

A CHAIRMAN, MAGADH GRAMIN BANK AND ANR.

v.

MADHYA BIHAR GRAMIN BANK AND ORS.

(Civil Appeal No. 4194 of 2003)

FEBRUARY 17, 2010

B

[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

Regional Rural Banks Act: s.17(1), second proviso.

C – *Facility of automatic switch over from scale II to scale III – Grant of – Held: Facility shall stand granted to the officers w.e.f. 16th December, 2002 – However, payment already made to employees be not recovered from them for the period earlier to 16th December, 2002.*

D *Computer increment, computer allowance – Grant of – Letter dated 6th January, 2003 from Government of India to NABARD shows that grant of computer increment to employees/officers of RBBs was declined – Since the Government's decision denies benefit of computer increments, direction issued by High Court requiring*
E *respondent-bank to grant the said benefit not sustained.*

Appeal: Government's decision regarding grant of certain benefits not challenged in writ petitions filed by aggrieved-employees before High Court – Plea before Supreme Court that Government's decision was arbitrary and ought to be set
F ***aside by permitting employees to amend the writ petitions or by remanding the matter to High Court – Held: Not tenable – Employees cannot be permitted to challenge the said decision in appeal before Supreme Court as High Court did not have an occasion to examine the matter in the writ***
G ***petitions heard and disposed of by it.***

The question which arose for consideration in these appeals was whether employees of RRB are entitled to the facility of automatic switchover from Scale II to Scale

H

III and grant of computer increment and computer allowance. A

Partly allowing the appeals, the Court

HELD: 1. The facility of automatic switch over from scale II to scale III shall stand granted to the officers w.e.f. 16th December, 2002 subject to the conditions stipulated in the order. However, the payment already made to the employees should not be recovered from them for the period earlier to 16th December, 2002. [Paras 6, 7] [876-H; 877-A-E] B

2. A perusal of letter dated 6th January, 2003 from the Government of India to NABARD would show that the grant of computer increment to the employees/officers of RBBs was not favoured by the banks and the NABARD which consensus was agreed to by the Government of India thereby effectively declining the grant of computer increment to the employees/officers of the RRB. The decision of the Government was not in question before the High Court in their writ petitions. Therefore, there is no reason to allow the employees to challenge the said decision in these proceedings when the High Court did not have an occasion to examine the matter in the writ petitions heard and disposed of by it. Since the Government's decision denies the benefit of computer increments, the direction issued by the Single Judge and upheld by the Division Bench in appeal to the extent requiring the respondent-bank to grant the said benefit cannot be sustained. [Paras 8 and 9] [877-G-H; 878-A-B-D-H] C D E F

South Malabar Gramin Bank v. Coordination Committee of South Malabar Gramin Bank Employees Union 2001 (1) SCC 101; All India Regional Rural Bank Officers Federation and Ors. v. Govt. of India and Ors. 2002 (3) SCC 554, referred to. G

Case Law Reference:

2001 (1) SCC 101 referred to Para 2 H

A **2002 (3) SCC 554** referred to **Para 4**
 CIVIL APPELLATE JURISDICTION : Civil Appeal No.
 4194 of 2003.

B From the Judgment & Order dated 4.2.2003 of the High
 Court of Judicature at Patna in L.P.A. No. 84 of 2003.

 WITH

 C.A. No. 4483 of 2003.

C Parag P. Tripathi, ASG, Rakesh Dwivedi, S.B. Upadhyay,
 Dhruv Mehta, Yashraj Singh Deora, Mohit Abraham, T.S.
 Sabarish, Tannushree Mukherjee (for K.L. Mehta & Co.), K.T.
 Anantharam, Mukti Choudhary, Rahul Dua, Ankit Dalela, Dr.
 R.N. Upadhyya (for P.V. Yogeswaran) Kumud Lata Das, Rashmi
D Malhotra, Shalinder Saini (for S.N. Terdal for the appearing
 parties.

 The Judgment of the Court was delivered by

E **T.S. THAKUR, J.** 1. These appeals by special leave arise
 out of an order passed by the High Court of Judicature at Patna
 whereby LPA No.84 of 2003 filed by the appellant-bank has
 been dismissed in limine and the order passed by a Single
 Bench of that Court allowing Writ Petitions No.7367 of 2001
 and 5924 of 2002 affirmed. The controversy in the appeals lies
 in a narrow compass but before we come to the precise issue
 that falls for our consideration, we may briefly set out the facts
F giving rise to the proceedings before the High Court and the
 present appeals before us.

G 2. In *South Malabar Gramin Bank Vs. Coordination*
 Committee of South Malabar Gramin Bank Employees Union
 (2001 (1) SCC 101) this Court, inter alia, held that the Central
 Government was vested with the power to determine the pay
 structure of the employees working in the Regional Rural Banks
 in accordance with second proviso to sub-section (1) of Section
 17 of RRB Act, and that it should try to maintain parity between
 the pay structure of the employees of the RRBs and those
H

CHAIRMAN, MAGADH GRAMIN BANK AND ANR. v. 875
MADHYA BIHAR GRAMIN BANK [T.S. THAKUR, J.]

working in the nationalized commercial banks. As a sequel to the said direction the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) issued notification dated 11th April, 2001, inter alia, determining the pay scales of the employees of RRBs and granting to them the benefit of 6th and 7th Bipartite Settlements and Officers Wage Revision w.e.f. 1st November, 1992 and 1st November, 1997 respectively. The notification attempted to bring at par the pay scales of the RRB employees and those of their counterparts in other nationalized banks. It was then followed by a letter dated 25th April, 2001, defining the expressions "Basic Pay and Dearness Allowance" used in the notification. The clarification was to the effect that "Basic Pay and the Dearness Allowance" would mean "Basic Pay, Dearness Pay, Dearness Allowances, ad hoc or additional D.A.; interim relief or any other allowance which form part of pay or D.A."

3. Pursuant to the above, the appellant-bank issued a circular dated 16th May, 2001, giving to its employees the benefit of what is known as "computer increment" as per 6th and 7th Bipartite Settlements and Officers Wage Revision. The circular envisaged that each staff member shall file an undertaking that he/she shall refund in lump the excess amount drawn by them in case a contrary decision is received from the Government of India/NABARD sponsor bank. This circular was some time later recalled by an order dated 5th June, 2001 and the benefit of computer increment and automatic switch over from scale II to scale III granted to the employees of the appellant-bank withdrawn. The order further directed that the amount already paid shall be recovered from the employees concerned.

4. Aggrieved by the order aforementioned, the employees-association filed Writ Petition No.7367 of 2001 challenging the validity of the withdrawal order on several grounds. While the said writ petition was still pending, this Court passed an order dated 7th March, 2002 in *All India Regional Rural Bank Officers Federation and Ors. Vs. Govt. of India and Ors.* 2002

A (3) SCC 554 whereby paragraphs 2 and 3 of the notification dated 11th April, 2001 were quashed and the Government directed to issue a fresh notification for proper implementation of the judgment of this Court. The Government of India accordingly appears to have examined the matter and issued
 B a fresh notification dated 17th April, 2002, para 5 whereof provides as under:

C “All other allowances should be immediately revised, if not already revised pursuant to order dated 11.4.2001 by respective sponsor banks after negotiations with RRB employees.”

D 5. In the writ petition filed by the association before the High Court, the Bank filed an affidavit in reply, inter alia, stating that the matter relating to the grant of “computer increment”, “computer allowance” and “automatic switchover from scale II to scale III” was pending consideration of the Government of India which is the authority competent under Section 17 of the RRB Act. A learned Single Judge of the High Court of Judicature at Patna, however, allowed the Writ Petition Nos.7367 and 5924 of 2002 by a common order dated 17th December, 2002 and directed the appellant-bank to act upon the decision dated
 E 17th April, 2002, taken by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) in its letter and spirit and to pay to the employees the benefits admissible to them in accordance with law. The said direction
 F proceeded on the premise that the decision of the Government of India dated 17th April, 2002, particularly, clause (5) of the notification issued by the Government envisaged grant of all allowances admissible to the employees of the nationalised banks to those serving in the RRBs. A Letters Patent Appeal
 G preferred against the said order, having been dismissed summarily, the appellant-bank has filed appeal to this Court by special leave as already noticed above.

H 6. Appearing for the appellant-bank, Mr. Dhruv Mehta, learned counsel, submitted that so far as grant of automatic switch over from scale II to scale III was concerned, the issue

stood finally resolved by the Government and NABARD who have now taken a decision to extend the facility of automatic switch over to the employees working in the RRB w.e.f. 16th December, 2002. In support of his submissions, Mr. Mehta drew our attention to a letter dated 11th April, 2002 addressed by NABARD to the Government of India suggesting certain modalities and conditions for the grant of automatic switch over facility to the officers of RRBs and order dated 6th January, 2003 issued by the said bank pursuant to the decision taken by the Government of India on the subject. A careful reading of the said order would show that the Government of India and NABARD have agreed to the grant of automatic switch over from scale II to scale III to the officers of RRBs w.e.f. 16th December, 2002 subject to the conditions stipulated in the said order. Mr. Mehta argued, and in our opinion rightly so, that the facility of automatic switch over from scale II to scale III shall stand granted to the officers w.e.f. 16th December, 2002 subject to the conditions stipulated in the said order and that the directions issued by the High Court can subject to that modification be affirmed.

7. Mr. Rakesh Dwivedi, learned senior counsel, appearing for the respondents-writ petitioners were agreeable to the disposal of these appeals subject to the condition that the payment already made to the employees shall not be recovered from them for the period earlier to 16th December, 2002. We order accordingly.

8. The only other question that had fallen for consideration before the High Court and that need be noticed by us relates to the grant of computer increment to the employees of the RRBs. Mr. Tripathi, Additional Solicitor General, appearing for the Government of India, has placed before us a compilation of documents comprising a letter dated 6th January, 2003 from the Government of India to NABARD approving the consensus of the bank as set out in NABARD's letter dated 23rd July, 2002. A perusal of the said letter would show that the grant of computer increment to the employees/officers of RRBs was not

A favoured by the banks and the NABARD which consensus was
agreed to by the Government of India thereby effectively
declining the grant of computer increment to the employees/
officers of the RRB. It was contended by Mr. Tripathi and Mr.
Mehta that the Government of India had taken a conscious
B decision on the subject leaving no manner of doubt relating to
the admissibility of computer increment to the employees/
officers of RRBs.

9. The material placed on record was not disputed by Mr.
Dwivedi. Mr. Dwivedi fairly conceded that the Government's
C decision, as is evident from the documents placed on record,
does indeed deny the said benefit to the employees of RRBs.
It was, however, argued by the learned counsel that the decision
of the Government of India was arbitrary and ought to be set
D aside by permitting the respondents to amend the writ petitions
suitably or by remanding the matter back to the High Court. We
are not impressed by that submission. We say so because the
legality of the decision taken by the Government was not in
question before the High Court in the writ petitions filed by the
respondents. We, therefore, see no reason why we should allow
E the employees to challenge the said decision in the present
proceedings when the High Court did not have an occasion to
examine the matter in the writ petitions heard and disposed of
by it. Since the Government's decision denies the benefit of
computer increments the direction issued by the learned Single
F Judge and upheld by the Division Bench in appeal to the extent
requiring the respondent-bank to grant the said benefit cannot
be sustained. We, however, make it clear that this order shall
not prevent the respondent-association or any member thereof
from challenging in appropriate proceedings the validity of the
decision taken by the Government of India on all such grounds
G as may be open to them but subject to all just exceptions
including delay and laches. These appeals are accordingly
allowed in part and the orders passed by the High Court to the
extent indicated above set aside. The parties are left to bear
their own costs.

H D.G.

Appeals partly allowed.