(2020) 01 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 8272, 8273 Of 2018

Vidarbha Konkan Gramin Bank And Ors APPELLANT

Vs

Appellate Authority And Ors RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Regional Rural Banks Act, 1976 — Section 30
Payment Of Gratuity Act, 1972 — Section 2(s), 4(3), 7(4)
Vidarbha Gramin Bank Officers And Employees Service Regulations, 2013 — Regulation 2, 2(i), 2(m), 2(o), 72, 72(3)

Citation : (2020) 01 BOM CK 0004

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : Anand Jaiswal, R. M. Tahaliyani

Final Decision : Allowed

Judgement

1. These two writ petitions give rise to identical questions raised on behalf of the petitioner Vidarbha Konkan Gramin Bank and hence both the writ petitions are being disposed of by this common judgment and order.

2. The question that arises for consideration in these writ petitions is, as to whether the contesting respondents (respondent No.2 in both the writ petitions) are entitled to payment of gratuity under the provisions of Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act of 1972') or under the Vidarbha Gramin Bank, Officers and Employees Service Regulations, 2013, issued by the Board of Directors of the said Bank under section 30 of the Regional Rural Banks Act, 1976. While the petitioner Bank claims that the contesting respondents are entitled to payment of gratuity under the provisions of the Act of 1972 with an upper ceiling of Rs.10,00,000/-, the contesting respondents have claimed that they are entitled to gratuity under the said Regulations without any such ceiling. The contesting respondents further claim that even under the said Regulations, for calculating the amount of gratuity payable, dearness allowance and other

allowances are required to be included in the expression "Pay" as defined in the said Regulations.

3. The brief facts leading to filing of the present writ petitions by the petitioner Bank are that the contesting respondents retired as Senior Managers from the petitioner Bank on 31/05/2017. Respondent No.2 in Writ Petition No.8272/2018 had completed 33 years before superannuation and respondent No.2 in Writ Petition No.8273/2018 had completed 29 years of service. The petitioner Bank calculated the amount of gratuity payable to the said respondents on the basis of the provisions of the Act, 1971 and also in accordance with the said Regulations. The petitioner Bank found that the amount of gratuity payable to the said respondents as per the Act of 1972 came to a higher figure of Rs.10,00,000/- and therefore, the said amount was disbursed to the respondents upon their attaining the age of superannuation.

4. The contesting respondents sent applications to the petitioner Bank after having received the amount of Rs.10,00,000/- each towards gratuity, claiming that the cap or upper ceiling of Rs.10,00,000/- under the provisions of the Act of 1972, was wrongly applied in their cases, because they were entitled to gratuity in terms of Regulation 72 of the said Regulations. The said Regulation specifically provided that an officer or an employee of the petitioner Bank shall be eligible for payment of gratuity either under the Act of 1972 or Regulations, whichever was higher. It was submitted that therefore, the petitioner Bank ought to have paid total amount of gratuity without applying the upper ceiling of Rs.10,00,000/-, as provided under the Act of 1972.

5. As the petitioner Bank refused to accept the claims made by the said respondents, they filed applications under section 7(4) of the Act of 1972, for direction to the petitioner bank to make payment of the balance amount due to them. In the case of respondent No.2 in Writ Petition No.8272/2018, demand of further amount of Rs.5,61,472.16, was made and in case of respondent No.2 in Writ Petition No.8273/2018, claim of further amount of Rs.3,37,261.78, was made before the Controlling Authority under the Act of 1972 i.e. Assistant Labour Commissioner.

6. By orders passed on 28/03/2018, the Controlling Authority rejected the applications filed by the contesting respondents, holding that the petitioner Bank had correctly applied provisions of the Act of 1972, thereby disbursing an amount of Rs.10,00,000/- each, towards gratuity in favour of the said respondents. It was held that the said respondents were not eligible for the additional amount of gratuity claimed by them.

7. Aggrieved by the said orders passed by the Controlling Authority, the contesting respondents filed appeals before the Appellate Authority i.e. Deputy Chief Labour Commissioner. By orders dated 04/10/2018, the Appellate Authority allowed the appeals filed by the contesting respondents and directed the petitioner bank to pay the additional amount of gratuity claimed by them

alongwith interest @10% per annum for delayed period till the date of actual payment. The petitioner bank filed instant writ petitions challenging the said orders passed by the Appellate Authority.

8. Mr. Anand Jaiswal, learned senior counsel appearing for the petitioner Bank in both the writ petitions submitted that the Appellate Authority failed to appreciate the real controversy in the present case. It was submitted that Regulation 72 of the said Regulations clearly specified that an officer or employee would be entitled to gratuity as per the provisions of the Act of 1972 or the said Regulations, whichever is higher. According to the learned senior counsel, calculation of gratuity payable to the contesting respondents was undertaken by the petitioner Bank under both the Act of 1972, as well as the said Regulations. It was submitted that the amount payable to the contesting respondents under the Regulations came to a figure which was less than the amount payable to them under the provisions of the Act of 1972. It was pointed out that as per the aforesaid Regulation 72 of the said Regulations, the gratuity payable to the respondents was to be calculated on their last pay drawn, which as per the definitions in the Regulations did not include the component of dearness allowance, while under the provisions of Act of 1972, the last drawn wage of the respondents included the last pay and dearness allowance.

9. It was submitted that therefore, the petitioner bank had calculated the amount of gratuity payable to the contesting respondents under the Act of 1972 and in the case of respondent No.2 in Writ Petition No.8272/2018, it came to Rs.15,61,472.16 and in the case of respondent No.2 in Writ Petition No.8273/2018, it came to Rs.13,37,261.78. It was further submitted that since at the relevant time the amount of gratuity payable to an employee under section 4(3) of the Act of 1972, could not exceed Rs.10,00,000/-, the said amount was paid to the contesting respondents. On this basis, it was pointed out that the higher amount of gratuity payable to the contesting respondents was disbursed to them, because on a proper application of the Regulations, respondent No.2 in Writ Petition No.8272/2018, was entitled to gratuity amount of Rs.8,93,920/- and respondent No.2 in Writ Petition No.8273/2018 was entitled to gratuity amount of Rs.7,61,740/-. On this basis, it was submitted that the appellate Court had committed a grave error in passing the impugned orders in favour of the contesting respondents.

10. On the other hand, Mr. R. M. Tahaliyani, learned counsel appearing for respondent No.2 in both the writ petitions submitted that the petitioner Bank had wrongly calculated amount of gratuity payable to the said contesting respondents under the aforesaid Regulations by refusing to include the component of dearness allowance in the last pay drawn by the respondents. It was submitted that a perusal of the said Regulations would show that dearness allowance could not have been excluded by the petitioner bank, while calculating the amount of gratuity payable to the contesting respondents. It was submitted that inclusion of dearness allowance in "pay" as defined under Regulation 2(m) of the Regulations

would show that the respondents were clearly entitled to the higher amounts which they had claimed and since there was no upper ceiling or cap to the amount payable under the Regulations, the Appellate Authority had correctly directed payment of the additional amounts to the respondents alongwith interest.

11. The learned counsel for the contesting respondents placed reliance on judgment of the learned Single Judge of the Madhya Pradesh High Court in the case of All India Gramin Pensioners Organization Unit Rewa vs. Madhyanchal Gramin Bank and another [W. P. 9182/2017 with W. P. 2299/2017 and W. P. 2877/2018 decided on 06/09/2018] and Division Bench of the Madhya Pradesh High Court in the case of Madhyanchal Gramin Bank and another vs. All India Gramin Pensioners Organization Unit [W.A.1318/2018 with W.A. Nos. 1316 and 1317/2018 decided on 26/02/2019], wherein pari materia provisions to the said Regulations were considered and it was found by the High Court that the expression "pay" under the Regulations included dearness allowance. It was further held in the said judgment that since there was no upper ceiling for the amount of gratuity payable to the employees of the Bank under Regulation 72, the higher amount payable was to be disbursed. The learned counsel pointed out that Special Leave Petitions filed by the Madhyanchal Gramin Bank (supra) before the Hon'ble Supreme Court challenging the judgment of the Division Bench of the Madhya Pradesh High Court, were dismissed. It was further pointed out that a learned Single Judge of the Calcutta High Court had also followed the said view taken by the Madhya Pradesh High Court and that therefore, the present writ petitions deserved to be dismissed.

12. In rejoinder the learned senior counsel appearing for the petitioner bank submitted that the Madhya Pradesh High Court had erred in interpreting the Regulations, particularly Regulation (2) providing for definitions of the expressions "Pay", "Salary", and "Emoluments". It was submitted that Regulation 72 was also not properly appreciated in the said judgment and that therefore, reliance placed on the same by the contesting respondents was misplaced. It was submitted that the Appellate Authority had committed a grave error and that therefore, the impugned order deserved to be set aside.

13. There is no dispute amongst rival parties that higher amount of gratuity would be payable to the contesting respondents either under the Act of 1972 or the aforesaid Regulations. The real controversy between the parties in these writ petitions is, as to the basis of calculation of the amount of gratuity payable to the contesting respondents under the aforesaid Regulations. It is only because there is no upper ceiling or cap in the Regulations that the contesting respondents insist that they be paid gratuity under the said Regulations, by including dearness allowance as a component under the expression "Pay" under the said Regulations so that they are found to be entitled to receive entire amount without any cap or upper ceiling of Rs.10,00,000/-. The petitioner Bank has claimed that, on a proper reading of the Regulations, calculation of gratuity

under its provisions has to be made by taking only the pay i.e. basic pay drawn by the contesting respondents including stagnation increments, without adding the component of dearness allowance. On such a calculation the amount of gratuity payable to the contesting respondents is much less and even less than Rs.10,00,000/-. As a result, the petitioner Bank has calculated gratuity amount under the Act, 1972, wherein "Wage" includes dearness allowance and then the cap or upper ceiling of Rs.10,00,000/- has been applied.

14. In order to resolve the conflict between the parties, it is necessary to refer to the relevant portions of the aforesaid Regulations.

Regulation 2, Definitions :- (1) In these regulations, unless the context otherwise requires -

(a) to (h) ....

(i) "Emoluments" means the aggregate of salary and allowances, if any.

(j) to (l) ....

(m) "Pay" means basic pay drawn per month by the officer or employee in a pay-scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations;

(n) ....

(o) "Salary" means aggregate of pay and dearness allowance;

Regulation 72. Gratuity.-(1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee shall be eligible for gratuity or

(a) retirement

(b) death

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing 10 years of continuous service, or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay :

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn.

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%) dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be.

15. The relevant provisions of the Act, 1972 are as follows :-

Section 2(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Section 4(3) The amount of gratuity payable to an employee shall not exceed [such amount as may be notified by the Central Government from time to time].

16. The rival parties have not disputed the formulae of calculation under the Regulations as well as the Act of 1972 and the only area of dispute is with regard to inclusion or exclusion of dearness allowance while calculating amount of gratuity under the said Regulations. A perusal of Regulation 72 shows that after stating the manner of calculating the amount of gratuity under Clause (3), there are 03 provisos appended to the said clause. The 2nd and 3rd proviso are relevant for the present controversy. The 2nd proviso states that in respect of an officer, the gratuity is payable based on last pay drawn while the 3rd proviso states that in respect of an employee, for the purposes of calculation of gratuity, pay shall be the average of basic pay, dearness allowance and special allowance and officiating allowance. The expression "Pay" has been specifically defined under Regulation 2(m) quoted above. It specifically states that "Pay" means basic pay including stagnation increments and any part of emoluments, which may specifically be classified as pay under the Regulations. It is significant that the expression "Salary" is specifically separately defined under Regulation 2(o) as aggregate of pay and dearness allowance, while the expression "Emoluments" is also separately defined under Regulation 2(i) as the aggregate of salary and allowances. The three expressions "Pay", "Salary" and "Emoluments" are distinctly and separately defined under the said Regulations.

17. The 2nd proviso to Clause (3) of Regulation 72 uses the expression "last pay drawn". Since "Pay" as defined under Regulation 2(m) does not include dearness allowance , the same cannot be read into the expression "Pay", as sought to be

claimed by the contesting respondents. Since the expression "Salary" under Regulation 2(o) includes pay and dearness allowance, if the contention raised on behalf of the contesting respondents is accepted, instead of the expression "Pay", the expression "Salary" will have to be read into 2nd proviso to Clause (3) of Regulation

72. In this situation, the learned counsel appearing for the contesting respondents submitted that the words used in Regulation 2(m) to the effect that "and any part of the emoluments which may specifically be classified as pay under these regulations" would be rendered meaningless, if the contention raised on behalf of the petitioner Bank was to be accepted. It was submitted that the Madhya Pradesh High Court and Calcutta High Court in the aforementioned judgment concerning Madhyanchal Gramin Bank (supra) had therefore, read the definitions of "Pay" under Regulation 2(m), "Salary" under 2(o) and "Emoluments" under 2(i), as interwoven and interlinked to each other, to give a proper meaning to the said definitions, read with Regulation 72 of the said Regulations. It was submitted that dearness allowance was always part of pay and this was further clear from definition of wages as defined in section 2(s) of the Act of 1972. On this basis, it was submitted that the expression "Pay" used in the 2nd proviso to Clause (3) of the Regulation 72, had to be read to mean that it included basic pay and dearness allowance.

18. But, the said contentions raised on behalf of the contesting respondents cannot be accepted, because as noted above it would amount to reading something that is not specifically stated in the 2nd proviso to Clause (3) of the Regulation 72 of the Regulations. The words used in Regulation 2(m) are to the effect that "Pay" would include any part of the emoluments which may specifically be classified as pay. These words do have meaning, because if the 3rd proviso to Clause (3) of Regulation 72 of the Regulations is perused, it shows that when gratuity of an "employee" is to be calculated, as opposed to that of an "officer", "Pay" for the purposes of calculation of gratuity is to include basic pay, dearness allowance and officiating allowances. Thus, in the case of an employee, the said allowances have been specifically classified as pay and therefore, while calculating gratuity amount payable to an "employee" under the 3rd proviso, such allowances have to be included before calculating the quantum. This distinction in the 2nd and 3rd provisos to Regulation 72(3) of the Regulations, in the light of definitions under Regulation 2, was not brought to the notice of the High Courts of Madhya Pradesh and Calcutta when it was held that calculation of gratuity in the case of officers under the said Regulations ought to be based on inclusion of dearness allowance in the expression "Pay".

19. As regards the dismissal of Special Leave Petition of the Madhyanchal Gramin Bank against judgment and order of the Division Bench of the Madhya Pradesh High Court, it would not result in the judgment of the Madhya Pradesh High Court being binding on this Court, because as per settled position of law there is no merger when a Special Leave Petition is dismissed and the Hon'ble Supreme

Court refuses to grant leave by a speaking or non-speaking order. The Hon'ble Supreme Court has reiterated the said position of law in a recent judgment in the case of Khoday Distilleries Ltd. vs. Shri. Mahadeshwara Sahakara Sakkare Karkhane Ltd. (2019) 4 SCC 376. Therefore, dismissal of the Special Leave Petition against the judgment and order of the Division Bench of the Madhya Pradesh High Court would not detain this Court from considering the contentions raised on behalf of the petitioner Bank on interpretation of the aforesaid Regulations.

20. Thus, the petitioner Bank is justified in raising a grievance as regards the impugned orders passed by the Appellate Authority. In fact, the Appellate Authority did not discuss this main controversy between the parties at all and it proceeded on the basis that calculation of gratuity under the Act of 1972, as well as the Regulations resulted in the same quantum of amount and that since the Regulations did not have a cap or upper ceiling, the same would apply and not the Act of 1972. Therefore, the impugned orders passed by the Appellate Authority are rendered unsustainable.

21. Once it is found that while calculating the amount of gratuity payable to the contesting respondents under the Regulations, only pay could be made the basis without adding dearness allowance, the quantum of gratuity payable to the contesting respondents comes to Rs.8,93,920/- in the case of respondent No.2 in Writ Petition No. 8272/2018 and Rs.7,61,740/- in the case of respondent No.2 in Writ Petition No.8273/2018, which is much less than the amount of Rs.10,00,000/- each disbursed by the petitioner Bank to the said contesting respondents. Thus, the petitioner Bank applied the provisions of the Act of 1972, while calculating the amount of gratuity payable to the contesting respondents, because by applying the provisions of the said Act higher gratuity was payable to the contesting respondents, despite the cap or upper ceiling of Rs.10,00,000/-. This amount for disbursal of gratuity amount was correctly approved by the Controlling Authority, while rejecting the applications filed by the contesting respondents for claim of additional amount of gratuity. But, the Appellate Authority failed to appreciate the contentions of the petitioner Bank.

22. In view of the above, the writ petitions are allowed. The impugned orders passed by the Appellate Authority are quashed and set aside and the orders passed by the Controlling Authority in the case of the contesting respondents are restored. Accordingly, the petitioner Bank is found not liable to pay any further amount towards gratuity to the contesting respondents as they admittedly received the amount of Rs.10,00,000/- from the petitioner Bank immediately upon their superannuation.

23. Writ petitions are disposed of in above terms with no order as to costs.

