IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 04, 2022

\+ W.P.(C) 7759/2020, CM APPL. 25576/2020, 25577/2020, 25578/2020, 25616/2020 & 26542/2020

RAJEEV JAIN AND ORS. ..... Petitioners
Through: Mr. Ankur Mittal, Adv. with Ms. Chitranshi, Adv.

versus

PUNJAB NATIONAL BANK ..... Respondent
Through: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Nipun Sharma and Mr. Ravi Solanki, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM APPLs. 25577/2020, 25578/2020 & 25616/2020

Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 7759/2020

1. This petition has been filed with the following prayers:-

> *"a. Pass an appropriate writ, order or direction quashing the impugned Recovery Notices dated 16.12.2019, 10.09.2020 (4 notices of said date) and 16.09.2020 (2 notices of said date) (**ANNEXURE P-1**) issued by the respondent bank;*
> *b. Pass an order permanently restraining bank to take any coercive action whether financial, non-financial or otherwise*

towards the petitioners, merely on account of issuance of Recovery Notices.
c. Pass an order setting aside the 3(Three) Show Cause Notices Dated 09.10.2020 (annexed alongwith as Annexure-P-16) issued by the respondent bank, including setting aside and quashing of any further action taken by bank in pursuance thereof;
d. Pass an order restraining the respondent bank for initiating or taking or continue with any action against the petitioners based upon the impugned recovery notices (Annexure- P-1 to the writ petition) and 3(Three) Show Cause Notices Dated 09.10.2020 (annexed alongwith this application as annexure-P-16)
e. Pass an order awarding exemplary costs to be payable by the respondent bank to the petitioners;
f. Pass any or such other order is this Hon'ble court deems fit in the interest of justice."

2. The present petition has been filed impugning the recovery notices dated December 16, 2019, September 10, 2020 (four notices of said date) and September 16, 2020 (two notices) issued by the respondent Bank against the petitioner Nos. 1 to 6 seeking recovery of bonus / incentive / *Dashain* allowance received by the petitioners during their deputation as India Based Officers ('IBO', for short) in Everest Bank Limited ('Everest Bank', hereinafter) having its registered office in Kathmandu, Nepal and also show-cause notices dated October 9, 2020 issued to petitioner Nos. 1, 4 and 5 for taking disciplinary action.

3. It is the case of the petitioners herein that they were sent offer letters for their deputation at Everest Bank in terms of the Technical Service Agreement ('TSA', for short) executed between Everest Bank and the respondent Bank. The same was approved by the Nepal Rastra Bank, i.e., central bank of Nepal. The term of deputation of the petitioners at Everest Bank was approximately three years. Petitioner No. 1, an employee of the respondent Bank, received an offer letter on July 30, 2016 from the respondent Bank for posting in Everest Bank,

Kathmandu, Nepal, from October 16, 2016 to February 05, 2020. On October 14, 2016, he received a relieving letter from the respondent Bank wherein it was mentioned that he will be entitled to the salary and perquisites of Everest Bank from the date of his reporting there. Similarly, the petitioner No. 2 received the offer letter on July 19, 2013 for posting at Everest Bank, Kathmandu, Nepal from July 23, 2013 to October 21, 2016. Petitioner No. 3 received the offer letter on March 19, 2011 for deputation at Everest Bank, Kathmandu, Nepal from March 20, 2011 to June 15, 2014. On March 19, 2011 the petitioner No. 3 received a relieving letter from the respondent Bank wherein it was mentioned that he will be entitled to the salary and perquisites of Everest Bank from the date of his reporting there. Petitioner No. 4 also received an offer letter on April 20, 2018 for deputation at Everest Bank, Kathmandu, Nepal and has been posted there since April 24, 2018. Petitioner No. 5 received the offer letter on August 06, 2016 from the respondent at Everest Bank, Nepal, and was posted there from October 16, 2016 to October 16, 2019. Petitioner No. 6 received a transfer letter on June 17, 2018 for deputation at Everest Bank, Representative Office, Kasturba Gandhi Marg, New Delhi, where he has been posted since July 21, 2018. On August 13, 2018 the petitioner No. 6 received a letter from Everest Bank stating that he will be entitled to additional allowances and perquisites over and above his salary in the respondent Bank. On July 04, 2016 another TSA was executed and implemented, which incorporated similar terms and conditions as the then existing TSA.

4. In the 295th meeting of the Board of Directors of Everest Bank held on 06 July, 2018, the Chairman informed the Board that an opinion was obtained from labour law experts as to whether contract staff are eligible for receiving bonus or not. The opinion dated July 04, 2018 stated that officers working under fixed term

contract basis and who have worked half of the period in a fiscal year are entitled to bonus pursuant to Section 6 (1) of the prevailing Nepal Bonus Act, 2030 (1974) (hereinafter referred to as "Bonus Act"). Subsequently, the Board, after deliberation approved to pay bonus to seconded staff and contract staff in compliance of the Bonus Act.

5. It is stated that however, the respondent Bank in an arbitrary and *mala fide* manner, issued recovery notices against the petitioners claiming recovery of random amounts allegedly paid to the petitioners towards bonus/additional perquisites/additional salaries by Everest Bank during their deputation. The amounts claimed from the petitioners through the recovery notices are as below:-

Petitioner No.	**Date of Notice**	**Amount claimed**
Petitioner No. 1	16.12.2019 and 10.09.2020	Rs. 29,42,615/-
Petitioner No. 2	10.09.2020	Rs. 11,06,884/-
Petitioner No. 3	10.09.2020	Rs. 9,34,095/-
Petitioner No. 4	16.12.2019 and 16.09.2020	Rs. 17,74,667/-
Petitioner No. 5	10.09.2020	Rs. 33,41,356/-
Petitioner No. 6	16.09.2020	Rs. 2,63,095/-

6. It is submitted that Recovery Notices were sent by the respondent Bank seeking arbitrary and illegal recovery of the amounts mentioned above from the

petitioners which were paid by Everest Bank, to the petitioners as bonus/*Dashain* expenses during their tenure of deputation. The respondent in the said notice stated that the amount to be recovered from the petitioners was received by the petitioners over and above the salary/ incentive/ perquisites approved by the Working Group of the Standing Committee ('WGSC', for short) set up by the Ministry of Finance (Banking Division), Government of India.

7. Everest Bank is a joint venture where the respondent Bank is having a minority holding of 20% stake. Furthermore, in case of minority holding in joint venture, the Standing Committee recommendations allows the concerned banks to decide the matter on case to case and ownership basis. The same is also duly recorded in the TSA entered into between the banks. It is submitted that the amount sought to be allegedly recovered by the respondent Bank is a part of the *Dashain* expenses and bonus which was distributed among the officers of Everest Bank, as per provisions of the prevalent labour and bonus legislations of Nepal. Therefore, it can never be appropriated by the respondent Bank. In the present arrangement of joint venture between the respondent bank and Everest Bank, the TSA fee is paid by Everest Bank to the respondent Bank as management fee lump sum and the salaries to the respondent Bank's IBOs are borne and paid by Everest Bank with prior approval of the regulator. It is further mentioned that Everest Bank is exclusively a local Nepali entity; therefore, all the relevant laws of Nepal are applicable to it. As such being on the roll of Everest Bank, the respondent Bank's IBOs are also subject to the local laws of Nepal.

8. The petitioners after receiving the Recovery Notices claiming recovery of random amounts which were allegedly paid to petitioners towards Bonus/*Dashain* expenses by Everest Bank during the petitioners' deputation, made their respective representations vide letters dated December 22, 2019, September 22,

2020, September 18, 2020, September 21, 2020, September 19, 2020, September 17, 2020 and September 25, 2020, raising their grievance towards the arbitrary and illegal recovery, by affirming that there is no provision either in the offer letters or in any prevalent bank guidelines for recovering such amount, as such amounts were paid to the petitioners in accordance with the provisions of the TSA with the prior approval of the regulator and the policies of Everest Bank applicable to employees and officers of the respondent Bank on deputation, and as per local laws of Nepal.

9. Further, it is averred that when the respondent issued the Recovery Notices to petitioner No. 1 and petitioner No. 4 on December 16, 2019, they made a joint representation against the said notices on December 22, 2019 stating that bonus is an appropriation of profit among officers and cannot be subject to any recovery by the employer. The respondent has not provided any reply to the said joint representation till the date of filing of the petition.

10. That apart it is stated that the Nepal Rastra Bank, which is the main regulatory body to approve Foreign Direct Investment in the Nepalese Banking Sector has approved the TSA signed by the respondent Bank and Everest Bank wherein the rules and detailed terms and conditions under which both the banks would be functioning. The respondent Bank and Everest Bank, being signatories to the TSA, are obliged to recognise the rules set out for allowing Foreign Direct Investment in Nepal. As such, the recovery to the respondent Bank would be in violation of the terms of the TSA, as prior investment and returns are duly recorded and approved as foreign investment with the Nepal Rastra Bank. The same has been mentioned in 'Article I: Equity Participation' of the TSA.

11. It has also been stated that the respondent bank, after issuing the said recovery notices, further arbitrarily and illegally issued three show cause notices

dated October 09, 2020 seeking to initiate disciplinary action against the petitioner Nos. 1, 4 and 5. That the said show cause notices further refers to a letter dated January 16, 2020 which was circulated reiterating the operative guidelines for MD and CEOs at overseas centres, reproduced as under:

> "*To ensure that IBOs are paid salary and allowances as per recommendations of Working Group of Standing Committee (WGSC) and any perks/ bonus/ benefits received over and above the recommendations of WGSC should be deposited with the Parent Bank.*"

12. It is the stand of the petitioners that the aforesaid guidelines mentioned in the show cause notices were not communicated to the petitioners and even otherwise, have been issued subsequent to their appointments, and are applicable to MD and CEOs only. Therefore, the said guidelines cannot be applied to the petitioners retrospectively by the respondent Bank. It is their contention that a subsequent internal decision by the bank cannot have a retrospective application and bearing on the petitioners while on deputation with another organisation. Additionally, there is no modification or change in the terms of TSA, which remains binding on the respondent Bank as well, and which categorically provides for the benefits as paid to the petitioners.

13. A counter affidavit has been filed on behalf of the respondent Bank wherein it is stated that the Standing Committee was formed in 1986 under the directives of Government of India for the purpose of issuing uniform guidelines in respect of salary and other service conditions of officers of Public Sector Banks posted abroad. Representatives of the Government of India and Member Banks are part of the Standing Committee. The Guidelines, norms and Rules in respect of salary and other service conditions for IBOs are framed from time to time by the said Standing Committee. The WGSC comprises of the representatives of the State

Bank of India (Convenor), Bank of Baroda, Bank of India, Indian Overseas Bank, Punjab National Bank, Exim Bank and holds meetings under the aegis of the Ministry of Finance, Department of Financial Services. The role of the WGSC is to approve revision and enhancement in the existing allowances and to introduce new allowances, uniform for all banks to be paid to IBOs posted outside India and once the recommendations of WGSC are approved by the Ministry of Finance, Government of India, the said uniform guidelines are implemented by all the Member Banks in order to maintain the uniformity regarding payment of emoluments/ benefits to IBOs posted outside India. Following the aforementioned procedure, the salary and other entitlement of IBOs posted outside India have been fixed by the Member Banks with the approval of their respective Board of Directors, as the Board of Directors are the final Authority under the Section 19 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1980.

14. It is stated that a perusal of the Board Notes dated February 10, 2012 and October 10, 2014 would reveal that the aforementioned practise has been followed from 1986 and that entitlement of IBOs decided by the WGSC is comprehensive and not only provides for the payment of salary but also provides for reimbursement of other entitlements. The entitlement so recommended by the WGSC and implemented by the Member Banks with the approval of the Department of Financial Services, Ministry of Finance, Government of India, does not provide for payment or acceptance of any bonus or any other perquisites by IBOs from foreign banks/entities where they are posted on deputation. It is in this background that the offer letter dated July 30, 2016 was issued to the petitioners by the respondent Bank. The said offer letters specifically provided as under:-

> *"During your tenure at Kathmandu, Nepal, you will be entitled to salary and perks as applicable to other India Based Officers (IBOs) of Public Sector Banks posted abroad and also governed by the service conditions approved by the Government of India and as adopted by the Bank from time to time."*

15. The offer letters issued to the petitioners, which have been unconditionally accepted by them also provided the details of benefits exhaustively to be paid to them during their posting outside India, such as salary including housekeeping allowance, children's education allowance, reimbursement of medical expenses, shipment of un-accompanied baggage, outfit allowance, transport, entertainment expenses, reimbursement of water charges, mobile or internet charges, reimbursement of newspaper expenses, special halting allowance, home leave facility, leave as per rules during overseas posting, sick leave, provident /pension fund, residential accommodation and other conditions.

16. It is stated that the petitioner No. 6 was posted on transfer at Representative Office of Everest Bank at New Delhi vide transfer letter dated June 17, 2018. Thereafter, Everest Bank vide its letter dated August 13, 2018, has clearly specified the additional allowances payable to him over and above his salary in the respondent Bank while on deputation at the Representative Office at New Delhi, which does not include any bonus.

17. That apart, it is stated that the Group Business Management Department of the respondent Bank has also issued instructions to the MD and CEOs of all Group Overseas Entities, specifically to the MD and CEO of Everest Bank, Nepal, *inter alia* pointing out that the IBOs are entitled to salary as per the recommendations of the WGSC, duly approved by the Board and in case IBOs have received any bonus or other perquisites from the associate / subsidiary/ joint venture company over and above the salary fixed by the WGSC, the same is

required to be deposited with the parent bank, i.e., the respondent Bank. It is stated that subsequently the Group Management Department of the respondent Bank, with the approval of the Board of Directors of the respondent Bank once again issued comprehensive guidelines dated January 16, 2020 to MD and CEOs/ CEOs at Overseas Centres, wherein in Clause E- HR Management in paragraph 5, it was reiterated that any perquisites/bonus/benefits received by IBOs over and above the recommended amounts of the WGSC should be deposited with the parent bank.

18. However, the petitioners herein during their deputation from the respondent Bank to Everest Bank have received bonus, despite the fact that the payment of bonus is neither allowed by the WGSC nor provided for in the offer letter. Therefore, the respondent Bank issued letters to the the respective petitioners to recover the amounts received by the petitioners from the overseas entity. Show cause notices have also been issued to the petitioners to show as to why disciplinary action should not be initiated against them.

19. Insofar as the reliance placed by the petitioners on the TSA, it is stated that the petitioners are not a party to the same and as such should be estopped from relying upon the same due to the principle of privity of contract. That apart, it is stated that the provisions contained in Article IV sub clause 3 of the TSA is only an enabling provision and merely provides that Everest Bank shall pay additional salary/bonus to the staff. However, the said provision does not create any right in law in favour of the petitioners to claim the said benefits either from the respondent Bank or Everest Bank.

20. Further, it is stated that if any additional salary/bonus have been paid to any IBOs including the petitioners, by any entity where they have been posted on deputation, such amounts / benefits being over and above the uniform service

condition approved by the WGSC for IBOs and not part of the offer letter of the petitioners, cannot be claimed / retained as a matter of right in law and the said amounts/benefits are liable to be returned/refunded by the petitioners to the respondent Bank. They can claim/ retain as a matter of right only such amounts that have been offered to them in the offer letter.

21. The Nepal Rastra Bank, i.e., the central /regulator bank of Nepal, has approved Article-IV of the TSA on the following terms and conditions:-

> *"The officers of PNB presently under deputation to EBL shall continue to be paid at present as follows:-*
>
> *1. For Chief Executive Officer, dollar denominated amount as determined by the standing committee of Government of India from time to time or as mentioned in chief executive's remuneration Guidelines, 2067 issued by Nepal Rastra Bank, whichever is lower.*
>
> *2. For other officers according to dollar denominated amount as determined by the standing committee of government of India from time to time or as determined by the board of directors of EBL, whichever is lower.*
>
> *xxxx xxxx xxxx*
>
> *In addition the staff may be paid additional salary/bonus salary as follows:-*
>
> *1. For Chief Executive Officer, as mentioned in chief executive's remuneration Guidelines, 2067 issued by Nepal Rastra Bank.*
>
> *2. For other officers, as determined by the Board of Directors of EBL"*

22. It is stated that from the above, it is evident that the CEO/other officers posted on deputation to Everest Bank are not entitled to claim any amount higher than the amount determined by the Standing Committee from time to time on the basis of provisions contained in the TSA. The petitioners herein, while on deputation to the foreign entity remained employees of the respondent Bank and were bound by the terms of employment of the respondent Bank, i.e., the Punjab

National Bank (Officers) Service Regulations, 1979. Therefore, while on deputation, they were not allowed to receive any amount over and above the salary and perquisites specified in the offer letter that was duly accepted by the petitioners.

23. It is also stated that as per the terms and conditions of the petitioner, the amount of salary and perquisites as mentioned in the offer letter were required to be paid net of taxes by Everest Bank. However the bonus amounts received by the petitioners from Everest Bank have been paid after deducting tax. This, according to the respondent Bank is indicative of the fact that the petitioners were not entitled to receive bonus, as the tax has been paid by the petitioners themselves and not by Everest Bank.

24. A rejoinder has been filed on behalf of the petitioners wherein, apart from reiterating the contentions set forth in the petition, it is stated that vide note dated February 10, 2012, the Deputy General Manager of the respondent Bank sought Board approval from its Chairman and Managing Director, Executive Director and General Manager regarding fixation of pay and allowances of officers posted abroad, to be implemented after approval of the respective boards of public sector banks. Relevant paragraph of the note dated February 10, 2012 is reproduced as under:

> *"These recommendations were forwarded to Ministry of Finance, Govt of India by standing Committee for final approval. The ministry vide its letter dated 02.02.2012 has approved the recommendations of Standing Committee to be implemented after approval of the respective boards of Public Sector Banks. These are outer limits and banks are free to fix lower limits. There shall be no difference in allowances payable to officers posted in branches/ROs and subsidiaries. However, joint ventures with less than 51% holding are not covered."*

25. Under Article I (1) of the TSA, the respondent bank as a Joint Venture Partner contributed 20% of share capital of Everest Bank at face value of shares. Therefore, the guidelines were not applicable to the Everest Bank-respondent Bank joint venture. Accordingly, the TSA was signed and executed to decide the modalities between two banks on mutually agreed terms.

26. Further, the Minutes of the meeting dated December 29, 2014 of the Standing Committee, which was duly signed by the Director (IR), Department of Financial Services, Ministry of Finance, in item IV, citing letter No. F. No. 4/09/96- IR (Vol II) dated September 19, 2011 of the Department of Financial Services, had mentioned that the mandate of the WGSC was being revisited and that it had been decided that the WGSC would continue to deal with the fixation of pay and allowances but does not include any bonus and other perquisites. It was further clarified that the matter other than salaries and allowances are therefore not required to be referred to WGSC, which means that WGSC deal only with the fixation of pay and allowances and rest of the issues were left to the banks to be decided in accordance with the regulations of host countries and mutually agreed terms with the joint venture partner/subsidiaries.

27. It is further submitted that vide the minutes of the 218th meeting of the Board of Directors of Everest Bank held on March 11, 2012, agenda in item No. 2(a)(i) the representative of the respondent Bank gave its consent to the draft TSA along with TSA fee of Rs. 45 lakh INR per annum. Accordingly, the respondent cannot have any grievance as they were already aware of and consented for the bonus/additional salary and other perquisites as were being paid to the petitioners throughout their posting/deputation. The petitioners were paid bonus/additional salary/other perquisites by Everest Bank during their period of posting at Nepal, in accordance with the provisions of the TSA signed and implemented between

the two banks with prior approval of Nepal Rastra Bank. It is also pointed out that in the minutes of the 270th Board Meeting of Everest Bank held on July 04, 2016, it was stated that series of discussion between both the banks were held and ultimately a draft was finalised. Accordingly, the final draft was signed by both the banks and sent to Nepal Rastra Bank for approval. Subsequently, the Nepal Rastra Bank approved the TSA on April 11, 2017 with amendments in the provisions under Article IV for payment of bonus/additional salary/other perquisites. As such, the respondent Bank signed and consented to the documents pertaining to the provisions of payment of bonus/additional salary/other perquisites and further consented for their payments in the 270th and 279th Board Meeting of Everest Bank held on July 04, 2016 and July 09, 2017 respectively. Since the respondent bank is not the one who has paid these bonus/additional salary and other perquisites, it has no locus to enrich itself by claiming that the petitioners should deposit the bonus/ emoluments paid under mandatory regulatory employee benefit schemes of Government of Nepal with the respondent Bank.

28. That apart, it is stated that the salary is paid in terms of offer letter. The offer letters contained the details of the salary and allowances that would be received by the petitioners at Everest Bank. Subsequently, after acceptance of the offer, the relieving letters served on the petitioners by the respondent Bank in paragraph 3 stated- *"You shall be entitled to the salary and perquisites of Everest Bank Limited"***.**

29. It is stated that the above would show that the respondent Bank at its convenience has given restrictive meaning to the term “payment of salary and allowances”. It is further submitted that respondent Bank always knew that under the TSA signed between both the banks, Everest Bank pays bonus and additional

salary to IBOs. Therefore, it was incumbent on the respondent Bank to have specifically stated in the offer letter that nothing over and above what is mentioned in the offer letter should be accepted by the petitioners during the period of their posting at Everest Bank. It is further stated that Punjab National Bank Officers Service Regulations, 1979 under clause 2 (2) specifically states that the Regulations shall apply to officers transferred/ posted/ deputed outside India except to such extent as may be specifically or generally prescribed by the Competent Authority. However, no specific guidelines/directions were issued by the respondent Bank that the petitioners will not be entitled to any bonus/additional salary and other perquisites.

30. That apart, it is stated that recovery notices were issued by the respondent Bank after arbitrarily issuing the comprehensive guidelines dated January 16, 2020 for MD and CEOs / CEOs at overseas centres. Even assuming these guidelines were in force when the petitioners received their offer letters and were posted in Everest Bank, no notice has been issued before January 2020, which clearly suggest that no such guidelines existed prior to January 16, 2020. Moreover, while conveying the comprehensive guidelines, it was stated in paragraph 2 that-

> *"While approving the policy, Board has directed that MD & CEO/CEOs at overseas centers shall exercise the financial, administrative and loaning powers in the bank within the authority delegated by their Board and ensure that the guidelines do not conflict with the regulatory guidelines of the host country."*

It is contended that upon perusal of the above, it can be seen that the respondent Bank had directed MD and CEOs/ CEOs at overseas centres to use the power within the delegated authority to ensure compliance of the regulatory guidelines of the host country.

31. It has also been stated that the respondent Bank is not competent to change the provisions of TSAs *suo moto*, as it requires consent of both the banks first and thereafter final approval of the regulator for any change or amendment in the agreement. It is submitted that sub-clause (2) of Article V (Tenure of the Agreement) of the TSA signed and executed between both the banks states as under:

> *"This Agreement may be revised from time to time during its currency; on the mutual understanding / agreement between the Bank and PNB and any substantial amendment and modification of the Agreement, resulting there from shall be effective after approval of Nepal Rastra Bank."*

However, no such amendment or change of provisions was ever proposed by the respondent Bank or Everest Bank at any point of time. Additionally, subsequent TSA dated July 04, 2016 was partly modified, but the clause for payment of salary, allowances, additional salary and other perquisites as payable to local staff did not change. This reveals that despite a mandate to review the clauses, both the banks took a conscious decision not to effect any change in the provisions that dealt with payment of salary, allowances, and other perquisites. Therefore, it was in accordance with these provisions that Everest Bank paid bonus/additional salary/other perquisites to the petitioners and this fact was known to the respondent Bank, being signatory to the TSAs. Thus, the payment of bonus/additional salary/other perquisites to the petitioners was as per mandate arising out of the TSAs signed and implemented by both the banks with prior regulatory approval, adopting a fully transparent process. It is the case of the petitioners that the respondent Bank is trying to set up a false case and further wants to make arbitrary and illegal recovery from the petitioners under the garb of arbitrary guidelines.

32. Written submissions have been filed on behalf of the petitioners. Mr. Ankur Mittal, learned counsel appearing for the petitioners, reiterating the contentions as set forth in the petition, has stated that the respondent Bank has no locus to recover the bonus/*Dashain* allowance paid to the petitioners by Everest Bank during their period of deputation. The respondent Bank has neither paid nor compensated Everest Bank for the amount paid by them as bonus/*Dashain* allowance to the petitioners in accordance with the prevalent labour and bonus laws of Nepal.

33. He would submit that it is not the case of the respondent that Everest Bank has sought to make any recovery on account of extra benefit conferred upon the petitioners which they were not legally entitled to. The benefits were given to the petitioners duly under the applicable policies and norms of Everest Bank, as applicable to officers including those on deputation. There is no complaint/ communication from Everest Bank in this regard. Two representatives of the respondent Bank were on board of Everest Bank, and the officials of the respondent Bank deputed to Everest Bank were paid in accordance with the provisions of the TSA signed and implemented with the prior approval of the Nepal Rastra Bank. The respondent Bank never raised any objections with regard to the same, which shows the *mala fide* on part of the respondent Bank.

34. Mr. Mittal has also stated that the TSAs between the respondent Bank and Everest Bank, initially on August 26, 1996 and thereafter on July 03, 2001, July 21, 2006, March 11, 2012 and July 04, 2016 provides for payment of bonus and additional salary as per applicable laws of Nepal under Clauses 2, 3 and 5 of Article IV and Article XI. That apart, the respondent Bank, vide letter dated August 26, 2008, suggested the Chairman of Everest Bank to revise the salary structure of its deputed officials equivalent to that of the employees of Everest

Bank in similar position/rank. The respondent Bank itself, on multiple occasions vide notes dated February 10, 2012, February 16, 2012 and minutes of meetings dated March 11, 2012, December 29, 2014, July 04, 2016 and July 09, 2016 consented to the terms of the TSA.

35. The respondent Bank issued a note dated February 10, 2012 which stated that the Standing Committee guidelines with regard to allowances of officers posted abroad are not applicable to joint ventures whose holding is less than 51%. Since under the TSA, the respondent Bank as a joint venture partner contributed only 20% of share capital of the Bank at face value of shares, WGSC guidelines were not applicable to the Everest Bank-respondent Bank joint venture.

36. That apart, the Standing Committee in the minutes of the meeting dated December 29, 2014, which was duly signed by the Director (IR), Department of Financial Services, Ministry of Finance, Government of India, citing letter dated September 19, 2011 of the Department of Financial Services, wherein it was clarified that the mandate of the Standing Committee was being revisited and that it had been decided that the Standing Committee would continue to deal with the fixation of pay and allowances. It was clarified that the matter other than salaries and allowances are therefore not required to be referred to the Standing Committee.

37. He has further stated that the banks, being signatories to the TSA are obligated to recognise such rules set out for allowing Foreign Direct Investment in Nepal. As such, recovery to the respondent Bank will be in violation of the terms of the TSA and approval of the Nepal Rastra Bank, the main regulatory body to approve Foreign Direct Investment in the Nepalese banking sector. The Nepal Rastra Bank issued a circular dated February 12, 2017 with regard to functioning of the non-Nepalese nationals, wherein it was mentioned that

remuneration of non-Nepalese officials shall be decided by the concerned Board of Directors.

38. The circular dated January 16, 2020 was not communicated / made known to the petitioners and as such reflects the *mala fide* intentions of the respondent Bank inasmuch as they seek to extract money that does not belong to them.

39. That apart, the bonus/*Dashain* allowances were paid in accordance with applicable local laws of Nepal. Section 4A of the Nepal Labour Act, 2017 (2074) prohibits working of any foreign national in Nepal unless it is permitted by the Department of Labour. In the present case, the deputed staff of the respondent Bank can only function/work in Nepal after approval of the banking regulator and thereafter, the said approval is recommended to the Department of Labour of Nepal under the provisions of the TSA. Section 4 of the Nepal Labour Act, 2048 (1992) reads as under:-

> *"Prohibition of Engaging non-Nepalese Citizens at work:*
>
> *1) Non-Nepalese citizens shall not be permitted to be engaged at work in any of the posts classified pursuant to Section 3.*
>
> 2) *Notwithstanding anything contained in Sub-Section (1) if a Nepalese citizen could not be available for any skilled technical post even after publishing an advertisement in national level newspaper and journals, the manager may submit an application to the Department of Labour along with the evidence of such fact for the approval to appoint a non-Nepalese citizen."*

Section 6(1) of the Bonus Act, states that employees who have worked for half period of total work period in a fiscal year shall be entitled to obtain bonus under the said Act. The provision reads as under:-

> *"Section 6*

Eligibility for Bonus: (1) An employee who has worked for of the an half period to be worked in a fiscal year, shall be entitled to obtain bonus under to this Act."

40. Subsequently, the Board after deliberation approved to pay bonus to seconded staff and contract staff in terms of provisions of the prevailing Bonus Act. The petitioners were also paid one-month salary as festival expenses / additional salary / *Dashain* allowance under the Civil Service Act of Nepal, which was subsequently incorporated into the Labour Act in 2017 by way of an amendment, which is reproduced as under:-

"37. Entitlement to festival expense:

(1) Each labour shall be entitled to an amount equal to the basic remuneration of one month as the festival expense each year for the festival to be celebrated according to his or her religion, culture and tradition.

(2) A labour may make a written request to the employer for the payment of the festival expense referred to in sub-section (1) at one time in one fiscal year on the occasion of the main festival to be celebrated according to his or her religion, culture and tradition. In the case absent such a request, the festival expense shall be provided at the time of Dashain festival every year.

(3) A labour who has not completed one year of service period on or before the day of payment of the festival expense shall be entitled to such expense in proportion to the period of service he or she has completed."

41. The Law Division of the respondent Bank on March 02, 2020 gave its opinion that recovery of bonus/other perquisites, over and above the salary fixed may not be sustainable in the eyes of the law as the appointment letters of the IBOs do not stipulate any such provision for recovery of the amount paid over and above the salary fixed. He has also contended that there is no bar in the

respective offer letters of the petitioners on receiving any bonus/allowance from Everest Bank.

42. Written Submissions have been filed on behalf of the respondent Bank, wherein, Mr. Rajesh Kumar Gautam, learned counsel for the respondent has stated at the outset that the present petition is premature and the same needs to be dismissed, because through the show cause notice dated October 09, 2020, the three petitioners have only been asked, for the reasons mentioned therein, as to why disciplinary proceedings should not be initiated against them. In support of this argument, he has relied upon the decisions of the Supreme Court in the cases of ***Chanan Singh v. Registrar of Co-operative Socities, 1976 (3) SCC 361; Air India v. M. Yogeshwar Raj, 2000 (5) SCC 467; Special Director and Anr. v. Mohd. Gulam Ghoushe and Anr., 2004(3) SCC 440*** and ***Union of India and Anr. v. Kunisetty Satyanarayana, 2006 (12) SCC 28.***

43. Mr. Gautam has contended that subsequent to filing of the petition, petitioner Nos. 1, 4 and 6 have taken bonus/ *Dashain* allowance, in an attempt to overreach the proceedings pending before this Court.

44. He stated that it is not the case of the petitioners that they have received, or are entitled to receive bonus from Everest Bank where they were on deputation in terms of their respective offer letters of deputation. Neither the petitioners nor Everest Bank can claim the petitioners to be employees/staff of Everest Bank, as throughout the period of deputation, they remained employees of the respondent Bank.

45. As regards the TSA, he has submitted that the respondent Bank is a joint venture partner with 20% share capital with Everest Bank. Further, in terms of the TSA (Article-III), at the request of Everest Bank, the respondent Bank agreed to "loan the services" of three officers to assist the management of Everest Bank and

one of such officers be Chief Executive Officer (CEO) of Everest Bank. Under Article - IV (Reimbursement of Technical Service Expenses) it was agreed that Everest Bank shall pay Rs. 45 lakh INR (in TSA dated March 11, 2012) and Rs. 63 lakh INR (in TSA dated July 04, 2016). In Article- IV sub Clause 2, 3, 4 and 5 (which are identical in both the TSAs dated March 11, 2012 and July 04, 2016) reads as under:-

> *"2. The officers of PNB presently under deputation to EBL shall continue to be paid as at present (which is dollar denominated amount as determined by the Standing Committee of Government of India from time to time).*
> *3. In addition the staff may be paid additional salary / Bonus salary as per practice.*
> *4. The income tax payable shall also continue to borne by EBL.*
> *5. All the perquisites as payable to local staff shall also continue. PNB and EBL shall review the present practice and discuss any change that may be convenient from administrative point of view and keeping in mind the amount fixed by the Government of India's Standing Committee for Banking Officers being posted outside of India.*
> *The period of assignment of such seconded PNB staff shall be for such period as may be mutually agreed, which may extend up to 3 years, subject to approval of NRB."*

46. It is the contention of Mr. Gautam that the TSA has been signed between the respondent Bank and Everest Bank, and the petitioners are not parties therein. Therefore, they cannot rely upon the provisions contained in the TSA.

47. Mr. Gautam has submitted that Mr. Mittal ,while relying upon the provisions contained in Article-IV (3) of the TSA dated July 04, 2016, has ignored the approval granted by the Nepal Rastra Bank to various other provisions of the same TSA, namely, Article-IV (2) and Article-IV (3). He argued that conjoint reading of these two provisions would reveal the following.

a. The CEO, who is on deputation to Everest Bank from the respondent Bank cannot be paid more than the amount determined by Standing Committee of the Government of India or as mentioned in the Chief Executive Remuneration Guidelines 2067 issued by NRB; and

b. Other Officers who are on deputation to Everest Bank from the respondent Bank cannot be paid more than the amount as determined by the Standing Committee of Government of India or as determined by the Board of Directors of Everest Bank.

48. Thus, the reliance placed by the petitioners on the decision dated July 06, 2018 of the Board of Directors of Everest Bank is misplaced and misconceived and is contrary to the approval of the TSA dated July 04, 2016 granted by the banking regulator of Nepal, i.e., Nepal Rastra Bank.

49. That apart, he has submitted that the Standing Committee was formed in the year 1986 under the directives of Government of India for the purpose of issuing uniform guidelines in respect of salary and other service conditions of the officers of Public Sector Banks posted abroad. The guidelines, norms and rules in respect of salary and other service conditions of IBOs are framed from time to time by the Committee. A working group has also been formed by the Standing Committee comprising of certain Banks to take decision on various issues relating to IBOs, and to deliberate on various issues before referring the same to the Standing Committee for its approval. It is stated that decision of the WGSC regarding IBOs are placed before the Board of the respondent bank for approval and thereafter they are implemented uniformly like other Public Sector Banks in respect of the IBOs of the respondent Bank.

50. Mr. Gautam has also submitted that it cannot be the case of the petitioners that they are entitled to payment of bonus from Everest Bank on the basis of the

terms and conditions contained in their respective offer letters of deputation to Everest Bank or that they have not been paid the amount / benefits as mentioned in the respective offer letters of deputation. In all the offer letters issued to the petitioners, it has been mentioned in an unambiguous terms that:-

> *"you will be entitled to salary and perks as applicable to other India based Officers (IBOs) of Public Sector Banks posted abroad and also governed by Service Conditions approved by Government of India and as adopted by the Bank from time to time."*

51. The petitioners having accepted the terms and conditions of the offer of deputation to Everest Bank without any demur or protest cannot claim bonus or any other payment over and above the payments/ benefits mentioned in their respective offer letters. They also cannot claim any payment or benefit over and above the salary and perquisites approved by the WGSC and adopted by the respondent Bank from time to time. The claim of the petitioners to receive or retain the bonus paid by Everest Bank to them during their respective period of deputation is neither supported by any decision of the WGSC or the terms and conditions of the offer letters of deputation.

52. Mr. Gautam has submitted that the reliance placed by Mr. Mittal on the letter dated August 26, 2008 is misplaced and misconceived inasmuch as, the said letter does not permit or authorise IBOs to claim any bonus over and above the salary/allowances fixed by the WGSC and beyond the terms and conditions of deputation accepted by them unconditionally without demur or protest.

53. As regards the reliance placed by Mr. Mittal on the legal opinion dated March 02, 2020, Mr. Gautam has contended that the same is not addressed to the petitioners and is an internal communication between two departments of the

respondent Bank, which is merely in the form of an opinion and hence, it does not create any legal right in favour of the petitioners.

54. It has also been brought to my attention that except the petitioners herein, 19 other IBOs who had received their bonus from respective overseas banks where they were on deputation, have refunded the said amount to the respondent Bank.

55. Having heard the learned counsel for the parties, at the outset, I intend to deal with the preliminary submission made by Mr. Gautam that the present petition is premature inasmuch as through the show-cause notices dated October 9, 2020, the petitioners have been called upon to explain why disciplinary proceedings be not initiated against them and since no action has been taken thereafter, in view of the Judgments of the Supreme Court in the cases of ***Chanan Singh (supra); M. Yogeshwar Raj (supra); Special Director & Anr. (supra)*** and ***Kunisetty Satyanarayana (supra)***, this Court should not interfere with the same. It is a settled position of law, when there is an issue which goes to the root of the matter which will have a bearing on the proposed action by the respondent Bank, judicial review is open. Hence the plea is liable to be rejected.

56. The only issue which arises for consideration is whether the respondent Bank is justified in issuing the impugned recovery notices and show-cause notices to the petitioners, asking them to deposit the bonus received by them with the respondent Bank, and on their failure to do the same, why disciplinary action be not taken against them. The said issue needs to be decided from the perspective whether the petitioners were entitled to payment of bonus from Everest Bank, where they were posted on deputation.

57. The case of the petitioners is primarily by relying upon the TSA executed between Everest Bank and the respondent Bank from time to time wherein a stipulation has been made in terms of Article IV(3) (of TSA dated July 4, 2016)

which contemplates that the IBOs who are appointed on deputation to Everest Bank shall be entitled to additional salary / bonus as per practice. The plea of Mr. Gautam is that the employees of the respondent Bank, including the petitioners, are not signatories to the TSA. It was also stated by him that the grant of bonus is overlooking the approval of TSA granted by the Nepal Rastra Bank including to Article IV(2) of TSA. The case of the respondent Bank is also that there is a clear stipulation in the offer letter issued to the petitioners that during their tenure at Everest Bank, Nepal, that they will be entitled to the salary and perquisites as applicable to the IBOs of Public Sector Banks posted abroad and will be governed by the service conditions approved by the Government of India and adopted by the Bank from time to time. In other words, the petitioners are not entitled to any other benefits over and above the benefits that have been specified in the offer letters and the payment of bonus is not specified in the offer letters. The submissions are not appealing. It is true that the employees / petitioners are not signatories to the TSA, but the same is a binding agreement between Everest Bank and the respondent Bank with respect to technical services including the appointment of staff and the salary etc. as determined by the Standing Committee as per Article IV (2). But the provisions of Article IV(2) and IV(3) clearly demonstrate that the staff, i.e., the petitioners herein, shall be entitled to additional salary / bonus salary as per practice, which benefits are in addition / *de-hors* Article IV(2). In view of clear mandate of Article IV(3), Article IV(2) cannot restrict the application of Article IV(3). They operate independently. Additionally, it is a fact that the bonus has been paid by Everest Bank to the petitioners in view of the stipulation in the TSA and also in terms of the obligation under the Bonus Act. This stand of the petitioners is not disputed by the respondent Bank. The Bonus Act confers an obligation on the employer, i.e., the Everest Bank to pay bonus. The plea of Mr. Gautam is that the payment of bonus cannot be demanded as a matter of right by the IBOs, but the same is a discretion vested with Everest bank. This plea is also unmerited. The stipulation which has been incorporated in the TSA, by virtue of the provisions of Bonus Act, cannot be said to be discretionary merely because the word *"may"* is found mentioned therein. Rather, the word "*may"* in view of the obligation under the Bonus Act has to be read as *"shall"* and such a payment cannot be denied by relying on Article IV(2). It is the Board of Directors of Everest Bank, which includes the nominee(s) of the respondent Bank that, after deliberations, decided to pay bonus to seconded staff and contract staff, in compliance of the Bonus Act, as is clear from the minutes of the 295th Meeting of the Board of Directors held on July 6, 2018. It follows that the stand of the respondent Bank that the petitioners would not be entitled to any benefits over and above what has been stipulated by WGSC is not correct and is untenable on facts. In other words, IBOs including the petitioners shall be entitled to be paid in terms of what has been determined by WGSC, and in addition to that, they shall also be entitled to bonus as per practice.

58. Mr. Gautam in support of the impugned action has also relied upon the office order dated July 6, 2019 bearing subject *"Uniform guidelines on Salary and service conditions of PSB's posted abroad – Receipt of bonus / other perks over and above the salary"*, wherein it is stated that in case IBOs like the petitioners received bonus and other perquisites from the associate / subsidiary / joint venture companies over and above the salary fixed by the WGSC, such bonus / additional salary are to be deposited with the parent bank and hence in terms of the office order, the petitioners were called upon to deposit the bonus received by them with the respondent Bank which they have not done so far. The

reliance is misplaced. It is not known what really prompted the respondent Bank to issue such an office order when the stipulation i.e., Article IV(3) of TSA is clear and has been acted upon by Everest Bank. It is not the case of the respondent Bank that Everest Bank has communicated to them that the bonus has been wrongly paid to the petitioners and need to be recovered. Accordingly, the impugned notices / show cause notices being illegal, are set aside. Any amount withheld in terms of the orders of this Court, in the case of any petitioner shall be released to such petitioner within four weeks along with interest accrued (being in FDR). The petition is disposed of as allowed. No costs.

CM APPLs. 25576/2020 & 26542/2020

In view of my conclusion in the writ petition, these applications are dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 04, 2022/*jg*