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Court : Rajasthan

Decided On : Sep-14-1988

Reported in : 1988(2)WLN591

Judge : S.N. Bhargava and; P.C. Jain, JJ.

Appeal No. : D.B. Civil Writ Petition No. 289 of 1988

Appellant : Arvind Kumar and anr.

Respondent : Jaipur Nagar Anchalic GramIn Bank

Advocate for Def. : Shri. G.S. Singhvi

Advocate for Pet/Ap. : Shri. S.L. Sharma, Shri. Sharma

Disposition : Petition dismissed

Judgement :

1. In this writ petition, the petitioners have prayed for issuance of an appropriate writ order or direction directing the respondent not be deduct dearness allowance from the salary of the employees/officers of Jaipur Nagar Anchalik Gramin Bank (for short, the Bank) by impounding the same and, further directing the respondent to make payment to the employees/officers of the amount so far impounded.

2. Briefly stated the facts of the case are that petitioner No. 1 is an employee of Jaipur Nagar Anchalik Gramin Bank and petitioner No. 2 is the Union which

represents the majority of the employees employed on different posts in the service of Bank all over Rajasthan and it represents the interest of the member employees of the Bank It is stated that petitioner No. 2 is a Union registered under the Trade Union Act, 1926. It is further stated that the Bank Is a Regional Rural Bank established under Sub-section (1) of Section 3 of the Regional Rural Bank Act, 1976. The respondent Bank is a bank sponsored by the United Commercial Bank which is a nationalised Bank. It is also stated that the Regional Rural Bank i.e. respondent Bank is an agency or instrumentality of the Government and is a State within the definition of Art 12 of the Constitution of India. The case of the petitioner is that the employees/officers are governed by the provisions of various legislation, including the Payment of Wages Act, 1936 and that pay scale and payment of dearness allowance to the Bank employees/officers are governed by the State Government's rules and circulars issued from time to time. The case of the petitioners is that whenever there is an increase in dearness allowance, the Bank has issued circulars from time to time, whereby arrears of Dearness Allowance have been impounded. The petitioners have referred to the Circulars dated 23rd July, 1984, 5th February, 1985 and 12th January, 1988. Vide Circular dated 23rd July, 1984, it was directed that though the revised rates of Dearness Allowance are applicable from 1st August, 1983, the arrears of increase in the Dearness Allowance from 1st August, 1983 to 31st May, 1985 have been impounded. How ever, a direction was made to pay arrears of increase in Dearness Allowance to the officers/employees for the month of June, 1984 and prepare salary for July, 1984 at the revised rates as per the schedule given in the said Circular. Similarly, in the Circular dated 5th February, 1985, it was stated that though, the revised rates of Dearness Allowance are applicable as from 1st August, 1984, arrears of increase in Dearness Allowance from 1st August, 1984 to 31st Jan., 1985 have been impounded. It was directed that the arrears of Dearness Allowance from 1st August, 1984 to 31st Jan., 1985 shall be calculated by the Branch as per the revised rates. In the Circular dated 12th January, 1988, it was stated that consequent upon the revision of the Dearness Allowance admissible to the State employees, the Bank has also decided to revise the Dearness Allowance admissible to the Bank's officers/employees with effect from 1st July, 1987. How ever, it was stated that the amount of arrears of increase in

Dearness Allowance with effect from 1st July, 1987 upto 31st December, 1987 shall be impounded by the Bank. The arrears of increase of Dearness Allowance from 1st July, 1987 will be prepared by the Branches and the said amount shall thereafter be transferred to the head office. In short the case of the petitioners is that impounding by the Bank of the Dearness Allowance as per the above referred circulars is without any authority of law and also against the provisions of the Payment of Wages Act and, therefore, the petitioners are entitled to seek the direction as prayed in the writ petition.

3. In the reply, the respondent has contended that writ petition is without any merit It is submitted by the Bank that the deduction or impounding of the Dearness Allowance is not without jurisdiction; but it is with the sanction of law. The respondent has contended that proviso to Section 17 of the Regional Rural Bank Act, 1976 provided that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees Of the State Government and the local authorities of comparative level and status in the notified area. It is, thus submitted by the respondent that the Central Government is competent authority to determine remuneration. The Central Government by its order dated 4th January, 1984 in exercise of the powers under Section 17 of the said Act have decided that the Regional Rural Banks should strictly follow the State Government orders as applicable to the equated categories of posts in respect of employees in the Regional Rural Bank in regard to impounding portion of the Dearness Allowance or Additional Dearness Allowance or arrears of pay etc. It is further submitted that Section 30 of the said Act empowers the Board of Directors to make regulations after consultation with the Bank and the Reserve Bank of India and with the previous sanction of the Central Government. In pursuance of the said orders regulations have been framed and Clause 39 of the said Regulations says that the pay and allowance of an officer or an employee shall be regulated in accordance with the provisions of Appendix-I to these regulations. Clause (i) of Appendix states that the remuneration shall be such as may be determined by the Central Government under proviso to Sub-section (1) of Section 17 of the Regional Rural Bank Act. Clause 2 says that Dearness

Allowance shall be admissible to all officers and employees on the pattern and at the rates prescribed by the State Government for its officers and other staff with which they are equated. Thus, the case of the respondent is that impounding has been done on the same pattern whereby impounding of Dearness Allowance has been made with regard to the payment of arrears of Dearness Allowance for the State Government Officers and other staff and it has been done under the orders of the Government regarding deposit of the Dearness Allowance by invoking proviso to Sub-section (1) of Section 17 of the Regional Rural Bank Act, 1976.

4. Shri S.L. Sharma, learned Counsel for the petitioners, has submitted that the impounding of the Dearness Allowance is without any authority of Jaw in as much as it is in violation of the provisions of the Payment of Wages Act, 1936. Shri G.S. Singhvi, learned Counsel for the respondent, has submitted that the impounding has been done in accordance with the provisions of the Regional Rural Bank Act, 1976. There is no illegality in deducting the arrears of Dearness Allowance by virtue of various circulars referred to by the petitioners in the writ petition. Shri Singhvi has placed on record an order of the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) dated 4th January, 1984, which is reproduced as under:

Subject: Impounding of part of Additional Dearness Allowance payable to RRB employees.

Vide order contained in letter No. F2-17/79-RRB dated 29/4/1980, Government had determined the structure of pay scales for the employees of the Regional Rural Banks with due regard to the salary structure of the employees of the State Government and the Local Authorities of comparable level and status in the command area of such banks, as provided in second proviso to Sub-section (1) of Section 17 of the RRB Act, 1976. As per this determination the officers in the RRBs are entitled to draw pay and related allowance at par with those drawn by Block Development Officer (Ordy/Lower grade). Similarly the Field Supervisors have been equated with post of the E.O. (Co-operation) or its equivalent; and the clerical staff with their counter-parts in the District Administration 2. References have been made to the Government and NABARD about the implementation of orders of the various State Governments in relation to increases allowed by them from time to time in the additional dearness allowance admissible to comparative posts in the State Governments. It has been seen that after orders of the State effecting revisions in D.A A.D.A. etc. envisage non-disbursement of a portion of the increase in cash and crediting the amount so not disbursed to the Provident Fund Accounts of the employees concerned. How ever, RRBs have not been able to follow State Government's orders in this regard mainly because unlike State Government employees the RRB employees are covered by the CPF Scheme under Employees Provident Fund Act, 1952. In some cases the requests made by RRBs to the concerned Provident Fund Commissioners administering Scheme of CPF for crediting the impounded part of the ADA etc. have also not been accepted. In the circumstances the RRBs have found it difficult to implement orders of the State Governments envisaging impounding of a portion of the DA, ADA etc.

With a view to removing this difficulty of the RRBs the matter has been carefully considered by the Government and in exercise of the powers conferred vide Section 17(1) of the Regional Rural Banks Act, 1976, the Government have decided that the Regional Rural Banks should strictly follow the State Government orders as applicable to the equated category of posts, in respect of the employees in the RRBs in regard to the impounding of a portion of DA/ADA or arrears of pay etc., and instead of transferring the impounded amount to the CPF of the employees such amount may be kept in a separate account in the RRB itself. The fund so retained will be refundable as per the State Government's directions together with interest calculated on the rate prescribed by concerned State Government. These orders will take effect immediately. Past cases need not be reopened.

5. Shri Singhvi has also placed on record the various orders of the Government of Rajasthan with regard to granting of DA to the State Government employees. Reference may be made to orders dated 1st January, 1983, 20th July, 1984, 20th January, 1985, 4th June, 1985, 11th March, 1986, 23rd April, 1987, 4th June, 1988 etc. and these are the orders by which the existing rates of Dearness Allowance have been revised from time to time.

6. In the facts and circumstances of the case we are called upon to decide whether the impounding of the arrears of Dearness Allowance was justified or not Second Proviso to Sub-section 17 of the Regional Rural Bank Act, 1976, reads as follows:

Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.

7. This proviso gives certain powers to the Central Government with regard to determination of the remuneration of the officers and other employees appointed by the Regional Rural Bank and it further provides that in determining such remuneration the Central Government shall give due regard to the salary structure of the State Government and local authorities of comparable level and status in the notified area. There is no dispute between the parties that by virtue of various circulars the State Government while granting' increase in Dearness Allowance to officers and employees of the State Govt. also directed that the amount of increase in DA with effect from a particular period shall be credited to General Provident Fund Account of the employees and, thus, it being so, the arrears of DA of a particular period have been impounded. It is also clear from the various orders referred to above that the Bank has issued circulars directing for impounding of the Dearness Allowance. It is also clear from the orders of the Central Government that there are directions for impounding DA if the same is done in the case of the employees of the State Government on comparable basis. After perusing the various circulars and orders of the State Government and the order of the Central Government, dated 12th January, 1984, we are satisfied that the impounding has been made by virtue of the directions issued by the Central Government and the Central Government derives its power under Section 17 of the Regional Rural Bank Act, 1976. In view of the powers conferred upon the Central Government, the Regional Rural Banks are well within their authority to abide by the Circulars and orders issued by the Central Government. While issuing the orders the

Central Government has taken into consideration the salary structure of the employees of the State Government of comparable level. There is thus no illegality in the impounding of the DA.

8. Shri Sharma, learned Counsel for the petitioner, has submitted that the impounding amounts to deductions in wages and such a deduction is not within the purview of Section 7 of the Payment of Wages Act, Shri Sharma has placed reliance on two judgments of this Court Rajasthan State Warehousing Corporation v. The Authority appointed under the Payment of Wages Act and Anr. (S.B. Civil Revision Petition No. 350/1986 & other revision petitions, decided on 5th January, 1987) and Rajasthan Parivahan Nigam Sanyukta Karmachari v. The State of Rajasthan and Anr. (D.B. Civil Writ Petition No. 1242 of 1987, decided on 14th Sept, 1987), former has since been reported in 1987 (1) RLR 536. We are of the opinion that the said judgments do not help the petitioners in any manner. In those cases, it was held that the deduction was unlawful as it was made contrary to. the provisions of Section 7 of the Payment of Wages Act i.e. the deduction was not authorised by the Payment of Wages Act, How ever, in this case, impounding of arrears of Dearness Allowance has the sanction of law and, even if the Payment of Wages Act 1936 is applicable, the deductions will be well within the provisions of Section 7(2)(h) of the said Act, which provides that if a deduction is made by an order of competent authority, the deduction will be permissible under Section 7 of the said Act. Since the Central Government has been authorised under Section 17 determine remuneration of the officers and other employees appointed by the Regional Rural Banks and as the determination will take within its ambit the payment of salary or wages or the Dearness Allowance, or the impounding of the portion of the Dearness Allowances, as such, the deductions, made in pursuance to the order of the Central Government will be well within the deductions made by an order of authority competent to make such deductions. Shri Singhvi, though, has argued that in view of Sub-section (2) of Section 17 of the Regional Rural Bank Act, 1976, the Payment of Wages Act has no application. How ever, we do not want to express our opinion on this aspect of the matter as we are satisfied that even if the Payment of Wages Act, l936 is applicable, the deductions are permissible.

9. In the premises aforesaid, there is no merit in this writ petition and the same is dismissed with no order as to costs.