impugned order, re-fixing the pay of the Petitioner is, thus, arbitrary, and amounts to colourable exercise of power, thus violative of Article 14 of the Constitution of India.

22. As observed above, there was no question of recovery at all, as the Petitioner was granted increment by the Respondents Bank, without any misrepresentation or fraud on his part.

23. In any case, this question need not be deliberated further, as in this case, it is held that the Petitioner was in-fact entitled to annual increment, granted to him, and there is no occasion, either to re-fix the salary or claim of recovery, only because Petitioner was under suspension for particular period.

24. For the reasons stated above, the writ petition is allowed and the impugned order is quashed.

25. No costs.