

# SUPREME COURT OF INDIA

Surendra Nath Pandey

Vs.

U.P.Cooperative Bank Ltd.

C.A.No.945 of 2010

(R.V.Raveendran J.)

19.01.2010

## ORDER

1. Leave granted. Heard the parties.

2. The appellants were appointed during 1978-1981 on daily wage basis by the first respondent (UP Co-operative Bank Ltd., (for short 'the Bank'), by way of stop gap arrangement. Upto 30.6.1981, they were on daily wages.

From 1.7.1981, they were paid consolidated salary of Rs.368/- per month which was increased to Rs.575/- per month from 1.4.1982. From 1.7.1983, they were extended the benefit of the minimum in the pay scale applicable to regular employees, i.e. Rs.325/- per month, with allowances, but without yearly increments.

3. On 30.7.1985, the UP Regularisation of Ad-hoc appointments (on posts within the purview of the Uttar 2 Pradesh Cooperative Institutional Service Board) Regulations, 1985 were notified and came into force. In terms of the said rules, the appellants were regularised on different dates -- 1.10.1985, 9.12.1985, 24.4.1986 and 29.9.1986 and they were also extended the benefit of regular pay scales with all allowances. In the year 1990, they approached the Allahabad High Court by filing a writ petition seeking the benefit of regular pay scale, allowances and other benefits which were extended to regular employees, with effect from the date of their stop gap or ad-hoc appointment.

4. A learned single Judge of the High court, by order dated 6.7.2005, allowed the writ petitions and directed the first respondent-Bank to treat the appellants on par with employees, who were the petitioners in *Jai Kishan & Ors. vs. UP Co-operative Bank Ltd. & Ors.*, (WP No.1941 of 1985 and connected cases which were decided by the High Court on 3.3.1989). In *Jai Kishan*, the High Court had affirmed the decision of the Labour Court directing that certain employees of the Bank (whose cases were espoused by the Union) shall be extended the benefit of pay scale by starting with a minimum of Rs.325/- per month with effect from 1.7.1981 with annual increments in the regular pay scale and all other allowances. This

direction was issued on a concession by the learned 3 counsel for the Bank given on the peculiar facts and circumstances of the case, with respect to three employees. The effect of the judgment of the learned single Judge was that the appellants were also to be extended the benefit of the regular pay scale with annual increments with effect from 1.7.1981. Feeling aggrieved, the Bank appealed and the Division Bench of the High Court allowed the special appeals of the Bank, set aside the judgment of the learned Single Judge and dismissed the writ petitions. The said order is challenged in this appeal by special leave.

5. The appellants submit that the Division Bench found that there was no significant difference between the type of work which the appellants were rendering and the type of work which their counterparts who were regularly employed were rendering at the relevant point of time.

“They also submitted that the Bank did not dispute the fact that the petitioners in *Jai Kishan* who were given the benefit of the regular pay scales, were similarly placed as the appellants. They contend that the decision in *Jai Kishan* having become final the Bank cannot discriminate between the petitioners in the case of *Jai Kishan* and other similarly situated employees like appellants and, therefore, they are also entitled to the same reliefs.”

6. We are of the view that the real issue is whether persons employed on stop gap or ad hoc basis were entitled to the benefit of pay scales with increments during the period of service on daily or stop-gap or ad hoc basis. Unless the appellants are able to establish that either under the contract, or applicable rules, or settled principles of service jurisprudence, they are entitled to the benefit of pay scale with increments during the period of their stop-gap/ad-hoc service, it cannot be said the appellants have the right to claim the benefit of pay scales with increments. Admittedly, the appellants do not claim the said relief on the basis of any rules or contract. This Court in a series of decisions [See for example -- *State of Haryana vs. Jasmer Singh*<sup>1</sup> and *State of Haryana vs. Tilak Raj*<sup>2</sup> has held that the daily wage or ad hoc employees were not entitled to the benefit of regular pay scales with increments, by claiming parity with regular employees. Therefore, it is clear that the appellants did not have a right to claim the said relief.

7. If the appellants do not have a legal right to seek the benefit of pay scales before their regularisation, the question is whether they are entitled to such a relief on the ground that such a relief has been extended to some similarly placed employees in pursuance of the decision in *Jai Kishan*. This question is answered by this court in *Col (Retd) B. J. Akkara vs. Govt. of India*<sup>3</sup> while dealing with a similar contention:

"It is contended that the Respondents having accepted and implemented the decision of the Delhi High Court in the case of civilian medical officers, cannot discriminate against the Defence service medical officers placed in identical position and therefore the benefit given to the civilian medical officers in pursuance of the decision of the Delhi High Court should also be extended to them. The petitioners rely on the broad

principles underlying estoppel by Judgment, legitimate expectation, and fairness in action in support of their contention.

Respondents ... contended that the fact that a decision of the High Court had been accepted or implemented in the case of some persons, will not come in the way of the Union of India resisting similar petitions filed by others, in public interest.

25. A similar contention was considered by this Court in *State of Maharashtra vs. Digambar*<sup>4</sup>. This Court held:

"Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in Writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where S.L.Ps are filed by the State against judgments of High Court, such S.L.Ps may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some S.L.Ps in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an S.L.P. or S.L.Ps in other similar matters where it is considered on behalf of the State 6 that non-filing of such S.L.P. or S.L.Ps and pursuing them is likely to seriously jeopardize the interest of the State or public interest."

The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives.

8. In view of the above, we are of the view that the appellants are not entitled to any relief based on the decision in *Jai Kishan*. The Division Bench of the High Court was justified in

reversing the decision of learned Single Judge which extended the benefit of Jai Kishan to the appellants. The appeal has no merit and is, accordingly, dismissed.

<sup>1</sup>1996(11) SCC 77

<sup>2</sup>2003 (6) SCC 123

<sup>3</sup>2006 (11) SCC 709

<sup>4</sup>1995 (4) SCC 683