**SUPREME COURT OF INDIA**

Personal Manager,Sbi

Vs.

Krishna Grameena Bank Employees

C.A.No.2790 of 2006

(Arijit Pasayat and S.H.Kapadia JJ.)

28.11.2007

**JUDGMENT**

**Dr. ARIJIT PASAYAT, J.**

1. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court dismissing the writ appeal filed by the appellant.

2. Background facts in a nutshell are as follows:

3. On 1.9.1987 employees of Regional Rural Banks (in short the 'RRBs.') filed Writ Petition Nos. 7149-50 of 1982 and Writ Petition No. 132 of 1984 under Article 32 of the Constitution of India, 1950 (in short the 'Constitution') challenging salary structure in these Banks. This court directed the issues to be referred to a National Industrial Tribunal (in short the 'National Tribunal'). On 26.11.1987 the National Tribunal was constituted by the Government of India to consider the disputes relating to pay, salary and allowances payable to the employees of RRBs. On 10.4.1989 "Industry Level Fifth Bipartite Settlement" was signed between 54 Banks and their associations, wherein inter alia agreed that special allowances for clerical staff would be payable to the employees of 54 (sponsor) Banks, and "Cashier in charge of cash" would be entitled to special allowance of Rs.189 per month. On 9.6.1989 an agreement was entered into between the State Bank of India and its federation, called the "Fifth Bipartite Settlement" wherein revised functional allowance for workmen was agreed to be paid and each "cashier in charge of cash" was to be paid allowance of Rs.380/- per month. On 30.4.1990 the National Tribunal passed an award directing that the officers and employees of the RRBs. will be entitled to claim parity with their counterparts

in the sponsor bank in the matter of pay scale with effect from 1.9.1987. On 16.1.1991 Government of India constituted an Equation Committee pursuant to the observations made in the Award wherein it was provided that "allowances and benefits" which are provided in the Bipartite settlement of the concerned sponsored bank may be extended to the RRBs' employees. On 22.2.1991 Government of India issued instructions to all sponsor banks and RRBs for implementing NIT award and recommendation of the Pay Equation Committee. On 31.7.1991, arose the starting point of controversy so far as the present dispute is concerned. According to the appellants, on an erroneous reading of the award and without appreciating the fact that there is no post of "Joint Custodian of Keys" in the sponsor bank i.e. State Bank of India, the RRBs. issued a circular stating that "Joint custodian of Keys (junior/senior clerk )will be eligible for a cash allowance of Rs.380/- per month. This was issued by the appellant No. 2. Another RRB i.e. Nagarjuna Gramin Bank on 8.8.1991 which is also sponsored by appellant No. 1 (SBI) issued a circular stating that there is no comparable post of clerk or cashier holding keys as Joint Custodian in SBI and as per Government of India and as per Government of India's instructions, "cashier in charge" holding keys will be entitled to allowance of Rs.189/- per month and not Rs.380/- per month. The appellant No. 2 RRB also issued similar circular clarifying that Joint Custodian allowance shall be paid at the rate of Rs.189/- (as per Industry Level Settlement) instead of Rs.380/- per month. The respondent- Union filed writ petition before the High Court. That writ petition No. 23469 of 1991 was filed praying for quashing circular dated 21.10.991 issued by the appellant No. 2 on the ground that Fifth Bipartite Settlement entered between SBI and Staff Federation provided that said allowance was to be paid at the rate of Rs.380/- per month as cash allowance and joint custodian allowance is payable to the employees of sponsor bank and there should be parity of allowance of the employees of RRB as per the National Tribunal Award. By judgment dated 27.1.1992 the Patna High Court which was dealing with similar issues granted liberty to Government and RRB to reduce the said allowance. On 21.4.1992 NABARD issued a Circular to all sponsor banks including SBI stating that of RRBs' special allowance of only Rs.189/- shall be payable. This order of NABARD was issued with the prior approval of the Government of India. The writ petition filed by respondent was allowed by a learned Single Judge of the Karnataka High Court. Challenge was raised by the employees of another RRB i.e. Nagarjuna Gramin Bank which was also sponsored by SBI before Andhra Pradesh High Court. A Division Bench of the Andhra Pradesh High Court held that employees are entitled to allowance at the rate of Rs.189/- and not at the rate of Rs.380/- per month. The order of learned Single Judge of the Karnataka High Court was challenged before the Division Bench in Writ Appeal which as noted above was dismissed.

4. Stand of the respondent on the other hand appears to be that the appellants have relied on the alleged circular of NABARD dated 21.4.1992 purportedly issued in exercise of power under Section 38 of the NABARD Act, 1981. It is submitted that the same cannot be treated as a decision by the Government of India issued under Section 17(1)(ii) proviso of the Act. It was further submitted that the circular was inapplicable to RRB acting under sponsor banks covered by industry level settlement and not bank level settlement as is evident from a reading of the said circular. In case of appellant no. 1 the power is exercisable by the Government of India under Section 18 of the State Bank of India Act, 1985 and not the NABARD Act. It is submitted that the appellants' stand that the post of "Cashier in Charge" of cash has become redundant in the sponsor bank has been contested by the respondent on the ground that the so called redundancy took place much after the 6th Bipartite Settlement of 1995 whereas the offending circular was issued on 21.10.1991. It is stated that the appellants' stand that parity in pay between the employees of the sponsor bank and the RRB according to the NABARD in case of post of similar category is not correct on the date the bank level settlement was made. Post of cashier in charge of the sponsored bank and in the appellant No.1

in fact existed and there existed a basis for parity. The re-designation of the post due to change of job profile subsequent to the circular cannot be the basis of special/functional allowance since the original determination of such allowance was made on the basis of the existing job profile which in the case of appellant No. 2 remains unaltered and the members of the respondent No. 1 continue to discharge some function up to date.

5. It is to be noted that NABARD was not a party in the writ petition. There is no stand taken by the respondent that the NABARD did not have the consent of the Government of India. It is accepted that NABARD in its letter dated 21.4.1992 wrote to all RRBs as follows:

"Please refer to instructions contained in Finance Ministry (Banking Division) letter No. 11-3/90 RRB(I) dated 22nd February, 1991 on the captioned subject. In this connection, attention is invited to para 14 and also item 8(ii)(b) of Annexure VI thereof. It has been reported that different banks are paying different rates of allowance to the cashiers-in- charge of cash in RRBs. In RRBs. Clerks-in- charge of cash shall be entitled to allowance provided to cashier-in-charge of cash in pay offices/branches in the industry level bipartite settlement i.e. a special allowance of Rs.164/- per month only from Ist September, 1987 as provided in the IV Industry level bipartite settlement. This allowance will be payable to the RRB employees concerned from 1st

September, 1987 i.e. the date of implementation of the Award of NIT. The excess allowance paid, if any, may be recovered from the employee concerned excepting where specific court orders are in operation. These instructions shall be uniformally applicable to all RRBs. throughout the country.

This order is issued with the prior approval of the Ministry of Finance (Banking Division), Government of India, New Delhi."

6. It is also to be noted that the Central Government is not objecting to Rs.189/- though it is the stand of the respondent that there is functional similarity. If that logic should apply then that allowance of Rs.189/- shall have to go. The Staff Circular No. 11 dated 31.7.1991 stipulated as follows:

(i) "Senior among Jr. Clerk or Sr. Clerk wherever available will act as Joint Custodian of safe keys alongwith Branch Manager and will hold one set of safe keys.

(iv) When an employee with custody of keys also officiates as Branch Manager, he will be paid only the officiating allowance, which is higher than the cash allowance during the period he officiates as Branch Manager, the employee is eligible for only one type of allowance at a time.

(v) (iia) Joint Custodian of keys (Junior Clerk/Senior Clerk) of the branch will be eligible for a cash allowance of Rs.380/- p.m."

7. It is seen that the National Tribunal decided on the basis of parity. It, however, does record any finding about the functional similarity. It did not go into the question post wise. It purportedly adopted the parity principle and not 'equal pay for equal work' concept. National Tribunal's direction was that the details were to be adopted by the Equation Committee.

8. In Kshetriya Kisan Gramin Bank vs. D.B. Sharma and Ors.(2001(1) SCC 353) it was observed in paras 5 & 7 as follows:

"In view of the rival submissions at the Bar, the first question that arises for our consideration is whether the Tribunal had really accepted the plea of principle of Equal pay for Equal work or had rejected the same and instead, had applied the principle of parity. We have gone through the award passed by Justice Obul Reddi. The dispute which had been referred to the tribunal for its decision was the dispute relating to pay, salary, allowances and other benefits payable to the employees of the Regional Rural Banks in terms of the pleading of the parties in the Writ Petition (Civil) Nos. 7149-50/82 and 132 of 1984, filed in the Supreme Court of India. The first two writ petitions had been filed by the All India Grameena Bank Workers Organisation and the third one had been filed by the All India Regional Rural Bank Employees Association. It is undoubtedly true that in the writ petition prayer had been made for issuance of a mandamus to fix the emoluments of the Regional Rural Bank employees in conformity with the laid down judicial maxims of 'equal pay for equal work' and 'industry-cum region formula' and bring about parity in emoluments between the employees of Regional Rural Banks Inter se and employees of the Nationalised Commercial Banks. The Tribunal on consideration of the stand of the parties and various statistics given by the Banks, came to a conclusion that there would be no serious economic repercussions, if the parity in the matter of pay-scales and allowances, is given to the Regional Rural Banks employees. It also came to the conclusion that there cannot be any comparison between the District Central Co- operative Banks and Regional Rural Banks inasmuch as Co-operatives are a State subject and the said banks are run by the State Governments; whereas Regional Rural Banks are run by the Central Government under an Act of Parliament. It also found that the work carried out by Regional Rural Bank employees and Nationalised commercial bank employees is the same, both in quality and quantity. It further found that there are absolutely no grounds whatsoever to deny parity between the employees of the rural branches of the commercial banks and those of Regional Rural Banks, applying the yardstick of cost of living and volume of business. It also found that the Regional Rural Banks and the rural branches of the commercial banks perform the identical functions and duties. The tribunal came to hold on the basis of evidence on record that the employees of Regional Rural Banks form a separate class under a separate statute and so are the employees of the commercial banks. In paragraph 4.422, the tribunal held:

4.422. I further observed in para

4.149 that "I must make it very clear in this connection and let there be no ambiguity about it, that my finding that the RRB employees form a separate class and that, therefore, they are not discriminated against so as to attract the doctrine of "equal pay for equal work" has to be disengaged and de-linked from the question of their claim for parity in their pay structure with the sponsor bank employees in corresponding and comparable posts within the framework of the 2nd proviso on the facts and circumstances of the case.

Shred of legal nuances, their claims have to be examined on the principles of justice and equity". Ultimately, the tribunal held that the officers and employees of the Regional Rural Banks will be entitled to claim parity with the officers and other employees of the sponsor banks in the matter of pay scales, allowances and other benefits. In paragraph 4.428, the tribunal held as follows:

4.428. So far as the equation of posts and the consequent fixation of the new scales of pay allowances and other benefits for Officers and other employees of the RRBs on par with the Officers and other employees of comparable level in corresponding posts in sponsor banks and their fitment into the new scales of pay as are applicable to Officers of sponsor banks in corresponding

posts of comparable level, it is a matter which has to be decided by the Central Government in consultation with such authorities as it may consider necessary. This will also include the pay scales, benefits, other allowances and fitment of sub-staff of the RRBs with the sub-staff of sponsor banks. This Award is accordingly passed and it shall cover all existing RRBs. The Award shall be given effect to from 01st day of September, 1987.

In view of the aforesaid conclusions of the tribunal on the basis of evidence placed before it, the conclusion is irresistible that the tribunal never applied the principle of 'equal pay for equal work' and on the other hand was of the view that the employees of the Regional Rural Banks will be entitled to claim parity with the officers and other employees of the sponsor banks in the matter of pay scales, allowances and other benefits and for determining the parity, it left the matter to be decided by the Central Government in consultation with such authorities as it may consider necessary. We are, therefore, persuaded to accept the submissions of Mr. Ramachandran, appearing for the appellant that while resolving the dispute of the employees of the Regional Rural Banks, the tribunal did no apply the so-called principle of 'equal pay for equal work' and on the other hand applied the principle of parity with the officers of the respective sponsor banks."

9. No where has the National Tribunal said anything about the functional similarity and as noted above they also did not examine the question post wise. The Equation Committee does not say that the two posts are equal because of earlier position. In para 6 of Kshetriya Kisan Gramin Bank's case (supra) stress was laid on comparable level and status. In SBI there is no post of Joint Custodian. In the State Bank of India and the sponsored bank there are two posts as cash officer and clerk cum cashier who perform distinct functions. The custody of the cash is held by the cash officer and as and when cashiers perform the additional function of cash officer they are paid an allowance of Rs.380/- which is called officiating allowance and not the keys allowance. Significantly in RRB the cash in charge is a workman, while in the sponsor bank he is an officer. In view of what has been stated above, this appeal is bound to succeed. It is, however, directed that no amount shall be recovered from the period from 1.1.1991 to 21.10.1991. The amounts already paid shall not be recovered if not already done. There shall be no order as to costs.

10. It may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

11. However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since heel) settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees

who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

12. In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows: (at para 17)

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v. Union of India and others (supra) (1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum- Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

13. Appeal is allowed with no order as to costs.