

V. K. Rama Rao and Others

Vs

National Bank for Agriculture and Rural Development through Its Managing Director

Petition (Civil) No. 1134 of 1986

(Ranganath Misra, P. B. Sawant, K. Ramaswamy JJ)

14.12.1989

JUDGMENT

SAWANT, J. –

1. The petitioners who are employees of respondent 1 National Bank for Agriculture and Rural Development (hereinafter referred to as 'the Bank') request for a direction to the Bank to give them fitment benefits which were given to their counterparts who were in the Bank's service prior to February 1, 1984.
2. The admitted facts are that on February 1, 1984, petitioner 1 was in the Bank's service as a 'Grade B' officer and was promoted to 'Grade C' officer and petitioners 3 and 4 were appointed as 'Grade B' officers, on various dates in March 1984. Petitioners 5 and 6 were in the Bank's service in Clerical Grade prior to February 1, 1984 and were appointed as officers 'Grade A' after the said date.
3. The respondent 1 Bank came into existence on July 12, 1982 under an Act of Parliament, via. National Bank for Agriculture and Rural Development Act, 1981. The initial staff of the bank consisted of the employees of the Reserve Bank of India and of those recruited by the Reserve Bank of India exclusively to serve the erstwhile Agriculture Refinance and Development Corporation which was taken over by the respondent 1 Bank. On February 24, 1986, the Bank revised pay scales of all its officers as a result of a settlement on the charger of demands submitted by the Bank's Officers' Association called NABARD Officers' Association. One of the demands of the Association was that the revision in the scales of their pay should be on the same basis as of the revision of the officers in the Reserve Bank of India. It appears that the NABARD Officers Association had submitted its charter of demands on November 30, 1984 which was on the same lines as the charter of demands submitted by the Officers Association of the Reserve Bank of India to the Reserve Bank of India. On October 9, 1985, the Reserve Bank of India revised the pay scales of its officers w. e. f. February 1, 1984. As a result, the respondent 1, Bank also revised the pay scales of its officers, as stated earlier, on February 24, 1986, and to bring it on parity with the pay scales of the Reserve Bank of India, gave effect to them also from February 1, 1984, Hence the importance of the date February 1, 1984. Incidentally it may be state that the revision of pay scales of the officers in the entire Banking Industry was brought into effect from that date. The said date is thus not arbitrarily fixed by the respondent bank for giving effect to the revision of pay scales.
4. Since the revision of pay scales was given effect to from February 1, 1984, it was necessary to fit the pay of the employees in service prior to February 1, 1984 in the revised pay scales. Hence it was necessary to evolve some uniform formula for the Fitment. The Reserve Bank of India had already prepared a refixation chart for the purpose. This chart was also approved of by the NABARD

Officers Association. The Association at the relevant time had 2284 members and except the present six petitioners nobody has made a grievance against the said chart. By the present petition what is in effect, challenged is the said refixation chart.

5. The refixation chart which is an annexure to the petition gives effect to the terms of the settlement between the Bank and its officers, which as stated above, is a part of the general settlement in the Banking Industry. The said chart is made applicable to all the officers who were in the service of the Bank holding either probationary, permanent or temporary appointments, and its benefit is given from February 1, 1984. The chart is no more than a device for fitting the pay of the concerned officers in the revised pay scales. Since the revised pay scales were given retrospective effect from February 1, 1984 it was necessary, as a first step, to fit the pay in the old scales into the new scales on and from February 1, 1984. Such a fitment was necessary only in the case of those who were in service prior to February 1, 1984. The entrants in service after that date would automatically be treated as being employed on the new scales from the date of their entry. There was therefore, no need, as indeed there could not be, of making fitment adjustments in their case. There is further no dilute that the employees like the petitioners who were appointed either for the first time, or promoted to the higher post, after February 1, 1984, were given all the benefits of the revised pay scales including the arrears in salary, treating them as if they were appointed initially in the new scales.

6. The refixation chart under challenge, therefore, contained a table of fitment of salaries of those employees who were in service prior to February 1, 1984. It is common knowledge that such fitment has to be made not by reducing the existing pay of the employees but fixing it into the nearest higher stage in the new scale. The table incorporated in the chart therefore contained fitment increments for the employees in service prior to February 1, 1984 (hereinafter referred to as 'the old employees') to avoid reduction and anomalies which would otherwise result. Those increments were to merge in the new scales in course of time, when the concerned employees reached the appropriate stage in the new scale. The increments given were not designed to grant higher emoluments to the old employees for all time to come. As has been pointed out by the respondent Bank, there was a possibility of reduction in salary in some cases and of anomalies in other cases if a stage to stage adjustment was made in their salaries. Hence the table was so prepared that the fitments avoid the said consequences. The said fitment adjustments in the salaries of the old employees resulted in temporary increases in their pay packets, although, as stated earlier these fitment increments were to merge in future increments in the new scales. The grievance of the petitioners in this petition is directed precisely against these increments give undue benefit to the old employees as against them, and since they occupy the same posts they are also entitled to the same fitment benefits. That is the main relief which they have claimed in the petition by prayer (a). The other reliefs are declaratory in nature and incidental to it. In support of their claim they have invoked the theory of Equal Pay for Equal Work and Articles 14 and 16 of the Constitution by alleging discrimination between them and the old employees. They have also pressed certain decisions in support of their case.

7. As will be obvious from what we have stated earlier, the whole basis of the petitioners' case is misconceives. It proceeds on wrong presumptions and unwarranted premises. The present is not a case of discrimination between employees belonging to the same class or of granting different scales of pay to them. The present is a case of adjusting and fitting the salaries of the old employees belonging to the same class into the new scales of pay which are made available to both the new and old employees. If in effecting such adjustment, it becomes necessary to give fitment increments to the old employees, it is to work out the equities and to do justice to them. Their past service in fact merits it. To deny them such adjustments is to treat them unequally by ignoring their past service

and placing them on par with the new entrants. For this purpose, however limited it may be, the old employees in the present case stand in a different class from that of the new. The classification for the purpose is not only justifies but necessary. The revision of pay scales is always effected with a particular date prospectively or retrospectively. Whatever the date from which it is effected, it necessarily involves fitment of the salaries of the existing employees in the new scales. A retrospective operation in the new scales therefore involve, for the same purpose, a classification of employees into two categories, viz. those who were in service prior to the retrospective date and those who entered the service thereafter. If the benefit of the revised pay scales is to be conferred equitably on the old and the new employees, the fitment of salaries is inevitable. To avoid it is to deny the equal benefit of the revised scales to the employees in service prior to the date from which the new scales come into effect. The service jurisprudence, therefore, makes it imperative to grant such fitments in the emoluments of the old employees. The fitment/adjustment in the new scales further, as stated above, has to be done by revising the salaries upward. This sometimes necessarily involves fitment in a higher stage in the pay scale than what the employee would be entitled to by a strict application of the stage to stage adjustment. The provision is also, therefore, sometimes made to treat the additional benefit as personal pay till it gets merged in the next higher increment. This is a known practice of equitable adjustment of the old pay scales to the new pay scales. There is no other way of effecting the just and required adjustment. Thus, it is not a case of giving undue benefits to one sections of the employees belonging to the same class, but is a case of conferring equitable benefits on the old employees and effecting a just adjustment between the salaries of the old and new employees, as necessitated by the new pay scales.

8. As state above, there is not dispute in the present case that the petitioners were either appointed to the higher post or they came in the service of the Bank, for the first time after February 1, 1984. Those who were appointed to the higher post after February 1, 1984 and who were therefore necessarily in the lower post prior to that date, get the benefit of fitment into the new scales in their earlier lower post according to the very same refixation chart and received arrears of salary on account of such refixation. What they claim now in that notwithstanding the benefit of the refixation they got in their lower post, they should also get the said benefit in the higher post, as if they were promoted to the higher post prior to February 1, 1984. Similarly, those of the petitioners who entered the Bank's service for the first time after February 1, 1984, want the benefit of refixation as if they were in service prior to February 1, 1984. The claim of the petitioners is thus on the face of it both unreasonable and unsustainable in law.

9. We may now examine the authorities cited before us. *K. N. Ananda v. Karnataka State Financial Corporation, Bangalore*, was not a case of Fitment of the salaries of the old employees into the revised scales of pay. In that case, what the respondent Karnataka State Financial Corporation had instead done was to prepare a conversion table and give the old employees salaries in the revised scale according to the said table. The pay given to the old employees according to the table had apparently no relation to the stage in the revised pay scale at which the salaries of the old employees had to be fitted. The Corporation also could not explain the basis on which the said table was worked out. In fact, as is apparent form paragraph 16 of the judgment, the learned counsel for the Corporation being unable to furnish the basis of the differentiation in the salaries, submitted before the court that in fact the Corporation wanted to protect the total emoluments and to allow the new employees, who were petitioners in that case, to earn increments over and above the pay, as entered in the Cooperation's resolution of March 30, 1978 which was reproduced in the judgment. But the State Government did not agree.

10. It is for this reason that the High Court there held that the conversion table insofar as it was

made applicable to the old employees only, was discriminatory in nature and therefore invalid. It will thus be seen that the facts in that case were different and hence the ratio of the said decision is not applicable to the present case.

11. *P. Savita v. Union of India*, was again not a case of fitment of the salaries of the old employees into a new pay scale. In fact, what was done in that case was to prescribe two separate pay scales for Senior Draftsmen by dividing them artificially into seniors and juniors, and awarding Senior Draftsmen new scales while keeping the Junior Draftsmen on the old scale. The court, therefore, struck down the classification.

12. *D. S. Nakara v. Union of India* was a case of dividing the same class of individuals, namely, the pensioners on the basis of an artificial date, and giving benefit of pension calculated on a new basis to those benefit of the same computation to those who had retired before that date. The classification made of the pensioners into two categories on the basis of their retirement date had no nexus to the object which was sought to be achieved, namely to mitigate to the hardship of the fixed income group, on account of the ever rising prices, and of the lowering of the value of the rupee. In fact, it was pointed out by the court in that case that by extending the benefit to those employees who had retired prior to March 1979 the court was not making liberalisation of the pension retroactive. It was only giving benefit of the same basis of computation to all the pensioners whether they had retired before or after that date. The court also pointed out in that context that retroactiveness is implicit in the theory of wages. When revised pay scales are introduced from a certain date, all existing employees are brought on to the revised scales adopting a theory of fitments and increments for the past service. The benefit of the revised scales is not increments for the past service. The benefit of the revised scales is not limited to those who enter service subsequent to the date fixed for introducing the revised scales but is extended also to those in service prior to that date. These observations would also make it clear that it is general practice recognized even by this Court that when new pay scales are introduced, the salaries of the old employees have to be adjusted and fitted into the new scales by adopting formula of fitments and increments for past service. In fact, if such fitment is not made, the old employees would get no benefit for the service rendered by them in the past, and they would be placed on par with those who enter the service after the date of the revision of scales. That would be a case of unequals being treated equally. It is, therefore, an absence of fitments and adjustments and not their application which results in discrimination.

13. In *State Government Pensioners' Association v. State of Andhra Pradesh*, the government order dated March 26, 1980 providing for higher gratuity to the employees who had retired after April 1, 1978 was challenged by the Pensioners' Association on the ground that the benefit of the said higher gratuity was not made available to them. The court held that the provision of payment of gratuity on stepped up basis from a specified date of retirement, was not unconstitutional.

14. In *Kanpur Suraksha Karamchari Union v. Union of India*, the Government of India by its order of July, 25, 1981 accorded sanction to treat employees of canteens established in Defense Industrial Installation under Section 46 of the Factories Act as the government employees with immediate effect. By an amendment, the said government order was given effect to from October 22, 1980. The question which was raised in the case was whether the employees who were recognised as government employees w. e. f. October 22, 1980, were entitled to calculate the service rendered by them prior to October 22, 1980 for the purpose of their pension, and the court held that the period of service rendered by the employees prior to that date has to be counted for the said benefit. This was thus in effect giving benefit to the old employees for their past service.

15. In Reserve Bank of India v. C. N. Sahasranaman what was challenged was the combined seniority scheme of promotions for cadres of officers and non-officers in the Reserve Bank of India. In the past, there was a separate departmentwise and gradewise seniority, and the promotions to the cadres of officers and non-officers were effected on the basis of such seniority. In September 1962, a need was felt for the maintenance of a combined seniority list at each centre for the purposes of promotions as recommended by the National Industrial Tribunal presided over by Justice Desai. These recommendations for centrewise combined list were approved by this Court in 1966. In 1970, the supervisory staff in Class 1 was upgraded to Staff Officers in Class 1 pursuant to the settlement between the employees and the Bank on January 9, 1970 subject to certain conditions. On June 6, 1970, a circular was issued for introduction of written examination for departmental promotions of clerks Grade 1/Assistants etc. to the post of Staff Officers. Grade II in all the groups. The circular was not, however, enforced. On May 7, 1972 the Bank took several steps towards equalising promotional opportunities of employees by introducing what was known as Optee Scheme of 1965 and the Optee Scheme of 1966, and finally by entering into a settlement with the Association of the employees on May 7, 1972. The Association by that settlement accepted the principle of maintenance of a combined seniority list at a centre. On the same date, the Bank formulated a scheme for promotions of staff officer Grade II after giving full opportunity to the Association to make its suggestions. On that occasion, the Bank and the Association further agreed by exchange of correspondence that the ratio of direct recruits to the promotes in the total strength of officers staff Grade II should be 17.5 per cent : 882.5 per cent. On May 13, 1972, the Bank introduced administrative circular NO. 8 which was binding on all employees of the Bank. On the same date, the Bank introduced another Circular No. 9 on "Scheme of Combined Seniority List and switch over from clerical to non-clerical" w. e. f. May 7, 1972 which was also binding on all employees. The constitutional validity of this scheme also was upheld by this Court.

16. On May 22, 1974 the Bank took a decision based on the recommendations of the Cadre Review committee, and issued administrative Circular No. 15 to prepare a common seniority list and to provide for another group mobility at the lowest level of officers in Grader w. e. f. May 22, 1974, Grade a view to equalise the opportunity for promotion among officers. Three employees who were Grade II clerks working at the Nagpur branch of the Bank ever since their employment, variously between 1962 and 1965, challenged clause (II) (a) (i) of the Administrative Circular No. 8 of May 13, 1972 dealing with "the Scheme for promotion from Staff officers Grade II" (later designated as Grate A) before the Nagpur Bench of the Bombay High Court. This clause provided for the number of candidates who will be qualified to appear in the test at the written examination. The clause stated that an estimate of the vacancies to occur in each office during the panel year, i. e. September 1 to August 31, will be declared by the Bank in advance, and the number of candidates in that office will not exceed twice the number of such vacancies subject to other clauses in the Scheme. The grievance of the petitioners was that the said clause was violative of their rights under Articles 14 and 16 of the Constitution since the chance to appear in the examination depended not on relative merits but merely on the fortuitous circumstance, namely, the number of vacancies occurring in the particular centre in a panel year, which had no nexus with the purpose of promotion, namely, to secure a fresh cadre of Staff Officers, and therefore, the Scheme was bad in law. The High Court found force in the submission and struck down the said clause. In allowing the appeal filed by the Bank, this Court held, among others, that : (SCR Headnote)

"1. In service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone. Further, whether there has been

denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged, where interest of large number of people are concerned, in the abstract."

3. 2 "The reference held pursuant to the orders of this Court dated May 2, 1984 undoubtedly indicates that majority of the employees are in favour of acceptance of the modified settlement. In matters of service condition it is difficult to evolve as ideal set of norms governing various conditions of services and in grey area where service rules operate, if more than one view is possible without sacrificing either reasons or commonsense the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few. These principles, however significant, do not authorise the majority of the employees to trample upon the constitutional guarantees or rights of the individuals or minority employees. Majority cannot thwart or barter away the constitutional rights of the minorities. The constitutional guarantees are to protect this very danger. But in judging the content of the constitutional rights, the entire perspective of the equality of opportunity here and denial of equal right in public employment have to be viewed in a fair, reasonable and just perspective. Viewed in that light, it is true there may be individual instances exemplifying injustices by postponing or delaying the chances of promotions of the contesting respondents yet that does not deny them their constitutional right in its proper measure, and the considerations that have weighed with the making of the modified scheme and in light of the other considerations it must be observed that with whatever care and objectivity or foresight any rule is framed, some hardship, inconvenience or injustice might result but the paramount consideration is the reconciliation of the conflicting claims of two important constituents of service - - one which brings fresh clerical employees and the other mature experience. There has been a happy merger of these two considerations in the scheme proposed and in that merger, no violation of the guaranteed right of the opposing respondents have occurred."

17. These observations have much bearing on the present case. As has been pointed out hereinabove, in the present case also re-fixation chart of the salaries of the employees was worked out with the approval of the Association of the Bank officers concerned. The employees involved were further large in number. Any chart evolved to fit the salaries of the old employees who had entered the service during the whole span of the period prior to February 1, 1984, was bound to result in some employees getting slightly more and others getting slightly less. It is not possible in such circumstances to satisfy all employees to the same degree. Hence, as contended by the petitioners, if in some cases, the employees have received some excessive benefit, the chart cannot be faulted on that account. The chart as applied is a uniform one and is designed to adjust the old salaries in the new scale. In a large organisation with a large number of employees involved in the exercise, a few marginal cases of excessive benefits cannot be relied upon to invalidate the entire chart, for no adjustment chart in such cases can be free from some defects.

18. In *Tarsem Lal Gautam v. State Bank of Patiala* and in *C. R. Seshan v. State of Maharashtra*, this Court has, in fact, held that a higher category in the same class of employees on the basis of seniority-cum-merit can be carried (sic carved) out and a higher pay scale can be given to such higher category and that it is neither arbitrary nor unconstitutional to do so.

19. The aforesaid review of the authorities shows that none of them supports the proposition

advanced by the petitioners, namely, that the salaries of the old employees cannot be brought on to be new or revised pay scales by giving them fitment increment as is done in the present case. In fact, in such as case to refuse to fit the salaries of the old employees in the new scales of pay by denying them the necessary fitment or adjustment increments, is to deny them the equality of treatment. That amounts to ignoring their past service and to treating them on par with the new entrants which would be unjust in itself. The adjustment increments granted to the old employees on such occasions automatically achieve the dual purpose of rewarding them for their past service and of adjusting their salaries in the new scale. The adjustment fitment and increments are therefore not discriminatory but eminently just and valid.

20. In the circumstances, we find no merit in this petition and dismiss the same. There will, however, be no order as to costs.

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