BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.3272 of 2020
W.M.P(MD).No.2766 of 2020

M.Radhakrishnan
S/o.P.Meenakshisundaram,
General Secretary,
Pandiyan Grama Bank Retired Officers Association,
761, Pillaiyar Koil Street,
Gandhi Nagar,
Aruppukottai-626 101. ... Petitioner

Vs.

The Chairman,
Pandiyan Grama Bank,
Administration Office,
Collectorate Complex,
Virudhunagar.

Now amalgamated as
The Chairman,
Tamil Nadu Grama Bank,
6, Yercad Road, Hasthampatti,
Salem-7 ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the respondent dated 28.01.2020 in Ref:HRM/1140/2019-20 and quash the same and consequently, direct the respondent to include the dearness allowance in the last drawn pay for the purpose of calculating the gratuity and to pay the same to the members of the petitioner.

For Petitioner	:	Mr.AR.L.Sundaresan Senior counsel for Mr.J.Anand Kumar
For Respondent	:	Mr.N.Dilip Kumar

ORDER

This Writ Petition has been filed to call for the records pertaining to the impugned order of the respondent dated 28.01.2020 in Ref:HRM/1140/2019-20, quash the same and consequently, direct the respondent to include the dearness allowance in the last drawn pay for the purpose of calculating the gratuity and to pay the same to the members of the petitioner.

2. The case of the petitioner is that the petitioner is the General Secretary of the Pandyan Grama Bank Retired Officers Association. The members of the said Association retired from service on superannuation and some of the members have tendered Voluntary Retirement. The said Association is functioning with due registration under the Societies Registration Act. Earlier, the respondent Bank formed under the Regional Rural Bank Act, 1976 and is also a Subsidiary of Indian Overseas Bank which is Nationalised Bank and functions under the aegis of the Government of India. The said Bank is a Model employer and is liable to adhere to the instruction and orders of the Government of India. The respondent Bank is having separate regulations namely Pandiyan Grama Bank Staff (Officers and Employees) Service Regulations, 2010, which have been adopted from 13.12.2010 onwards. The said Service Regulations is being followed in respect of calculating the gratuity. However, the respondent Bank started to follow different yard sticks in respect of officers and employees at the time of their retirement. But, the respondent Bank is not entitled to follow the different yardstick for its employees. For calculating the gratuity, Regulation 72 enables the respondent Bank to calculate the same either as per the provisions of the Payment of Gratuity Act, 1972 or as per the Service Regulation (2) and the higher of the said amount is payable to the concerned officer or employee eligible for receiving gratuity. However, the respondent herein has fixed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as limit for grant of gratuity even though the employees are eligible and entitled for higher amount as per the Service Regulation 72. When the same was raised before the respondent Bank, by a Circular dated 10.08.2016 it was informed that it has been decided in the Board meeting conducted on 09.08.2016 to lift the ceiling on gratuity and permission was accordingly accorded. Even thereafter, the respondent has not initiated any steps to change the method of arriving at the retirement gratuity thereby enabling the employees or officers of the respondent Bank to get higher amount of gratuity.

3. Therefore, the petitioner Association made a representation on 24.08.2016 to implement the service regulations and to pay the gratuity calculated on the basis of basic pay along with dearness allowance. Since no order was passed the petitioner Association filed a writ petition in

W.P(MD).No.4600 of 2017 to direct the respondent to consider the representation dated 24.08.2016 and to implement the service regulations of the respondent and pay the gratuity calculated on the basis of basic pay along with dearness allowance for its members. This Court vide its order dated 20.03.2019 has disposed of the said writ petition by issuing a direction to the respondent to consider the representation of the petitioner after affording an opportunity to the petitioner and pass orders within a period of eight weeks from the date of receipt of a copy of the order, pursuant to which the impugned order has been passed, challenging which the present writ petition has been filed.

3. Learned Senior Counsel appearing for the petitioner submits that the respondent Bank has rejected the representation of the petitioner Association on the ground that the petitioner is not entitled to get the benefit either under the Payment of Gratuity Act or under the Service Regulations. However, the petitioner is not claiming any benefit under the Payment of Gratuity Act and the petitioner Association has made a representation claiming only under Service Regulations 72(2) and 72(3). Though the

respondent Bank has rejected the representation of the petitioner's Association on the ground that the maximum cap fixed is Rs.10,00,000/- and beyond Rs.10,00,000/-, they have no power to disburse the gratuity amount, the finding rendered in the impugned order is not sustainable one since the said cap has already been lifted on 10.08.2016. Therefore, the officer or employee is eligible for more than a sum of Rs.10,00,000/- subject to statutory deductions, if any. Therefore, the impugned order is liable to be interfered with.

4. The learned Senior Counsel appearing for the petitioner would further submit that clause 2(m) of the Service Regulations clearly provides that “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. Emolument is defined under clause 2(i) which means the aggregate of salary and allowances, if any. Salary is defined under clause 2(o) which means the aggregate of pay and dearness allowance. Hence, the above provisions makes it clear that the pay includes dearness allowance.

5. The learned Senior Counsel would further submit that the similar issue came up for consideration before the High Court of Madhya Pradesh in W.P(MD).Nos.9182 of 2017 etc., wherein the learned Single Judge had categorically held that the pay includes dearness allowance which was confirmed by the Hon'ble Division Bench of the Madhya Pradesh High Court in W.A.Nos.1316 of 2018 etc., It was challenged before the Hon'ble Apex Court in S.L.P.Nos.11113 to 11115 of 2019, which was dismissed at the admission stage itself. Without considering the above facts, the respondent has mechanically rejected the petitioner's representation which is not sustainable. Hence, this Court may set aside the impugned order and remand the matter to the respondent Bank for passing fresh order in terms of Service Regulations 72(2) and 72(3).

6. Per contra, the learned Standing Counsel appearing for the respondent would submit that the persons who retired from service before 10.08.2016 made a representation on 24.08.2016 and no representation has been made on behalf of the persons who retired after 10.08.2016. Even, in

Service Regulation 72, the first proviso which is applicable to the members of the petitioner's Association makes a distinction between an officer and an employee. In respect of an officer, the second proviso makes it clear that the gratuity is based on the last pay drawn and the third proviso in respect of the employee, makes it clear that pay for the purpose of calculation of gratuity shall be the average of the basic pay, dearness allowance, special allowance and officiating allowance payable during 12 months preceding death, disability, retirement, resignation or termination of service as the case may be. Regulation 72(3) makes it clear as to how the gratuity has to be provided to the officer as well as the employee. Hence, no further clarification is necessary by reading of the definition of clauses 2(m), 2(i) and 2(o). Though the learned Senior Counsel appearing for the petitioner has relied upon the judgment of the Division Bench of the Madhya Pradesh High Court, the very same issue is covered by a decision of a learned Single Judge of the Bombay High Court wherein it was held that the dearness allowance cannot be included in the last pay drawn. Hence, he prays for dismissal of the present writ petition.

7. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents.

8. The facts in the present case are not in dispute. Admittedly, the respondent Bank is having separate regulations from 13.12.2010 and the same is being followed by them in respect of service condition of the employees. However, the said regulation is not being followed in respect of calculating the gratuity of the members of the petitioner Association and the respondent Bank has followed different yardstick in respect of members of the petitioner Association and has fixed the limit for grant of gratuity as Rs.10,00,000/- (Rupees Ten Lakhs only). When the issue was raised before the competent authority, vide Circular dated 10.08.2016 with reference to the Board meeting conducted on 09.08.2016, permission was accorded for lifting the ceiling on gratuity. However, the respondent Bank has not taken any steps to change the method. Therefore, the petitioner Association made a representation on 24.08.2016 for payment of gratuity in terms of Service Regulations 72(2) and 72(3). However, no order was passed by the respondent Bank and therefore, the petitioner has filed a writ petition in

W.P(MD).No. 4600 of 2017 before this Court and this Court vide its order dated 20.03.2019 issued a direction to the respondent to consider the representation of the petitioner. Pursuant to the same, the impugned order has been passed.

9. The issue arising in the present writ petition is whether the members of the petitioner Association are entitled to gratuity without any ceiling limit. The learned Senior Counsel appearing for the petitioner relied upon the lifting of cap with regard to the maximum ceiling limit of Rs.10,00,000/- (Rupees Ten Lakhs only) on the basis of the representation of the persons, who retired prior to 10.08.2016 and submitted that persons, who retired after 10.08.2016, are entitled to get more the benefit of the gratuity without fixation of any cap on the ceiling limit. Though the decision of the Madhya Pradesh High Court is pressed into service by the petitioner, but it is countered by the respondent relying upon the decision of the Bombay High Court where the question of the composition of emoluments was considered. However, the fact remains that the decision of the Division Bench of the Madhya Pradesh High Court was put in issue

before the Hon'ble Apex Court, which was not favourably considered by the Hon'ble Apex Court.

10. In such a backdrop, this Court is of the considered view that inspite of the aforesaid fact being placed before the respondents, the respondent Bank has not properly considered the issue, but passed the impugned order, which clearly reveals non-application of mind necessitating this Court to to interfere with the impugned order.

11. Accordingly, the impugned order dated 28.01.2020 in Ref:HRM/1140/2019-20 is set aside and the petitioner is permitted to make a representation with regard to the entitlement of the gratuity of the persons who retired after 10.08.2016 and with regard to the inclusion of dearness allowance in the last drawn pay for calculation of gratuity of the persons, who retired before 10.08.2016 within a period of two weeks from the date of receipt of a copy of this order. If such representation is made, the respondent Bank is directed to pass appropriate orders on merits and in accordance with law within a period of 6 weeks thereafter in terms of

Service Regulations and also taking into consideration the judgment of the Hon'ble Division Bench of Madhya Pradesh High Court which was not interfered with by the Hon'ble Apex Court.

11. Accordingly, this Writ Petition is allowed in the aforesaid terms. No costs. Connected miscellaneous petition is closed.

15.12.2022

Index : Yes / No
Speaking Order : Yes / No

ssb

To

The Chairman,
Pandiyan Grama Bank,
Administration Office,
Collectorate Complex,
Virudhunagar.

Now amalgamated as
The Chairman,
Tamil Nadu Grama Bank,
6, Yercad Road, Hasthampatti,
Salem-7

M.DHANDAPANI,J.

ssb

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