IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 175 OF 2021
WITH
CIVIL APPLICATION NO. 1982/2022 IN WP/175/2021

1) Adarsh Kumar Jain,
Age 58 years, Occ. Service,
r/o. Magnium Housing Society,
H/No. 182E, Savarkar Nagar,
Near Dharander Sambha School,
Dakshin Mukhi Hanuman Mandir,
CIDCO-N5 Aurangabad.

2) Pavan Kumar Singh
Age 44 years, Occ. Service,
R/o. Flat No. 203, Tulsi Acrade
Connaught Place, Aurangabad.

3) Katakam Kondala Rao,
Age 54 years, Occ. Service,
R/o. Flat No. 4, Plot No. 25,
Yashdeep Apartment, Ashoknagar,
Garkheda, Aurangabad. ... **Petitioners**

VERSUS

1) The Union of India,
Through the Under Secretary to
Government of India,
Ministry of Finance,
Department of Financial Services,
New Delhi.

2) The Joint Secretary,
Department of Financial Services,
Ministry of Finance, New Delhi.

3) The Debts Recovery Tribunal,
CIDCO, Aurangabad. ... **Respondents.**

...

Advocate for Petitioners : Mr. Avinash S. Deshmukh a/w Mr. P.B. Chandel.
Advocate for Respondent nos. 1 to 3 : Mr. S.S. Deve, Standing Counsel

...

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.

RESERVED ON : 10.12.2024
PRONOUNCED ON : 14.12.2024

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. The learned advocate Mr. Deve waives service for respondent nos. 1 to 3. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The issue that is involved in the petition is as to whether the petitioners who are employees of various nationalized banks, who have been sent on deputation to respondent no. 3, a Debts Recovery Tribunal, established under the Recovery of Debts and Bankruptcy Act, 1993, are entitled to claim fixation of their pay by including *inter alia* special allowance.

3. The petitioner no.1 joined as a clerk in the Punjab National Bank on 06.11.2017. The petitioner no. 2 joined as a Law Officer with Syndicate Bank (now Canara Bank) on 18.12.2006 and the petitioner no. 3 was appointed as SSI Field Officer in Allahabad Bank (now Indian Bank) on 23.03.1992. They were sent on deputation having opted therefor, on 06.11.2017, 30.06.2020 and 19.08.2019, respectively. Before deputation, they were getting the salaries including the special allowance on which dearness allowance was being assessed/calculated.

4. By the impugned communication/circular issued by the Under Secretary to the Government of India dated 01.10.2020 (**Exh. D**), by referring to a clarificatory letter issued by the then Under Secretary to the Government of India in the Ministry of Finance dated 24.11.2009, and by referring to DOPT's office memorandum dated 17.06.2010, and particularly para 4.1, it was directed that 'special allowance' was not 'pay' and was also not to be treated as 'pay' for the purpose of determining pension (including

NPS, PF and gratuity) as per the bipartite settlement dated 25.05.2015. It is this communication, which is being challenged by the petitioners and they are soliciting writ of prohibition not to make recoveries, seeking a declaration that they are entitled to special allowance as a part of their pay.

5. Mr. Deshmukh for the petitioners would take us through the aforementioned communications as well as the bipartite settlement dated 25.05.2015. He would submit that it is pursuant to the communication dated 24.11.2009 (Exh. B) that it was specifically directed by the Ministry of Finance that fixation of pay of the employees of various banks, who were deputed to the Debts Recovery Tribunals (DRTs) or Debts Recovery Appellate Tribunals (DRATs) shall be done by including the special allowance. Since the basic pays were directed to be added with stagnation increment, professional qualification pay, fixed personal pay etc., on which the dearness allowances were being paid were to be fixed as a basic pay, looking at the incentive only, the petitioners and similarly placed employees could have opted for being sent on deputation to the DRTs and DRATs.

6. He would submit that there should not have been any confusion. The bipartite settlement being relied upon by the respondents also expressly stipulated that the banks' employees would be entitled to have a dearness allowance calculated on the basic pay, several other allowances/increments as well as special allowance. Without there being any reason, the impugned communication was issued expressly mentioning that the special allowance was not 'pay' and was not to be treated as such for the purpose of determining pension and other pensionary benefits. In fact, the settlement of 2015 expressly laid down in the definition of "pay", the components which are to be considered for extending superannuation benefits, other components which are to be considered for assessment of dearness allowance and gain the components which shall be considered for assessment of house rent allowance. He would, therefore, submit that though the special allowance would not be a component to be added for

extending superannuation benefits, for the purpose of dearness allowance it is agreed that the special allowance would be a component for assessing the pay. He would, therefore, submit that since the petitioners would be governed by the regulations of the parents bank for the purpose of pensionary benefits, at the most in tune with the bipartite settlement, the Ministry of Finance could have simply stipulated that such bank employees, who are sent on deputations to DRTs and DRATs would not be entitled to claim inclusion of special allowance for the purpose of extending superannuation monetary benefits. However, it apparently also mentions that special allowance is not pay. The direction is arbitrary.

7. Mr. Deshmukh would submit that pursuant to the impugned communication the petitioners have been put to loss in the aggregate salary they are being paid while on deputation with the DRTs and DRATs, which could not have been the purport of the scheme/understanding whereby the bank employees were requisitioned to man the DRTs and DRATs.

8. The learned advocate Mr. Deve referring to the affidavit in reply of respondent nos. 1 and 2 and surrejoinder filed by them submits that the petitioners are confusing between ‘special pay’ and ‘special allowance’. Special allowance was never to be a part of ‘pay’. Even the bipartite settlement deals with ‘special allowance’ separately and not as a ‘pay’ but as its component. It is an attempt to mislead the Court. However, he would not dispute that the employees of the banks like the petitioners are entitled to have a special allowance as per the settlement. He would submit that the impugned communication is mere reiteration or a clarification and does not seek to change the extant scenario when the petitioners were drawn for serving with the DRTs and DRATs. He would submit that special allowance was never meant to be merged with basic salary and no fault can be found with the impugned communication. Mr. Deve would, lastly, submit that it is only pursuant to the option exercised by the petitioners, on being shown their readiness to be sent on deputation that their respective banks have

relieved them and being on tenure posts they are not entitled to claim fixation of their pay by adding such special allowance to the basic pay.

9. We have considered the rival submissions and perused the papers.

10. Admittedly, pursuant to the vacancy circular dated 13.06.2017, issued by the Ministry of Finance that the petitioners had opted and were sent on deputation to the DRTs and DRATs. However, admittedly, while fixing their pay the special allowance receivable by them has not been added to the basic pay and the action is being justified by referring to the impugned letter dated 01.10.2020 (Exh. D).

11. It is necessary to note that by a letter/communication dated 24.11.2009, issued by the Ministry of Finance (Exh. B), all the Presiding Officers of the DRTs and Registrars of DRATs were informed as under:

> *" I am directed to say that the Bank Officers have been appointed on deputation basis to the DRTs and DRATs and they are being paid the salary as applicable to the Officers of the DRTs and DRATs on exercising their option for the same. In the Public Sector Banks the basic pay, stagnation increment, professional qualification pay, fixed personal pay etc. qualify for the purpose of DA, HRA and superannuation benefits. This Department has received some references that certain pay components like professional qualification pay, fixed personal pay etc. paid to bank officers by their parent offices are not being considered for the purpose of pay fixation in DRTs/DRATs.*
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> *Accordingly, the matter was taken up with IFU of Ministry of Finance and it has been decided that while determining pay in the bank, all pay on which DA was being paid should be treated as basic pay for the purpose of fixation of pay in the DRT. (For this purpose a Last Pay certificate giving breakup of pay and allowances drawn at the time of deputation should be obtained from the respective bank and the bank should certify that DA was being paid on the basic of pay, stagnation increment etc.)"*

12. In our considered view, this communication/letter expressly directed how the fixation of pay in the DRTs should be done in respect of bank officers, who were appointed on deputation to the DRTs and DRATs, expressly mentioning that all the stagnation increments etc. which were being added to the basic pay for calculation of the dearness allowance in the respective banks were to be considered for fixation of pay. When, admittedly, the settlement expressly mentions that the special allowance *inter alia* would be added to the basic pay for the purpose of calculation of dearness allowance, one finds substance in the submission of the learned advocate Mr. Deshmukh that the petitioners would not have opted/consented for being sent on deputation to the DRTs but for such incentive, which they were promised, else, they would have been happy to continue with their respective banks.

13. It seems that the impugned communication dated 01.10.2020 has been issued under misconception of the facts and would be rather inconsistent with the communication dated 24.11.2009. It seeks to change the conditions of the employment adversely after the petitioners opted for deputation and joined DRTs. The impugned communication/letter reads as under :

> *"3. A clarification was also issued vide this office letter No.A-19014/11/2009-DRT dated 24th November 2009 regarding admissibility of pay components like professional qualification pay, fixed personal pay etc. paid to Bank Officers by their parent Banks. It was clarified that all 'Pay' on which DA was being paid should be treated as Basic Pay for the purpose of fixation of pay.*
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> *4. Instances have come to the notice of this Department that some of the DRTs/DRATs are allowing the component of "Special Allowance" drawn by Bank Officers*

in their parent Banks for pay fixation purpose in DRT. Such fixation where the component of "Special Allowance" has been incorrectly taken into account while determining the pay in the Central Government pay structure in some of the DRTs has also come under the scrutiny of Audit. As such, "Special Allowance" is not "Pay" and is also not to be treated as "Pay" for the purpose of determining Pension (including NPS, PF, and Gratuity) in the parent Banks as per the Bipartite Settlement dated 25th May, 2015."

14. Obviously, to the extent that special allowance has to be excluded for the purpose of determination of pension and other post retiral monetary benefits, direction is in tune with the settlement between Indian Bank Association and the union of the employees. Therefore, to this extent one cannot take exception, as has been rightly put forth by Mr. Deshmukh. However, to the extent it declares and directs that special allowance shall not be a pay even for the purpose of fixation and that too by referring to communication dated 24.11.2009 clearly demonstrates arbitrariness or lack of understanding.

15. In light of above, the impugned communication to the extent it directs pay fixation to be done excluding the special allowance being received by the employees of banks which are posted in the DRTs and DRATs on deputation being arbitrary and inconsistent with the communication dated 24.11.2009 (Exh. B), the former is liable to be struck down to that extent.

16. However, the prayer clause 'B' of the petition does not seem to be articulated appropriately. It reads as under:

"(b) By issuing appropriate writ or direction, the directions in the letter dated 1.10.2020 which states that "Special Allowance" is not "Pay" and is not to be treated as "Pay" for the purpose of determining Pension (including

NPS, PF and Gratuity) in the parent Banks as per the Bipartite Settlement dated 25.5.2015, be quashed and set aside, being contrary to the Bipartite Settlement."

The whole argument of Mr. Deshmukh on behalf of the petitioners was merely directed against an attempt to exclude special allowance while making pay fixation of the petitioners which the respondents are seeking to justify in their affidavit in reply and the surrejoinder. As is mentioned herein above, exclusion of special allowance for the purpose of determination of pension including NPS, PF and gratuity is a part of the bipartite settlement dated 25.05.2015, and even the subsequent settlements which fact even Mr. Deshmukh conceded.

17. The writ petition is allowed partly.

18. The directions in the letter dated 01.10.2020 to the extent it directs the special allowance to be excluded for pay fixation is quashed and set aside. It is declared that the petitioners are entitled to fixation of their pay on their respective post on deputation with respondent no.3-DRT, in accordance with the communication dated 24.11.2009.

19. Pending Civil Application is disposed of.

(PRAFULLA S. KHUBALKAR J.) **(MANGESH S. PATIL, J.)**

mkd/-