

Mukund K. Pai & Ors. Vs. Punjab National Bank & Ors.

Civil Appeal No. _____ of 2025 arising out of SLP (C) No. 8223 of 2020 · Supreme Court of India · 2025-07-30 · J.K. Maheshwari · Vijay Bishnoi · F2J-C-1426

Full judgment text

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1) Leave granted.

2) The instant appeal has been preferred by the ex-servicemen, challenging the impugned order dated 07.02.2020¹, whereby the writ appeal was allowed and the order dated 11.04.2019² allowing the writ petition was set-aside.

3) The appellants after their retirement from Indian Navy, were re-employed with the respondent-bank as Single Window Operator-A (SWOA) in the Clerical Cadre. The discord between the parties arose when the respondent- Bank re-fixed the pay of the appellants at an amount lower than what they were re-employed at. This was challenged before the Single Bench in the writ petition, which was allowed, however in appeal, the judgment of the Single Bench was set-aside by Division Bench. Hence, the present appeal.

4) The facts in brief are that, post-retirement from the Indian Navy, the appellants were re-employed with the respondent-Bank in between 2015-2017. On re-employment, appellants nos. 1-4 were initially allowed to draw a basic pay of Rs. 40,710/- and appellant No. 5 was of Rs. 34,160/-. Subsequently, the Indian Banks Association, vide letter dated 17.05.2018, (hereinafter, "IBA Clarification"), issued a clarification regarding 'payfixation of ex-servicemen' advising that maximum basic pay for ex-servicemen be fixed at Rs. 31,540/-. In this view, the respondent-bank vide HRMD Circular No. 413/2018 dated 22.06.2018 (in short "HRMD circular"), directed that the pay-fixation of all ex-servicemen/excommissioned officers be made accordingly. Thereafter, vide letters dated 24.07.2018 and 25.07.2018, basic pay of all the appellants was re-fixed at Rs. 31,540/-.

5) Being aggrieved, the appellants challenged the re-fixation before the Single Bench of the High Court, inter-alia asking the following reliefs:

"a. To call for the records leading to Exhibit P21 to P25.

b. To issue a writ of Certiorari setting aside Exhibit P21 to P25.

c. To declare that Exhibit P20 is not applicable to Petitioners for the purpose of fixing Petitioners pay.

d. To declare that Petitioner No. 1 to 5 are entitled and eligible to the pay initially fixed by the 1st respondent as per Exhibit P15, 16, 17, 18 and 19 respectively in consonance with the Exhibit P1 and other relevant statutory provisions.

e. To issue a writ of Mandamus or any other appropriate writ order or direction directing the 1st Respondent to refund the amount deducted from the salary of Petitioner No.1 to 5 in furtherance of Exhibit P21 to P25 respectively. AND f. Pass such other orders as this Hon'ble Court may deem fit to grant in the circumstances of the case."

6) The assertion of the respondent-Bank is that the pay fixation of appellant nos. 1 to 4 was inadvertently made at the 27th stage of the cadre and that of appellant no. 5 at 22nd stage at the time of re-employment. The pay scale beyond 20th stage is applicable only to the employees who have reached stagnation. In compliance with the HRMD circular, the pay of the appellant was re-fixed to the 20th stage of the cadre with a basic pay of Rs. 31,540/-. Additionally, the basic pay being drawn by the appellants at the time of re-employment was exceeding the minimum of the scale of pay of the General Manager in the respondent-Bank and was in contravention to Clause 2.1(iii) of the guidelines³ dated 17.02.2014 (in short "2014 guidelines") issued by Department of Financial Services (Welfare). As such, it was contended that the Bank was justified in their action of re-fixation.

7) Heard the learned counsels for the parties at length and perused the material placed on record. It is not in dispute that 2014 guidelines govern the re-fixation of pay of ex-servicemen on re-employment. As such, learned Single Judge as well as Division Bench both have interpreted those guidelines vis-à-vis the applicability of the IBA Clarification and the HRMD circular in the present matter.

8) Learned Single Judge, considered the question whether last scale of ex-servicemen need to be protected in reemployment and while interpreting the 2014 guidelines, opined that the IBA Clarification cannot override the 2014 guidelines. Learned Single Judge appraised as under -

a) As held by Apex Court's in 'State Bank of India and Others Vs. K. P. Subbaiah'⁴, the intention of the government was to ensure that the ex-serviceman at the time of employment in the public sector bank does not get an amount as pay lesser than what he was drawing while in defence service.

b) The aggregate of re-employed pay and pension on re-employment of ex-servicemen should not exceed the minimum of the scale of pay of the General Manager in the Bank.

c) The instructions and clarifications issued by an Association like IBA cannot supersede the orders/instructions/guidelines issued by the Government of India, especially when it is by way of a benevolent welfare measure. With the above, the learned Single Judge allowed the Writ Petition and by quashing the order of re-fixation, directed the Bank to disburse the arrears of withheld salary within a period of two months.

9) On filing of the Writ Appeal, the Division Bench on re-appraisal of the 2014 guidelines, set-aside the order passed by the learned Single Judge while noting as thus -

a) That the IBA guidelines cannot override the instructions of the Government of India. A combined reading of Sub-clause (ii) & (iii) of 2014 guidelines, makes it clear that during pay fixation of ex-serviceman re-employed in public sector banks, his last pay drawn has to be protected, however such pay fixed, plus the pension drawn should not exceed the minimum of the scale of pay of the General Manager.

b) The pay of the appellants was fixed at the maximum of the scale of the Clerical cadre, which is at Rs. 31,540/- with D.A. of Rs. 14,382/-; which totals to Rs. 45,922/-. The Bank was obliged to pay to the appellants the amount last drawn by them at the time of their discharge from the Indian Navy, subject to the limit of the pay on re-employment added to the pension, which comes to Rs. 81,438/- [Rs. 45,922 + 35,516], which is above the minimum of the time scale of pay applicable to the General Manager, i.e., Rs. 76,520/-.

c) In such circumstances, the order passed by the learned Single Judge was set-aside.

10) Learned counsel for the appellants has emphatically contended in the lines of observations made by learned Single Judge and urged that in light of provisions contained in 2014 guidelines, re-fixation of their pay and the subsequent reduction in their salary is wholly unjustified, therefore the judgment passed by the Division Bench is liable to be set-aside. In support of this contention, reliance has been placed on the judgment of this Court in K.P. Subbaiah (supra).

11) Per contra, Mr. Dhruv Mehta, learned senior counsel and Mr. Rajesh Kumar Gautam, learned Advocate on Record for the respondent-Bank, have submitted that the interpretation as made by the Division Bench is in consonance with the spirit of the 2014 guidelines, rightly accepting the fixation done by the Bank. The judgment of the learned Single Bench has rightly been set-aside by the Division Bench, and no interference is called for by this Court.

12) After considering the submissions of learned counsel for both the parties, the following questions fall for our consideration:

(i) Whether in the facts of the present case, IBA Clarification and HRMD Circular can override the 2014 guidelines for the purpose of pay fixation of ex-servicemen during re-employment of ex-servicemen?

(ii) Whether re-fixation as done by the respondent- Bank pursuant to the IBA Clarification is in consonance with the guidelines dated 17.02.2014 and whether the High Court was justified in confirming such re-fixation by impugned judgment?

(iii) If not, in what manner can the fixation of pay of ex-servicemen may be made on their reemployment? And what reliefs can be granted to the appellants?

13) Since the questions as posed hereinabove for discussion are inter-connected and primarily based on the contents of 2014 circular, therefore, all the issues are being appreciated simultaneously.

14) It is to be noted here that as per the findings recorded by the learned Single Judge in para 15 and confirmed by Division Bench in para 10 in the impugned judgment, it is clear that the IBA Clarification and the subsequent HRMD Circular do not override the 2014 guidelines and neither of the parties have disputed the said fact. During hearing, the parties have conceded to the applicability of the 2014 guidelines qua the lis and the finding on this issue does not require any re-look or re-appreciation in detail except to acknowledge its conclusion.

15) In the facts, since the interpretation of the 2014 guidelines is in question, therefore, the relevant portion of the said guidelines is reproduced as thus:

"Guidelines for Pay Fixation of ex-Servicemen/Ex- ECOs/SSCOs Re-employed in Public Sector Banks on or after 01.01.2006.

Fixation of pay of ex-servicemen in Public Sector Banks is governed by the guidelines/instructions issued by the Government of India from time to time. Accordingly, based on the Government Guidelines/instructions in force, issued vide DoPT O.M. No. 3/19/2009 - Estt(pay II) dated the 5th April, 2010 and clarification given vide O.M. No. 3/19/2009- Estt, (Pay-II) dated the 8th November, 2010, fitment of pay of ex-servicemen/ex-ECOs/SSCOs, who have been appointed in the Bank on or after 01.01.2006 is to be done as under:

2.1 Ex-Servicemen joining in workmen cadre: Pay fixation of an ex-serviceman would be through protection of pay plus DA drawn by him at the time of released from, Armed Forces. As per the instructions issued by the Ministry of Defence vide their letter No.1/69/2008/D(Pay/Service) dated the 24th July, 2009 and advised by DoPT vide OM No. 3/19/2009 - Estt. (Pay II) dated the 8th November, 2010, pre-retirement pay has been defined as under:-

(i) In respect of re-employment taking place on or after 1.1.2006, pre-retirement pay for those who retired after 1.1.2006, means the pay in the pay band plus grade pay but inclusive of non-practicing Allowance (NPA) if any, last drawn before retirement.

(ii) In case of officer who retired before 1.1.2006 and also those who retired after 1.1.2006 in the pre-revised pay scales without opting for the revised pay scales promulgated on or after 1.1.2006 the pay will be basic pay including stagnation increment and Rank Pay plus Dearness Pay and Dearness Allowance drawn at the time of retirement. As such, the figure of pay plus D.A. admissible in the Bank will be fixed with reference to this protection i.e. pay as mentioned above plus DA and relevant stage of the basic pay in the reemployed scale will be determined after deducting DA admissible in the Bank from the figure protected. For the purpose of fixation of pay on re-employment, the pay would mean the basic pay plus the special allowance/special pay as the case may be, attached to the re-employed post (where applicable).

As the MSP has not been included in pre-retirement pay as per the definition given by the Ministry of Defence vide letter No.1/69/2008/D (Pay/Service) dated 24.07.2009, the protection of the component of MSP in refixation of pay in Bank has been excluded. Moreover, the ex-servicemen on re-fixation of pay in Bank has been excluded. Moreover, the ex-servicemen on re-employment in the banks are allowed to draw entire pension i.e., entire pension is ignored and not reduced from the re-fixed pay. As such, they will get the benefit of the component of Military Service Pay (MSP), if any, in their pension from the Government.

(iii) In addition to the pay so fixed, as aforesaid, pension and other retirement benefits may be allowed to be drawn. This will, however be subject to limitation that the aggregate of re-employed pay and pension on re-employment of ex-servicemen would not exceed the minimum of the scale of pay of the General Manager in the Bank as per Ministry of Finance letter No.F4/1/98-SCT(B) dated 02.09.1998."

16) On perusal of aforementioned guidelines, it is clear that on re-employment prior to or after 01.01.2006, the ex-servicemen in Public Sector Banks are governed by the instructions issued by the Government of India from time to time. By way of Government guidelines/instructions issued vide DOPT O.M. No.3/19/2009-Estt. (Pay II) dated 05.04.2010 and its clarification O.M. dated 08.11.2010, fitment of pay of ex-servicemen/ex-ECOs/SSCOs who have been appointed in the Bank prior to or after 01.01.2006 ought to be done as per 2014 guidelines. As per Clause 2.1, it is clear that an ex-serviceman would have protection of pay plus DA drawn at the time of release of from the Armed

Forces.

17) In the 2014 guidelines, pre-retirement pay has also been defined. However, the present case relates to clause 2.1(ii), whereby officers who retire either before or after 01.01.2006, their pay fixation ought to be made as specified. The Government has clarified that the pay plus DA admissible in Bank will be fixed in reference to the protection of pay plus DA as mentioned, and relevant stage of the basic pay in the re-employed scale will be determined after deducting DA admissible in the Bank from the figure protected.

18) It has been further clarified that for the purpose of fixation of pay on re-employment, the pay would mean basic pay plus special allowance/special pay as the case may be, attached to the re-employed post. On reemployment in the Bank, the ex-servicemen are also allowed to draw the entire pension. They are also entitled to get the benefit of component of Military Service Pay (MSP), if any, in their pension from the Government.

19) In the backdrop of the above and looking to the issue at hand, Clause 2.1(iii) also assumes relevance, whereby in case of ex-servicemen, the pay as directed while fixing on re-employment and the pension allowed to them would not exceed the minimum of the pay scale of the General Manager in the Bank in terms of the guidelines issued by the Ministry of Finance vide letter No.F4/1/98- SCT(B) dated 02.09.1998. In view of the foregoing, the three essentials can be broadly carved out for refixation of the pay of an ex-serviceman on re-employment in the public sector bank;

(i) They would be entitled to protection of pay plus DA drawn by them at the time of release from Armed Forces; and would further be entitled for entire pension and benefit of MSP, if any, in their pension from the Government on reemployment;

(ii) During fixation of pay in re-employment, the pay would mean Basic Pay plus Special Allowance/Special Pay, as the case may be, to the re-employed post;

(iii) While fixing the pay of ex-servicemen, the pay protected plus pension would not exceed the minimum of the scale of pay of the General Manager in the Bank in terms of the guidelines issued by the Ministry of Finance. As such, the fixation of pay of the appellants ought to be made applying the abovesaid three broad guidelines.

20) In the case at hand, the justification of re-fixation made by the Bank is required to be appreciated in the light of three essentials as summed up above. As per refixation letters dated 24.07.2018 and 25.07.2018, it is clear that the Bank has referred to pay fixation made on the date of re-employment, and later referring the IBA clarification and HRMD circular, reduced the pay of appellant nos. 1 to 4 from Rs. 40,710/- to Rs. 31,540/- and of appellant no. 5 from Rs. 34,160/- to Rs. 31,540/- respectively, citing that their pay deserves to be protected only to the extent of 20th stage. Since the appellants' pay were fixed over and above the 20th stage of their cadre in re-employment at 27th stage (appellant nos. 1 to 4) and 22nd stage (appellant no. 5), therefore, on the pretext of re-fixation, applying the guideline which were not applicable, the re-fixation has been directed.

21) Learned Single Judge while appreciating the applicability of the IBA clarification and the HRMD circular has recorded the finding that 2014 guidelines have overriding effect and the Division Bench has affirmed that finding. The bank has not assailed that finding taking recourse as permissible. In addition, it is relevant to note that 2014 guidelines were issued by Department of Financial Services (Welfare), Government of India. While discussing the issue in para 14 above, it is conceded on behalf of the bank that 2014 guidelines would have an overriding effect qua the lis in hand. Looking to all these aspects, in our view, refixation done by the bank ignoring 2014 guidelines in applying IBA clarification and the HRMD circular deserves to be quashed.

22) The learned counsel for the appellants placed reliance on the judgment of this Court in the case of K.P. Subbaiah (supra), wherein the distinction of 'pay' and 'pay scale' and the distinction of 'pay fixation' and 'fixation of pay scale' have been elaborated to indicate the general principles and factors to be taken into consideration. In our view, in the facts of the case, wherein re-fixation was in blatant violation of the applicable 2014 guidelines while relying upon the IBA clarification and HRMD circular, therefore, the reliance on the said judgment is of no help to the appellants.

23) Be that as it may, by the order of re-fixation of pay the appellants' pay were reduced in the wake of refixation. The deductions in the pay scale recurring reductions of salary affects the civil consequences to an ex-serviceman. This is urged that such refixation cannot be directed without

observance of the principle of natural justice. In support thereto, reliance has been placed on the judgment of this Court in the case of 'Bhagwan Shukla Vs. Union of India and Others'⁵, wherein while dealing with question of reduction of basic pay of appellant, this Court held thus:

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs 181 p.m. from Rs 190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay.

He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter.

Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17- 9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs 190 to Rs 181 w.e.f. 18- 12-1970."

24) After going through the facts of this case, it is not in dispute that the order of re-fixation has been passed without affording an opportunity to the appellants. Observance of the principles of natural justice in cases of re-fixation of pay leading to financial loss is sine qua non. Considering the aforesaid, we have no hesitation to hold that the Bank while re-fixing the pay had violated the principles of natural justice and reduced the pay of appellants without hearing them.

25) In view of the discussion made above, we answer question no. 1 that the IBA clarification and HRMD circular are not in consonance with the 2014 guidelines for pay fixation of ex-servicemen and for purpose of fixation of pay, the 2014 guidelines shall prevail over the IBA clarification and HRMD circular. Similarly, question no. 2 is answered that the re-fixation applying IBA clarification and HRMD circular by ignoring the 2014 guidelines is not justified. We have already held that that by virtue of passing order of re-fixation, the appellants have suffered civil consequences, therefore, without affording an opportunity, re-fixation so done, was in violation of principle of natural justice hence, it is set-aside. In view of the above, question no. 3 is also answered.

26) As per the discussion made, we further make it clear that the relief prayed by the appellants in the writ petition in clauses (a) to (c) deserves to be allowed in their favour. Simultaneously, in view of the reliefs prayed in clauses (d) and (e), we direct the Bank to apply the 2014 guidelines and re-fix the pay of the appellants on the principles broadly culled out and discussed hereinabove.

We further direct that the recovery and refund, if any, shall stand quashed and the refund which has been made during the pendency of the writ petition/writ appeal, or the present appeal also stands quashed. In view of the above discussion re-fixation be made afresh. While fixing the pay, in case, the pay of the appellants is reduced from initial fixation, the bank shall observe the principle of natural justice.

27) Accordingly, in view of the above, the present appeal stands allowed to the extent indicated above. Parties to bear their own cost.

Pending application, if any, shall stand disposed of.

.....J. [J.K. Maheshwari]

.....J. [Vijay Bishnoi]

New Delhi;

July 30, 2025.

1 passed by Division Bench of Kerala High Court in W.A. No. 2094/2019.

2 passed by Single Bench in WP (C) No. 26946 of 2018.

3 Guidelines for fixation of pay of ex-servicemen/ex-ECOs/SSCOs, re-employed in Public Sector Banks etc. on or after 01.01.2006 - guidelines, regarding.

4 (2003) 11 SCC 646

5 (1994) 6 SCC 154

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