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

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Judgment delivered on: April 20, 2015

+ W.P.(C) 8063/2014

ANDHRA BANK

..... Petitioner

Represented by:- Mr. Jagat Arora &
Mr. Rajat Arora, Advocates for the
petitioners.

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION &
ANR

..... Respondents

Mr. Inderjit Singh, Advocate for
respondent No.1/Federation.

Ms. Rashmi B. Singh, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

For detailed order see W.P.(C) 7571/2014.



**SURESH KAIT
(JUDGE)**

April 20, 2015

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: April 20, 2015

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W.P.(C) 7571/2014 & CM Nos.17864-17865/2014

STATE BANK OF BIKANER & JAIPUR Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

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W.P.(C) 8340/2014 & CM Nos.19328-19329/2014

UNION BANK OF INDIA Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

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W.P.(C) 8174/2014 & CM No.19017/2014

THE FEDERAL BANK LTD. Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

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W.P.(C) 8330/2014 & CM Nos.19316-19317/2014

STATE BANK OF MYSORE Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

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+ W.P.(C) 8379/2014 & CM No.19407/2014

STATE BANK OF PATIALA

..... Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR

..... Respondents

+ W.P.(C) 8233/2014 & CM Nos.19142-19143/2014

THE LAKSHMI VILAS BANK LTD.

..... Petitioner

versus

ALL INDIA BANK DEPOSIT & ANR.

..... Respondents

+ W.P.(C) 8384/2014 & CM Nos.19418-19419/2014

INDIAN BANK

..... Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR

.... Respondents

+ W.P.(C) 8236/2014 & CM Nos.19149-19150/2014

UCO BANK

.....Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR

.... Respondents

+ W.P.(C) 8332/2014 & 19319-19320/2014

DENA BANK

..... Petitioner

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versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

+ W.P.(C) 8380/2014 & CM No.19409/2014

BANK OF MAHARASHTRA Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

+ W.P.(C) 7584/2014 & CM No.17878-17879/2014

STATE BANK OF HYDERABAD Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR. Respondents

+ W.P.(C) 7588/2014 & CM Nos.17886-17887/2014

SYNDICATE BANK Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR. Respondents

+ W.P.(C) 7589/2014 & CM Nos.17888-17889/2014

VIJAYA BANK Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

+ W.P.(C) 7590/2014 & CM Nos.17890-17891/2014

ING VYSYA BANK LTD. Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION Respondent

+ W.P.(C) 7591/2014 & CM Nos.17892-17893/2014

PUNJAB NATIONAL BANK Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

+ W.P.(C) 7698/2014 & CM Nos.18130-18131/2014

THE SOUTH INDIAN BANK LTD. Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

+ W.P.(C) 7832/2014 & CM Nos.18386-18387/2014

KARNATAKA BANK LTD. Petitioner

versus

ALL INDIA BANK DEPOSIT & ANR. Respondents

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+ W.P.(C) 7833/2014 & CM Nos.18388-18389/2014

CENTRAL BANK OF INDIA Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

+ W.P.(C) 8056/2014 & CM No.18820/2014

CANARA BANK Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR. Respondents

+ W.P.(C) 8063/2014 & CM No.18827/2014

ANDHRA BANK Petitioner

versus

ALL INDIA BANK DEPOSIT COLECTORS
FEDERATION & ANR Respondents

AND

+ W.P.(C) 8065/2014 & CM No.18829/2014

CORPORATION BANK Petitioner

versus

ALL INDIA BANK DEPOSIT COLLECTORS
FEDERATION & ANR Respondents

Represented by:- Mr. Jagat Arora &
Mr. Rajat Arora, Advocates for the
petitioners.

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Mr. Inderjit Singh, Advocate for
respondent No.1/Federation.

Ms. Rashmi B. Singh, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. This batch of writ petitions are directed against the Award dated 07.10.2013 and modified vide order dated 02.06.2014 whereby the learned Tribunal held as under:-

"188. On above standard, a deposit collector would get a sum of Rs.9000 .00 in a year towards conveyance allowance. Adding that amount to the cost incurred on a deposit collector for collection of Rs.3 lac, the bank had to spend only a sum of Rs.96,000.00 on fall back wages + Rs.4000,00 on gratuity + Rs.9000.00 as conveyance allowance. In all, banks have to spend a sum of Rs.1,09,000.00 out of the earning of Rs.1,22,,850.00. This arithmetic projects that by payment of that much of amount, the bank would earn something on a collection of Rs.3 lac per month by a deposit collector of 'C' area city. Earning of the bank would be more on collection of deposit collectors of 'B' area and 'A' area cities. When deposit collectors would collect more than the minima prescribed for them, the income of the bank would grow more. Arguments of the bank relating to economic viability of the scheme would have an answer from the above reasoning.

189. The Tribunal has power to give retrospective effect to its award, as held by the Apex Court in *New Edgeson Woollen Mills* (1969(2) LLJ 782) and *Sarva Shramik Sangh, Bombay* (1993 Lab.I.C. 870). It is a well established proposition of law that an industrial adjudicator can treat the date of demand and the date on which the award comes into force as two extreme points to give effect to the award. The date from which this award would be effective, should be decided by the Tribunal on consideration of facts and circumstances projected herein. As award Ex.WW1/3 highlights, fixation of fall back wages and incentive remuneration was based on the circumstances prevalent in the year 1981. The fall back wages and incentive remuneration fixed by award dated 22.12.1988, remained static till date. The present dispute was raised by the Federation in the year 2003. After raising of the dispute and during the course of adjudication a few of the banks closed their small deposit schemes. In case this award is not given any retrospective effect, then the deposit collectors of the banks, who had closed the scheme, would not be eligible to get any relief out of it. Therefore, I am of the considered opinion that this Tribunal should give retrospective effect to the award so that the deposit collectors, whose case was projected before the Tribunal, may also avail their rights so adjudicated herein. In view of the above discussion, it is concluded that the demand of the Federation/Union for enhancement of fall back wages and incentive remuneration, besides conveyance allowance is justified. The issue is answered, accordingly.

Relief

190. In view of the findings recorded on issue No.1, it is ordered that deposit collectors operating in 'A' area, 'B' area and 'C' area cities would collect atleast Rs.3 lac, Rs.4 lac and Rs.5 lac per month respectively. They can meet the target every month or may collect a sum of Rs.9 lac, Rs.12 lac and Rs.15 lac respectively on 31st March, 30th June, 30th September and 31st December every year. On a collection of Rs.3 lac, a deposit collector would get fall back wages of Rs.8000.00 per month, besides conveyance allowance of Rs.750.00 per month. He will also get gratuity of Rs.4000.00 every year. On a collection of over and above Rs.3 lac and upto Rs.5 lac, all deposit collectors, irrespective of their areas of operation, will earn incentive remuneration of 3%. Thus, a deposit collector of 'B' area and 'A' area city would get Rs.3000.00 and Rs.6000.00 respectively per month as incentive remuneration on minima limit of their collection. On collection of over and above Rs.5 lac, a deposit collector would get incentive remuneration of 2%. All deposit collectors, irrespective of areas of their operation, would get conveyance allowance at flat rate of Rs.750.00 per month.

191. In case of failure of a deposit collector to meet minima standard of collection consecutively for two quarters of a year, his contract of service would be snapped by the bank without any further notice to him. For this inefficiency, he will not be able to claim any right of being heard from the bank.

192. The award will have retrospective operation from 19.07.2005, the date when the banks were summoned to appear before the Tribunal. An award is, accordingly, passed. It be

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*sent to the appropriate Government for
publication."*

2. Vide Order dated 02.06.2014, Learned Tribunal modified the Award that wherever it is recorded that the Collectors operating in areas A, B and C would collect Rs.3, Rs.4 and Rs. 5 Lac shall be read as "the Collectors operating in areas C, B and A would collect Rs. 3 Lac, Rs. 4 Lac and Rs. 5 Lac per month respectively."

3. The brief facts leading to filing of the present petitions are that most of the Nationalized/ private/subsidiary Banks of State Bank of India had introduced a Scheme known as Pigmy Deposit Collection Scheme. It was known by various names in different banks. The Schemes were introduced at various points of time in the year 1960/1980's. Some of the banks had introduced the Scheme much earlier also. The basic concept of the Scheme was that the Pigmy Deposit Collectors (hereinafter referred to as 'Collectors') would visit the homes/offices of the customers to collect cash and deposit the same in their bank accounts maintained with the respective Banks. These Schemes served the dual purpose, i.e., the Banks would get the deposits from the customers, where the Banking business was not widely expanded and would also encourage the vast majority of the people to inculcate a habit of savings by getting their deposit in the Banks without spending any time or effort as the same was collected at their own door steps either at home or shop/place of business or work etc.

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4. Thereafter, the Collectors organized themselves through a union and raised an industrial dispute which was referred to the Industrial Tribunal, Hyderabad for adjudication with the following terms of reference:

"Whether demand of the commission agents or as the case may be, deposit collectors engaged in the banks listed in the annexure that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of those banks is justified? If not, to what relief the workmen are entitled to and from which date?"

5. The Hyderabad Tribunal answered the reference by awarding the relief to Collectors below 45 years as on October 1980 to be considered for absorption as Clerks and Cashiers if they are matriculates and above, including qualified Graduates and Post Graduates. Those who are absorbed shall be treated at par with regular clerical employees of the Banks. Those who are qualified with 8th Class and below matriculates shall be considered for absorption as sub-staff by taking qualifying examination. Those who are above 45 years and those who do not wish to be regularized shall be paid Rs.750/- p.m. linked with Rs.7,500/- p.m. They would be paid for collection over Rs.7,500/- a commission at 2%. Also a uniform conveyance allowance of Rs.50/- p.m. for deposit upto Rs.10000/- or upto Rs.30000/- p.m. They should be paid gratuity of 15 days commission for each year of service rendered.

6. The above mentioned Award passed by the Hyderabad Tribunal was challenged by the Syndicate Bank before the High Court of Hyderabad. The Writ Petition was allowed by modifying the Award that none of the Deposit Collectors could be absorbed, however, the fall back wages, incentive commission, conveyance allowance, gratuity would be payable to them.

7. Being aggrieved, the Unions of Collectors challenged the High Court Judgment before the Supreme Court. The same was decided in the case of *Indian Banks' Association Vs Syndicate Bank 2001 SCC (L&S) 504* wherein the Apex Court held that the Deposit Collectors cannot be treated as regular employees of the Bank, though they may be 'workmen' under the Industrial Disputes Act.

8. Accordingly, the Supreme Court expressed its opinion in para 27 & 28 as under:-

"27. We also see no force in the contention that Section 10 of the Banking Regulations Act prevents employment of persons on commission basis. The proviso to Section 10 makes it clear that commission can be paid to persons who are not in regular employment. Undoubtedly the Deposit Collectors are not regular employees of the Bank. But they nevertheless are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the Deposit Collectors and the concerned Bank.

28. Mr. Nageshwar Rao is right in his submission that the concession was not binding on his clients. However, what has been conceded has been correctly conceded. No question arose of directing absorption of the Deposit Collectors as regular workmen. No such demand had been made and, therefore, there could have been no such direction. Such directions were beyond the reference. Even otherwise, the question of absorption would be fully covered by an authority of this Court in the case of *Union of India vs. K. VS. Baby*. In this case it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. It has been held that the mode of selection and qualifications are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, not only are the modes of selection and qualifications not comparable, but even the work is not comparable. The work which the Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks."

9. Mr. Jagat Arora, learned counsel appearing on behalf of the petitioners submitted that the present reference to the Tribunal contains the following terms of reference:

"Whether the demand of All India Banks Deposit Collectors Federation for linkage of fall back wages of Rs.7500.00 as determined by award dated 22.12.1998 by Industrial Tribunal, Hyderabad, which is based on Consumer Price Index at 500 points (Base 1960=100) to the present Consumer

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Price Index and their upward revision is justified? Whether the demand of All India Bank Deposit Collectors Federation for reimbursement of Conveyance expenses at revised and enhances rate is justified? If so, what relief the said deposit Collectors employed by various Banks represented by the Indian Banks' Association are entitled to and from which date?"

10. Mr. Arora submitted that the impugned award given by the Tribunal whereby relief has been awarded in favour of the workmen is vitiated, without jurisdiction, illegal, liable to be set aside or in any event be remanded back to the Industrial Tribunal for determination in accordance with law. The Tribunal is bound by the terms of reference and cannot travel beyond the same. In the present case there was no reference regarding gratuity. There were no pleadings in the claim statements filed by the two unions claiming gratuity but still under the impugned award gratuity has been awarded that too in violation of the provisions of Payment of Gratuity Act. The Act prescribes that minimum 5 years of service is required. However, under the impugned award the gratuity is to be awarded without any minimum period of service for eligibility.

11. To strengthen his arguments on the issue raised, learned counsel relied upon the judgment of the Supreme Court in the case of *J.K. Iron and Steel Co.Ltd., Kanpur vs. The Iron and Steel Mazdoor Union, Kanpur AIR 1956 SC 231* in which the Apex Court has held as under:-

"22. All the same, wide as their powers are, these Tribunals are not absolute and there are limitations to the ambit of their authority. In *Bharat Bank, Ltd. vs. Employees of Bharat Bank Ltd.* AIR 1950 SC 188 at p. 203 (C), this Court held by a majority that though these Tribunals are not Courts in the strict sense of the term they have to discharge quasi-judicial functions and as such are subject to the overriding jurisdiction of this Court under Art 136 of the Constitution. Their powers derived from the statute that creates them and they have to function within the limits imposed there and to act according to its provisions."

12. Further relied upon the case of *M/S. Parry and Co., Ltd. vs. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and Others.* AIR 1970 SC 1334 in which the Apex Court held as under:-

"13. the Tribunal had to confine itself to the pleadings and the issues arising therefrom and it was, therefore, not open to it to fly off at the tangent disregarding the pleadings and reach any conclusions that it thought as just and proper."

13. Learned counsel also relied upon the case of *Workmen of M/s. Hindustan Lever Ltd. and others vs. Management of M/s Hindustan Lever Ltd.* AIR 1984 SC 516 in which the Apex Court held as under:-

"25. The Tribunal may as well frame preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter. But the Tribunal cannot travel beyond the pleadings and arrogate to itself the power to raise issues which the parties to

the reference are precluded or prohibited from raising; to wit if the employer does not question the status of the workmen, the Tribunal cannot suo moto raise the issue and proceed to adjudicate upon the same and throw out the reference on the sole ground that the concerned workman was not a workman within the meaning of the expression of the Act....."

14. Mr. Arora further submitted that the Tribunal was to see the scope of the reference from the circumstances preceding the reference. Since no claim was raised in the pleadings before the Tribunal, no 'industrial dispute' exists in relation to gratuity, thus the Tribunal has disregarded the well settled law.

15. Learned counsel further submitted that the Tribunal has proceeded on the basis as if the mini Deposit Collectors were employees and, therefore, they are entitled to better remuneration than fixed earlier. Whereas, the Apex Court in case of *Indian Banks' Association (supra)* clearly held that they cannot be treated to be regular employees but they are only 'workmen' under the Act.

16. Mr. Arora submitted that the Tribunal misdirected itself by not considering the cost analysis in running the schemes as per the chart extracted at page 13 and 14 of the WP(C) 7571/2014. He contended that the financial aspect was completely lost sight of by the Tribunal. As per the evidence of workman, namely, Mr. I.P. Ponnusamy, Mr. Ashish Bilala and Mr. A.N. Sivananad Babu, they have admitted that Banks are suffering losses in the scheme in question and the Unions have done no study or research to show

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about the cost benefit analysis. Whereas the Bank Management had produced documents in evidence showing losses. In number of cases the Supreme Court has observed that financial capability is one of the main criteria before any monetary benefit could be granted to the workman.

17. To strengthen his arguments on the above issue, learned counsel relied upon the case of *A.K. Bindal and Another vs. Union of India and Others* 2003-II LLJ page 1078 in which the Apex Court observed as under:-

"16. The contention that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees, does not appeal to us. The question of revision of wages of workmen was examined by a Constitution Bench in *Express Newspapers Ltd. and Ors. vs. Union of India and Ors.* AIR 1958 SC 578: 1961-I-LLJ-339, having regard to the provisions of Industrial Disputes Act and Minimum Wages Act and the following principles for fixation of rates of wages were laid down at p.367 of LLJ:

(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstance to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity ;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in production considered in conjunction with the elasticity of demand for the product - no doubt against the ultimate back-ground that the burden of the increased rate should not be such as to drive the employer out business".

18. Mr. Arora further submitted that the Tribunal has also erred in granting the relief from a retrospective date without realising the financial implication of the award. In most of the cases, such as State Bank of Jaipur and Bikaner, the financial implication is more than 373 lakhs, and similarly in other connected banks. The scales fixed by the Tribunal while comparing the Banking Sector with Industrial Sector or insurance industries itself shows that the Tribunal has compared the commission paid to the Collectors.

19. Learned counsel submitted that all industries are different and wages or minimum wages are fixed for employees in that particular industry. In the present case of Collectors they are not "regular employees" as held by the Supreme Court. They have no fixed working hours, no disciplinary control by the Banks, no hours of work, leave etc. The comparison with the insurance industries and other industries is, therefore, untenable.

20. Mr. Arora further submitted that learned Tribunal also misdirected itself by adding parties to the reference and made the award applicable to them when in fact no demand has been raised against them. No conciliation had taken place and such unjustifiable and untenable demands have been granted. It is the settled law that for raising a valid 'industrial dispute', the conciliation proceedings to take place, Govt. to consider the report of Conciliation and then make a reference. However, by adding parties the Tribunal acted unjustifiably giving no chance to the employers concerned to place/plead their cases before the Authorities concerned. Thus, the principles of natural justice have been violated.

21. Mr. Arora further submitted that in one of the writ petition, i.e., WP(C)No.8236/2014 and other petitions the point had been raised that no tenure has been fixed by the Tribunal under the award for keeping the deposit. Therefore, it has so happened that some of the deposit once made is again withdrawn and recycled and thus, the same money is used again and again by the Collectors.

22. It is pertinent to mention here that vide order dated 27.11.2014 this Court permitted the petitioners to file an additional affidavit to explain this phenomena. Accordingly, on perusal of charts it shows that the money is taken and withdrawn and further shows how losses are being caused to the Banks.

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23. Mr. Arora submitted that on pleadings of the parties, the learned Tribunal framed the following three issues:-

- “(i) As per terms of reference sent by Government of India.*
- (ii) Was there any privity of contract between the concerned workmen and the IBA? IF not, what are consequences?*
- (iii) Relief.”*

24. The learned Tribunal gave its opinion on the issue no.(ii) above in para 89 in its Award which is as under:-

“89. Record tells that vide order dated 19.07.2005, 40 banks were summoned to represent interest of the employer. Those banks filed their respective written statements and contested claims put forward by the Federation as well as the Union. Admittedly, the deposit collectors represented by the Federation /Union, work with those banks, who have been added as parties to the dispute. On impleadment of those banks as parties to the dispute, the issue became redundant. Accordingly, it is concluded that the issue, referred above, needs no adjudication. It is answered, accordingly.”

25. Learned counsel further submitted that the Payment of Gratuity Act, 1972 is not applicable on workmen, however, it applies only to the employees under the said Act. Therefore, the Award on the gratuity and other issues raised above is to be set aside.

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26. On the other hand, Mr. Inderjit Singh, learned counsel for respondent No.1/Federation submitted that the impugned award is just, fair and based on determined appraisal of evidence. Therefore, this Court may not disturb the same while exercising its supervisory jurisdiction as the writ petitions are not bonafidely filed and their only objective is to tear out the poor workmen in endless litigation. As argued by the counsel for the petitioners, the learned Tribunal had added parties to the reference without jurisdiction and against the provisions of the Industrial Disputes Act, 1947. In the case of *Hochtief Gammon vs. Industrial Tribunal, Bhubaneswar, Orissa & Ors. Industrial Tribunal, Bhubaneswar, Orissa and Ors.* [1964] 7 SCR-596 the Apex Court has held that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? Moreover, the order of impleading the other banks in the proceedings before the Tribunal ought to have been challenged at that point of time. However, the petitioner waited for the result of the same. Hence, at this stage, the petitioners moved to this Court just to defeat the fruits of the respondents workmen received from the Tribunal.

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27. Learned counsel further submitted that the learned Tribunal rejected the cost benefit analysis because the same was not certified by the Auditors of the petitioners' Banks and also because it was ex-facie a fabricated document. Incidentally, the Cost Benefit analysis does not come within the ambit of Bankers Books as defined in Section 2(3) of the Banks' Books Evidence Act, 1891. The same reads as under:-

"bankers' books"" include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both;"

28. Moreover, the plea that the scheme was un-remunerative was rejected by the Supreme Court in the case of *A.K. Bindal (supra)* observing as under:-

"27. . Shri Nageshwar Rao, learned senior counsel appearing in Transferred Case No. 35 of 2000 (Writ Petition filed by employees of HFC in Calcutta High Court) apart from challenging the validity of the Office Memorandum on the same grounds also urged that the price of urea was fixed by the Government under Fertilizer Control Order which was wholly unremunerative and, therefore, the employees cannot in any way be held responsible for the losses suffered by the Units and consequently they should not be made to suffer on that account. We are unable to entertain this submission as the factual foundation for

such a plea has not been laid in the pleadings. That apart, learned counsel for the respondents has made a statement that the Government had reimbursed the Units in that regard."

29. Learned counsel further submitted that the banks are admittedly making huge profits as indicated in paragraphs 180 & 181 of the impugned award. He further submitted that if the scheme of the banks was going under loss, it was up to the banks to close or continue with that scheme. If, despite the scheme being running in loss, the banks are continuing with the said scheme, then the poor workmen should not suffer for the loss incurred by the banks in particular scheme.

30. Learned counsel further submitted that the Tribunal referred to minimum wages in Para 181 of the award to convey the simple fact that the Collectors could not be paid less than the prescribed minimum wages. Needless to mention that the Apex Court held long back in the cases of *Bijoy Cotton Mills [1955] 1 LLJ 129* and *Crown Aluminum Works [1958] 1 LLJ 1* that an employer, who cannot pay even the prescribed minimum wages, has no right to exist. Moreover, Article 43 of the Constitution of India mandates that the State should endeavour to secure to all the workers a living wage. Fixing of a minimum wage is just a first step. The remuneration paid to the Deposit Collectors was not revised since 1988 and the learned Tribunal, vide the impugned award, has only

tried to pull up their remuneration near about the minimum wages level.

31. Learned counsel further submitted that the plea of the petitioners that Collectors are not the employees of the banks is wholly wrong, motivated and false. As per the definition of workman in section 2(s) of the Industrial Disputes Act, 1947, the respondents' workmen are employees of the petitioners / banks.

32. On the issue of gratuity raised by the petitioners, learned counsel for the respondent no.1 submitted that the learned Tribunal, while dealing with the issue of fair remuneration of the Collectors, merely observed in Para 184 that *"....His pay packet would come to Rs.11000.00 in a month, besides a gratuity of Rs.4000.00 a year."*

Therefore, gratuity was just mentioned to show the overall total income of Deposit Collectors. It is hardly necessary to mention that gratuity is only a terminal benefit and is to be paid at the time of exit of the employees. Therefore, mention of the word 'gratuity' was only by way of an illustration. In any case, this Court may modify that gratuity shall be paid to the Collectors as per the Payment of Gratuity Act, 1972.

33. Learned counsel further submitted that another grievance raised by the petitioners is about the retrospective effect given by the Tribunal in the award. It will be seen from para 192 of the award that retrospective effect has been given from 19.07.2005, the date when the individual banks were summoned to appear before

the Tribunal. It is well settled law that grant of relief is in the discretion of the Tribunal and the same can be granted either from the date of raising the dispute or from the date of reference or from the date of award. Therefore, having regard to all the facts of the case, the learned Tribunal has given relief to the Collectors from 19.07.2005. It is pertinent to mention that Collectors even now will be in receipt of remuneration just about equal to the subordinate staff employed in the banks although they admittedly do clerical and cash handling work.

34. To strengthen his arguments, learned counsel has relied upon the case of *Sarva Shramik Sangh, Bombay vs. Indian Hume Pipe Co. Ltd. and Anr.* 1993 Lab IC 870, wherein the Apex Court held that the Tribunal can grant relief even with effect from the date anterior to the date of raising an industrial dispute.

35. On the issue that the learned Tribunal has travelled beyond the terms of reference, learned counsel for the respondent no.1 has placed reliance on a Division Bench judgment of the Bombay High Court in the case of *Sheshrao Bhaduji Hatwar vs. P.O., First Labour Court & others* 1992-I LLJ 672 Bom. that even if the reference is not happily worded, it will not justify short-circuiting the reference by ignoring the basic background and subjecting the poor workman to untold misery and hardship.

36. While concluding his arguments, learned counsel submitted that the Banks have raised all the issues just to frustrate the interests

of the respondent workmen. This Court under Article 226 of the Constitution of India should not normally disturb the award passed by the Tribunal on technical grounds. The petitioners have failed to establish that there is any perversity or illegality on the face of the award. The learned Tribunal on all the issues has given sufficient reasons based on evidence on record and the legal position available. Therefore, the writ petitions are liable to be dismissed.

37. Ms. Rashmi B. Singh, learned counsel for respondent No.2, in addition to the submission made by the counsel for the respondent no.1, submitted that during hearing of these petitions, this Court allowed the petitioners to file some additional evidence to satisfy the conscience of the Court. The said documents have no legal sanctity as they are not proved by any of the witnesses. Moreover, the plea of the counsel for the petitioners that some of the Collectors deposited the same amount in the account of the depositors on a number of times in a year. They used to open the account, deposit the amount and thereafter close the account. This type of practice, if continued because of the fault of the petitioners, the respondent workmen cannot be blamed for that. The petitioners are free to make guidelines relating to the life of the deposits and only thereafter they can give commission to the Collectors. If it is presumed that has happened in a few cases, the interest of the workmen cannot be put on jeopardy only for the sake that some of the Collectors are misusing the scheme which can be curtailed by the petitioners banks themselves.

38. On the other issues, learned counsel has supported the arguments of learned counsel for the respondent no.1 and submitted that the petitioners have only raised technical issues without any basis and evidence which has to be rejected and the petitions deserve to be dismissed.

39. I have heard learned counsel for the parties.

40. The respondent no.1 Federation pleaded before the Tribunal that bank managements resorted to reducing rates of commission from 3.5% to 2% for collection over and above Rs.7500/- per month. Bank managements also took steps to recover excess amount paid from 1997. Above steps were illegal and unwarranted. Banks have been paying 3.5% commission from 1978 to 2002 and subsequently reduced it to 2%. In fact, the Association mistook the incentive remuneration as commission. The Federation further projected that incentive remuneration is part of the fall back wages for doing clerical work in the banks and the commission is for manual work done by the Collectors in collecting the amount. The Industrial Tribunal, Hyderabad, Andhra Pradesh High Court and the Apex Court did not strike down the contract between the Deposit Collectors and the banks, hence banks were paying 3.5% commission for the manual work. Accordingly, linkage of fall back wages of Rs.750/- determined by Industrial Tribunal, Hyderabad, vide award dated 22.12.1988, which was based on consumer price index at 500 points (base 1960 = 100 points), has become totally out of date due to afflux of time and tremendous rise in prices in

last 15 years. The fall back wages are required to be adjusted upwards, related to the present consumer price index. Fall back wages of Rs.750.00 was linked to minimum deposit of Rs.7500/- per month. This linkage was based on consumer price index at 500 points. At present, consumer price index stands at 2438 points. Moreover, Tenth Five year plan has projected annual growth rate of 8% in GDP as its target.

41. The State Governments have fixed minimum wages on upward side consistently. In order to show justification of linkage of fall back wages of the Collectors, with All India Consumer Price Index, the Federation details the amount of minimum wages, fixed by the Government of NCT Delhi from time to time. In the year 1988 minimum wages for unskilled was Rs.562/- and for matriculate Rs.750/-. Whereas in the year 2003, the minimum wages for the aforesaid two categories were Rs. 2783.90 and 3231.90 respectively.

42. It is pertinent to mention here that the claim filed by the Federation before Industrial Tribunal, Hyderabad was that minimum wages in the region of Rs.800/- at 500 points in the All India Consumer Price Index for industrial workers on the basis of comparison of different wage structures in public sector undertaking may be awarded in their favour. The respondent no.1 claimed only Rs.750/-, which was linked to 500 points without claiming any dearness allowance thereon. Incentive remuneration of 5% on deposits collected in excess of Rs.7500 was also claimed,

apart, benefits of weekly holidays, national festivals, annual leave with wages, sick leave, medical leave and retiral benefits.

43. Accordingly, the Industrial Tribunal, Hyderabad, answered the reference as follows:

"(i) All the deposit collectors and agents who are below the age of 45 years as on October 1980 (the date of reference to the Tribunal) shall be considered for regular absorption in the post of clerks and cashiers if they are matriculates and above, including qualified graduates and post graduates. Those who are absorbed shall be treated at par with regular clerical employees of the banks. Those who are qualified with 8th class and below matriculate shall be considered for absorption as sub staff by taking qualifying examination.

(ii) As regards deposit collectors and agents who are above 45 years of age as on 03.01.1980 and also those who are unwilling to be absorbed in regular bank service, they shall be paid fall back wages of Rs.750.00 per month linked with minimum deposit of Rs.7500.00 per month and they should be paid incentive remuneration at 2% for collection over and above Rs.7500.00 per month and they should also be paid uniform conveyance allowance of Rs.50 per month for deposits of less than Rs.10,000.00 and Rs.100 per month for deposits of more than Rs.10,000.00 or upto or above Rs.30,000.00 per month. They should be paid gratuity of 15 days commission for each year of service rendered."

44. The Award dated 22.12.1988, passed by Industrial Tribunal, Hyderabad, was assailed by Syndicate Bank before the High Court

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of Andhra Pradesh whereby the writ of Syndicate Bank was partly allowed as under:

"On conspectus of consideration, the award reached the conclusion that deposit collectors are workmen of the respective banks though they are not and also cannot claim to be regular employees. In view of the conclusion, it necessarily follows that the scheme evolved by the Tribunal in Para 69 of the award for absorption of the deposit collectors who are below 45 years of age as on 03.10.1980 has to go. But the award also directed that the deposit collectors who are above 45 years and those who are not willing to be absorbed as regular employees, be paid fall back wages of Rs.750.00 linked with minimum deposit of Rs.7500.00 per month plus incentive remuneration at 2%. Besides such unabsorbed deposit collectors were also made entitled to conveyance allowance of Rs.50 per month for deposit of less than Rs.10,000.00 and Rs.100 per month for deposits of more than Rs.10000 upto or above Rs.30,000.00 per month. Besides, they were also entitled to gratuity of 15 days commission for each year of service rendered.

Now that we find that all deposit collectors are only workmen and none can be absorbed as regular employees, all of them have to be treated as only one category. The award would hence uphold and apply the decision of the Tribunal for payment of fall back wages and incentive commission as well as conveyance allowance and gratuity to the deposit collectors as workmen. The award has been modified accordingly."

45. Being aggrieved, the Association challenged the judgement dated 28.03.1997, delivered by High Court of Andhra Pradesh before the Supreme Court which ruled as under:-

"We have considered the rival submissions. In our view, Shri Sharma was right when he submitted that on the basis of evidence before it, the Tribunal has given findings to the effect that the deposit collectors are workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947. On the evidence on record, it cannot be said that that the finding was unsustainable. Having been shown relevant evidence, we are also of the opinion that the Tribunal correctly arrived at a conclusion that these deposit collectors were workmen."

46. On the issue of grant of pay scales, allowances & other service conditions and on continuance of the schemes the Apex Court concluded as under:-

"In the present case, not only are mode of selection and qualification not comparable but even the work is not comparable. Work which the deposit collectors perform is completely different from the work which regular employees do. There was no question of the deposit collectors being paid the same pay scales, allowances and other services conditions as regular employees of the bank.

*.....
The award also showed no substance in the contention that these schemes are un-remunerative. Banks have introduced these schemes because they want to encourage common man to make small and regular deposits. As a result of such schemes, number of depositors have become much large. We have no doubt that such schemes are continuing because the banks find them remunerative. Banks have large collection through such schemes."*

47. It is pertinent to note that the Apex Court held that Collectors are workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947. They are required to be compensated properly and adequately by the banks. The fact that other employees working in the banks are being paid good fair wages and capacity to pay of the banks is well known. A sum of Rs.750/- fixed by Industrial Tribunal, Hyderabad, is far below even the subsistence level in the year 2003. Therefore, fall back wages cannot be below minimum wages, fixed by the State Governments from time to time. Concept of fall back wages would mean that minimum wages must be paid regardless of all other facts.

48. It is further pertinent to note that respondent no.1 moved an application under section 18(3) of the Act on 31.01.2005 before the Tribunal whereby pleaded 48 banks, as named in para 23 of the award, and most of the banks are party before this Court. None of the bank had challenged their impleadment, however, defended their cases before the Tribunal.

49. On pleadings of parties, the learned Tribunal framed the following issues:-

- “(i) - *As per terms of reference sent by Government of India.*
- (ii) *Was there any privity of contract between the concerned workmen and the IBA? If not, what are consequences?*

(iii) *Relief.*"

50. As regards the issue no.(ii) as noted above, undisputedly the appropriate Government referred the dispute for adjudication to the Tribunal. In its written statement, the Association took an objection that it is neither employer of the Collectors nor it lays down terms and conditions of their engagement.. Collectors are persons engaged by the respective banks on the basis of their individual contracts to work on commission basis. Such individual contracts are between the banks and the deposit collectors and as such, on any matter or matters which is/are part of the contracts, they cannot raise any grievance against the Association. Accordingly, the learned Tribunal allowed the application under section 18(3) and impleaded 48 banks as mentioned above.

51. No doubt, it is not open to the Tribunal to travel materially beyond the terms of reference, which determine the scope of its powers and jurisdiction from case to case. However, provisions of section 10(1)(d) of the Act empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication. Section 10(4) of the Act provides, that jurisdiction of an Industrial Tribunal would be confined to points of dispute specified by the order of reference and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of disputes have been

referred to an Industrial Tribunal for adjudication, it may while dealing with the said points, deal with the matters incidental thereto, if the Tribunal feels that some persons who are not joined to the reference should be brought before it. Accordingly, the Tribunal has power to make an order in that behalf under section 18(3)(b) of the Act. In the case in hand, the petitioners banks, where Collectors are working, initially were not made parties to the dispute. Addition of the banks was necessary to make adjudication effective and enforceable.

52. Admittedly, the banks impleaded in the array of parties are the employers of the collectors. Thus, the Tribunal has not materially enlarged the scope of reference by summoning the banks to participate in the proceedings.

53. It is not in dispute that 40 banks filed their respective written statements and contested claims put forward by the Federation as well as the Union. Admittedly, the collectors represented by the Federation /Union, work with those banks, who have been added as parties to the dispute. Since, initially, the reference was qua only the Indian Banks Association and, thereafter, joining of 40 banks with their respective statements to issue no.1, the issue no.2 has become redundant as rightly held by the Tribunal.

54. The learned Tribunal has justified by giving example of other organized sectors, viz., steel, power, transport, textiles etc., which show that even a decade back workers employed in these sectors

were getting Rs.2130/- to Rs.2850/- per month, besides other fringe benefits like annual increments, variable dearness allowance, house rent allowance, compensatory allowance, washing allowance, children education allowance, transport subsidy and uniforms etc. However, no such benefits are available to the Deposit Collectors.

55. Moreover, Seventh Bipartite Settlement, entered into by the banking industry which fixed minimum basic pay of sub staff at Rs.2750/- per month, besides dearness allowance, house rent allowance and city compensatory allowance. Minimum basic pay for clerical staff has been fixed at Rs.3020/- per month besides above benefits. Fall back wages for collectors was fixed at Rs.750 per month, when an employee of clerical grade in the bank was getting basic pay of Rs.520/- besides above benefits. His total salary used to come around Rs.750/- per month. Minimum wages of workmen in various industries have gone upwards, as compared to the year 1983. There is a manifest justification for enhancement in fall back wages of at least Rs.5000/- for collection of Rs.50,000/- per month to compensate the Deposit Collectors for increase in cost of living.

56. It is not in dispute that minimum wages are required to be paid to any industrial labour. In other words, minimum wages is lowest wage below which efficiency of workmen is likely to be impaired. The concept of minimum wage is not fixed and static, since it varies from time to time and from place to place. Moreover, Tripartite Committee of Indian Labour Conference held in 1957

declared that wage policy to be followed irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. Thus, minimum wage applies to all alike big or small. A fair wage is thus related to the earning capacity and work load. It must be sufficient to provide not only essentials, but fair measure of frugal comfort, with an ability to provide for old age and evil days.

57. No doubt, for fixation of wage structure, industrial adjudicator had to take in account the counter balancing circumstances. In the present case, all the banks are admittedly earning profit from the business. This fact has been admitted by all the witnesses examined by the petitioners as well as the respondents, as have been discussed in detail by the learned Tribunal. It is not a matter of dispute that the collectors are workmen within the meaning of section 2(s) of the Act, who are not awarded scales of wages applicable to the employees of the banks. They are a special class in themselves. Neither they are classified as part time employees nor permanent employees. However, for the purpose of assessment of their fall back wages and incentive remunerations, it would be taken note of as to what quantum of wages a part time employee gets from the banks. The 9th Bipartite Settlement, signed on wage revision, pension and other service conditions between the Association and their workmen represented by their various Unions on 27.04.2010, details wages paid to a part

time employee. Clause 21 of the said settlement provides as follows:

"In substitution of Clause 21 of the Bipartite Settlement dated 2nd June 2005, with effect from 1st November 2007, Part-Time employees who are members of the subordinate staff on consolidated wages and whose normal working hours per week are 'upto 3 hours' and 'more than 3 hours but less than 6 hours' shall be paid one third scale wages w.e.f. 1st May 2010. From 1st November 2007 to 30th April 2010, they shall be paid consolidated wages as under:

a. Upto 3 hours : at bank's discretion with a minimum of Rs.1030/- p.m.

b. More than 3 hours but less than 6 hours: at bank's discretion with minimum of Rs.1140/- p.m.

The employees recruited on or after 1st May 2010 in part-time:scale wages shall be at minimum of one third scale wages."

58. It cannot be in dispute that the Collectors perform clerical duties, since they collect deposits from the account holders, issue receipts to them and account for the money so collected to the banks. Though Deposit Collectors are not part time employees but assuming them to be so, they would get 1/3rd of scale wages of the clerical staff, besides an amount equivalent to the other benefits paid to such employees. Their basic fall back wages would be Rs.2400/- per month, besides other allowances admissible as per rules. On that standard, fall back wages of the Deposit Collectors shall be primarily Rs.5,000/- per month. Moreover as emerged out of the award Ex.WW1/3, rendered by Hyderabad Tribunal,

Collectors get fall back wages of Rs.750/- on a collection of Rs.7,500/- per month. On collection over and above Rs.7,500/- per month, they get incentive remuneration of 2% assuming that Rs.3,00,000/- per month is collected by a Deposit Collector, his fall back wages and incentive remuneration would be Rs.6,600/- [(Rs.750/- that fall back wages) + Rs.5,850/- (incentive remuneration)]. Thus, it is obvious that a Collector is getting less than the minimum wages, notified from time to time and even less than a deemed part time clerical staff. On perusal of award Ex.WW-1/C, the main thrust of the Tribunal was whether the Collectors were commission agents or employee of the banks. Accordingly, the Learned Tribunal at Hyderabad held that the respondent/workman should be paid a fall back wages of Rs.750/- per month, linked with minimum collection of Rs.7,500/- per month. They should also be paid incentive remuneration at 2% for collection over and above Rs.7,500/- per month and also be paid uniform affirming allowance of Rs.50/- per month for depositing of less than 10,000/- and Rs.100/- per month for deposits of more than Rs.10,000/- or up to or above Rs.30,000/- per month.

59. In respect of the other demands, fixation of fall back wages and incentive remuneration, the Learned Tribunal of Hyderabad ruled out that the Deposit Collectors or agents, are not entitled to weekly holidays, national and festival holidays, annual leave and sick leave. They were virtually enjoying those benefits by virtue of non-functioning of banks on weekly holidays and paid national and

festival holidays. They were also entitled to enjoy leave account to their own choice after intimating the bank as regards the retirement benefits. As held by the Learned Tribunal, they cannot claim any provident fund or pension but they should be paid gratuity of 15 days commission for each year of service rendered. They are not entitled to medical and hospitalisation charges and the insurance as regular employees. They would be entitled to such benefits only after they are regularly absorbed in the bank services.

60. Except the above treatment of alteration relief of the federation, the Learned Tribunal at Hyderabad nowhere linked relief of fall back wages and incentive remuneration to All India Consumer Price Index. When High Court of Andhra Pradesh exercised power of judicial review, none of the parties raised the issue to the effect that the fall back wages and incentive remuneration were linked to All India Consumer Price Index. Therefore, there was no occasion for High Court of Hyderabad to consider as to whether fall back wages and incentive remuneration were linked with All India Consumer Price Index or not. The Apex Court too was not invited to deal the issue that the fall back wages and incentive remuneration, awarded in favour of the Deposit Collectors, were linked to All India Consumer Price Index. In reference order, appropriate Government tried to project that the fall back wages and incentive remuneration, granted in favour of the Deposit Collectors, have link with All India Consumer Price Index. Resultantly, the Learned Tribunal concluded that fall back wages

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and incentive remuneration awarded to the Deposit Collectors have no link with All India Consumer Price Index.

61. In case of a Deposit Collector, who collects a sum of Rs.3,00,000/- per month, gets only a sum of Rs.6,600/- (Rs.750/- as fall back wages + Rs.5,850/- as incentive remuneration). Collection of a sum of Rs.3,00,000/- per month is a moderate amount but fall back wages and incentive remuneration, which would come in the hands of a Deposit Collector would be less than minimum rates of charges, notified for a matriculate clerk.

62. It is well established that an employer has a right to organize or re-organize his business in any fashion, for the purpose of convenience of better administration for achieving economy, productivity or profitability, subject to the limitation that in doing so, he does not contravene any Regulation or other laws.

63. It is pertinent to record that if these schemes are not reproductive, what prevented the banks to close down such schemes. Admittedly, the Pigmy Deposit Scheme was started by Syndicate Bank in the year 1967 in southern part of the country. The scheme attracted other banks too, where it was initiated when those banks were having small number of its branches in semi urban and rural areas of the country. With the extension of banking industry, branches of the banks increased manifold with opening of branches in semi-urban and rural schemes. It is not disputed that in

some of the banks, the scheme has been closed but such a decision was taken on other consideration, besides economic factors.

64. The Apex Court has affirmed the decision of the State Bank of India in respect of closure of its scheme, vide its order dated 28.02.2008 passed in transfer case (Civil) No. 79/2005 titled as A.P. Bank Deposit Collectors Association vs. State Bank of India. Thus, it is clear that the banks are free to close its scheme if it is not economically profitable. But in case, banks opt to continue with the scheme, they cannot be allowed to pay fall back wages and incentive remuneration which are less than minimum charges notified from time to time. An industry has to pay minimum wages to its workmen. As held by the Apex Court, the collectors are workmen, a class in themselves, who had a right to receive minimum charges in the form of fall back wages and incentive remuneration.

65. It is settled law that for fixation of rates of wages, an Industrial Tribunal has to see the financial capacity of the industry as a whole to pay. Moreover, financial capacity of an employer and financial capacity of a particular unit is to be taken into consideration.

66. Undisputedly operating profits of the banking industry have increased by Rs.70,790/- crores while net profits have gone up by 27,800/- crores. Therefore, it has emerged from the record that the banking industry has financial capacity to pay higher fall back

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wages and incentive remuneration. Financial capacity of a particular bank has also been substantiated through the depositions of the witness produced by the petitioners and respondents, who deposed that the banks are earning profit from the last many years. Therefore, it is established that not only the banking industry as a whole, but individual banks, where small deposits scheme is being run, have financial capacity to pay higher fall back wages and incentive remuneration to the Deposit Collectors, engaged by them. Accordingly for 'A' area city, like Delhi, fall back wages for Deposit Collectors should not be less than Rs.9,386/-.

67. For ascertaining the limit of collection, it is to be noted as to what amount of money is being collected by the Deposit Collector in a month. Sh. Pommuswamy witness of the workman stated that in the year 1978, he used to collect a sum of Rs.3,00,000/- per month. As on date, (he entered in the witness box in the May 2011) was collecting a sum of Rs.12,00,000/- approximately in a month. Similarly, Ashish Bilala declared that he has been earning a sum of Rs.12,000/- to 13,000/- per month as fall back wages and incentive remuneration. He deposed that he has been collecting a sum of Rs.6,50,000/- from account holders. Accordingly, Sh. Ashok Kumar has been collecting a sum of Rs.1,50,000/- to Rs.2,00,000/- per month from the account holders. It is pertinent to note that Sh. I.P. Ponnusamy has been operating in 'A' area city while other witnesses except Bilala have been operating in 'B' area cities. Sh. Bilala has been operating in 'C' area city. Accordingly, the

Collectors operating in 'C', 'B' and 'A' area cities would collect Rs.3,00,000/-, Rs.4,00,000/- and Rs.5,00,000/- per month respectively. On collections over and above Rs.3,00,000/-, but upto Rs.5,00,000/-, a Collector would get an incentive remuneration of 3% and on collections over and above Rs.5,00,000/- per month, he will get incentive remuneration of 2% only. Therefore, a Deposit Collector of B area city who had to collect a minimum of Rs.4,00,000/- per month, will get fall back wages of Rs.8,000/- besides incentive remuneration of Rs.300/- per month. Thus, by collecting more than Rs.5,00,000/- in a month, the Deposit Collectors may earn more. The amount, which will come to them towards fall back wages and incentive remuneration, would be over and above, the minimum charges, so notified by making that payment to the Deposit Collectors, the banks would not be constrained financially at all. The fall back wages and incentive remuneration, as referred above, have rightly been compared to the wages earned or a deemed part time of clerical staff, employed in the bank and the minimum wages for a skilled clerical staff in a scheduled employment.

68. I note that the Learned Tribunal recorded in the impugned award that conveyance allowance is being paid to the Collectors @ Rs.50/- per month for deposit of less than Rs.10,000/- and @ Rs.100/- per month for deposit of Rs.10,000/- over and above upto Rs.30,000/- per month. This quantum of conveyance allowance was demanded by the federation, when it filed its claim

before the Industrial Tribunal of Hyderabad in the year 1981. The Industrial Tribunal granted the relief *in toto* and fixed conveyance allowance for the Collectors at the above rates. Since 1981 till date, price of petrol has roled many times. The Deposit Collectors had to reach persons of lower and middle income group, small traders, businessman, artists and self employed persons and house wives to collect money from them. These facts have established that a Deposit Collector has to reach his customer, according to convenience of the latter. For that purpose, possibility of going for collection twice or thrice a day, cannot be ruled out. One cannot dispute that in 'C' area as well as 'B' area cities, the collectors may have to travel in a radius of 10 kilometres daily. In 'A' area city, he may travel a little bit longer. One cannot be oblivious of the fact that these days such bikes are in the market which are fuel efficient. Manufacturers claim that such bikes have fuel efficiently of running generally 60 kilometres per litre. A Deposit Collector in 'C' and 'B' area cities may have to travel roughly 500 kilometres in a month. For 'A' area city, a Deposit Collector may avail public transport also. Accordingly, the Learned Tribunal opined that at least 8 to 10 litres of petrol in a month is to be spent by a collector. Accordingly, a sum of Rs.9,000/- per year has been granted towards conveyance allowance.

69. As per award Ex.WW-1/3 the fixation of fall back wages and incentive remuneration was based on the circumstances prevalent in the year 1981. Fall back wages and incentive remuneration fixed

by award dated 22.12.1988, remained static till date. The present dispute was raised by respondent No. 1 in the year 2003. After raising of the dispute and during the course of the adjudication, a few of banks closed their small deposit schemes. Accordingly, the Learned Tribunal held that in case this award is not given to any retrospective effect than the Collectors of banks, who had closed the schemes, would not be eligible to get any relief out of it. Therefore, the Learned Tribunal has held that the demand of federation/union for enhancement of fall back wages and incentive remuneration, besides conveyance allowance is justified. Accordingly, the Learned Tribunal has given the Award retrospective effect from 19th July, 2005, the date when the banks were summoned to appear before the Tribunal.

70. Admittedly, issue of gratuity was not part of reference. However, learned Tribunal has held that the respondents will also get gratuity of Rs.4,000/- every year. It is also not in dispute that in case of *Indian Banks' Association (supra)*, Hon'ble Supreme Court, held that Deposit Collector can be treated as regular employees of the Bank, though they may be 'workmen' under the Industrial Disputes Act. Moreover, there was no pleadings on this issue.

71. Keeping in view the above discussions, I find no discrepancy in Award dated 07.10.2013, except the gratuity part. Accordingly, order on gratuity is hereby set aside. However, liberty is granted to

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the respondents to claim gratuity, if they are entitled, under the Payment of Gratuity Act, 1972 before the appropriate forum.

72. The petitions are partially allowed with no order as to costs.

73. All the pending CMs stand disposed of being infructuous.


SURESH KAIT
(JUDGE)

April 20, 2015
RS/Rita