

Kerala High Court

Mukund K. Pai vs Punjab National Bank on 11 April, 2019

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

THURSDAY, THE 11TH DAY OF APRIL 2019 / 21ST CHAITHRA, 1941

WP(C).No.26946 of 2018

PETITIONERS:

- 1 MUKUND K. PAI  
AGED 39 YEARS, S/O. V.KRISHNA PAI, C-34,  
JAL VAYU VIHAR, MUNDAMVELI, KOCHI - 682 507.
  - 2 PRAJU B. CHANDRAN  
AGED 39 YEARS, S/O. B.M. CHANDRAN,  
BLAYIMUNDACKAL HOUSE, MULAVOOR P.O., ERNAKULAM.
  - 3 ANISH KUMAR P.S.  
AGED 38 YEARS, S/O. V. PUSHKARAN PILLAI,  
AMBALAPARAMBIL HOUSE, BEHIND GOVT. I.T.I.,  
ATHIRAMPUZHA P.O., KOTTAYAM - 686 562.
  - 4 GIFFY T.J.  
AGED 39 YEARS, S/O. T.J. JOHN, H.NO. 16/1990 B,  
TQR CROSS ROAD, THOPPUMPADY, KOCHI - 5.
  - 5 LINO K. PHILIP  
AGED 41 YEARS, S/O. PHILIP K.J., KOOTHRAPALLI HOUSE,  
PALACHODE P.O., KOLATHUR VIA, MALAPPURAM.
- BY ADVS.  
SRI.LIJU.V.STEPHEN  
SMT.INDU SUSAN JACOB

RESPONDENTS:

- 1 PUNJAB NATIONAL BANK  
HEAD OFFICE, PLOT NO. 4, SECTOR 10, DWARAKA,  
NEW DELHI - 110 075,  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 2 PUNJAB NATIONAL BANK

CIRCLE OFFICE, MARKET ROAD, 40/1461,  
ERNAKULAM - 682 011, REPRESENTED BY ITS CIRCLE HEAD.  
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3 PUNJAB NATIONAL BANK  
CIRCLE OFFICE, SHATABDHI BHAWAN, MINI BYEPASS ROAD,  
KOZHIKODE - 673 016,  
REPRESENTED BY ITS CIRCLE HEAD.

\* 4 UNION OF INDIA,  
REPRESENTED BY SECRETARY, MINISTRY OF FINANCE,  
DEPARTMENT OF FINANCIAL SERVICES, NEW DELHI,  
PIN- 110001.

(ADDITIONAL RESPONDENT NO.4 IS IMPEADED AS PER  
ORDER DATED 12.11.2018 IN I.A.NO.02 OF 2018).

BY ADVS.  
SMT.HEMALATHA M., CGC  
ASIF.K.H  
MAJEED.C.A  
MUJEED .C.A  
SRI.SANDEEP ANKARATH, SC, PNB  
SMT.POOJA SURENDRAN, GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
01.04.2019, THE COURT ON 11.04.2019 DELIVERED THE FOLLOWING:  
WP(C).No.26946 of 2018

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#### JUDGMENT

~~~~~ The petitioners, who are Ex-servicemen retired as Personnel Below Officer Rank (PBOR) from Indian Navy, are aggrieved by reduction of their basic pay in violation of Rules, Orders and prevalent Government Policy.

2. The five petitioners retired from Indian Navy during 2015-17 after rendering 15 to 20 years of service. After retirement, the petitioners were appointed as Single Window Operator-A in the Punjab National Bank. Their appointment against the said clerical cadre was under Ex-servicemen quota.

3. The petitioners contend that in the light of the orders passed by Government of India, Department of Financial Services (Welfare) for fixation of pay of Ex-servicemen re-employed in public sector bank, their pay WP(C).No.26946 of 2018 plus D.A. drawn by them at the time of

release from the Armed Force has to be protected. The last pay drawn by petitioners 1 to 4 was more than 70,000/-. The last pay drawn by the 5th petitioner was 53,098/-. When the petitioners were inducted in the services of the 1st respondent-Bank, the basic pay of petitioners 1 to 4 were fixed as 40,710/-. The basic pay of the 5th petitioner was fixed as 34,160/-. Though the pay so fixed was less than the last pay drawn by them, it was highest in the cadre to which they were appointed.

4. The petitioners were receiving the said pay from the time of joining till June, 2018. On 27.07.2018, the petitioners received a letter stating that as per clarification issued by Indian Banks Association, the respondent-Bank has reduced the basic pay of petitioners 1 to 4 from 40,710/- to 31,540/-. The 5th petitioner's pay was reduced from `34,160/- to `31,540/-. The petitioners have produced their last pay certificates, pay slips at the time of their joining services in the Bank and the pay slips issued WP(C).No.26946 of 2018 after 27.07.2018. These documents go to show that the petitioners' pay has been substantially reduced.

5. The petitioners contended that the initial pay in respect of the petitioners were fixed in strict compliance of the Rules. The 1st respondent-Bank cannot arbitrarily reduce their pay. The reservation in re-employment granted to the petitioners is only a one time measure. According to the petitioners, the pay has been reduced on the basis of Ext.P20 clarification issued by the Bank on the basis of a communication from Indian Banks Association. Ext.P20 cannot take away the right vested in the petitioners. The petitioners, therefore, seek to declare that they are entitled and eligible to the pay initially fixed by the 1st respondent.

6. The respondents appeared in the writ petition and defended the writ petition filing detailed counter affidavit. In the counter affidavit, it has been stated that the 1st respondent is a nationalised Bank. Pay fixation of Ex-servicemen re-employed is based on Government WP(C).No.26946 of 2018 guidelines. The respondents admitted that the petitioners were recruited under Ex-servicemen quota under common recruitment process. The respondents stated that there are only 20 stages in the pay scale applicable to the cadre. After this 20 stages, 8 more stages are maintained for those who have to receive stagnation increments. While making fitment of salary in respect of the petitioners, their basic pay was fixed beyond the maximum stage in the clerical cadre i.e., beyond the 20th stage. An employee reaches maximum at the 20th stage which has a basic pay of 31,540/-. Beyond that, only stagnation increments can be given.

7. Relying on Ext.R1(c) issued based on a letter dated 17.05.2018 of Indian Banks Association, the respondents contended that maximum of pay contains the maximum pay in pay scales prescribed for a post or grade. In respect of SWO-A, the cadre to which the petitioners were engaged, maximum pay is 31,540/-. Therefore, in view of the clarifications issued by the Indian Banks WP(C).No.26946 of 2018 Association, the pay of the petitioners had to be appropriately re-fixed. The petitioners cannot raise any grievance in this regard. The writ petition is devoid of any merit and it is only to be dismissed, contended the respondents.

8. I have perused the pleadings and heard learned counsel appearing on either side. The counsel reiterated their contentions made in the writ petition and counter affidavit.

9. Ext.P1 contains instructions issued under file No.4/3/2012-Welfare, Department of Financial Services (Welfare), Government of India, for fixation of pay of Ex-servicemen re-employed in public sector banks. The petitioners are Ex-servicemen who joined the 1st respondent-Bank in their workmen cadre. Clause 2.1 of Ext.P1 are the guidelines applicable to the petitioners and binding the 1st respondent. The said Clause reads as follows:-

WP(C).No.26946 of 2018 " 2.1 Ex-servicemen joining in workmen cadre Pay fixation of an ex-servicemen would be through protection of pay plus D.A. 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 officers 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 WP(C).No.26946 of 2018 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 re- employed 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 24.7.2009, the protection of the component of MSP in 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 WP(C).No.26946 of 2018 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 2.9.1998." From the above instructions, it is clear that pay fixation of the petitioners should be by way of protection of pay plus DA drawn by them at the time of release from Navy.

10. Clause 2.1 provides that in respect of re-employment taking place on or after 01.01.2006, pre-retirement pay for those who retired after 01.01.2006 WP(C).No.26946 of 2018 means the pay

in the pay band plus grade pay but inclusive of non-practising allowance, if any, last drawn before retirement. In case of persons who retired after 01.01.2006 in the pre-revised pay scales without opting for the revised pay scales, the pay will be basic pay including stagnation increment and Rank Pay plus Dearness Pay and Dearness Allowance drawn at the time of retirement. The provision mandates that the figure of pay plus DA admissible in the Bank will be fixed with reference to the protection of pay as mentioned above plus DA 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.

11. Clause 2(1)(iii) of Ext.P1 provides that in addition to the pay so fixed, 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 WP(C).No.26946 of 2018 Manager in the Bank.

12. The respondents have not produced any subsequent orders of the Government of India varying the provisions contained in Ext.P1. Ext.P1 instructions would clearly show that public sector banks employing Ex-servicemen, will have to protect the pay plus DA drawn by such Ex-servicemen at the time of their retirement. The respondent-Bank has not done so. For instance, the last pay of the 1st petitioner included a basic pay of 56,900/- and Dearness allowance of 1,242/- along with military service pay of 5,200/-, as is evident from Ext.P10. Ext.P15 pay slip of the 1st petitioner would go to show that his basic salary was fixed as 40,710/- and he was paid a Dearness Allowance of 19,655.36. However, Ext.P15 would go to show that petitioners were placed in the highest of the pay scale applicable to the cadre to which they were appointed. But, the petitioners' pay have been substantially reduced as per Exts.P21 to P25 orders of the respondent and the basic pay of petitioners 1 to 4 has been WP(C).No.26946 of 2018 revised from 40,710/- to 3,1540/-. The basic pay of the 5th petitioner has been revised from 34,160/- to 31,540/-. In view of the orders and instructions issued by the Government of India as is evident from Ext.P1, such reduction unsettling the protection of pay plus DA drawn by the petitioners while they were in Armed Forces, cannot be justified.

13. The Apex Court in its judgment in State Bank of India and others v. K.P.Subbaiah and others [(2003) 11 SCC 646], considered the question whether last pay scale of Ex-servicemen need be protected in re-employment. The Apex Court held that there was no intention in Government Orders, to protect last scale of pay. While holding so, the Apex Court also held that the intention as reflected in the policy of Government of India was to protect the last pay drawn of the concerned Ex-serviceman in the armed forces. The apparent intention was to ensure that the Ex-servicemen at the time of employment in the public sector bank does not get an WP(C).No.26946 of 2018 amount as pay lesser than what he was drawing while in defence service.

14. The contention of the respondents is that the maximum scale applicable to the cadre in which the petitioners are working is at the 20th stage and the petitioners cannot be permitted to draw more than the said stage. According to the respondents, the petitioners were inducted in stage 24 initially, by mistake. The stage 24 is intended for those employees who are in receipt of stagnation increments. I am afraid, on the basis of the binding instructions of the Government of India, the respondents cannot take such a stand. A reading of Ext.P1 would show that the only embargo put on

the nationalised banks as regards a ceiling for the pay to be paid to the Ex-servicemen, is that 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. The respondents have no case that the initial pay granted to the petitioners exceed the said WP(C).No.26946 of 2018 limit.

15. The Standing Counsel for the respondents argued that the public sector banks are bound by the directions given by Indian Banks Association and the Indian Banks Association has clarified that the fitment should not exceed the maximum basic pay of clerical cadre. This stand cannot be justified. 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. Therefore, the contentions of the respondent-Bank based on IBA Circulars are only to be repelled.

16. The petitioners have a further case that their pay has been reduced in gross violation of the principles of natural justice. The petitioners were not put to notice of the reduction in pay. They were not extended with an opportunity of hearing before effecting the reduction. For this reason also, the reduction in pay of the petitioners WP(C).No.26946 of 2018 cannot stand the scrutiny of law.

In the circumstances, this writ petition is allowed. The orders of the respondents at Ext.P21 to P25 are set aside. If the petitioners were paid salary at reduced rates pursuant to Exts.P21 to P25, the arrears of such withheld salary shall be disbursed to the petitioners within a period of two months.

Sd/-

N. NAGARESH, JUDGE aks/04.04.2019 WP(C).No.26946 of 2018 APPENDIX PETITIONER'S EXHIBITS:

EXHIBIT P<sub>1</sub> A TRUE COPY OF THE LETTER NO.

04.03.2012 WELFARE DATED 17.02.2014 ISSUED BY DEPARTMENT OF FINANCIAL SERVICES (WELFARE) EXHIBIT P<sub>2</sub> A TRUE COPY OF THE NOTIFICATION ISSUED BY INSTITUTE OF BANKING PERSONNEL SELECTION.

EXHIBIT P<sub>3</sub> A TRUE COPY OF THE PROVISIONAL ALLOTMENT LETTER ISSUED TO THE 1<sup>ST</sup> PETITIONER DATED 13.04.2017.

EXHIBIT P<sub>4</sub> A TRUE COPY OF THE PROVISIONAL ALLOTMENT LETTER ISSUED TO THE 2<sup>ND</sup> PETITIONER DATED 13.04.2017.

EXHIBIT P<sub>5</sub> A TRUE COPY OF THE PROVISIONAL ALLOTMENT LETTER ISSUED TO THE 3<sup>RD</sup> PETITIONER DATED 13.04.2017.

EXHIBIT P6 A TRUE COPY OF THE PROVISIONAL ALLOTMENT LETTER ISSUED TO THE 4TH PETITIONER DATED 13.04.2017.

EXHIBIT P7 A TRUE COPY OF THE COMMUNICATION RECEIVED FROM THE INDIAN BANKER'S ASSOCIATION DATED 05.06.2015.

EXHIBIT P8 A TRUE COPY OF THE CIRCULAR DATED 18.11.2015 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P9 A TRUE COPY OF THE RTI APPLICATIONS AND THE INFORMATION RECEIVED FROM CENTRAL PUBLIC INFORMATION OFFICER, DATED 30.11.2015.

EXHIBIT P10 A TRUE COPY OF THE CERTIFICATE OF THE PAY LAST DRAWN BY THE 1ST PETITIONER DATED 30.09.2016.

EXHIBIT P11 A TRUE COPY OF THE CERTIFICATE OF THE PAY LAST DRAWN BY THE 2ND WP(C).No.26946 of 2018 PETITIONER DATED 31.01.2017.

EXHIBIT P12 A TRUE COPY OF THE CERTIFICATE OF THE PAY LAST DRAWN BY THE 3RD PETITIONER DATED 30.09.2016.

EXHIBIT P13 A TRUE COPY OF THE CERTIFICATE OF THE PAY LAST DRAWN BY THE 4TH PETITIONER DATED 30.09.2016.

EXHIBIT P14 A TRUE COPY OF THE CERTIFICATE OF THE PAY LAST DRAWN BY THE 5TH PETITIONER DATED 30.09.2016.

EXHIBIT P15 A TRUE COPY OF THE SALARY SLIP OF THE 1ST PETITIONER ISSUED FROM THE 2ND RESPONDENT BANK FOR THE MONTH OF AUGUST 2017.

EXHIBIT P15(A) A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER ISSUED FROM THE 2ND RESPONDENT BANK FOR THE MONTH OF JULY 2017.

EXHIBIT P15(B) A TRUE COPY OF THE SALARY SLIP OF THE 3RD PETITIONER ISSUED FROM THE 2ND RESPONDENT BANK FOR THE MONTH OF MAY 2018.

EXHIBIT P15(C) A TRUE COPY OF THE SALARY SLIP OF THE 4TH PETITIONER ISSUED FROM THE 2ND RESPONDENT BANK FOR THE MONTH OF JUNE 2018.

EXHIBIT P16 A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2017.

EXHIBIT P16(A) A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF AUGUST 2017.

EXHIBIT P16(B) A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF MAY 2018.

WP(C).No.26946 of 2018 EXHIBIT P16(C) A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JUNE 2018.

EXHIBIT P17 A TRUE COPY OF THE SALARY SLIP OF THE 3RD PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JUNE 2018.

EXHIBIT P17(A) A TRUE COPY OF THE SALARY SLIP OF THE 3RD PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF MAY 2018.

EXHIBIT P17(B) A TRUE COPY OF THE SALARY SLIP OF THE 3RD PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF AUGUST 2017.

EXHIBIT P17(C) A TRUE COPY OF THE SALARY SLIP OF THE 3RD PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2017.

EXHIBIT P18 A TRUE COPY OF THE SALARY SLIP OF THE 4TH PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF MAY 2018.

EXHIBIT P18(A) A TRUE COPY OF THE SALARY SLIP OF THE 4TH PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JUNE 2018.

EXHIBIT P19 A TRUE COPY OF THE SALARY SLIP OF THE 5TH PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JUNE 2018.

EXHIBIT P20 A TRUE COPY OF CIRCULAR NO. 413/2018 DATED 22.06.2018 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P21 A TRUE COPY OF THE LETTER DATED 25.07.2018 ISSUED TO THE 1ST PETITIONER FROM THE 2ND RESPONDENT WP(C).No.26946 of 2018 INTIMATING THE REDUCTION OF BASIC PAY.

EXHIBIT P22 A TRUE COPY OF THE LETTER DATED 25.07.2018 ISSUED TO THE 2ND PETITIONER FROM THE 2ND RESPONDENT INTIMATING THE REDUCTION OF BASIC PAY.

EXHIBIT P23 A TRUE COPY OF THE LETTER DATED 25.07.2018 ISSUED TO THE 3RD PETITIONER FROM THE 2ND RESPONDENT INTIMATING THE REDUCTION OF BASIC PAY.

EXHIBIT P24 A TRUE COPY OF THE LETTER DATED 25.07.2018 ISSUED TO THE 4TH PETITIONER FROM THE 2ND RESPONDENT INTIMATING THE REDUCTION OF BASIC PAY.



EXHIBIT P25 A TRUE COPY OF THE LETTER DATED 24.07.2018 ISSUED TO THE 5TH PETITIONER FROM THE 3RD RESPONDENT INTIMATING THE REDUCTION OF BASIC PAY.

EXHIBIT P26 A TRUE COPY OF THE SALARY SLIP OF THE 1ST PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2018.

EXHIBIT P26(A) A TRUE COPY OF THE SALARY SLIP OF THE 2ND PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2018.

EXHIBIT P26(B) A TRUE COPY OF THE SALARY SLIP OF THE 3RD PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2018.

EXHIBIT P26(C) A TRUE COPY OF THE SALARY SLIP OF THE 4TH PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2018.

EXHIBIT P26(D) A TRUE COPY OF THE SALARY SLIP OF WP(C).No.26946 of 2018 THE 5TH PETITIONER ISSUED FROM THE RESPONDENT BANK FOR THE MONTH OF JULY 2018.

EXHIBIT P27 A TRUE COPY OF THE REPRESENTATION MADE BY THE 1ST PETITIONER TO THE 2ND RESPONDENT DATED 30.07.2018. EXHIBIT P28 A TRUE COPY OF THE QUERY AND THE REPLY RECEIVED UNDER THE RIGHT TO INFORMATION ACT, 2005 FROM THE 4TH RESPONDENT TO THE 1ST PETITIONER. RESPONDENT'S EXHIBITS :

R1(A) THE RELEVANT PORTION OF THE 10TH  
BIPARTITE SETTLEMENT ON WAGE

REVISION DATED 25.5.2015 SIGNED BETWEEN INDIAN BANKS ASSOCIATION AND ALL INDIA BANK EMPLOYEES ASSOCIATION (AIBEA-NCBE-BEFI-NOBW-INBEF) R1(B) THE STAGNATION INCREMENTS ARE TO BE RELEASED AS PER THE 10TH BIPARTITE SETTLEMENT AND CLARIFICATIONS ISSUED AS PER PAD CIRCULAR NO.282 DATED 23.09.2015. A PHOTOCOPY OF THE PAD CIRCULAR NO.282 DATED 23.09.2015.

R1(C) PHOTOCOPY OF THE CLARIFICATION  
ISSUED BY THE INDIAN BANK'S  
ASSOCIATION VIDE LETTER NO.HR &

IR/SKK/5895/5140 DATED MAY 17, 2018.