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(2006) 08 AHC CK 0027

In the Allahabad High Court

Case No : Special Appeal No. 475 of 2005

U.P. Co-operative Bank Ltd. and Another — APPELLANT

Vs

Pratap Singh Bisht and Others — RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:
Constitution of India, 1950 — Article 14
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2006) 10 ADJ 672 : (2007) 7 AWC 7616

Hon'ble Judges : Ajoy Nath Ray, C.J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajoy Nath Ray, C.J. and Pradeep Kant, J.—This appeal by the Co-operative Bank is against the judgment and order of an Hon''ble single Judge dated 6.7.05 making available monetary benefits to 70 writ Petitioners, who are private Respondents before us.

2. In terms of this impugned order, the writ Petitioners have been permitted as from 1.7.1981 monetary benefits in the following manner ; the impugned order directs the bank to pay them on the same scale as if they had been appointed as regular employees on 1.7.1981 and also make available to them from the said date all increments, allowances and other monetary benefits which would have been available to them had they been regularly selected employees from that date.

3. How this creates a sizeable benefit in favour of the writ Petitioners will be understood when the actual amount, which they received, and the status in which they were at the material period are seen and appreciated. It is the admitted case that between the years 1978 and 1981, all the 70 writ Petitioners had been inducted in the employment of the Bank.

4. They were inducted under a very special service clause, which is peculiar to

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the instant Co-operative Bank itself.

5. The regulation in question is Regulation 5 (iii) of the U. P. Co-operative Societies Employees'' Service Regulations, 1975 and it reads as under :

5 (iii). The Board may, pending selection, permit stop-gap-arrangements to be made by the appointing authority as the Board may consider necessary, intimation of such appointment shall be given to the Board within a month of such appointments.

6. This will be seen in effect as a rule permitting what is usually happening in other services as and by way of back door entry. It often happens that in several Government services and semi-Government organisations ad hoc or daily rated workers are taken in without any selection process having been undertaken in the matter of their selection. They start working on some sort of a consolidated basis and it might be on daily payment or on monthly payment. These backdoor appointments give rise to a lot of litigation. Sometimes they are regularised and sometimes, it is stated, and this is the recent trend, that backdoor entries should never be regualrised. It often happens, as it has happened in the State of U. P. that once the group of ad hoc workers becomes very large, their very very number calls for some sort of regularisation process to be undertaken. Some regularisation rules are framed, and then, at least in phases, ad hoc workers are absorbed in the mainstream of regular workers.

7. In the case of the 70 writ Petitioners, the position was that they formed a group from amongst a larger group of 131 workers, who had been inducted by the appointing authority into the service of the Bank under the said Regulation 5 (iii) pending selection. The Hon''ble single Judge, in his Lordship''s judgment, has mentioned how, in the years 1982, 1983 and 1984 and also to an extent in the year 1981, the Bank and the Board treated all the 131 side entrants with all sympathy and consideration. Stop gap arrangements by way of payment to them were made from time to time. It appears that at first, before 1.7.1981, they were paid on daily basis. After 1.7.1981, the monthly payment consolidated at the figure of Rs. 368 was fixed for them. From 1.4.1982 it was raised to 575 rupees ; from 1.7.1983, they were allowed to have Rs. 325 being the first basic pay of a regular employee starting at the lowest point of the scale, but from that date, i.e., 1.7.1983, the writ Petitioners and Ors. were also given the allowances which were part of the emoluments of regular workers, although no increments were then given to any of these 131 persons, who had been taken in without any regular selection process. From 1.7.1981 these writ Petitioners were treated as temporary employees employed for three months; but the three months'' period was never given any effect at all and they simply continued on the several successively ameliorated stop-gap arrangements until the time mentioned hereinafter.

8. The above Regulation, which we have quoted, was slightly amended in the year 1983 and from 30.7.1983, the stop-gap arrangement could be continued

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only for 180 days. Whether this amendment was paid due regard to by the Bank or not, we need not wait to consider, because that is not material to our case.

9. From 1993 this peculiar Regulation 5 (iii), permitting, if we might say so, a semi-respectable side door entry, has been removed from the Regulation book.

10. What is much more material for us, is to consider and note, that in the year 1985 certain rules for regularisation of ad hoc employees were brought afoot in respect of the Bank and all the 70 writ Petitioners received the benefit thereof. Whether they were ad hoc employees or not ; whether they lost their status as ad hoc employees and became temporary employees or not, these are the questions, which have not been agitated before us. They got, in any event, the benefit of the Regularisation Rules, which had been made for regularising ad hoc employees working for an appreciable length of time. They took such benefit and the Bank and other parties made no grievance about according these benefits to the writ Petitioners. They were all regularised, but not all on the same date. There were several dates applicable to them, those dates being 1.10.1995, 9.12.1985, 24.4.1986 and 29.9.1986.

11. From these four dates onwards, the writ Petitioners have received the regular scale of pay with all allowances and increments and there is no grievance about that.

12. Sometime in the year 1989, the present writ in question was filed. In the writ, claims were made that the writ Petitioners should have been allowed the monetary benefits of regularly selected workers from the very beginning ; they also claimed seniority alongwith the pay claim.

13. It is very important to note that the claim for seniority has been given up by the writ Petitioners in absolutely unequivocal terms. The only claim which survived for consideration by the writ court was the claim for money and that benefit has been made available to the writ Petitioners.

14. Several simple and elementary questions arise to the mind as soon as these facts are read. The first question would be, that after allowing so many years to pass and after taking benefits of the Regularisation Rules and the regular scales, which were made available to the writ Petitioners, how can they, some 8 years after the event, file a writ petition claiming only arrears of pay? Similarly, questions regarding delay or waiver would also naturally arise in the mind.

15. The claim of the writ Petitioners has been made and supported principally on two bases. The first basis is that, according to them, they were rendering actually the same type of service and work to the Bank, as the regular employees were rendering. As such they claim equal pay on the basis of equal service or equal work rendered. On examining the papers before us we have not been able to discern any significant difference between the type of work which the writ Petitioners were rendering from the period 1.7.1981 onwards and the type of work which their counterpart regular employees were rendering at the

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same period of time.

16. The second basis is much the more important one. If the writ Petitioners had been aggrieved about the unequal pay for equal work from 1.7.1981 onwards, they should have filed their writ petition there and then and not waited for eight years to make their claim. Taken by itself, if the claim had arisen on the first point only, their claims would all be barred because of gross delay, negligence and waiver.

17. This problem they seek to get over by relying on their second point, which, as we have said, is the principal reason why the writ petition was filed and why the writ petition has succeeded in the court below.

18. A case was decided in favour of three of those one hundred thirty one employees, who came into employment without the regular selection process, and that is a Division Bench judgment of the Allahabad High Court given in the case of Jai Kishun and Ors. (1989) 2 UPLBEC 144.

19. Those three employees were one Hari Babu and two others. From the submissions that were made at the Bar before us, we gathered that these three employees were the so-called ''Senapatis'' of the group of hundred and thirty one. Their cause was espoused by the Union. Such cause was espoused before the 1985 Regualrisation Rules came into the rule book. The industrial dispute raised on their behalf encompassed two main items. The first item was that they wanted regualrisation through the intervention of the labour court. The Regularisation Rules not having been framed at that time, this was the only way they could become regularised without going through the selection process.

20. The second main item of their claim was the claim for money. The claim was very similar to the claim, which has succeeded in the case before us in the writ Court. The wages and emoluments claimed by them before the labour court was the difference between what they had received after obtaining their ad hoc employment, and what they would have got had they been employed just like regularly selected employees on the regular pay scale from the very beginning.

21. In the Division Bench judgment, the point about regualrisation was argued out in full and it was decided against these employees. The Division Bench opined that they were not entitled to regularisation.

22. So far as the emoluments and wages were concerned, learned Counsel appearing for the Bank made a concession and did not argue the matter in this regard before the Court at all. In para 63 of the reported judgment, this concession is recorded. Nonetheless, the Division Bench went on to state as follows in para 68 of the said judgment, which is quoted by the Hon''ble single Judge in his Lordship''s judgment also. We reproduce that paragraph below :

We would like to clarify that our holding that the said three employees were not entitled for confirmation does not follow or mean that they are not entitled for their salary in the prescribed scale meant for the post on which they are working.

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There is no doubt about the fact that they are continuously working since a long time and it will not at all be justified to make them to work on lower wages in comparison to those who are discharging the same function and duties in a higher scale. We are, therefore, inclined to uphold the order of the labour court in so far it provided for payment of salary in the prescribed scale and other allowances and increments with effect from 1.7.1981.

23. It is on the basis of this decision given in para 68 by the Division Bench that the writ Petitioners make bold to claim the same relief in their favour. In the manner we respectfully read the judgment, which is impugned before us, this paragraph is also the single most important reason, if not the only reason, why the Hon''ble single Judge has allowed the writ petition in favour of the writ Petitioners.

24. The writ Petitioners-Respondents submit before us that the concession made by the learned Counsel in regard to the emoluments was not proceeded upon by the Division Bench by giving it the full effect, which the Bench could have accorded to such concession. The Bench thought it fit to give a decision of its own, not on the basis of concession, but on the basis of its own understanding of the law and facts. Since a decision has been given by the Division Bench, such a decision has to be applied, according to the well known principles of law, by the later courts. The Division Bench certainly opined that it will not at all be justified to make the concerned ad hoc employees work on lower wages in comparison to those who were discharging the same functions and duties. As such the seventy writ Petitioners, who are similarly situated, should, on the same justification, be allowed the added allowances and increments. This Division Bench judgment was given only sometime in or about the year 1989. The writ Petitioners became aware of their rights and their entitlement to claim their rights on the basis of this Division Bench judgment in an absolutely certain and well defined way. This type of entitlement or right had not been pronounced in their favour when they were rendering their service during the material years from 1.7.1981. As such, their claims should not be brushed aside on the ground of delay and delay alone. The passage of time is argued to be sufficiently well explained in the above manner. It would be very unjust if three persons whose cases were espoused by the Union got the larger benefits on the basis of a Court decision and the seventy writ Petitioners are denied identical benefits.

25. This is the main point in the appeal, and we have to deal with this main point first. Some elementary ideas about the doctrine of judicial precedent have to be cleared up and stated, because without a clear statement of those basic principles, a fallacy, like the fallacy which is contained in the above argument, is very likely to be committed and not detected.

First Point:

26. The first point to understand about judicial precedents is that what a Court does, or what a Court grants by way of relief to a litigant, whether in a decree or

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in an order, never classes as a judicial precedent. The reason why the Court decides in a particular manner is what constitutes the core and heart of a judicial precedent. The phrase ratio decidendi means ''reason of deciding''. What binds the later court is the reason for deciding and not what has been decided.

Second Point:

27. Finding out the ratio decidendi of a case, or the reason why the case has been decided in a particular manner, requires a whole reading of the judgment, or at least its most material parts, and a careful analysis as to why the judgment went in that particular way. It is not right to read sentences or paragraphs in isolation. Once the ratio decidendi has been extracted, a whole re-reading of the judgment or its material parts will show whether the extraction has been fair and correct and does full justice to the judgment and the decision itself.

Third Point:

28. According to the doctrine of precedent, some decisions of Courts of standing compel later courts to decide similarly circumstanced cases in a similar manner, since the same decision on the point of law has to be applied in the later case also. A pure assessment of fact never classes as a legal precedent. It can only be an issue estoppel between the same parties. Once the later court is convinced that there is a binding precedent created by way of a decision on a point of law, judicial discipline requires that, whether the Court likes it or not, it do apply the same law to the facts, which have come before it in the later case.

29. Alongwith the three above points of judicial precedent, one should bear in mind the relation, or the lack of relation, which the principle of equality or Article 14 of our Constitution bears to the decision of cases made in the regular courts of law. This is also equally elementary, but has to be applied in every case where the point arises, so that absolutely basic and elementary errors are not committed.

Article 14 and Judicial Precedent:

30. In administrative matters, one can complain about inequality roughly on this type of argument that ''A'' was treated in this way in these facts and circumstances ; although I am ''B'', the facts and circumstances surrounding me are not materially different ; I should be treated in the same manner as ''A''.

31. This type of argument cannot be made in regard to different successive litigations, which come before the court of law. Article 14 is not available for the purpose of getting rid of the principle of judicial precedent or for the purpose of replacing it. No Plaintiff can say that a similarly circumstance Plaintiff has been given a decree and, therefore, he should be given a decree too. The only way the later Plaintiff can made use of the earlier decree is by bringing his case within the principle of judicial precedent and by saying that a point of law has been decided in the earlier case, which cannot but be applied in his case also, the facts being not materially different in his case. It must be emphasised that it is not an Article

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14 exercise. Only the point of law can be invoked by the later Plaintiff or by the later Petitioner, who seeks a similar relief. As between two judicial decisions, principles of equality do not operate. As between two judicial decisions only the principles of precedent and res judicata operate. Equally is a principle of democracy. Precedent and res judicata are principles of the rule of law. Although democracy is the heart of the rule of law, and the rule of law is the heart of democracy, the two are not the same. Law enforces democracy, but in the world of its own, it is guided by its own more sophisticated, exact and perfect principles, which are sharper and more demanding than the rough and ready rules which govern the masses of a democratic population.

Application of the above principles:

32. The question before us is, can the seventy writ Petitioners say that in Jai Kishun''s case a point of law has been decided and if that point of law is applied to their case, they must be given the same benefit?

33. We must clarify once for all that it is not enough for them to say that they had come in like the three Union leaders as ad hoc employees ; that they were similarly circumstanced ; that in Jai Kishun''s case three employees have got monetary benefits ; it is a denial of the principle of equality to them if they are not given the same benefits in their writ petition also. Arguing in this manner would be an attempt to make an Article 14 exercise in the field of judicial precedent and this, as we have explained, is simply not good law, on the basis of absolutely rock bottom basic principles.

34. What point of law was decided in Jai Kishun''s case?

35. The Division Bench in that case refused to set aside that part of the labour court''s judgment and award whereby additional monetary benefits were made available to Hari Babu and two others. The Division Bench said ''it will not at all be justified to make them to work on lower wages in comparison to those who are discharging the same functions and duties in a higher scale''.

36. The only word, which has a legal implication in this determination, is the word ''justified''. Can one read into this single word, the legal principle that in all cases of all ad hoc workers, being one hundred and thirty one in number, they would have to be given, on some principle of law, the same benefits as were being obtained by regularly selected employees?

37. In our opinion, it is impossible to read into that single word ''justified'', this legal principle or this legal determination.

38. The learned single Judge has said in his Lordship''s judgment (on internal page 15 of the judgment) that the ''Union had taken up the case of similarly situated few employees and their claim for equal pay for equal work has been adjudicated by the Industrial Tribunal and that portion of the award with regard to the pay has been upheld by the High Court and the judgment of the High Court has become final''.

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39. If the Division Bench had indeed decided, as a matter of law, that in the situation of the three employees, Hari Babu and two others, the principle of equal pay for equal work operated, and the application of Article 14 had been and could be spelt out, then and in that event the seventy writ Petitioners would have an extremely good case. But equal pay for equal work has not been spelt out by the Division Bench simply by, and because of, the use of the single word ''justified''. No fair or reasonable extraction of the ratio decidendi of the case can go so far as to say that the Division Bench judgment, by refusing to set aside the labour court award, had thereby automatically held that the principle of equal pay for equal work applied in the circumstances and that is why their Lordships were upholding the award of the labour court.

40. It is well known that the principle of equal pay for equal work is a facet of Article 14. See for example, State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc.,

41. It is also well known that for the purpose of claming equal pay, the claiming employees have to show other things also than merely showing equal or similar discharge of duties. See again as an example, State of Haryana and Ors. v. Jasmer Singh and Ors. (1996) SCC 11: 1997 (1) AWC 2.145 (SC) (NOC) paragraph 10.

42. Simply put, the ad hoc or temporary or contract employees, whatever the seventy writ Petitioners might be called, were on a completely different status, before their regualrisation, than the regularly selected employees. First, they have not faced the stiff preliminary selection process ; secondly, they were not subject to disciplinary rules ; and thirdly, the leave rules and other similar rules were also not applicable to them. The true principle of ''equal pay for equal work'' should run as ''equal pay for equal work rendered by equally circumstanced people''. This is too obvious, and too well-settled in law now, but because of the truncated form in which this principle has come to be stated, often a mistake is made, and only duties discharged are taken note of and none of the other things, like qualification for entry, responsibilities discharged, avenues of promotion etc. It would be much better if the principle of equal pay were stated as ''equal pay for equals''.

43. In the Division Bench judgment of Jai Kishun, no consideration was made of the substantial Article 14 equality of Hari Babu and two others with regularly selected candidates. In this situation, it is not right simply to apply the case of Jai Kishun to the seventy writ Petitioners and say that they must get the same benefit as Hari Babu and Ors.

44. They are, from the point of view of litigation, wholly differently circumstanced ; for whatever reason their case was not referred by the State Government at the instance of the Union to the labour court nor an industrial dispute raised ; they have got their regularisation on the basis of the 1985 regularisation rules ; peculiarly enough Hari Babu and Ors. did not get

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regularisation in spite of the labour court holding in their favour in that regard ; they had to get regularisation later on, and on the same 1985 Regularisation Rules being ultimately made applicable to them.

45. If, apart from merely applying Jai Kishun''s case, we try to see whether the case of the seventy writ Petitioners should succeed on the basis of equal pay for equals, we find that there also they cannot succeed. They are not equals of regularly selected candidates by any means or stretch of imagination. Reasons already mentioned need not be repeated. A bare consideration will show that they were wholly differently circumstanced. Any other decision would lead us to extremely illogical and unwise results. It was submitted that by paying the ad hoc workers less, the Bank has improperly saved a lot of money. They should have paid the ad hoc workers on the same scale as the regular workers because they were getting the same benefit from these workers. If this argument is accepted, it would mean that in every case whenever an ad hoc employee is taken in, even without the regular selection process, he should get all monetary benefits exactly like a regular employee, if only he is rendering the same type of service. This would be simply absurd. For one thing, it would encourage even more the taking in of ad hoc employees whereas it is now well understood that irregularly inducted employees, in whatever from it is done, must certainly be discouraged rather than encouraged to grow in number.

46. Certain other minor arguments were made also on behalf of the writ Petitioners. They showed us the case of one Ram Bilas, which is mentioned by the Hon''ble single Judge in the judgment at internal page 11. Apparently this Ram Bilas filed Writ Petition No. 9128 of 1988 and got a similar benefit as Hari Babu and Ors. Apparently a copy of the judgment of Ram Bilas was sent to the Chief Secretary of the State of U. P. to avoid future litigation by other employees and that the Bank did not challenge this particular judgment of the Court.

47. From what we have discussed above, this is a matter of absolutely no relevance or importance. This argument again makes the mistake of invoking Article 14 in a sphere where only judicial precedent operates. That Ram Bilas has got the benefit, that Ram Bilas was just like one of the hundred and thirty one employees, or that he was a similarly circumstanced employee, may be in Class IV whereas these hundred and thirty one were in Class III, these are not material for the purpose of applying the principle of judicial precedent at all. To make the case of Ram Bilas applicable, the legal reason for its decision must be extracted and demonstrated by the writ Petitioners to a later court either for its binding or persuasive value. Nothing like this has been done before us, and nothing like this was done before the Hon''ble single Judge.

48. Exactly similar is the argument with regard to three other Petitioners who were also before the Division Bench in Jai Kishun''s case and whose case has been considered by the Court in paragraph 83 of the said judgment. The said paragraph dealt with Writ Petition No. 1397 of 1985. That paragraph and its heading are set out below :

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Writ Petition No. 1397 of 1985, Shashi Bhushan Tewari and Ors. v. U. P. Co-operative Bank Ltd. and Ors. :

83. The Petitioner No. 1 was appointed on 26.8.83, Petitioner No. 2 was appointed on 23.9.1983 and Petitioner No. 3 on 15.2.1983. They continued till March, 1985 with intermittent breaks in their services. Nonetheless they have completed 240 days in preceding one year. Therefore, they could not be deprived of the benefit of Section 6N of the U. P. Industrial Disputes Act while bringing about cessation of their employment. The opposite party No. 1 is therefore, directed to treat the Petitioner as continuing in service with all benefits. Annexure-1 to the writ petition will be inapplicable in the cases of Petitioners. The writ petition is thus allowed.

49. A bare reading of the paragraph would show that the decision was given on the basis of Section 6N of the U. P. Industrial Disputes Act which refers to, inter alia, termination only with notice. These elements of legal problem are not present before us in this case. The argument was that this Shashi Bhushan Tiwari and some others, mentioned in paragraph 83, although allegedly appointed later than some writ Petitioners, have got benefits of extra pay because of the judgment of Jai Kishun and, therefore, the seventy writ Petitioners should also be getting the same benefit. It is again the same flaw of confusing the different spheres of operation Article 14 and judicial precedent.

50. On behalf of the Appellants the great lapse of time was commented upon. A portion of the judgment of Sir Barnes Peacock quoted with approval by the Supreme Court was placed before us. It runs as follows :

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect, he has, though perhaps not waving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.

51. The said quotation is extracted in the case of State of Maharashtra Vs. Digambar, and the opinion of the judicial committee from which the quotation is extracted, is given in the case of Lindsay Petroleum Co. v. Hurd, (1874) 5 PC 221.

52. In our opinion, the above principle has some manner of application to the facts of our case. The Bank has stated that even though the seventy writ

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Petitioners have given up their claims of seniority, yet if the larger pay and the larger pay alone, is made available to them now, on the basis of a reasoned and decided legal entitlement, the Bank will land up in a lot of financial difficulty. This is because the other employees, who might have been regularly taken in, before the seventy writ Petitioners, i.e., before 1985 and 1986, cannot then be given any lesser monetary benefits than the writ Petitioners. They remain senior to the writ Petitioners even on the basis of the concession made by the writ Petitioners. They cannot get less monetary benefits or less pay than their admitted juniors. The additional financial burden and this problem of complicating third party rights and interests have arisen because and practically only because, of the lapse of time. Had the writ Petitioners come in claiming for higher pay as soon as they were engaged on ad hoc basis, all these problems would not have occurred. Indeed, it is quite clear to anybody, who has any practical experience in these matters, that the hundred and thirty one employees were in no mood to file litigation when their tenure was uncertain, temporary and merely ad hoc. They have gained courage only after they have taken full benefit of the regualrisation rules.

53. The Bank has stated that the additional financial burden, which they would have to face if the writ Petitioners were successful, is quite high. The Respondents-writ Petitioners have pointed out that the Bank''s calculations in this regard are very unsatisfactory and even ex facie only approximate. They made a comment that before the first Court the Bank had said that they would be out of pocket by Rs. 90 lacs and an additional amount of Rs. 14 lacs per year ; before the Court of appeal this has gone up to more than Rs. 2 crore even so far the benefits of writ Petitioners alone are concerned, and to more than Rs. 8 crores, so far the absent other senior employees of the Bank are concerned. We do not enter into the facts and figures and it would have been much more satisfactory if the Bank had come before us with exact and perfect calculations. After all, it is quite the job for a Bank to do. In any case, this is not a matter of primary importance. We are quite clear in our minds that the appeals can be decided only in one way ; the appeals are allowed. The impugned order and judgment is set aside and disapproved, although with the greatest of respect. The writ petitions stand dismissed.

54. No order as to costs.

55. All the appeals will be governed by the same order.

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