

(2011) 06 MAD CK 0471

Madras High Court

Case No: Writ Petition No's. 8135 and 8136 of 2010

S. Kathiresan and N.
Durairaj

APPELLANT

Vs

Registrar of
Cooperative and
Special Officer, Tamil
Nadu Cooperative
State Agricultural and
Rural Development
Bank Limited

RESPONDENT

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 vide Na.Ka.127801/2008/VeUooVa.4, dated 16.12.2008, confirming the order passed by the 2nd Respondent in his proceedings No. Estt//Accts//Grats/1001/ADO -(201)/2002 & (205) /2004, dated 12.07.2002 and 01.07.2004 as against the respective Petitioners, and direct the Respondents to pay the reserved amount of Rs. 92,275.51 to the Petitioner in WP No. 8135 of 2009 and Rs. 1,00,751.91 to the Petitioner in WP No. 8136 of 2009 with interest @ 9% p.a.

2. Since in both the writ petitions, challenge is made to the impugned orders passed by the very same authority and the issue being the same, they are disposed of by this common order.

3. Learned Counsel appearing for the Petitioner points out that in the year 1968, the Petitioner herein joined the services of the Tamil Nadu Co-operative State Agricultural and Rural Development Bank Limited/R2 as Clerk and Supervisor respectively and, after being promoted as Grade I Supervisor and Selection Grade Supervisor, subsequent to a decision taken by the Bank in the year 1984 to appoint Land Valuation Officer from amongst the Senior Supervisors of the Primary Agricultural and Rural Development Banks throughout the State, they came to be appointed as Land Valuation Officer (in short "LVO") with effect from 27.12.1984 in the scale of pay of Rs. 525/-. Consequently, the Petitioner 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 Petitioner 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 Petitioner 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 Petitioner 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 Petitioner would submit that the show cause notice issued in the background of audit objections stating that the Petitioner 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 Petitioner 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 Petitioner.

In support of his submission, learned Counsel for the Petitioner 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 above mentioned 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.