IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Suvra Ghosh

F.M.A. 657 of 2020

Paschim Banga Gramin Bank & Ors.
Vs.
Chinmay Majumdar & Ors.

For appellants: Mr. Biswaroop Bhattacharya, ld. Adv.,
Ms. Surasri Baidya, ld. adv.

For respondents: Mr. Debabrata Saha Roy, ld. Adv.,
Mr. Indranath Mitra, ld. Adv.,
Mr. Subhankar Das, ld. Adv.,

Heard on : 4th February, 2021.

Judgment on : 4th February, 2021.

Arindam Sinha, J.: The appeal has been heard, earlier as well as today.

Mr. Bhattacharya, learned advocate appears on behalf of appellants and submits, regulation 72 in Paschim Banga Gramin Bank (Officers and Employees) Service Regulations, 2010 has three provisos under sub-regulation (2). The third proviso is for additional inclusion of dearness, special and officiating allowances, payable during 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be, for calculation of gratuity in respect of employees. Respondents are officers.

He relies on judgment of Supreme Court in **Khoday Distilleries Limited – vs – Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal** reported in **(2019) 4 SCC 376**, paragraphs 18 to 24, to submit there is no merger caused by **order dated 7th May, 2019** passed by Supreme Court in **Petition(s) for Special Leave to Appeal (C) no(s).11113 - 11115/2019 (Madhyanchal Gramin Bank & anr. Etc. - vs - All India Gramin Bank Pensioners Organisation Unit, Rewa Etc**.). As such, decision of the High Court, on not having been interfered with on dismissal of the Special Leave Petitions, does not cause the Madhya Pradesh High Court's judgment to have been confirmed by the Supreme Court and be a binding precedent on this Court. He then relies on **judgment dated 6th January, 2020** of a learned single Judge of Bombay High Court, Nagpur Bench in, inter alia, **Writ Petition no.8272 of 2018 (Vidarbha Konkan Gramin Bank – vs - The Appellate Authority and Anr.)**, paragraph 18. He also relies on **Maniruddin - vs – Chairman of Dacca** reported in **40 CWN 17** to submit, statutory bodies have no power to do anything unless power to do so is conferred by statute. Here the proviso is clear in the context of its application to employees only.

Mr. Saha Roy, learned advocate appears on behalf of respondents and submits, his clients need only to rely on second proviso under sub-regulation (3) in regulation 72. The proviso entitles his clients, as officers, to be paid additional amount of gratuity based on last pay drawn. He submits, pay includes, inter alia, emoluments. Emoluments have been defined to be aggregate of salary and allowances and salary means aggregate of pay and dearness allowance. As such, dearness allowance is part of the package, for calculation of additional amount of gratuity, in respect of his clients being officers. He relies on views of learned single Judges of High Court of Chhattisgarh and High Court of Judicature for Rajasthan, by respective **judgment dated 31st August, 2020** in, inter alia, **Writ Petition (L) no.55 of 2020 (Chhattisgarh Rajya Gramin Bank vs. Meghraj Pathak & Ors.** and **judgment dated 16th October, 2020** in **S.B. Civil Writ Petition no.7359 of 2019 (Rajasthan Marudhara Gramin Bank vs. The Appellate Authority).**

Here we would like to extract from our order dated 20th January, 2021, made in course of the hearing.

> *"We record what we have noticed. Clause (m) in definitions regulation 2 gives meaning of 'pay' to include emoluments, which may specifically be classified as pay under the Regulations. We have not been shown specific classification of emoluments as pay in the Regulations."*

Mr. Saha Roy, before making submissions on emoluments being specifically classified in the Regulations, draws attention to clause (e) of definitions section 2 in Payment of Gratuity Act, 1972, giving meaning of 'employee' as any person employed for wages. He relies on clause (s) in the section for meaning of 'wages', to be, all emoluments earned by an employee while on duty or on leave, to include, inter alia, dearness allowance. He then relies on section 14:-

> ***"14. Act to override other enactments, etc.***
> *The provisions of this Act or any rule made thereunder shall have effect notwithstanding*

> *anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*

He submits, on date of retirement, gratuity in respect of his clients stood capped at Rs.10 lakhs. Turning to pages 63 and 64 of the paper book he demonstrates, gratuity calculated under the Act was in excess of Rs.10 lakhs, in respect of two respondents. So also in respect of other respondents. Hence, employer bank paid out Rs.10 lakhs to each respondent.

He turns to regulation 72 and submits, the provision is beneficial in the matter of payment of gratuity, to be the amount on calculation under the Act or the Regulations, whichever is higher. His submission, calculation under the Regulations would yield a higher figure than Rs.10 lakhs and that, per regulation 72, is the entitlement of each respondent. Appellant bank has paid out Rs.10 lakhs each in purportedly showing calculation of gratuity against each respondent to be higher as per the Act.

To answer the query, he draws attention to clause (c) in regulation 10 and sub-regulation (2) in regulation 66. They are set out below:-

> *"**10. Termination of Service by Notice**.—*
>
> *1(a)................*
>
> *(b)..*
>
> *(c) In case of breach of clause (b) of sub-regulation (1), an officer or employee shall be liable to pay to the Bank as compensation a sum equal to his pay for the period of notice required by him."*

> *“**66. Paternity Leave**.—(1)……….*
> *(2) During such period of 15 days, the male officer or employee shall be paid **leave salary equal to the pay** drawn immediately before proceeding on leave.”* (emphasis supplied)

With reference to the above he submits, clause (c) in regulation 10 and sub-regulation (2) in regulation 66, both use expression ‘pay’. Clause (m) in definition regulation 2 gives meaning of ‘pay’ while clause (o) says ‘salary’ means aggregate of pay and dearness allowance. Clause (i) defines ‘emoluments’ to mean aggregate of salary and allowances. He submits further, deduction made by appellant bank on leave salary under regulation 66 has been salary equal to pay. According to him, the bank has itself interpreted word ‘pay’ in regulations 10 and 66 as classification of emoluments as pay, by and under the regulations. This is because it is so.

He relies on **judgment dated 6th September, 2018** by a learned Single Judge of High Court of Madhya Pradesh in, inter alia, **WP 9182 of 2017** (**All India Gramin Bank Pensioners Organization Unit Rewa – vs. – Madhyachal Gramin Bank & another)**, paragraphs 18 to 24. Special Leave Petition against dismissal of appeal therefrom, stood dismissed as aforesaid. In the premises, there is no controversy regarding merger, as parties appear to have accepted the declaration of law in **Khoday Distilleries Ltd.** (supra). We think fit to reproduce paragraph 20 from **judgment dated 6th September, 2018** (supra).

> *“(20) A microscopic reading of Regulations show that **there exists no provision whereby any part of emolument may specifically be clas-***

> ***sified as pay**. This expression- any part of emoluments which specifically be classified as pay needs interpretation. In my view, a conjoint reading of definition of "pay", "emoluments" & "salary" is required for proper interpretation of the meaning of "pay" or the said highlighted expression. It is important to note that "emoluments" is aggregate of salary and allowance "salary" is aggregate of pay and dearness allowance. Thus, said three definitions are deeply interlinked and correct meaning of said expression can be drawn by combined reading of said three provisions. The definition of "pay" refers about emolument, whereas emolument includes salary which includes pay and dearness allowance. Thus, dearness allowance is specifically classified and must form part of pay because the said definitions are closely interwoven. Otherwise, expression leads to an absurdity and impossibility. Absurdity, inconsistency and impossibility because in the Regulations there exists no provision for undertaking such exercise of specially classifying an emolument as pay."* *(emphasis supplied)*

Prayer in the writ petition was for recalculation of entitlement to gratuity amount of respondents, taking into consideration all components of emoluments. By impugned order, inter alia, following was said:-

> *"(10). In light of the above, I hold that the petitioners shall be entitled to gratuity based on a calculation that would include 'dearness allowance' in the "last pay". The respondents are directed to include the dearness allowance and recalculate the gratuity of the petitioners and pay the difference arising thereto to the petition-*

ers expeditiously and preferably within 90 days from date."

We are not satisfied with contention of respondents regarding emoluments or any part of it having been classified in the Regulations, as 'pay'. The phrase used in clause (m) of definition regulation 2 is 'specifically be classified'. Such phrase would exclude any interpretation by implication, based on what is meant or scope or effect of clause (c) in regulation 10 or sub-regulation (2) in regulation 66.

Meaning of 'pay' makes clear that it is basic pay and specially classified part of emoluments. Though stagnation increments are included with basic pay but no part of emoluments is. There is thus, distinction between pay and basic pay. Second proviso under sub-regulation (3) of regulation 72 refers to gratuity payable to an officer based on last 'pay' drawn. 3rd proviso is in respect of employee, to take average of 'basic pay' along with, inter alia, dearness allowance. Here too a clear distinction has been made by the Regulations, between officer and employee, in the matter of calculation of gratuity. Pay includes within it, certain components and to be taken into account in respect of officers. Regarding employees, it is basic pay and specifically mentioned allowances. We see no ambiguity in the provisos. In view of what we have said above **All India Gramin Bank Pensioners Organization Unit Rewa** (supra) is a view we are unable to accept or be persuaded by.

There is no dispute that the Act overrides in terms of section 14 therein. Here respondents have elected to urge their entitlement under the Regulations. So the overriding effect of the Act is irrelevant for their purpose.

For reasons aforesaid, impugned order is reversed. The appeal is allowed on the writ petition being dismissed.

Mr. Saha Roy prays for stay of operation of the judgment dictated in Court. The prayer is considered and refused.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)