IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICATION

Before:
THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

W.P.A. 13722 OF 2021

Paresh Kumar Mukherjee & Ors.
VS.
The Birbhum District Central Co-operative Bank Limited & Ors.

For the Petitioners	:	Mr. Kishore Mukherjee
For the State	:	Mr. P.K. Roy Mr. Partha Sarathi Pal
For the respondent Bank	:	Mr. Saikat Chatterjee
For the respondent nos. 2-4	:	Mr. Ankit Sureka Mr. Biplab Das

Heard on: 15.05.2024

Judgment on: 15.05.2024

SAUGATA BHATTACHARYYA, J:

The writ petitioners are retired employees of different branches of Birbhum District Central Co-operative Bank Limited (hereinafter referred to as "said bank") and have retired on different dates.

By presenting this writ petition the writ petitioners have expressed their grievance on a common cause of action relating to non-payment of leave encashment benefits for a period of 120 days after payment of leave encashment benefits for a period of 180 days.

Mr. Mukherjee, learned advocate representing the petitioners in support of his contention has placed reliance on Sections 134B and 134C of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as "said Act of 2006") as well as Rule 106 of West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as "said Rules of 2011") in order to demonstrate before this Court that the petitioners are entitled to receive leave encashment benefits for a period of 300 days instead of 180 days in terms of Clause 19(3) under Appendix to Chapter V as contained in the said Rules of 2011.

It has been submitted that under Section 134C (2) of the said Act of 2006 a co-operative credit structure entity was permitted to enjoy autonomy in all financial and internal administrative matters including the matters which are delineated under Sub-clauses (a) to (e) of Section 134C(2) of the said Act of 2006 but the areas which are provided under Section 134C (2) do not cover payment of leave encashment benefits *qua* terminal benefits in favour of the employees of a co-operative credit structure entity.

It is also submitted on behalf of the petitioners that similarly circumstanced other employees have already received leave encashment benefits for a period of 300 days in terms of the order passed by a Coordinate Bench on 22nd July, 2016 in a writ petition being **W.P. 34127 (W) of 2014** (**Bimal Gupta Vs. The State of West Bengal & Ors.**), which is annexed at pages 19 to 23 of this writ petition. According to the learned advocate representing the petitioners, said Bimal Gupta, being a retired employee of the said bank, has received leave encashment benefits for a period of 300 days. Therefore, similar benefits should be extended in favour of the petitioners considering the relevant statutory provisions.

It is also the contention of the petitioners that the Bye Laws of the said bank do not empower the bank to deny payment of leave encashment benefits in favour of the petitioners to the extent of 300 days. Therefore, according to the petitioners by this time the bank authority should have paid leave encashment benefits in favour of the petitioners upon computing the amount taking note of 300 days being the period for leave encashment benefits.

The prayer of the petitioners is opposed by the learned advocates representing the said bank.

It has been contended on behalf of the said bank that Sub-clause (d) of Section 134 C(2) of the said Act of 2006 shall apply in the present case and Section 134C(2) of the said Act of 2006 empowers the bank being a co-operative credit structure entity to enjoy financial autonomy in all financial and internal administrative matters including areas delineated under Sub-clauses (a) to (e). Therefore, the said bank is authorized to determine the period relating to leave encashment benefits to be paid in favour of the petitioners.

It is also submitted that personnel policy, staffing, recruitment, posting and compensation to staff, as provided under Section 134C(2)(d) of the said Act of 2006, cover the issue relating to payment of retiral benefits to the employees of the said bank. Therefore, it is within the domain of the said bank to determine the leave encashment benefits and the same may not be in consonance with Clause 19(3) under Appendix to Chapter V of the said Rules of 2011.

It has been jointly submitted on behalf of the respondent nos. 2 to 4 and the said bank that the said bank is a co-operative credit structure entity under Section 134B(1) of the said Act of 2006. Under Section 134C(2), a co-operative credit structure entity enjoys autonomy in all financial and internal administrative matters including areas as provided under Clauses (a) to (e). Therefore, in view of the amendment brought in with effect from 1st February, 2013, the provisions under Rule 106 of the said Rules of 2011 and Appendix to Chapter V of the said Rules of 2011 shall not apply in case of payment of leave encashment benefits to the employees of a co-operative credit structure entity.

Therefore, according to the said bank, in the present case the bank being a co-operative credit structure entity is not required to adhere to the provisions of Rule 106 and the provisions as contemplated under Appendix to Chapter V of the said Rules of 2011, as a result whereof Clause 19(3) of Appendix to Chapter V of the said Rules of 2011 which postulates payment of leave encashment benefits to a maximum period of 300 days shall not be a relevant consideration while determining the entitlement of the petitioners to get such benefits, as prayed for in the present writ petition.

It is also contended on behalf of the said bank in reference to the order passed by the Coordinate Bench in **Bimal Gupta** (supra) that the said order was passed since the petitioner in that writ petition retired prior to 2013 and the amendment was brought in with effect from 1st February, 2013 making provisions of Rule 106 inapplicable in case of the employees of the co-operative credit structure entity.

Having considered the submissions made on behalf of the parties and taking note of the relevant statutory provisions as discussed above while recording the submissions of the respective parties, it appears that the co-operative credit structure entity was permitted to enjoy autonomy in financial and internal administrative matters including the matters which are delineated under Clauses (a) to (e) to Section 134C (2) of the said Act of 2006.

On detailed perusal, it appears that Sub-section (2) of Section 134C of the said Act of 2006 does not cover the issue whether payment is to be made in favour of the employees of the said bank for leave encashment benefits taking into consideration 180 days or 300 days. It is also true that in view of exclusion of co-operative credit structure entities as provided under Rule 106 of the said Rules of 2011 as brought in by way of amendment with effect from 1st February, 2013 straightway it cannot be concluded that Clause 19 of the Appendix to Chapter V is applicable while determining the issue of leave encashment benefits as involved in this writ petition.

In pursuit of finding whether any other provisions are applicable in the present case, this Court has asked the learned advocate representing the said bank to produce the Bye Laws of the said bank and on perusal of such Bye Laws it does not appear that there is a specific provision which authorizes the said bank authority to determine leave encashment benefits in contradistinction to the provisions as contemplated under Clause 19(3) of the Appendix to Chapter V of the said Rule of 2011.

This Court cannot shut its eyes to the issue involved in this writ petition that is payment of retiral dues to the employees since leave encashment benefits is part of such retiral dues which according to this Court ought not to be denied in the event of non-existence of a specific provision which puts an embargo on the said bank in releasing leave encashment benefits for the period of 300 days in the context that other similarly circumstanced employees have received such benefits as it has been decided in the case of **Bimal Gupta** (supra).

Only difference that can be carved out based on the submissions made on behalf of the said bank is in the present case Court is considering payment of leave encashment benefits after the amendment which was brought in with effect from 1st February, 2013 relating to applicability of the provisions of Rule 106 and the Rules embodied in the Appendix to Chapter V of the said Rules of 2011.

While considering the entire gamut of the issue in the backdrop of relevant statutory provisions this Court is required to consider the observations made by the Coordinate Bench in **Bimal Gupta** (supra) which is quoted below:-

> *"The autonomy of the Co-operative Credit Structure Entity in financial matters does not confer any right on it to withhold the leave salary of an employee merely because in respect of certain matters the financial and administrative autonomy has been recognized by the statute. Thus, the stand taken by the Bank that it has the freedom to control its own financial matters in some respects does not override the*

obligation to pay the leave salary to a retired employee in terms of Rule 106(19)(3) of the said Rules"

This Court finds it has been rightly observed by the Coordinate Bench that the autonomy of the co-operative credit structure entity in financial matters does not confer right on it to withhold the leave encashment benefits of the employees since in certain areas financial and administrative autonomy has been recognized by the statute.

In addition thereto, as it has been observed in preceding paragraphs, the areas indicated under Section 134C(2) of the said Act of 2006 do not cover the field relating to payment of terminal benefits *qua* leave encashment benefits to the employees.

The learned advocate representing the bank has also not been able to point out before this Court that any of the provisions of the Bye Laws of the said bank puts specific embargo in the matter of releasing leave encashment benefits otherwise.

In the aforesaid conspectus, the writ petition stands allowed and disposed of thereby directing the concerned respondent authorities specifically the said bank authorities to release the leave encashment benefits to the petitioners for rest 120 days within a period of eight weeks from the date of communication of this order.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(SAUGATA BHATTACHARYYA, J.)