

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 2390 of 2009**

1. S. N. Padhi, son of late Shri Bhagirath Padhi, age 62 years, Retired Cadre Officer (Special Grade Managing Director), Chhattisgarh State Co-operative Bank Maryadit, R/o D-13, Priyadarshani Nagar, Raipur (CG)
2. Arun Kumar Jain, S/o late Shri Shiv Prasad Jain, Age 67 years, retired Inspecting Officer, Chhattisgarh State Co-operative Bank Maryadit, R/o A-23, Vijay Vihar, Priyadarshani Nagar, Raipur (CG)
3. S.K. Mishra, S/o late Shri G.P. Mishra, aged about 63 years, retired Deputy Manager, Chhattisgarh State Co-operative Bank Maryadit, R/o Changorabhata, Subji-Mandi, Raipur (CG)
4. R.D. Tamrakar, S/o late Shri T.L. Tamrakar, aged about 65 years, retired Assistant Manager, Chhattisgarh State Co-operative Bank Maryadit, R/o E-8/261, Trilanga Colony, near Red Rose School, Bhopal (M.P.)
5. G.S. Bajpai, S/o late J.S. Bajpai, aged about 68 years, retired Cadre Officer (Grade-I) Chhattisgarh State Co-operative Bank Maryadit, R/o District Cooperative Bank, Rajnandgaon (CG)
6. Rewaram Vishwakarma, S/o Late Kodu Lal Vishwakarma, aged 66 years, retired Peon, Chhattisgarh State Co-operative Bank Maryadit, R/o House No.I-48, Sector-10, Shankar Nagar, Raipur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh, through the Secretary, Co-operative Societies Department, DKS Bhawan, Raipur (CG)
2. Chhattisgarh State Co-operative Bank Maryadit, through Managing Director, Indira Gandhi Commercial Complex, Pandri, Raipur (CG)
3. Registrar, Co-operative Societies, Vivekanand Nagar, Pensionwada, Raipur (CG)
4. Managing Director, Chhattisgarh State Co-operative Bank Maryadit, Indira Gandhi Commercial Complex, Pandri, Raipur (CG)

---- Respondent

For Petitioners : Shri Anand Dadriya, Advocate.
For Respondent/State : Shri Rajendra Tripathi, PL.
For Respondent/Bank : Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/03/2020 :

1. The petitioners are retired employees of the Chhattisgarh State Co-operative Bank Maryadit, Raipur (hereinafter referred to as 'the Apex Bank'). They have retired between the period 1.1.2001 and 1.1.2007. Their claim in this writ petition is restricted to grant of 3 months interim relief from 1.1.2001 to 1.4.2001 and for payment of gratuity, leave encashment, surrender leave etc. as per the revised scale of pay along with interest @ 18% per annum.
2. Referring to the order (Annexure-P/3) passed by the Registrar, Cooperative Societies, Chhattisgarh, Raipur, Shri Dadriya, learned counsel for the petitioners would submit that the Registrar allowed payment of interim relief from 1.1.2001, but the Bank reduced the same from 1.4.2001 without there being any subsequent order of the Registrar. Similarly, referring to the Chhattisgarh State Cooperative Bank Employees Service Rules, 2007 (for short 'the Rules, 2007') (Annexure-R/4), it is argued that Note-1 under Appendix-II clearly provides that the pay of Bank employees shall

be fixed notionally on 1.1.2001 in the pay scales revised under the rules. Therefore, calculation of amount of gratuity, leave encashment, surrender leave etc. has to be made on the basis of pay scale revised notionally for the petitioners which has not been granted to them in illegal and arbitrary manner.

3. Shri Deshmukh, learned counsel for the Bank would submit that the Note appended to the Appendix II of the Rules, 2007 categorically states that the pay of employee shall be fixed notionally on 1.1.2001 in the revised pay scale, but the actual arrears of pay as a result of fixation of pay shall be payable with effect from 1.1.2007, therefore, payment of gratuity, leave encashment, surrender leave etc. on the basis of revised scale would amount to granting arrears, which is not permissible. He would refer to Annexure-R/5, the order passed by the Apex Bank on 27.10.2007 directing fixation of notional pay with effect from 1.4.2001.
4. The orders passed by the Registrar or the Bank or the Rules proposed by the Bank as approved by the Registrar vide Annexure-R/4 are not in dispute. The only issue is about the correct application of the orders passed by the Registrar and the Rules of 2007 approved by the Registrar.
5. When the issue concerning revision of pay was under consideration

of the competent authority, the Registrar passed the order on 28.5.2004 (Annexure-P/3) that every employee of the Bank shall be entitled for interim relief with effect from 1.1.2001 in anticipation of the revision of pay and as soon as the revised pay scales are made effective, the amount paid as interim relief shall be adjusted in lump sum to the arrears of revised scale which the employee is entitled for. There is no order by the Registrar modifying the order (Annexure-P/3), yet the Bank issued the order (Annexure-P/1) directing that since the M.P. State Cooperative Bank was re-organized/reconstituted with effect from 1.4.2001, which is the appointed day for creation of the Apex Bank in the State of Chhattisgarh, interim relief shall be paid from 1.4.2001 and not from 1.1.2001. This order (Annexure-P/1) nowhere refers to the order passed by the Registrar dated 28.5.2004. Similar is the intent and tenor of the order (Annexure-P/2) which refers to the Bank's letters dated 31.5.2004 and 4.6.2004 as well as the Registrar's letter dated 28.5.2004, but yet passing the order which is contrary to the Registrar's communication. Since the Registrar has not issued any order modifying its order (Annexure-P/3) to restrict the entitlement of interim relief from 1.4.2001 instead of 1.1.2001, the order of Registrar shall prevail and the petitioners would be entitled for interim relief with effect from 1.1.2001.

Since they have already received interim relief with effect from 1.4.2001, arrears of interim relief for 3 months shall be paid to them.

6. The second issue pertaining to calculation of amount of gratuity, leave encashment and leave surrender on the basis of revised scale or on the basis of pre-revised scale hinges around the applicability of the Note-1 under Appendix-II of the Rules, 2007. Having revised the pay scale under the said rules, the Note provides thus:-

“Note 1: Notwithstanding anything contained in this rule, the pay of Bank employees shall be fixed notionally on 01.01.2001 in above revised pay scales but the actual arrears of pay as a result of fixation of pay shall be payable from 01.01.2007.”

7. While arguing that the Note specifically provides for fixation of notional pay with effect from 1.1.2001, Shri Dadriya, learned counsel for the petitioners, would refer to the order dated 5.2.2010 passed by the Madhya Pradesh High Court in the matter of **P.N. Pandey & Others Vs. State of M.P. & Others** (WP No.14290/2008(S) wherein similar relief has been allowed.
8. Shri Deshmukh, learned counsel for the Bank would reiterate his submission to the effect that calculation of the amount of gratuity, leave encashment, surrender leave etc. on the basis of revised pay scale, would amount to grant of arrears, which has been made impermissible under the Rules.

9. The Note appended to Appendix II prohibits payment of actual arrears of pay on the basis of revised scale with effect from 1.1.2001, however, it does not prohibit calculation of amount of gratuity, leave encashment and surrender leave etc on the basis of pay scale which has been notionally revised with effect from 1.1.2001. The petitioners are not claiming arrears of pay for any period prior to 1.1.2007. Since the petitioners have not challenged the vires of the Rules notified by the Registrar, which is statutory in character, the petitioners are bound by the Rules and they cannot, even otherwise, claim actual arrears of pay for the period prior to 1.1.2007. However, their prayer for fixation of amount of gratuity, leave encashment, surrender leave etc. on the basis of revised scale shall survive, as it is claimed on the basis of Note 1 under Appendix II.
10. In the matter of **P.N. Pandey**, referred to above, similar revision of pay scale was made effective from 1.4.2001 but the actual payment of revised pay scale was given effect to on 1.4.2005. The petitioners therein claimed monetary benefits as admissible to them on the date of retirement on the basis of revised scale. Allowing the writ petition, the Madhya Pradesh High Court observed that on the date when pay scale was notionally revised, the petitioners were in service. Therefore, since the benefit of notional pay

fixation in the revised scale may not apply for the already retired employees, but it will definitely apply to the employees who were in service on the date the pay scale was notionally revised.

11. In the case at hand also, the petitioners having retired during the period 1.1.2001 to 1.1.2007. Once their pay scale has been notionally revised under the Rules of 2007, the amount of gratuity, leave encashment, surrender leave etc. admissible to them on the date of retirement is to be calculated on the basis of notionally fixed revised scale. The order (Annexure-P/5) to which Shri Vinod Deshmukh, learned counsel, has made reference is the order passed by the Bank, which is contrary to the Rules, 2007. The respondents themselves have stated in para-2 of the return that the Management or Board of Directors of the Bank have no power to amend the Rules. Thus the respondent-Bank itself has taken a stand that it has no power to amend the Rules. Therefore, Annexure-R/5 filed with the additional return is of no assistance to the Bank.

12. In view of the foregoing, the Writ Petition is allowed to the following extent:-

- the petitioners shall be entitled to interim relief from 1.1.2001 to 31.3.2001 on the same rate as was allowed to them with effect from 1.4.2001.

- the amount of gratuity, leave encashment, surrender leave etc to which the petitioners were entitled on the date of superannuation in between 1.1.2001 and 1.1.2007 shall be calculated on the basis of revised pay scale, as has been revised under the Chhattisgarh State Cooperative Bank Employees Service Rules, 2007.
- the petitioners shall also be entitled for interest @ 9% per annum on the difference amount for which they are entitled on calculation of the same on the basis of revised pay scale.

Sd/-
Judge
(Prashant Kumar Mishra)

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