

S. Kathiresan and N. Durairaj Vs Registrar of Cooperative and Special Officer, Tamil Nadu Cooperative State Agricultural and Rural Development Bank Limited

Court: Madras High Court

Date of Decision: June 15, 2011

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: T. Chellapandian, for the Appellant; R. Kannan, Government Advocate for Respondent 1 and Karthik Mukundan, for Respondent 2, for the Respondent

Final Decision: Allowed

Judgement

T. Raja, J.

The Petitioners herein seek for issuance of writs of certiorarified mandamus to call for therecords pertaining to the order passed

by the 1st Respondent in his proceedings videNa.Ka.127801/2008/VeUooVa.4, dated 16.12.2008,confirming the order passed by the 2nd

Respondent in hisproceedings No. Estt//Accts//Grats/1001/ADO -(201)/2002 & (205) /2004, dated 12.07.2002 and 01.07.2004 asagainst the

respective Petitioners, and direct theRespondents to pay the reserved amount of Rs. 92,275.51to the Petitioner in WP No. 8135 of 2009 andRs.

1,00,751.91 to the Petitioner in WP No. 8136 of 2009with interest @ 9% p.a.

2. Since in both the writ petitions, challengeis made to the impugned orders passed by the very sameauthority and the issue being the same, they

aredisposed of by this common order.

3. Learned Counsel appearing for the Petitionerpoints out that in the year 1968, the Petitionersherein joined the services of the Tamil Nadu Co-

operative State Agricultural and Rural Development BankLimited/R2 as Clerk and Supervisor respectively and,after being promoted as Grade I

Supervisor andSelection Grade Supervisor, subsequent to a decisio ntaken by the Bank in the year 1984 to appoint LandValuation Officer from

amongst the Senior Supervisorsof the Primary Agricultural and Rural Development Banksthroughout the State, they came to be appointed as

LandValuation Officer (in short "LVO") with effect from27.12.1984 in the scale of pay of Rs. 525/-.Consequently, the Petitioners along with 34

others similarly promoted employees of the III Batch joined duty in the promoted post at Vellore & Coimbatore Regional Offices respectively.

Though the Petitioners were drawing Rs. 675/- as basic pay even in the previous posts held by them, the basic pay in the promoted post was fixed

only as Rs. 525/-. Therefore, all the 36 persons/LVOs of the III Batch including the Petitioners herein made a representation to the 2nd

Respondent-Bank on 20.01.1986 and requested to revise the pay by specifically pointing out that the LVOs appointed in 1978 and 1980 were

already getting a higher pay of Rs. 865/- and Rs. 835/- respectively while Rs. 525/- has been fixed as basic pay for the LVOs of the III

Batch. Consequently, the 2nd Respondent Bank issued orders dated 04.04.1986 fixing the pay of LVOs who were recruited on 09.01.1985 or later

at Rs. 625/- giving four increments in the scale of pay of Rs. 525/-. Even though the anomaly has been set right by the aforesaid orders dated

04.04.1986, after a period of 12 years, the 2nd Respondent issued a show cause notice to the Petitioners on 17.03.1997 for recovery, that too

based on the objections raised by the Audit Department, and ultimately passed the impugned orders.

So pointing out the factual aspects, learned counsel for the Petitioners would submit that the show cause notice issued in the background of

audit objections stating that the Petitioners resigned the post of Supervisor in the Branch of the Primary Bank and thereafter, joined the post of

LVOs as fresh employees and therefore, their services rendered in the Primary Cooperative Land Development Bank cannot be combined with the

services of 2nd Respondent Bank, is highly discriminatory. According to him, it is not even the case of the Respondents that the Petitioners had ever

at any point of time misrepresented before the Department for enhancement of salary. The 2nd Respondent having considered the representation

submitted by the LVOs of the III Batch for a fair fixation of salary compared to I and II Batch of LVOs, by orders dated 04.04.1986, fixed the

scale of pay at Rs. 625 for the III Batch contrasting their case with that of the I and II Batch and that being so, it is not open for the 2nd Respondent

to issue a show cause notice followed by the impugned orders, adversely affecting the terminal benefits accrued to the Petitioners.

In support of his submission, learned Counsel for the Petitioners relied upon a decision of the Apex Court reported in Sahib Ram Vs. State of

Haryana and Others, , which has been subsequently followed by a Full Bench of the Apex Court in Syed Abdul Qadir vs. State of Bihar (1 (2009)

SC 163) to highlight the proposition that recovery of excess amount of emoluments/allowances not paid on account of any misrepresentation or

fraud on the part of the employee or made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of

a particular interpretation of rule/order which is subsequently found to be erroneous, is not permissible.

Ultimately, by producing a copy of the proceedings in R.C. No. 107410/2009 ARDB-4, Cooperative Department, dated 09.12.2010, issued by

the first Respondent, learned Counsel for the Petitioners submitted that, by virtue of the said communication, the Respondents have once again

revised the scale of pay of employees working in the Respondents-Bank, therefore, the impugned orders seeking retention of the aforesaid amounts

under the head "reserved amount" are liable to be set aside with a direction to refund the amounts to the Petitioners respectively, as no prejudice

would be caused to the Respondents if the impugned orders are set aside on the basis of the abovementioned proposition laid down by the

Hon'ble Apex Court.

4. Heard the learned Counsels appearing for the Respondents.

5. Though a detailed counter affidavit has been filed by the 2nd Respondent-Bank by stating that the present financial status of the Bank is rather

fragile, nowhere therein, it is whispered or mentioned as to why the Respondents have passed the impugned proceedings when they had already

fixed and paid the scale of pay not only to the III Batch consisting of the Petitioners but also to I and II Batch. Further, the proceedings of the Co-

operative Department, vide R.C. No. 107410/2009 ARDB-4, dated 03.12.2010, would stare much at the case of the Respondents. While the

counter affidavit proceeds as if the Bank has no other source of income and has to survive only on the interest margin on the jewel loan which is

being disbursed; the aforesaid proceedings indicate that the Respondent/Bank had submitted a proposal for revision of pay including Dearness

Allowance, Stagnation Increment, House Rent Allowance, City Compensatory Allowance, Medical Allowance, Special Allowance etc., and that

such proposal had been examined and the Bank was permitted to implement the revision of wages as detailed therein. Therefore, the present stand

taken by the Bank citing fragile source of income does not weigh much before this Court to tilt the scales in its favour. In such circumstances, after

contrasting the case on hand with the one decided by the Apex Court in Sahib Ram's case followed by Syed Abdul Qadir's Case (both cited

supra), it must be held that, when no misrepresentation or fraud has been made or played by the employees of the Government or its Agencies or

Institutions like the Respondent Bank while making requests for enhancement of monetary benefits, after considering the grievance regarding parity in

pay with other equally placed persons, if the Bank finds justification in the claim and fixes the pay scale to remove the parity,

the Petitioners/beneficiaries cannot and should not be confronted with the impugned order for recovery based on audit objections particularly after

lapse of a decade and at a crucial time when the employees concerned attained the age of superannuation. Therefore, in the light of the decisions of

the Apex Court as cited above, this Court does not feel any restraint to interfere with the impugned orders by holding the same legally untenable

while making it clear that the present order passed, in the peculiar facts, is applicable only to the Petitioners and not to other persons. The

Respondent-Bank is directed to refund the amount recovered from the Petitioners within a period of six weeks from the date of receipt of a copy of

this Order.

Writ Petitions are allowed with the aforesaid observation and direction. No. costs.