

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th December, 2022

IN THE MATTER OF:

+ **LPA 471/2022 & CM APPLs. 35254/2022 & 35255/2022**

PUNJAB NATIONAL BANK

..... Appellant

Through: Mr. Rajesh Kr. Gautam, Mr. Anant Gautam, Mr. Nipun Sharma, Mr. Sachin Singh, Mr. Vidur Ahluwalia, Mr. Sumit Sharma, Advocates.

versus

RAJEEEV JAIN AND ORS

..... Respondents

Through: Mr. Ankur Mittal, Mr. Yash Kapoor and Mr. Kaushal Kumar, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellant seeks to challenge Order dated 04.07.2022, passed by the learned Single Judge in W.P. (C) 7759/2020, allowing the Writ Petition filed by the Respondents herein, who are the employees of the Appellant herein, challenging four notices dated 16.12.2019 & 10.09.2020 and two notices dated 16.09.2020, issued by the Appellant herein seeking recovery of bonus/additional salary/perks which were received by the Respondents herein during their deputation/posting as Indian Based Officer in Everest Bank Limited (*hereinafter referred to as 'the Everest Bank'*) having its registered office in Kathmandu, Nepal.
2. The facts, in brief, leading to the instant appeal are as under:

- a) The Respondents herein, who are employees of the Appellant herein, were sent to Everest Bank, Nepal, on deputation as India Based Officers (*hereinafter referred to as 'the IBO'*). It is pertinent to mention here that the Appellant/Bank had entered into a Technical Service Agreement (*hereinafter referred to as 'the TSA'*) with Everest Bank. It is stated that Respondent No.1 received an offer letter from the Appellant/Bank on 30.07.2016 for posting at Everest Bank, Kathmandu, Nepal as an IBO from 16.10.2016 to 05.02.2020. It is stated that a relieving letter dated 14.10.2016 was received by Respondent No.1 herein wherein it was mentioned that he would be entitled to salary and perquisites of Everest Bank from the date of his reporting there. Similarly, Respondent No.2 herein received offer letter dated 19.07.2013 for posting at Everest Bank, Kathmandu, Nepal from 23.07.2013 to 21.10.2016. Respondent No.3 herein received offer letter dated 19.03.2011 for posting at Everest Bank, Kathmandu, Nepal, from 20.03.2011 to 21.10.2016. Respondent No.4 herein received offer letter dated 20.04.2018 for posting at Everest Bank, Kathmandu, Nepal from 24.04.2018, and he was posted at the Everest Bank till the filing of the Writ Petition. Respondent No.5 herein received offer letter dated 06.08.2016 for posting at Everest Bank, Kathmandu, Nepal from 16.10.2016 to 16.10.2019. Respondent No.6 herein received offer letter in June, 2018 for posting at Everest Bank, Kathmandu, Nepal and he has been working there since 21.07.2018 till the filing of the Writ Petition.

- b) It is stated that after completing their deputation period, the Respondents returned to India. It is stated that the Respondents received notices dated 16.12.2019, 10.09.2020 & 16.09.2020 from the Appellant/Bank stating that they have received bonus over and above the salary and perks which was to be paid to the officers who have been put on deputation to foreign banks and that the amount which had been paid to them as bonus/perks it is to be recovered from them.
- c) Aggrieved by the aforementioned notices, the Respondents herein filed a Writ Petition, being W.P. (C) 7759/2020.
- d) The Appellant/Bank filed a counter affidavit in the Writ Petition stating that a Standing Committee was formed in the year 1986 for the purpose of issuing uniform guidelines in respect of salary and other service conditions of Officers of Public Sector Banks posted abroad. It is stated that representatives of Government of India and Member Banks are a part of the Standing Committee and the guidelines, norms and Rules in respect of salary and other service condition for India Based Officer (IBO) are framed from time to time by the said Standing Committee. It is stated that a Working Group of Standing Committee (WGSC) has also been formed by the Standing Committee. It is stated that the purpose 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 the India Based Officers who are posted outside India.

- e) It is stated that once the recommendations of WGSC are approved by the Ministry of Finance, Government of India, then the said guidelines are implemented for payment of emoluments/benefits to the India Based Officers posted outside India. It is stated that the entitlement so recommended by the WGSC and implemented by the member Banks, with the approval of Ministry of Finance, does not provide for payment or acceptance of any bonus or any other perquisites to India Based Officers (IBO) from Foreign Bank entities where they are posted on deputation. It is stated that the offer letters clearly stated that the officers will be entitled to salary and perks as applicable to other India Based Officers of Public Sector Banks posted abroad and would be governed by the service conditions approved by Government of India and as adopted by the Bank from time to time.
- f) It was the contention of the Appellant herein that the offer letters have been accepted by the Respondents herein and only approved emoluments such as salary including housekeeping allowance, children education allowance, medical allowance, shipment of un-accompanied baggage, outfit allowance, transport, entertainment expenses, reimbursement of water charges, mobile or internet charges, reimbursement of newspaper expenses, special heating allowance, home leave facility, leaves, provident fund/pension fund, residential accommodations etc. were to be paid. It is stated that the Respondents herein have received amounts over and above what

is to be paid to the officers of banks who are posted outside India and since they are in receipt of amounts over and above the amounts which have been authorized/permitted by the Standing Committee, these amounts have to be returned by the Respondents.

- g) The learned Single Judge *vide* the judgment impugned herein has allowed the Writ Petition holding that the Everest Bank was entitled to pay bonus and perks to the Respondent herein as per practice. Learned Single Judge has further held that the Respondents herein are not signatories to the TSA and that there is a clear stipulation in the offer letter issued to the Respondents herein that during their tenure at Everest Bank, Nepal, 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.
- h) The learned Single Judge relied on Article IV(2) & IV(3) of the TSA dated 04.07.2016 which states that the IBOs who are appointed on deputation to Everest Bank shall be entitled to additional salary/bonus as per practice, whose benefits are in addition/ *de-hors* Article IV(2) of the TSA. The learned Single Judge also held that the Bonus Act applicable in Nepal casts an obligation on the employer, in this case the Everest Bank, to pay bonus to the employees and the fact that the bonus was paid to the Respondents herein by the Everest Bank without the same being sought by them, it cannot be recovered by the

Appellant/Bank. It is this Order which has been challenged by the Appellant in the instant appeal.

3. Learned Counsel for the Appellant submits that permitting the officers deputed in foreign countries to receive bonus etc. brings indiscipline in them and such officers are encouraged to do malpractices which are detrimental to the discipline of the Bank and can also lead to compromising the Bank in other countries. He states that the Respondents herein are not entitled to retain the amounts which have been paid to them over and above their entitlement. He states that this will ensure adherence of the TSA which has been entered into by the banks in India with foreign banks.

4. *Per contra*, learned Counsel for the Respondents submit that the recovery notices are *mala fide* and the Respondents never demanded the bonus, and since the Appellant herein has not been put to any disadvantage or wrongful loss by payment of bonuses to the Respondents herein, the Appellant/Bank cannot seek to recover the same from the Respondents herein. He states that neither the Everest Bank nor the Nepal Rastra Bank have sought for recovery of the amount which has been received by the Respondents herein and, therefore, the Appellant herein has no right to recover the said amount from the Respondents.

5. Heard the Counsel for the parties and perused the material on record.

6. A perusal of the facts mentioned above reveal that officers from nationalized banks are deputed to foreign banks and their emoluments are fixed on the basis of certain guidelines which have been framed by a Standing Committee which was formed in 1986 for the purpose of issuing uniform guidelines in respect of salary and other service conditions of Officers of Public Sector Banks posted abroad. The report of the Committee

was approved by the Ministry of Finance, and the guidelines have been implemented by the member banks. The material on record also shows that a TSA was entered into between the Appellant herein and the Everest Bank, Nepal. Article IV of the said agreement reads as under:

“ARTICLE IV: REIMBURSEMENT OF TECHNICAL SERVICE EXPENSES

1. As expenses for Technical Services to be rendered by PNB to the Bank as heretofore described, and also as fees for the Management support and General Management through use of PNB's expert knowledge and facilities, the Bank shall pay PNB each year (consisting of 12 months) during the period of this Agreement INR 45.00 lacs (INR Forty Five Lacs Only) for each of the year.

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” (emphasis supplied)

7. Article IV(2) stipulates that the Officers of the Appellant/Bank who were under deputation to Everest Bank shall continue to be paid in dollar denominated amount as determined by the Standing Committee of Government of India from time to time. Article IV(3) which is pertinent to

this case stipulates that staff be paid additional salary/bonus salary as per practice.

8. The offer letters given to the Respondents herein mention that the Officers posted abroad will be entitled to salary and perks as applicable to other India Based Officer of Public Sector Banks posted abroad and would be also governed by the service conditions approved by Government of India and as adopted by the Bank from time to time. Material on record also indicates that under the laws applicable in Nepal, it is an obligation on the employer, in this case the Everest Bank, to pay a bonus to its employees. It, therefore, cannot be said that if the laws in Nepal mandate payment of bonus towards employees then the Everest Bank has breached the TSA by paying bonus to the Respondents herein. It is not as if the Respondents herein demanded for the bonus and the Everest Bank has given bonus to the Respondents herein on their demand. The bonus paid to the Respondents herein by the Everest Bank was in compliance of the obligation mandated on the Everest Bank by the Nepal Government. No wrongful loss has been caused to the Appellant and there is no claim from the Everest Bank to the Appellant regarding refund of bonus etc.

9. In view of the above, it is not open for the Appellant herein to recover the amount from the Respondents herein. Recovery of the amount will amount to unjust enrichment of the Appellant/Bank. As rightly pointed out by the learned Single Judge, Article IV(3) of the TSA has been acted upon by the Everest Bank and, therefore, recovery of the amount paid by the Everest Bank to the Respondents herein, on its own volition and in compliance of the laws in Nepal, is unsustainable in law.

10. This Court, therefore, does not find any reason to interfere with the Order of the learned Single Judge. Accordingly, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

DECEMBER 19, 2022

Rahul

