

(1995) 09 DEL CK 0026

In the Delhi High Court

Case No : Civil Writ Petition No. 2983 of 1985

S.K. Mahajan

APPELLANT

Vs

Oriental Bank of Commerce and Another

RESPONDENT

Date of Decision : 06-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 60 DLT 140 : (1995) 35 DRJ 457

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : R.K. Singh and Jagat Arora, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is a petition directed against the order of the respondent-Bank impugning the letter dated 31st October, 1985 fixing the pay of the petitioner as Rs.1173.25 paise. However, this figure is wrong, as has been stated by the learned counsel appearing for the respondent at the outset of the hearing of this petition, this should be read as Rs.1495.10 paise.

(2) Various contentions have been raised by the learned counsel appearing for the petitioner, Mr.R.K.Singh. The petitioner, admittedly, is an ex-serviceman and under the scheme of the Government for rehabilitation of the ex-servicemen, the petitioner applied for re-employment with the respondent-Bank and was appointed on 17.10.1984. According to him, at that time the Third Bipartite Settlement was in operation and his pay is to be protected on the basis of the said Bipartite Settlement as well as Government of India instructions, which have been issued from time to time to protect the pay scale of such category of employees. The main thrust of the arguments of the learned counsel for the petitioner is that the revision of pay scale on the basis of Fourth Bipartite Settlement is bad in law, firstly, on account of petitioner not being a party to the said Bipartite Settlement; secondly said Bipartite Settlement did not take into

consideration the cases of employees like the petitioner i.e. ex-servicemen; and thirdly the revision of pay scale was arbitrary and without affording the petitioner any opportunity of being heard in the matter. Mr.Singh has further contended that the applicability of Fourth Bipartite Settlement retrospectively cannot take away the vested rights of the petitioner. In support of his arguments, he has cited P.D. Aggarwal and Others Vs. State of U.P. and Others, . This case deals with the length of service and how the continuity of service has to be determined in case of direct recruits and other Departmental promotees. A serious challenge was made by the learned counsel for the petitioner regarding the applicability of the Fourth Bipartite Settlement, which was arrived at between the representatives of the All India Bank Employees Association with the Management of the Bank on 17.9.1984, which was made applicable from 1.7.1983 and in this connection he has cited Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh, , in which Supreme Court held |-

"ACCORDINGLY, the theory of implied agreement by acquiescence sought to be built up on behalf of the appellant on the basis of the acceptance of the benefits flowing from the agreement even by the workmen who were not signatories to the settlement is of no avail to the appellant Company and cannot operate as an estoppel against the Sangh or its members."

(3) Counsel for the petitioner has also cited Delhi Cloth and General Mills Co. Ltd. Vs. Union of India and Others, , Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others, and Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., .

(4) On the basis of the aforesaid authorities, Mr.Singh has argued that as the petitioner was not a party to the Fourth Bipartite Settlement, said Settlement was not binding on him and his pay has to be protected not in terms of the said Settlement but in terms of the Government orders and directions issued from time to time in relation to ex-servicemen category to which the petitioner belongs.

(5) Repelling the contention of Mr.Jagat Arora, learned counsel appearing for the respondent that there was equally efficacious remedy available to the petitioner under the Industrial Disputes Act, and, Therefore, this petition ought not to have been maintained and the same should be dismissed, Mr.Singh has argued that the writ petition was filed in the year 1985, which was admitted by this Court in 1986, i.e. approximately 10 years have passed and, Therefore, no useful purpose will be served to relegate the petitioner before the Labour Court. Moreover, Mr.Singh has contended that challenge in the writ petition was against the arbitrary and unjust decision of the respondent in revising the pay scale in contravention of the Government orders/directions and, Therefore, he was entitled to maintain this writ petition. In support of his arguments, he has cited L. Hirday Narain Vs. Income Tax Officer, Bareilly, , Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, , Ram and Shyam Company

Vs. State of Haryana and Others, and The State of Uttar Pradesh v. Mohammad Nooh Air 1958 Sc 86.

(6) On the other hand, Mr. Jagat Arora, learned counsel appearing for the respondents, has stated that the basic pay of the petitioner had been protected as per the instructions of the Government of India in this regard. Mr. Arora has contended that the impugned letter wherein the pay of the petitioner has been shown as Rs.1173.25 paise was wrong and it was corrected and communicated to the petitioner that it was Rs.1495.10 paise. Mr. Arora has contended that the basic pay and dearness allowance was merged between the intervening period of the Third and Fourth Bipartite Settlement. Mr. Arora has also contended that Government of India, Ministry of Finance vide its Office Memorandum dated 25.11.1958 has issued a circular regarding the fixation of pay of re-employed pensioners and has quoted paragraph-B of the said Office Memorandum |-

"(B)The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed."

(7) On the basis of this circular, Mr. Arora has contended that this was required to be done in view of the Government instructions that in case of re-employed employees, the initial fixation of pay may be fixed at a higher stage by giving them increments so that at the time of their re-employment, if they had drawn a higher pay at the time of their last pay drawn, the pay at which they had been re-employed, should not be less. Obviously, this was done to protect the employee, who, after re-employment, may not suffer undue hardship in the pay scale.

(8) The next submission of the learned counsel for the respondents is that the first letter on which the petitioner has relied dated 14.10.1984 regarding the fixation of pay at Rs.1717.85 paise, the stand of the respondent is that this letter was withdrawn on 7.11.1984. It has specifically been mentioned in the said letter that the letter dated 14.10.1984 be treated as cancelled and the petitioner be paid basic pay at Rs.580/= per month pending further decision and the excess salary paid to the petitioner be recovered from him. Mr. Arora as well as Mr. Singh both relied heavily on the Office Memorandum dated 28.1.1983 issued by the Government of India, Ministry of Finance. According to Mr. Arora, respondent has complied with the directions of the said letter in letter and spirit as it would be evident from the letter of the respondent sent to all Divisional Heads of the respondent. As per this office Memorandum dated 28.1.1983 in sub-para-2 of paragraph-2 it is mentioned |-

"THE pay fixation in the case of ex- servicemen who joined Banks" service after the revision of pay scales in September, 78 will however, be on the basis of protection of pay (instead of pay + DA) drawn by them prior to retirement. In other words, their pay fixation will be in accordance with the following office memorandum issued by the Ministry of Finance, Deptt. of Expenditure....."

(9) MR. ARORA has contended that even otherwise petitioner was estopped from taking this plea as the petitioner himself has admitted that petitioner was a

member of All India Bank Employees Association, which was one of the parties, who signed the Fourth Bipartite Settlement. What has been contended before me is that if certain workmen, who have been represented through their Associations of Unions and the Settlement is just and fair, it is not open for the workmen to challenge the Settlement. In support of his contentions he has cited Tata Engineering and Locomotive Company Limited Vs. Their Workmen, |-

"IF the settlement had been arrived at between the company and the union of the workers by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it, or because the tribunal was of the opinion that the workers deserved marginally higher emolument than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication.

(10) When the settlement is just and fair and is arrived at by a union representing majority workmen, the question of acquiescence to the settlement by the workmen does not arise."

(11) The next contention of the learned counsel for the respondent is that the petitioner had an alternative remedy and this writ petition should not be entertained. In this connection, he has cited Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, , Tarlok Chand & ors. v. National Industrial Development Corporation Ltd. & ors. 1994 (2) LJ 1130 and Punjab State Electricity Board v. Presiding Officer, Labour Court, Bhatinda 1995 (1) LJ 666.

(12) MR.ARORA has contended that as a matter of fact the respondent has implemented the said Office Memorandums and it cannot be said that any vested rights of the petitioner has been interfered with. In support of his contentions he has relied upon the Office Memorandum issued by Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division dated 10.6.1986, in which it is mentioned in sub- para-(ii) of paragraph-4 |-

"WITH effect from 1-7-1983, the pay fixation on re-employment of ex-servicemen in the Banks would be through protection of the basic pay plus D.A. drawn by them at the time of their release from the armed forces. The figure of pay plus D.A. admissible to the Bank will be fixed with reference to this protection and the relevant stage of the basic pay in the scale will be determined after deducting D.A. admissible in the Banks from the figure protected."

(13) On the basis of the aforesaid directions, learned counsel for the respondent has contended that the pay fixation of the ex-servicemen, who were re-employed after 1.7.1983 had to be done in accordance with the provisions of aforesaid Office Memorandum w.e.f. 1.7.1983 and that being so it cannot be said that the

pay fixation of the pay of the petitioner was not in accordance with the Government circulars dealing with the case of ex-servicemen. He has further contended that as per the directions of the Government, the petitioner was granted two increments at the time of his re-employment on 17.8.1984, which was required to be done by the respondent. Mr.Arora has also relied upon *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd & ors.* Air 1977 Sc 322. On the basis of the ratio laid down in *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd & ors.*'s case (supra), Mr.Arora has contended that the petitioner cannot be permitted to blow hot and cold at the same breath as, admittedly, the petitioner was taking the advantage and benefits under the Fourth Bipartite Settlement. The Supreme Court in *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd & ors.*'s case (supra) held |-

"IT is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole."

(14) I have given my careful consideration to the arguments advanced by the learned counsel appearing for both the parties. Firstly, dealing with the question as to whether the Fourth Bipartite Settlement can be questioned by the petitioner, no doubt Settlement de hors conciliation proceedings are governed by law of contract as between the contracting parties and obviously has limited application in comparison to Settlement arrived at in course of conciliation proceedings, which has extended applications. Can in this case it be said that this Settlement was not binding on the parties. The Fourth Bipartite Settlement, admittedly, was signed between the Management of the 55 A-Class Banks, as represented by the Indian Bank Association and their workmen, represented by All India Bank Employees Association and other Bank Employees Associations. Admittedly, the petitioner was a member of All India Bank Employees Association, Therefore, he cannot take the plea that the Fourth Bipartite Settlement arrived at between his Union and the Bank Management is not binding on him. Supreme Court in *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd & ors.*'s case (supra) has observed |-

"WHEN a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interest of labour, enters into a settlement in the best interests of labour. This would be the normal rule. There may be exceptional cases where there may be allegations of mala fides, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled to due weight and consideration. The justness and fairness of a settlement has to be considered in the light of the conditions that were in force at the time of the reference. It will

not be correct to judge the settlement merely in the light of the award which was pending appeal before the Supreme Court. So far as the parties are concerned there will always be uncertainty with regard to the result of the litigation in a court proceedings. When, Therefore, negotiations take place which have to be encouraged , particularly between labour and employer in the interest of general peace and well-being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust."

(15) That being the position, I hold that the Fourth Bipartite Settlement is binding on the parties and the petitioner cannot be permitted to take advantage under the Settlement of benefits, which have been accrued to the petitioner after the signing of the said Settlement and take the plea that his basic pay should be protected not on the basis of Fourth Bipartite Settlement but on the basis of Government orders/directions or alternatively on the basis of Third Bipartite Settlement.

(16) Before I deal with the question of fixation of basic pay of the petitioner, I would like to deal with the question as to whether this petition can be maintained by the petitioner or not. In case I decide that the petition cannot be maintained then I need not go into the other arguments advanced by the learned counsel for the petitioner. No doubt, it is true that when the statute has provided a in-built mechanism for redressal of the grievance, Courts while exercising constitutional powers under Article 226 of the Constitution would normally not permit the petitioner to invoke the extra-ordinary writ jurisdiction if other statutory remedies are provided until and unless the Court comes to a prima facie opinion that the impugned action of the State, Authority or person is perverse, arbitrary and against the principle of natural justice. But in this case, the petitioner had challenged the impugned re-fixation of his pay by the respondent on the ground of violation of principle of natural justice and feeling aggrieved that he not being a party to the Fourth Bipartite Settlement, the said Settlement was not binding on him. The High Court admitted the writ petition. The writ petition was filed in the year 1985. To non-suit the petitioner at this stage would not be in the interest of justice, Therefore, I am of the view that as the matter has been pending for the last 10 years, the petitioner has right to maintain this petition and the petition should be disposed of by the Court.

(17) The Supreme Court has observed in Ram and Shyam Company v. State of Haryana & ors."s case (supra) :

".....ORDINARY it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art.226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of law. At any rate it does not oust the jurisdiction of the

Court. In fact in the very decision relied upon by the High Court in *The State of Uttar Pradesh Vs. Mohammad Nooh*, it is observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy." It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art.226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits....."

(18) Dealing with the last contention raised by the petitioner as to whether his pay had been fixed in accordance with the Government directions or not. In view of my holding that the Fourth Bipartite Settlement was applicable to the petitioner, I do not like to go further in this question as it is not the case of the petitioner that the Bipartite Settlement itself was bad. The petitioner has challenged in part the limited applicability of the Fourth Bipartite Settlement vis-a-vis fixation of pay. The petitioner was getting a consolidated salary of Rs.1434.00 when he retired from military service, i.e. Rs.560/= as basic pay plus Rs.574/= as dearness allowance. The respondent fixed his pay to Rs.1495.10 paise. In the additional affidavit filed by the petitioner, the petitioner himself has stated that on the basis of the Third Bipartite Settlement 80% of the dearness allowance was merged in the basic pay of the petitioner, whatever he was drawing at that time and accordingly house rent allowance and other allowances increased. It has also been averred by Mr.Singh in the additional affidavit that the petitioner was benefitted by the Fourth Bipartite Settlement. Respondent has stated in his counter to the additional affidavit filed by the petitioner that the benefit of Rs.200/= per month was only to those employees, who were in the service of the Bank prior to 1.7.1983 and the basic pay was drawn by such employees under the Third Bipartite Settlement and not in the case of the employees, who were in the service of the Bank after 1.7.1983 like the petitioner. It has been specifically mentioned in the counter filed by the respondent that a bona fide mistake was committed by the respondent in the case of the petitioner that he was given fitment on the basis of protection of last pay drawn in the armed forces in the pay scales of the Third Bipartite Settlement and correspondingly he was allowed fitment in the new scales of pay as per Fourth Bipartite Settlement and this was not to be done as the petitioner has joined the Bank in September, 1984 and he was to be given the pay scale under the Fourth Bipartite Settlement. I see considerable force in the arguments of the learned counsel for the respondent as the petitioner has joined the service of Bank on 15th September, 1984 and his pay was to be protected in terms of the Government guidelines dated 28.1.1983, which would relate to the pay scales under the Fourth Bipartite Settlement, which became effective from 1.7.1983.

(19) In view of the above discussions, I see no merit in this writ petition, the writ

petition is dismissed. However, keeping in view the circumstances of the case, I make no order as to costs.