(2023) 05 CHH CK 0023

In the Chhattisgarh High Court

Case No : Writ Appeal No. 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693 Of 2022, 79 Of 2023

Chhattisgarh Rajya Gramin Bank APPELLANT

Vs

Kailash Chandrawanshi RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:
Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulations, 2013 — Rule 2(c), 5
Regional Rural Bank Act, 1976 — Section 3(1), 29(1), 29(2)(ba)

Citation : (2023) 05 CHH CK 0023

Hon'ble Judges : Ramesh Sinha, CJ;Sanjay K. Agrawal, J

Bench : Division Bench

Advocate : K.N.Nande, Anil Tawadkar, Sabyasachi Baduri

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. This batch of writ appeals {WA No. 679/2022, 680/2022, 681/2022, 682/2022, 683/2022, 684/2022, 685/2022, 687/2022, 688/2022, 689/2022, 690/2022, 691/2022, 692/2022 and 693/2022} preferred by the Appellants-Chhattisgarh Rajya Gramin Bank (for short, the Bank) are directed against the impugned judgment and order dated 22.08.2022 passed in WPS No. 4092/2019 and connected matters by which the learned Single Judge has declined to issue a writ directing the appellant-Bank to regularise the writ petitioners, however, the appellant-Bank has been directed to frame a scheme for regularisation of Sweeper-cum-Messenger within an outer limit of six months.

2. WA No. 79/2023, arising out of order dated 22.08.2022 passed in WPS No. 4305/2019, is preferred by the writ petitioners, challenging that part of the order by which the learned Single Judge though has directed the respondent-Bank to formulate a scheme for regularisation of Sweeper-cum-Messengers but there is no specific direction with regard to considering the case of each of the writ

petitioners therein, individually. The Appellants/writ petitioners have pleaded that the respondent-Bank may be directed to allow them to continue with their services till the scheme for regularisation is framed. However, in the prayer clause, the Appellants/writ petitioners have prayed for setting aside the judgment dated 22.08.2022 passed in WPS No. 4305/2019.

3. Since common facts and question of law are involved in this batch of writ appeals, they have been clubbed together, heard together and being disposed of by this common judgment. For disposal of these appeals, Writ Appeal No. 686/2022, arising out of order dated 22.08.2022 passed in Writ Petition (S) No. 4326/2019 and connected cases, is taken as the lead case.

4. The Appellant-Bank is aggrieved by that part of the order of the learned Single Judge by which it has been directed to frame a scheme for regularisation of Sweeper-cum-Messneger as the Bank has no power and jurisdiction to frame scheme for regulrisation. The aforesaid challenge has been made on the following factual backdrop.

4.1 The Appellant-Bank is a Government owned scheduled bank sponsored by the State Bank of India and is established under the provisions of the Regional Rural Bank Act, 1976 (for short, the Act of 1976). The private respondents (writ petitioners) were working on the post of Sweeper-cum-Messenger on daily wages with the appellant-Bank. The appellant-Bank issued an advertisement on 12.04.2019 calling upon the private registered agencies to supply 51 daily wage workers to the Regional Office, Baikunthpur for the Branches under the Regional Office, Baikunthpur, District Koriya, which led to filing of writ petitions before the writ Court seeking regularisation and for parity with respect to the service conditions, pay and benefits at par with the other daily wage employees who were regularised by the appellant-Bank and claiming relief on the ground that they cannot be replaced by another daily wage employees. The said petition was opposed by the appellant-Bank. The learned Single Judge, by its order dated 22.08.2022, rejected the claim of the writ petitioners for regularisation and relegated them to the remedy of raising an industrial dispute before the Central Government Industrial Tribunal. The learned Single Judge further issued a writ directing the appellant-Bank to frame a scheme for regularisation of the Sweeper-cum-Messenger within the stipulated period.

5. Mr. Sabyasachi Bhaduri, learned counsel for the appellant-Bank would submit that the learned Single Judge is absolutely unjustified in directing framing of the scheme for regularisation of the Sweeper-cum-Messenger as the power and jurisdiction in accordance with Rule 5 of the Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulations, 2013 (for short, the 2013 Regulations) read with Section 29(2)(ba) of the Regional Rural Bank Act, 1976 (for short, the Act of 1976), the power and jurisdiction lies with the Central Government to frame the rules with regard to the manner in which the officers and other employees of the Regional Rural Banks shall be appointed and more particularly, having regard to the fact that the writ petitioners did not claim any

such relief in the writ petitions for framing of any scheme for regularisation and the appellant-Bank has been taken by surprise by the impugned order. In absence of any claim in the writ petition, the appellant-Bank could not even oppose the direction for framing the scheme of regularisation. As such, the impugned order to the extent of direction to formulate the scheme for regularisation deserves to be set aside.

6. Mr. K.N.Nande and Mr. Anil Tawadkar, learned counsel appearing for the respective respondents/writ petitioners would submit that though the writ petitioners have been relegated to the remedy of raising an industrial dispute before the Central Government Industrial Tribunal, but the learned Single Judge is absolutely justified in directing the appellant-Bank to formulate a scheme in relation to the writ petitioners/sweeper-cum-messenger. Accordingly, the writ appeals preferred by the Appellant-Bank deserve to be dismissed.

7. We have heard learned counsel for the parties, considered their rival submission made hereinabove and went through the records with utmost circumspection.

8. The appellant-Bank is a regional rural bank established under the Act of 1976. The Regional Rural Banks are government owned scheduled commercial banks of India that operate at regional level in different States of India. These banks are under the ownership of Ministry of Finance, Government of India and they were created to serve rural areas with basic banking and financial services.

9. Rule 2(c) of the 2013 Regulations defines the term ‘Bank’ which means Chhattisgarh Rajya Gramin Bank established under sub-section (1) of Section 3 of the Act of 1976. Section 3(1) of the Act of 1976 deals with establishment and incorporation of Regional Rural Banks. The same reads as under:

“3. Establishment and incorporation of Regional Rural Banks. -

(1) The Central Government may, if requested so to do by a Sponsor Bank, by notification in the Official Gazette, establish in a State or Union Territory, one or more Regional Rural Banks with such name as may be specified in the notification and may, by the said or subsequent notification, specify the local limits within which each Regional Rural Bank shall operate.”

10. Rule 5 of the 2013 Regulations prescribes the procedure for making rules with respect to appointment of employees and officers of the Bank. Rule 5 of the 2013 Regulations provide as under:

“5. Appointment of the officer and employee in the Bank’s service. -

(1) The Chairman shall be the Appointing Authority in respect of officer and the General Manager shall be the Appointing Authority in respect of employee:

Provided that if there is incumbent to the post of General Manager, the Chairman shall be the Appointing Authority in respect of employees also.

(2) Save as provided in Regulation 4, all appointments in the Bank shall be made in accordance with the rules made by the Central Government in terms of Section 29 of the Act.

(3) Every officer or employee on his first appointment in the service of the Bank, shall be required to produce a certificate of fitness by the medical authority as may be specified by the Bank.

(4)(i) Disqualification.- No officer or employee, -

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who, having a spouse living, have entered into or contracted a marriage with any person, shall be eligible for appointment to the said post:

Provided that the Appointing Authority may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt the operation of this regulation;

(ii) every officer or employee on his first appointment in the service of the Bank shall furnish a declaration about his marital status as per Schedule-I."

11. As provided in Rule 5 of the 2013 Regulations, the power to make rule with respect to the appointment of the employees/officers lies with the Central Government. By Act of 1976, the power to make rules has been conferred to the Central Government under Section 29(1) read with Section 29 (2)(ba) of the Act of 1976 which provides that the Central Government may, after consultation with the National Bank and the Sponsor Bank, by notification in the official gazette, make rules for carrying out the provisions of this Act. Sub-section (2)(ba) of Section 29 the Act of 1976 reads as under:

"29. Power to make rules. (1) The Central Government may, after consultation with the National Bank and the Sponsor Bank, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) xxxxx

(b) xxxxx

(ba) the manner in which the officers and other employees of the Regional Rural Banks shall be appointed."

12. A careful perusal of sub-section 2(ba) of Section 29 of the Act of 1976 read with Rule 5 of the 2013 Regulation would show that the Central Government is the competent authority to frame rules providing the manner in which the officers and other employees of the Rural Banks can be appointed. The appellant-

Bank has no competence and jurisdiction to frame rules/regulations for appointment of officers and other employees of the Rural Banks and power and jurisdiction to frame rules to regulate the manner in which officers and other employees has to be appointed, has been conferred to the Central Government by Section 29(1) read with Section 29(2)(ba) of the Act of 1976 by the competent Legislative. As such, the appellant-Bank is completely denude of its authority to frame rules in this regard as Rule Making Authority for appointment of bank officers and servant lies with the Central Government.

13. The rule making function of Central Government under Section 29(2)(ba) of the Act of 1976 is a legislative function, therefore, the Court cannot issue mandamus to the Government to make rules or legislate under Section 29(2)(ba) of the Act of 1976. The learned Single Judge is absolutely unjustified in directing the appellant- Bank to frame the scheme/rules for regularisation of the writ petitioners/sweeper-cum-messengers which is liable to be set aside.

14. In addition to the above, there is one more reason for not upholding the order of the learned Single Judge directing framing of scheme for regularisation. In the writ petition, the petitioners had claimed the following reliefs:

"1. That, the petitioners may be regularised and may be given parity with respect to the service condition, pay and benefits at par with the other daily wages employee who have regularised by the respondent authorities.

2. That the Hon'ble Court may please to direct the respondent authorities may not publish such advertisement for requirement of daily wage employee by way of private placement company just like R.O. Baikunthpur dated 12.04.2019. Because daily wages employee can't be replaced by daily wages employee.

3. That the Hon'ble High Court may please to pass any other order which the Hon'ble Court may deem fit in the fact and circumstances of the case."

15. A careful perusal of the prayers made in the writ petition would show that the writ petitioners even did not pray for formulating any scheme for regularisation. As such, the appellant-Bank had no opportunity to deal with such a prayer on behalf of writ petitioners and the appellant-Bank was taken by surprise by issuance of a direction to frame the scheme with regard to regularisation. Further, even the Central Government was not even arrayed as a party respondent to the writ petition.

16. As a fall out and consequence of the aforesaid discussion for twin reasons stated herein-above, we are unable to uphold the part of the impugned judgment by which the learned Single Judge has directed the appellant-Bank to frame the scheme for regularisation of Sweeper-cum-Messenger and the same is hereby set aside. However, the remaining part of the order directing the writ petitioners to raise industrial dispute before the Central Government Industrial Tribunal will remain undisturbed. We also do not find any merit in Writ Appeal No.79/2023 preferred by the writ petitioners in view of the findings recorded hereinabove, it

deserves to be dismissed and is accordingly dismissed leaving the parties to bear their their own cost(s).

17. In view of the above, the writ appeals filed by the appellant-Bank are allowed to the above extent and writ appeal filed by writ petitioners being WA No. 79/2023 is hereby dismissed.

