

THE STATE BANK OF INDIA & ORS.

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v.

RAVINDRA NATH & ORS.

(Civil Appeal No. 12367 of 2017)

FEBRUARY 12, 2019

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[UDAY UMESH LALIT AND HEMANT GUPTA, JJ.]

State Bank of India Act, 1955: s.18 – Re-fixation of salary – Respondent joined the appellant bank in 1981 and on 24.6.2001, he was posted at Johannesburg as Manager on a salary of USD 1965 per month but subject to change from time to time – In the letter of posting, there was a clause that salary as well as other terms and conditions spelt out in the letter were subject to review and revision by the bank from time to time – On 16.1.2001, the salary in respect of the respondent was re-fixed as USD 1300 and same was subsequently revised to USD 1380 – The stand of the bank was that when the respondent was posted at Johannesburg, the salary was fixed on Consumer Price Index of 1992 on the basis of directives of the Working Group of the Standing Committee w.e.f 1.1.1995 in the absence of the availability of Cost of Living Index but since the relevant data became available in March 2000, the Working Group in its meeting held on 15.1.2001, refixed the salary based on formula approved by the Standing Committee and that these recommendations of the Working Group were binding on all public sector banks in respect of the officers posted abroad – High Court held in favour of respondent on the ground that the respondent did not have privity of contract with the Standing Committee on the basis of which the salary was reduced and that the letter did not remotely suggest that the salary of USD 1965 was tentative – On appeal, Held: The respondent as an Officer of the Bank is bound by the salary structure approved by the Bank for its Officers – The decision of the Standing Committee is a part of the decision-making in respect of salary payable to the employees of the Banks – The employee of a Bank has no right that he should be associated with the decision-making process in respect of the fixation of salary – However, if the question of reasonableness of salary arises, then in exercise of power of judicial review, the Court may examine the decision-making process – In exercise of power of judicial review, there was no infirmity in the decision of Standing Committee taken

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- A *on 15.01.2001 in pursuance to the direction of the Government of India issued under s.18 of the Act – Since, the salary was fixed for all Officers of the Public Sector Banks in a non-discriminatory manner keeping in view the Cost of Living Index, the High Court erred in law in setting aside the reduction in salary – There was reasonable basis of reduction of salary – Moreover, there was no promise ever made to the respondent that his salary of US \$ 1965 shall remain unchanged during the period of his posting – In fact, it was categorically mentioned that the salary as well as perquisites were subject to change from time to time – Therefore, mere fact that the salary was changed subsequently, it will not confer any legally enforceable right in favour of the respondent to challenge the same on the ground that the same is arbitrary or unjust.*

Allowing the appeal, the Court

- HELD :** 1. The relevant conditions in the letter of posting showed that salary of US \$ 1965 was not promised to be paid for the entire period of posting in Johannesburg. It was subject to change either way that is increase or decrease. The Bank had explained that such salary of US \$ 1965 was fixed in absence of Cost of Living Index on the basis of recommendations of the Committee. Later, the Standing Committee was constituted in exercise of the powers under Section 18 of the State Bank of India Act, 1955 mandating that any change in future in the salaries and perquisites and other service conditions has to be affected with the prior approval of the Standing Committee. In view of such directions, the appellant Bank framed service conditions and allied matters. It was thereafter on 15.1.2001, the Working Group of the Standing Committee decided the salary payable to the Officers of the Bank. Such salary structure was meant for all Officers of Public Sector Banks posted abroad. Such recommendations were applicable in non-discriminatory manner to all Officers of the Public Sector Banks. [Paras 15, 16][128-F-G, 129-B-C]
2. Though, certain representations were said to have been made by the Chief Executive Officer on behalf of the five Officers posted at Johannesburg but there was no communication that the Officers were finding it difficult to work on the basis of such reduced salary. The respondent never offered to seek
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repatriation to India and in fact sought voluntary retirement on depositing of Rs. 10,00,000/- for further stay in Johannesburg. It showed that there was no financial loss suffered by him on account of reduction in salary, but actually, he found it lucrative to resign from the service of the Bank and to stay in Johannesburg after payment of substantial amount. [Para 17][129-C-E]

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3. The salary was fixed in terms of directions of the Government of India, in respect of all Public Sector Banks keeping in view the Cost of Living Index in different countries and making adjustments in the salaries according to the Cost of Living of each country. The Cost of Living in each country is separate and distinct and such factors were taken into consideration while fixing the salary on the basis of Bulletin of Statistics published by U.N. in March, 2000. The earlier fixation of salary for Johannesburg was fixed by Working Group w.e.f. 01.01.1995 on the basis of Consumer Price Index of 1992 as per International Financial, Statistics. The revised salary structure was not meant for any particular official but was applicable to all Officers of Public Sector Banks posted abroad. [Para 18][129-F-G]

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4. The respondent as an Officer of the Bank is bound by the salary structure approved by the Bank for its Officers. The decision of the Standing Committee is a part of the decision-making in respect of salary payable to the employees of the Banks. The employee of a Bank has no right that he should be associated with the decision-making process in respect of the fixation of salary. However, if the question of reasonableness of salary arises, then in exercise of power of judicial review, the Court may examine the decision-making process. In exercise of power of judicial review, there was no infirmity in the decision of Standing Committee taken on 15.01.2001 in pursuance to the direction of the Government of India issued under Section 18 of the Act. [Para 20][130-C-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12367 G
of 2017.

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From the Judgment and Order dated 09.07.2014 of the High Court of Judicature at Bombay in Writ Petition No. 2457 of 2006.

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- A Neeraj Kishan Kaul, Sr. Adv., Sanjay Kapur, Ms. Megha Karnwal, Bharat Gangadharan, Ramchandra Madan, Advs. for the Appellants.
 Subrat Birla, Subhash Chandra Birla, Advs. for the Respondents.
 The Judgment of the Court was delivered by
HEMANT GUPTA, J.
- B 1. The challenge in the present appeal is to an Order passed by the Division Bench of the High Court of Judicature at Bombay on 09.07.2014, whereby the communication dated 16.01.2001 re-fixing the salary of the respondent from 01.01.2001 was set aside.
- C 2. The respondent-writ petitioner before the High Court joined the appellant Bank in the year 1981. After almost nineteen years vide letter dated 24.06.2000, he was posted at Johannesburg Branch (South Africa) as Manager (Credit) as a Scale V Officer on a fixed salary of US \$ 1965 (net) per month but subject to change from time to time. Apart from such salary, the respondent was granted various allowances including reimbursement of education expenses of the children, usage of Bank's car, leave and reimbursement of medical expenses apart from the host of other allowances. The relevant clause in respect of salary reads as under:
- E “1.1. A fixed salary US \$ 1965 (net) per month subject to change from time to time will be paid to you abroad from the date of your reporting at the foreign office. Wherever taxes are payable by you on account of salary and perquisites such taxes will be reimbursed by the bank.”
- F 3. There was also a condition that salary and terms and conditions as spelt out in the letter are subject to review and revision by the Bank from time to time. Clause 7.3 in this respect reads as under:
“7.3 Your salary as well as other terms and conditions spelt out in this letter are subject to review and revision by the bank, from time to time.”
- G 4. It was on 16.01.2001, the salary in respect of the respondent was re-fixed as US \$ 1300 w.e.f. 01.01.2001. The same was subsequently revised to US \$ 1380 on 14.12.2001. It is the stand of the Bank that when the respondent was sent to Johannesburg, salary was fixed on Consumer Price Index of 1992 on the basis of directives of the Working
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Group of the Standing Committee w.e.f. 01.01.1995 in the absence of availability of Cost of Living Index. But since, the relevant data became available in March 2000, the Working Group in its meeting held on 15.01.2001, has re-fixed the salary on the basis of formula approved by the Standing Committee.

5. The revised minimum net monthly salary in respect of Scale I Officer was US \$ 950 reduced from US \$ 1615 per month, whereas, in respect of Scale V Officer such as the respondent, the salary was fixed at US \$ 1300 reduced from US \$ 1965. The maximum salary in respect of TEG Sp. SC. II, was US \$ 1900 reduced from US \$ 2565. The said communication reads as under:

REVISION OF SALARY WEF 01.01.2001

1. In the absence of availability of Cost of Living Index data at the material time salary for Johannesburg was fixed by the Working Group w.e.f. 01.01.1995 on the basis of Consumer Price Index of 1992 (as per IMF Publication of September, 1995) as available.

2. With the relevant data now available the Working Group in its meeting held on January 15, 2001 has re-fixed the salary on the basis of the formula approved by the Standing Committee. The detailed salary levels for various grades with effect from 01.01.2001 will be as under:

Scale	Net Monthly Salary in US \$ (at present)	Net Monthly Salary in US \$ payable w.e.f. 01.01.2001
I	1615	950
II	1690	1025
III	1765	1100
IV	1865	1200
V	1965	1300
VI	2115	1450
VII	2265	1600
TEG Sp. SC. I	2415	1750
TEG Sp. SC. II	2565	1900

6. The stand of the Bank is that the recommendations of the Working Group are binding on the Bank which are applicable to all Public Sector Banks, in respect of the Officers posted abroad. The reliance

- A was placed upon Section 18 of the State Bank of India Act, 1955¹ as also the proceedings of the Standing Committee from time to time, the reference to which will be made subsequently.

B 7. The High Court in the impugned judgment held that the respondent-writ petitioner has no privity to contract with the Standing Committee on the basis of which the salary was reduced. It has also held that the salary of the respondent has been reduced within three months which is unfair and arbitrary and that the letter dated 24.06.2000 does not even remotely suggest that salary of US \$ 1965 was tentative, nor the available information taken into consideration for fixing the salary was shared with the respondent.

C 8. The High Court did not accept the argument raised by the respondent of the equal pay for equal work for the reason that the Cost of Living in the different countries is different, therefore the salary must necessarily be fixed keeping in mind various factors which vary from country to country.

D 9. In the present appeal, the appellant refers to the constitution of a Committee by the Government of India in August 1981 for evolving uniform guidelines on salaries and other terms applicable to Officers of Indian Banks posted abroad. The Report of the Committee produced before this Court is on record. Some of the relevant extracts from the Report read as under:

E “12. The salary levels recommended by the committee for countries for which a detailed study has been made are given in Annexure-III. To facilitate comparison with the existing salary structure, not only the gross salary recommended has been given but the net take home salary after taxes etc., has also been indicated separately, as some of the banks have a practice of fixing the salary levels on the basis of net take home pay. The salary model recommended broadly follows the level obtaining in the State Bank, determined as on 1979 and updated by building the cost of living indicates for 1980 and 1981. This updating has been done on the basis of UK Cost and Living Index figure after making an allowance of 5 % for the accommodation factor as the officers stand insulated from increases in cent of accommodation.

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F G H 14. Before applying the revised model set of provisions conditions outlined in Annexure I and II, Individual banks should be asked to

¹The Act

work out the impact of the implementation of the standardization scheme on each of its officers working overseas so as to ensure that the adoption of the standardisation structures does not result in either too large a benefit or sever curtailment of the existing emoluments. While the Committee has taken a broad view in the matter on the basis of the information supplied by the various banks, having regard to the limited number of officers working abroad, an individualistic exercise as suggested could be done to minimize the problems that may arise on this score. It is, therefore, suggested that the revised set of a service conditions be communicated to all the banks who have overseas offices, with a request to them to advise the standing committee, the present salary and allowances pattern of each of the officers, the revised salary and allowances payable and the net difference. Based on this detailed information, the standing committee may modify the salary levels appropriately.”

10. It is, thereafter on 27.07.1982, the Government again communicated to Public Sector Banks that any change in future, in the salaries, perquisites and other service conditions of Officers posted abroad may be made in consultation with and with prior approval of the Standing Committee constituted by the Government. The Standing Committee consists of Chairperson of four Public Sector Banks and Joint Secretary in the Banking Division of the Government of India. It was in July, 1984, the appellant Bank framed service conditions and allied matters on personnel posted overseas.

11. The fixation of salary of the Officers posted in Johannesburg (South Africa), Botswana and Seychelles was considered by Working Group of the Standing Committee in its meeting held on 15.01.2001. In respect of fixation of salary for the Officers at Johannesburg, the Cost of Living Index was revised on the basis of Bulletin of Statistics published by U.N. in March, 2000 as 62, as compared to 100 of New York. Therefore, if the salary for Scale III Officers in New York is US \$ 1773, then the salary for Scale III Officers in South Africa would be 62% that is US \$ 1099.26, say US \$ 1100. On the basis of such criteria, the net monthly salary of different grades of Officers was fixed as was communicated to the respondent on 16.01.2001.

12. The counter-affidavit filed by the respondent relies upon the representations submitted by Chief Executive Officer of the Appellant-Bank posted at Johannesburg Bank on 22.01.2001 that reduction would

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- A cause extreme hardship to the Officers. Such grievance was repeated subsequently. It is also pointed out that the representations were not accepted on 12.04.2004, whereas, the term of posting of the respondent came to end in November, 2004. It is also stated in the affidavit of the respondent himself that he has taken voluntary retirement on 18.03.2005, after paying a sum of Rs. 10,00,000/- including payment of bond money.
- B It is admitted on record that the respondent after taking voluntary retirement on 18.03.2005 stayed in Johannesburg only, where he was posted as an Officer of the Bank.

13. Learned counsel for the appellant argued that the High Court has committed material illegality in holding that the salary communicated to the Officers on 24.06.2000, was not tentative. It is contended that such finding is contrary to the letter dated 24.06.2000, wherein, while communicating the salary of US \$ 1965, it was categorically mentioned that it is subject to change from time to time. Apart from the said fact, there was Clause 7.3 which is also to the effect that salary as well as other terms and conditions spelt out in the letter are subject to review and revision by the Bank from time to time.

14. Mr. Kaul learned counsel for the appellant-Bank has pointed out that there was no alteration in the perquisites granted to the respondent which was to the tune of Rs. 1,60,000/- per month. It was only the salary component which was reduced on availability of the Cost of Living Index in March, 2000.

15. A perusal of relevant conditions as reproduced above shows that salary of US \$ 1965 was not promised to be paid for the entire period of posting in Johannesburg. It was subject to change either way that is increase or decrease. The Bank has explained that such salary of US \$ 1965 was fixed in absence of Cost of Living Index on the basis of recommendations of the Committee. Later, the Standing Committee was constituted in exercise of the powers under Section 18 of the Act mandating that any change in future in the salaries and perquisites and other service conditions has to be affected with the prior approval of the Standing Committee. Section 18 of the Act reads as under:

“18. Central Board to be guided by directions of Central Government.—(1) In the discharge of its functions the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the governor of the Reserve Bank and the chairman of the State Bank, give to it.

(2) All directions shall be given by the Central government and, if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.”

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16. It is in view of such directions that the appellant Bank framed service conditions and allied matters. It is thereafter on 15.1.2001, the Working Group of the Standing Committee decided the salary payable to the Officers of the Bank. Such salary structure is meant for all Officers of Public Sector Banks posted abroad. Such recommendations are applicable in non-discriminatory manner to all Officers of the Public Sector Banks.

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17. Though, certain representations are said to have been made by the Chief Executive Officer on behalf of the five Officers posted at Johannesburg but there is no communication that the Officers are finding it difficult to work on the basis of such reduced salary. The salary was reduced from the month of January, 2001, though, the respondent-writ petitioner has joined only on 21.09.2000. The respondent never offered to seek repatriation to India and in fact sought voluntary retirement on depositing of Rs. 10,00,000/- for further stay in Johannesburg. It shows that there was no financial loss suffered by him on account of reduction in salary, but actually, he found it lucrative to resign from the service of the Bank and to stay in Johannesburg after payment of substantial amount of Rs. 10,00,000/-.

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18. The salary has been fixed in terms of directions of the Government of India, in respect of all Public Sector Banks keeping in view the Cost of Living Index in different countries and making adjustments in the salaries according to the Cost of Living of each country. The Cost of Living in each country is separate and distinct and such factors have been taken into consideration while fixing the salary on the basis of Bulletin of Statistics published by U.N. in March, 2000. The earlier fixation of salary for Johannesburg was fixed by Working Group w.e.f. 01.01.1995 on the basis of Consumer Price Index of 1992 as per International Financial, Statistics (IMF Publication - September, 1995). The revised salary structure is not meant for any particular official but is applicable to all Officers of Public Sector Banks posted abroad.

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19. The argument of the learned counsel for the respondent is that when the respondent was deputed in June, 2001 the Cost of Living Index as in March, 2000 was available, therefore, there was no reason

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- A to fix the salary on the basis of Consumer Price Index of the year 1995. It has come on record that the Bulletin of Statistics published by the U.N. in March, 2000 was considered by the Standing Committee in its meeting held on 15.01.2001. The respondent was informed of his reduced salary the very next day. Therefore, the Cost of Living Index on the basis of March, 2000 Report was considered in January, 2001. Such decision cannot be said to be arbitrary only because it was taken after about nine months of the publication of the data.

- B 20. The reasoning given by the High Court that there is no privity of contract of the respondent-writ petitioner with the Standing Committee is not tenable. The respondent-writ petitioner as an Officer of the Bank is bound by the salary structure approved by the Bank for its Officers. The decision of the Standing Committee is a part of the decision-making in respect of salary payable to the employees of the Banks. The employee of a Bank has no right that he should be associated with the decision-making process in respect of the fixation of salary. However, if the question of reasonableness of salary arises, then in exercise of power of judicial review, the Court may examine the decision-making process. In exercise of power of judicial review, we do not find any infirmity in the decision of Standing Committee taken on 15.01.2001 in pursuance to the direction of the Government of India issued under Section 18 of the Act.

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- E 21. Since, the salary has been fixed for all Officers of the Public Sector Banks in a non-discriminatory manner keeping in view the Cost of Living Index, we find that the High Court erred in law in setting aside the reduction in salary. There is reasonable basis of reduction of salary. Still further there was no promise ever made to the respondent-writ petitioner that his salary of US\$ 1965 shall remain unchanged during the period of his posting. In fact, as reproduced above, it was categorically mentioned that the salary as well as perquisites are subject to change from time to time. Therefore, mere fact that the salary was changed subsequently, it will not confer any legally enforceable right in favour of the respondent to challenge the same on the ground that the same is arbitrary or unjust.
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22. The present appeal is allowed. The order passed by the Bombay High Court is set aside and the Writ Petition is dismissed with no order as to costs.