

A silhouette of a two-masted sailboat is shown against a vibrant sunset sky. The sun is a large, bright yellow-orange orb on the right side of the frame, partially obscured by the boat's rigging. The water in the foreground reflects the warm colors of the sky. The overall mood is serene and peaceful.

OFFICERS' CAUSE

APRIL - 2018

BANK FRAUD

ONE NEED TO BE ALERT RATHER BEATING THE BUSH

The country had witnessed the rucks created in Parliament by the opposition parties on the issue of Nirav Modi scam that caused the banking system, especially in Punjab National Bank more than ₹13000 crores. According to source this irregularities have been happening in the bank since the year 2011, when the Brady House Branch of PNB in Mumbai had been issuing LoUs without collateral, that was exposed only recently, by the time the culprit has vanished from the country.

The authorities are now grop in darkness about the whereabouts of the fraudster. Instead of beating the bush now it is necessary that one need to examine where the system has failed. It is the normal practice that whenever such fraud takes place a new controlling mechanism is introduced in the system, whether the existing mechanism is implemented effectively or not. When the NPA's in the banking system started showing its ugly head and when the recovery through the legal progress has failed, a new fast track process through Debt Recovery Tribunal was introduced. When such system also failed a new Insolvency and Bankruptcy Code (IBC) was introduced, which is yet to take off at the expected level and most of the NPA'S

remains unsettled. In order to come out from the lacunae of the Code government further made amendment to the Code, to avoid clandestine bidders to the assets. The history reveals that whenever any regulatory control is introduced the fraudsters will find loopholes. making the regulatory authorities to find a new system to plug the loophole. Reforms like IBC code, recapitalization etc will not have the desired result unless it is property enforced. What we see now is that every day a new skeleton is falling from the cupboard, the latest being Kanishk Gold, defrauding SBI and others to tune of ₹824 crores, and Totem Infrastructure Ltd. that defrauded union Bank and others to a tune of ₹1934 crore, and many more may tumbled down once a micro audit has started.

The incidence of Nirav Modi, Mehul choksi, Vijay Mallya and others who fled the country after having committed fraud on the banking system shows that banks are getting blind by such, so called high value customers. During the financial meltdown in the year 2008 that shocked US and other western countries, Indian banking system boasted that they escaped unscathed due to their strong fundamentals. Thereafter

banks become more aggressive in their expansion in search of profit trying to outsmart others. While the asset size was increasing the quality started decreasing. They indulged in short cut method of getting high value customers without looking into their credentials and method of operation. Banks lend to such corporates and industrial houses in blatant violation of fiduciary trust who later become defaulter and duped the lenders.

After nationalization, banks have become a political tool for political class for their own welfare. Banks were subjected to the pressure by virtue of ownership. Banks were also made to lend to big corporates and industrial houses, many of them have become NPA's. In this connection it is pertinent to mention here the observation of a UK court hearing Vijay Mallya's extradition case, that the loan given to Vijay Mallya is against the normal banking guidelines for such loans. Many of such defaulters are quite influential both at the management and government authorities.

In the Nirav Modi case the Letter of Understanding was issued by certain officers of the bank that was sent to the suppliers in the form of message through SWIFT without put to core banking system, thereby throwing all security norms into winds. The same set of officers were allowed to continue this operation but the blame game started only now. Though the technology has improved in easing the operation, the banking is still human centric, despite the increasing invasion of machine. Top management was a mere spectator to this whole episode who was concentrating on their expansion drive and profit, until the bubble burst. In spite of similar frauds taken place in the past, the authorities could not create an effective mechanism to control such frauds. Banks have got various types of audit such as internal audit, concurrent audit, snap audit recovery audit, statutory audit, external audit, stock audit etc. None of these watch dogs could trace or sniff out such flagrant violation of norms, nor by other regulators such as RBI and BBB. Now the

blame game started between the regulatory authorities. Here not only the bank management but also RBI, auditors, officers under Ministry of Finance, are all to be blamed for having failed to check such fraud in time. According to Bank Board Bureau (BBB) Chairman, now claims that none of their recommendations on reforms such as in appointment, compensation, performance assessment and governance etc were ever answered by the government. This shows that the political pressures continue to haunt the functioning of PSBs.

It is now claimed by RBI that they had already warned earlier to ensure linkage of SWIFT message with core banking but it was not followed up thereafter. According to RBI they have no disciplinary control over the Board of PSBs like the power they have in the case of private sector banks that is disowned by the Government. According to government sources RBI has power to appoint officers in the bank, direct change in the management, inspect any bank and books of account, direct special auditor and examine a director. RBI Governor has now even cautioned the government of preferential treatment to PSB's by re capitalization out of tax payers money and hence expressed of the desirability of privatization. Taking advantage of such deficiency and malpractice in the system there are already attempts from various circles to tarnish the image of PSB and advocating for privatization. This is after the comment by Chief Economic Advisor to the Government of India, Shri Arrvind Subramaniam that it is time to consider majority private participation in PSB. In the latest Economic Survey brought out by his team had even opposed re-capitalization of PSBs. There are also allegation that are recapitalization will be a drag on economy as it is only squandering of tax payers money. Mere blaming PSB for such fraud to pave way for privatization cannot be justified as the entire crisis in US during 2008 was caused by private sector banks, such as Lehman Brothers Inc., the giant investment bank and others, who were collapsed on their overweight in their greed to earn more profit. The PNB

SUCCESS AWAITS AT THE DOOR WHERE DILIGENCE IS

fraud cannot be a ground for privatization. Whereas in India even if it was a private sector bank, still government would have to step-in to save the bank in order to build the confidence of the public in the system with the problem of NPAs, privatization is not the solution as indicated by the RBI Governor. When the government is capitalizing an ailing PSB one should keep in mind that it is the government ownership that

saved the day.

Instead of beating the bush, after the culprits have already escaped, the regulatory authorities, bank management and auditors should work in tandem to ensure repetition of fraud is not taken place in the banking system in future. Public still has got confidence in Public Sector Banks, when the Union Govt guarantees their operation. ■

News in Brief

MANAGEMENT RESOLVES LONG STANDING DEMANDS COMPREHENSIVE REVIEW OF THE EXISTING FACILITIES RELIEF TO PENSIONERS AND FAMILY PENSIONERS UNDER MEDICAL BENEFIT SCHEME – ALLOCATION OF WELFARE FUND ENHANCED FROM ₹100/- TO ₹150/- CRORES

On continuous persuasion with the Management for the improvement of the Staff Welfare facilities, the Management has now agreed to the demand of the Federation and accordingly increased the ceiling on the percapita expenditure in respect of welfare facilities from ₹100/- to ₹150/- considering the various aspects as well as the post-merger scenario which has resulted in the increase in the number of employees in the bank, though not up to the expectation of the Federation and there is a need for further enhancement in the quantum in order to

see that the benefit of the welfare facilities are available to all the members. The bank has also considered the demand for providing medical assistance in respect of the retired employees as well. The Bank has also considered the demand for providing medical assistance to all those Retired Employees in case of critical illness.

The Corporate Centre has issued a Circular No. CDO/P&HRD-IR/107/2017-18 dated 21st March, 2018 in this regard. ■

GRATUITY AMENDMENT BILL ENHANCEMENT OF GRATUITY CEILING

The Amendment with regard to the enhancement of ceiling Gratuity from ₹10/- lac to ₹20/- lac on the Payment of Gratuity Act, made recently has been made effective from 29th March 2018, although there was a continuous appeal from the All India State Bank Officers' Federation as well as the All India Bank Officers' Confederation, for making the date effective from 1.1.2016, as in the case of the Central Government of employees. They have also sought

the help of the Ministry of Labour, the Ministry of Finance to help us out on these counts.

As the present amendment with effect from 29.3.2018 is disappointing Federation sought the intervention of Prime Minister vide their letter dt.2/4/18 for the Ministry for appropriate administrative directions in this regard so that a large number of employees in banking industry are able to get the benefit of the amendment to the Gratuity Act 1972. ■

INDIVIDUAL HOUSING LOAN SCHEME INCLUSION OF CHILDREN INCOME

On continuous persuasion by the Federation with the Management for the improvement in Individual Housing Loan Scheme, the Bank has now permitted reckoning of income of children/near

relatives, if they are added as co-borrower/guarantor. The Corporate Centre has issued instructions in this regard vide Circular No. CDO/P&HRD-IR/119/2017-18 dated 31st March, 2018. ■

ARISE, AWAKE, STOP NOT TILL THE GOAL IS REACHED

AVAILING OF LFC AFTER RETIREMENT MODIFICATION IN GUIDELINES FOR LEAVE ENCASHMENT

A long pending demand of the Federation has materialized and the Corporate Centre has issued the Circular No. CDO/P&HRD-PM/112/2017-18 dated 28th March, 2018.

As per the extant instructions, an officer could avail LFC up to six months after retirement. But if he wanted to avail encashment of LFC then he had to proceed

on LFC within a maximum period of one month only after retirement.

Now the condition of proceeding on LFC within one month has been removed and hence an officer may avail leave encashment with LFC and travel within the extended period of six months. This has brought in more flexibility. ■

COMPENSATION FOR WORKING DURING THE PERIOD OF DEMONETISATION

Federation had taken up the issue of compensation, for working during the period of demonetization with Corporate Center. After continuous follow-up at all

levels; the Circles are now paying compensation for working late during the period of Demonetisation depending on the number of days worked. ■

COMPENSATION FOR EXTENDED WORKING HOURS ON 31ST MARCH, 2018

Federation had taken up the issue of compensation for extended working hours on 31/3/2018 with the Corporate Centre, and accordingly, the Bank had advised all the Circles to pay ₹1,500/- as remuneration on

account of late sitting to attend Govt. transactions etc. The Corporate Centre has issued instructions in this regard vide Circular No. NBG/GAD-GBU/42/2017-18 dated 28th March, 2018. ■

IMPROVEMENT IN SUPERANNUATION BENEFITS TO RETIREES IN THE BANKING INDUSTRY

The federation had taken up the issue of improvement in the superannuation benefits to the retirees in the banking industry with the Prime Minister of India vide their letter dated 2nd April 2018 for his intervention. The major issues that are listed for immediate consideration by the Government are as follows:-

Improvement in the Family Pension: The Government employees gets 30% of the last drawn pay as Family Pension across the board for the spouses of the Pensioners on their death. The Family Pension which is now prevalent in the banking industry is an inferior one. The average family Pension is about 15% of the last drawn pay of the Pensioner and thus there is great discrimination apart from the hardship in managing life with this meager amount, after the death of the bread winner of the family.

The Pensioners in the Government have been getting substantial improvements in their Family pension, in

particular, after the introduction of the 7th Pay Commission Report.

Improvement in Dearness Allowance: The Dearness Allowance formulae in respect of the retirees prior to 1.11.2002 is inferior. The subsequent retirees are getting the benefit of 100% D.A. neutralization. The issue is under constant discussions and assurances have been given by IBA since the last several rounds discussions but no concrete results have come so far. The earlier retirees are therefore suffering a lot for want of improvement in their DA formula.

Updation of Pension: The Pension scheme is effective from 1.1.1986 in the banking industry. Since then no updation of Pension has taken place. The Central Government has improved their Pension during both 6th and 7th Pay Commission. Federation sought similar adjustments in the case of the retirees in the banking industry as well. This is a long pending issue with the IBA and the Government. ■

WORK IS WORSHIP , DO YOUR DUTY

BIDDING GOODBYE TO COM. BIBEKANANDA DAS

A farewell meeting was organized at Bhubaneswar on 30/03/2018 on the occasion of the retirement of Com. Bibekananda Das. Com. D.T.Franco Rajender Dev, President of AISBOF and General Secretary of AIBOC, who was present on the occasion threw light on various aspects of current policies of the central government which is playing havoc with the already dangerous NPA scenario of the Banking Industry. All the participants of the meeting regretted the retirement of seasoned leaders at such crucial times and particularly

Com. Bibekananda Das, the President of Bhubaneswar Circle. They wished him a very happy, healthy and contented retired life while throwing light on his achievements in sports, games and drama etc. Com. Arun Kumar Bishoyi presided over the meeting.

An emotional farewell was given to Com. Bibekananda Das in the presence of his family members. The meeting ended with a vote of thanks by Com. Sabyasachi Swain, the DGS of the Circle and AIBOC State Secretary. ■

Banking

BANKING SERVICES AT YOUR DOORSTEP

If you are 60 years and above and have been getting banking services, there's reason for you to cheer. Recently, the Reserve Bank of India (RBI) has mandated banks to offer special facilities to senior citizens and differently abled persons. This should improve access to banking services to people in these two categories.

What's on offer?

For one, standing in those long queues to either withdraw or deposit money at bank branches will soon be passé. The RBI has now made it mandatory for banks to have a dedicated counter for senior citizens and the differently –abled (includes those who are visually impaired too). In case a bank does not have the manpower and infrastructure to set up a dedicated counter to service these special customers, they need to identify one counter that will give priority to these customers. Thus, this move should provide access to banking services faster, saving the hassle of waiting for too long.

Two, for customers who are 70 and above or are differently abled (including visually impaired) or are suffering from medically certified chronic diseases, the RBI has mandated banks to offer services at their doorstep. This covers basic services such as pick-up of cash and other instruments such as cheque., delivery of cash against withdrawal made from the account and delivery of demand drafts. In addition to this, door step banking services will also help customers submit their KYC documents and life certificate.

Three, getting cheque books from the bank has also been made easy now. These special customers do

not have to go to the bank directly to submit request for a fresh cheque book. They can send the form duly filled through any representative. Banks have been mandated to provide a minimum of 25 cheque leaves every year at no additional fee.

Four for senior citizens who depend on Government pension to meet their monthly needs, timely submission of life certificates is critical to receive pension without interruption. While the RBI had earlier notified that pensioners could submit life certificates at any branch of the pension paying bank, there have been issues with the same such as delay in uploading of these details by the branches into the core banking system. To address this, the RBI has instructed that the certificates received will have to be uploaded immediately by the receiving branch. One can now also submit life certificates digitally through the Jeevan Praman website (<https://jeevanpramaan.gov.in>).

Five, for customers fully complaints with the Know Your Customers(KYC) norms, banks have been asked to ensure automatic conversion to senior citizen accounts when the criteria for the same are met. This will save them the trouble of having to go to the branch.

Finally, the RBI in 2015 notified that senior citizens who are either old, sick or incapacitated and are unable to sign cheques /other documents due to physical incapacity can use their thumb impression or other sign, verified by two individual witnesses to operate their account. This facility, which was only available to the sick, incapacitated persons, is now applicable to visually impaired customers too.

LET CUSTOMER SERVICE BE OUR MOTTO

The RBI has mandated that all these services be provided by not just scheduled commercial banks (including regional rural banks) but also small finance banks and payment banks.

Even as the Government, on the one side, is pushing

for digitization and e-delivery of banking services, reducing the dependence on physical banking infrastructure, the above initiatives take cognizance of the needs of seniors and sick individuals. Hence, it is a welcome move. ■

Source: Business Line- dt.27.11.17

STATE BANK OF INDIA STANDS OUT IN DIGITAL BANKING AND RURAL INCLUSION.

Deft handling of the demonetization rush, battling bad debts but remaining profitable, pushing the financial inclusion agenda through a wide network of its rural and semi-urban branches and at the same time catering to techsavvy customers through cutting edge digital banking products. State Bank of India (SBI), stand out in the Indian banking industry in the financial year 2016-17 according Business Standard rating.

The jury decided to place the emphasis on financial inclusion, and 64 percent of SBI's branches were in rural areas, much higher than its nearest private sector competitor.

"There were a number of banks which did well

during the year which the jury took into account. Besides, we also considered regulatory objectives like more digital banking, more inclusive banking and the performance of subsidiaries SBI has done outstanding work during the year and the chairman of the bank during that period viz, Smt. Arundhati Bhattacharya was recognized as the Business Standard :Banker of the Year,"

"SBI proves that it public sector banks get their act together, they could go places. At a time when income inequality is growing, SBI is providing services to the entire spectrum of its customer base. ■

Source:Banking Annual Business Standard-Jan2018

Agriculture

LOAN WAIVER IS NOT THE SOLUTION

Since Independence, one of the primary objectives of India's agricultural policy has been to improve farmers' access to institutional credit and reduce their dependence on informal credit. As informal sources of credit are mostly usurious, the government has improved the flow of adequate credit through the nationalization of commercial banks, and the establishment of Regional Rural Banks and the National Bank for Agriculture and Rural Development. It has also launched various farm credit programmes over the years such as the Kisan Credit Card scheme in 1998, the Agricultural Debt Waiver and Debt Relief Scheme in 2008, the Interest Subvention Scheme in 2010 -11 and the Pradhan Mantri Jan-Dhan Yojana in 2014.

It is encouraging to see a robust increase in institutional credit from ₹8 lakh crore in 2014-15 to ₹10 lakh crore in 2017 -18. Of this, ₹3.15 lakh crore is meant for capital investment, while the remaining is for crop loans, according to the Ministry of Agriculture and Farmers Welfare. Actual credit flow has considerably exceeded the target. The result is

that the share of institutional credit to agricultural gross domestic product has increased from 10% in 1999-2000 to nearly 41% in 2015-16.

Clamour for loan waiver

While the flow of institutional farm credit has gone up, the rolling out of the farm waiver scheme in recent months may slow down its pace and pose a challenge to increasing agricultural growth. The Uttar Pradesh government has promised a ₹ 0.36 lakh crore loan waiver covering 87 lakh farmers, whereas the Maharashtra government has announced its writing off ₹ 0.34 lakh crore covering more than 89 lakh farmers. The demand for a loan waiver is escalating in Punjab, Karnataka, and other states. This clamour is only poised to increase as the 2019 general election comes closer.

There is a serious debate on whether providing loans to farmers at a subsidized rate of interest or their waiver would accelerate farmers' welfare. At the global level, studies indicate that access to formal

BE TRUTHFUL, BE FEARLESS

credit contributes to an increase in agricultural productivity and house hold income. However, such links have not been well documented in India, where emotional perceptions dominate the political decision quite often. A recent study by the International Food Policy Research Institute reveals that at the national level, 48% of agricultural households do not avail a loan from any source. Among the borrowing households, 36% take credit from informal sources, especially from moneylenders who charge exorbitant rates of interest in the 25% -70% range per annum. More importantly, the study using the 2012-13. National Sample Survey Situation Assessment Survey(Schedule 33) finds that compared to non-institutional borrowers, earn a much higher return from farming (17%). The net return from farming of formal borrowers is estimated at ₹ 43,740/ha, which is significantly greater than that of informal sector borrowers at ₹33,734/ ha. Similarly, access to institutional credit is associated with higher percapita monthly consumption expenditures.

A negative relationship between the size of farm and per capita consumption expenditure (a proxy for income) further underscores the importance of formal credit in assisting marginal and poor farm households in reducing poverty. Indeed, access to formal institutional credit also tends to enhance farmers' risk-bearing ability and may induce them to take up risky ventures and investments that could yield higher incomes. Going by the NSS schedule 18.2 (debt and investment), rural households' investments in agriculture grew at a high rate of 9.15% per annum between 2002 and 2012. While 63.4% of agricultural investments are done through institutional credit, landless, marginal and small farmers' investment demand is met through informal sources to the tune of 40.6%, 52.1% and 30.8%, respectively. Statistics show that nearly 82% of all indebted farm households (384 lakh) possess less than two hectares of land compared to other land holders numbering 84 lakh households. Those residing in the less developed State are more vulnerable and hence remain debt ridden.

Not helping famers' welfare

Clearly, a major proportion of farmers remain outside the ambit of a policy of a subsidized rate of interest, and for that matter, of loan waiver schemes announced by respective State governments. In other words, this sop provides relief to the relatively better

off and lesser –in –number medium and large farmers without having much impact on their income and consumption. This anomaly can be rectified only if the credit market is expanded to include agricultural labourers, marginal and small land holders. It is, therefore, important to revisit the credit policy with a focus on the outreach of banks and financial inclusion.

Second, the government along with the farmers' body should desist from clamoring for loan waivers as it provides instant temporary relief from debt but largely fails to contribute to farmers' welfare in the long run. To what extent this relief measure can help bring farmers out of indebtedness and distress remains a question. This is because farmers' loan requirement is for non-agricultural purposes as well, and often goes up at the time of calamity when the state offers minimal help. If governments are seriously willing to compensate farmers, they must direct sincere efforts to protect them from incessant natural disasters and price volatility through crop insurance and better marketing systems.

Third, it should be understood that writing off loans would not only put pressure on already constrained fiscal resources but also bring in the challenge of identifying eligible beneficiaries and distributing the amount.

The report of the Committee on Doubling of Farmers' Income, Ministry of Agriculture and Farmers Welfare, has rightly suggested accelerating investments in agriculture research and technology, irrigation and rural energy, with a concerted focus in the less developed eastern and rain –fed States for faster increase in crop productivity and rural poverty reduction. Additional capital requirements estimated for 20 Indian State are ₹ 2.55 lakh crore (₹1.9 lakh crore on irrigation and rural infrastructure by State Governments and ₹ 0.645 lakh crore by the farmers) at 2015 -16 prices by 2022-23. Public and private investments are required to grow at an annual rate of 14.8% and 10.9% in the next seven years. A diversion of money towards debt relief, which is in fact unproductive, will adversely impinge on state finances, may dissuade lending by the banks, and hence prove counterproductive to the government's broader mandate of doubling famers' income by 2022-13. ■

Soure: The Hindu-Dt. 14.11.17

PRIVATIZATION IS NOT THE PANACEA FOR PSU BANKS' ISSUES

Chairman- SBI.

State –run banks have been taking it on the chin due to the ₹11,300 crore fraud at Punjab National Bank.

On the question of Nirav Modi episode in PNB Shri. Rajnish Kumar Chairman SBI said. I don't think that people have withdrawn money from PNB. Customers have faith due to ownership of the government. If it was a private sector lender by now there would have been a run on the bank. But yes, there has been a loss of trust in bank boards. Governance of those should be set right.

Privatization of PSU banks is not the panacea for such situation said the chairman. When people talk about privatization, the theory they must keep in mind is that it is government ownership that is saving the day. Even if it was a private sector bank, still the government would have to step in to save the bank and everywhere in the world it has happened. People who speak about privatization are missing the point, I am not advocating private or public sector banks or which model is better. All I am saying is that whatever the structure.

On the question of improving the state ownership he said the debate has to be balanced. There is a huge socio-economic agenda which only public sector Banks cater to. Does anyone speak about who will run branches in the troubled and remote parts of the country where you have to walk for 12 hours to reach the branch? If private sector is all about good corporate governance, then tell me which public sector company is in NCLT today? They are all private sector companies. We talk about privatization because we now have one bank as a good example. There are many public sector companies which have top –class corporate governance.

The main issue that is ailing the corporate governance is the steps that should be taken to improve governance at PSU banks and for that

matter, the private sector corporate in this country. They all default and sit in the front rows of the industry associations – that is the reality today. So when somebody is preaching, preach ... for sure, but look at the reality. Why are these defaulters sitting in the front row and bankers sitting in the back now?

Overhaul is definitely needed in the PSU banking system but it is long –drawn process. It's not that today you decide that we are overhauling it and the results will be seen tomorrow. We need to focus on the quality of the board and the quality of top management.

The debate should be on what things should be done to avoid a repeat of such episodes. Ninety nine percent of the banking employees are no way involved. No one praises hard working bank employees. Just because in some branch somewhere an unfortunate incident happened, the media narrative becomes negative. I agree that something like this should not have happened, but observation of experts or shouting on television channels that all bankers are corrupt- what are we doing? We are demoralizing our people.

As for as State Bank is concerned the attention to non credit risks has to be more because it could explode suddenly – And operational risk is where you just try to build scenarios that this may go wrong or that may go wrong and based on that, you would put risk mitigation measures.

All of us, regulators, private banks or PSU banks who constitute the financial system must take such action which does not result into lack of faith in the banking system. That should be the priority – I am very confident that PNB will not do anything that will erode the faith in the Indian banking system.

Last quarter was better. Lot of things are happening in the road sector where this new Hybrid Annuity Model is working out fine. There will be monetization of

assets. There is considerable interest in renewable energy where we have said we will not finance if you bid aggressively but there are reasonable bids where we are convinced of the viability. All these resolutions, whenever they happen, will lead to investments because it is not all about just paying

the existing creditors but there are also investment plans which the bidders have given. The consumer story in any case is intact and we have not seen much slowdown.

Excerpts from the interview given to Economic Times

Source: Economic Times, DT.27.2.18

Judicial Verdict

**[2018(156) FLR 644]
(MADHYA PRADESH HIGH COURT)
SANJAY YADAV and SHEEL NAGU, JJ.
W.A.No.310 of 2015
March 2, 2017
Between
CENTRAL BANK OF INDIA, MUMBAI and others
and
DRAGENDRA SINGH YADAV**

Industrial Disputes Act, 1947-Section 33-C (2)-Central Bank of India Employees Pension Regulations, 1995-Regulation 22-Dismissal from service-Reference was answered in favour of respondent-Dismissal order was set aside and the respondent was reinstated-Award was unsuccessfully challenged by appellant which was dismissed-Conditional joining order was passed-Feeling aggrieved the respondent filed writ petition which was allowed-hence, the present appeal by the employer-Contention of appellant was that the learned Single Judge failed to consider Regulation 22 of Regulation 1955 which prohibited to take into consideration the period not rendered as service for the purpose of pension-Further contention was that the workman had already approached the Government under section 33-C (2) of Act, 1947 so he should have resorted to get relief under that provision instead of invoking jurisdiction under writ petition-Held in view of submission made by respondent and the law laid down by Supreme Court in Ganesh Rajak, the contention of appellant that the respondent should have taken recourse to provisions of section 33-C (2) Act 1947 stood rejected-Dismissal order and direction for reinstatement with continuity of service was implicit as per S.S.Shetty v. Bharat Nidhi Ltd., AIR 1958 SC 12-No interference with the order of learned Single Judge-Appeal dismissed.

[Paras 10 to 17]

JUDGMENT

SANJAY YADAV and SHEEL NAGU, JJ.- None for the appellant.

Respondent present in-person.

It is reported that the Counsel are not appearing because of call of High Court Bar Association to abstain the Court.

Matter was called out yet no one appeared for the appellant.

As the matter is posted for final hearing

respondent is heard.

2. Appellant vide this Intra-court Appeal under section 2 (1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhinyam, 2005, takes exception to order dated 7.8.2015 passed in W.P.No.1571/2003 (s). [it is observed that though in the title petitioner states that the Appeal is directed against order dated 7.8.2015 passed in writ petition No. 4812/2014 (s) & W.P.No. 1571/2013; however in the relief clause the petitioner seeks quashment/setting aside of judgment/order dated 7.8.2015 passed in writ petition No.1571/2013]. Therefore, the Appeal is examined only against the order in W.P.No.1571/

DUTY FIRST, RIGHT NEXT

2013.

3. Petition in question, at the instance of respondent was directed against order dated 18.8.2012 passed by the appellant-Bank in purported compliance of Award dated 10.9.2008 passed by Central government Industrial Tribunal-cum-Labour Court Jabalpur in case No. CGIT/LC/R/57/88.

4. The Award was on an industrial dispute reference at the instance of respondent as to whether the action of management of Central Bank of India Gwalior in dismissing from service Shri D.S.Jadon, Agriculture Assistant w.e.f.29.1.1982 is justified? If no, to what relief is the workman entitled.?

5. The reference was answered by CGIT in favour of the respondent-workman, whereby the dismissal order dated 29.1.1982 was set aside and the workman was directed to be reinstated however there was no order as to back wages.

Award was unsuccessfully challenged by the appellant vide writ petition No. 621/2009 which was dismissed on 8.5.2012.

6. It appears from the record that the challenge was not carried forward. Instead the appellant in compliance to the Award, passed the order on 18.8.2012. The order speaks itself that the respondent-workman was taken in service as a fresh incumbent.

7. The order is in the following terms:

“In compliance of award dated 10.9.2008 passed by Central Government Industrial Tribunal-cum-Labour Jabalpur and also concurred by Hon'ble High Court of Madhya Pradesh Bench at Gwalior vide their order dated 18.5.2012, we are pleased to inform you that your services are being reinstated without back wages for the post of Agriculture Assistant from the date of reporting at the advised place of posting in the bank on the following terms and conditions:

(1) You will be paid a basic of pay of ₹ 10,000/- per month in the scale of pay and other

allowances as per Ib-Partite Settlements as amended from time to time.

You shall not be entitled to any benefit for the intervening period i.e. salary Increments, Allowances ,Perquisites service seniority etc, and not be treated on duty from the date of removal from Banks service to actual date of reinstatement in the service.

Further if you are eligible in terms of Regulation 22 of Central Bank of India (Employees) Pension Regulation, 1995 you will not qualify for pensionary benefits from the period of your removal till the resuming of duties.

(2) You are being placed at our LBO office, Morena. You are, therefore advised to report at our LBO office Morea on 21.8.2012 at 10.00AM positively.

As such Mr. Jadon is hereby instructed to report at the advised place of posting on 21.8.2012 failing which it would be deemed that you are not interested in reinstatement and in such eventuality further course of action will follow.”

8. Aggrieved respondent-workman filed a writ petition No.1571/2013 seeking quashment of the order dated 18.8.2012 and a direction to the Bank to reinstate him in service and grant him continuity thereof from the date of termination i.e.29.1.1982.

9. The relief sought by the respondent-workman found favour with the Writ Court whereon the impugned order came to be passed, holding:

“... In the opinion of this Court the order (Annexure P/1) passed by the respondent-Bank is not in conformity with the order passed by the Tribunal. Hence the impugned order, so far as it relates to denying benefits to the petitioner for the intervening period (the period from the date of removal of the petitioner from service to the date of his reinstatement) excepting denial of back wages, is

quashed and it is held that the petitioner shall be held entitled for all the benefits except back wages construing him to be in service from the date of removal till the date of actual reinstatement in service. Needless to mention that consequent upon the reinstatement petitioner is entitled for regular salary from the date of Award subject to adjustment of the amount already paid under section 17-B of the Industrial Disputes Act.

10. The order passed in writ petition is being challenged on the ground that learned Single Judge fell into patent legal error in not taking into consideration the provisions contained under the Central Bank of India Employees Pension Regulation, 1995 (hereinafter referred to as "Regulation 1995") which regulates actual service to be rendered before the person is entitled for benefit for the pension. It is urged that as the back wages were denied to the respondent workman grant of continuity of service would tantamount to dual benefit to the respondent which would be contrary to Regulation 22 of regulation, 1995 which does not take into consideration the period not rendered as service for the purpose of pension. It is also the contention of the appellant that the employee had suppressed the material fact that earlier he moved an application to the Government under section 33-C (2) of the Industrial disputes Act, 1947. It is further urged that learned Single Judge ought to have directed the workman to have invoked the said provisions for relief sought instead of entertaining the writ petition.

On these grounds the appellant seeks quashment of the impugned order.

11. Taking up submission that respondent-workman ought to have been called upon to have exhausted the remedy under section 33-C (2) of the Act of 1947 respondent workman is justified in submitting that it will be beyond jurisdiction of the Labour Court to have adjudicated the dispute while deciding the entitlement of the respondent-workman.

12. Reliance is placed on the decision in *Municipal Corporation of Delhi v. Ganesh Rajak*, wherein it is observed:

"12..... The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33-C (2) of the act. It is only when the entitlement has been earlier adjudicated recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under section 33-C (2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."

13. In view of the submission made by respondent-workman and the law laid down by the Supreme Court in the case of *Ganesh Rajak* (supra) the contention raised on behalf of appellant that the respondent-workman ought to have been directed to take recourse to the provisions of section 33-C (2) stands rejected.

14. As regard to the contention based on the Regulation 1995 the same deserves to be rejected at the outset for the reason that with setting aside of the dismissal order and direction for reinstatement continuity of service is implicit. For an authority please see *S.S. Shetty v. Bharat Nidhi Ltd.*, wherein their Lordships were pleased to hold:

"16. Whatever be the position in regard to the terms and conditions of employment thus varied in accordance with the terms of the award the benefit of reinstatement awarded to a workman certainly cannot be treated as part of the contract between him and the employer. The effect of an order of reinstatement is merely to set at nought the order of wrongful dismissal of the workman by the employer and to reinstate him in the service of the employer as if

Contract of employment originally entered into had been continuing.

The terms and conditions of the contract which obtained when the workman was in the employ of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employ of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before."

15. reference can also be had of the decision in *M/s. Hindustan Tin Works Pvt Ltd. v. The Employees of M/s Hindustan Tin Works Pvt. Ltd.*, wherein it is held:

"9 ... The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the

workman contrary to the relevant or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer.

16. The order dated 18.8.2012 which was the subject-matter of challenge in writ petition No.1571/2013 (s) when is tested on the anvil of the principle of law laid down in *S.S. Shetty* (supra) and *M/s Hindustan Tin* (supra) has rightly not been disapproved by the learned Single Judge, as would warrant an indulgence.

17. Consequently appeal fails and is dismissed.

18. Let the dues in favour of respondent-workman in the terms of order passed in writ petition No.1571/2013(s) be settled within a period of sixty days from the date of communication of this order. There shall be no costs.

Appeal Dismissed.

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