



WEB COPY



W.A.No.548 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal No.548 of 2021
and
C.M.P.No.2174 of 2021

The Zonal Manager,
Central Bank of India,
Zonal Office, 48/49, Monteith Road,
Egmore, Chennai – 600 008.

... Appellant

Vs.

1.P.Shanmugasundaram

2.The Appellante Authority under the
Payment of Gratuity Act, 1972 &
Deputy Chief Labour Commissioner (Central),
Chennai.

3. The Controlling Authority under the
Payment of Gratuity Act, 1972 &
Assistant Labour Commissioner (Central),
Chennai.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the
order dated 01.10.2020 passed in W.P.No.2891 of 2018.



W.A.No.548 of 2021

WEB COPY

For Appellant

: Mr.Raghunathan
for M/s.T.S.Gopalan & Company

For R1

: Mr.K.M.Ramesh
Senior Counsel
for Mr.V.Subramani

For R2 & R3

: No appearance

J U D G M E N T

(Judgment of the Court was delivered by S.M.SUBRAMANIAM, J.)

The appellant is Central Bank of India, a nationalised bank. The 1st respondent was employed as Driver by one of the Executives of the Bank in his personal capacity. The 1st respondent raised an industrial dispute through trade union seeking regularization of his service with the petitioner/Bank. The Appellate Tribunal rejected the plea of absorption in to services of the appellat/Bank to the effect that there was no order of appointment issued by the bank. Thus, it was pleaded that there was no employer and employee relationship existed between the appellant/Bank and the 1st respondent.

2. The said decision remained un-challenged. Subsequently, the 1st respondent/workmen filed a petition under the Gratuity Act, on attaining the age of superannuation. There is no order of appointment or relieving have



W.A.No.548 of 2021

been issued by the appellant/Bank.

WEB COPY

3. The contention of Mr.K.M.Ramesh, learned Senior Counsel appearing on behalf of the 1st respondent/workmen is that the 1st respondent/workmen was engaged as personal Driver for the executives. Further, the employment of the workmen has been approved by the Controlling Authority. Thus, the 1st respondent/workmen is entitled for gratuity.

4. Mr.P.Raghunathan, learned Counsel appearing on behalf of the appellant/Bank would oppose the contention by stating that the employer and employee relationship was not established and the issue had already been decided and remained un-challenged. That being so, the 1st respondent/workmen is not entitled for gratuity under the provisions of the Act.

6. We have considered the rival submissions between the parties.



W.A.No.548 of 2021

WEB COPY

7. Learned Counsel for the appellant/Bank relied on the Judgment of the Hon'ble Supreme Court of India in the case of ***Punjab National bank Vs. Ghulam Dastagir*** reported in (1978) 2 SCC 358, which reads as under:

“3. Shri Khera has taken us through the leading case on the point in Shivanandan Sharma v. The Punjab National Bank Ltd. and the subsequent decisions, which we may broadly describe as the beedi cases, such as in D. C. DewanMohideen Sahib & Sons v. United Bidi Workers' Union. There is no doubt that the proposition laid down in Shivanandan Sharma is unexception- able law and the crucial test in most cases is as to who exercises control and supervision over the workman. Lord Porter in the course of his speech in the judgment in Mersey Docks & Harbour Board v. Goggins& Griffith Liverpool Ltd., expressed himself in words which were relied upon by Shri Justice Sinha in Shivanandan Sharma:

“Many factors have a bearing on the result. Who is paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed, have all to be kept in mind. The expressions used in any individual case must always be considered in regard to the subject-matter under discussion but amongst the many



WEB COPY



W.A.No.548 of 2021

tests suggested I think that the most satisfactory, by which to ascertain who is the employer at any parti- cular time, is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged.”

It is clear that the direction and control are the telling factors to decide as to whether the driver in the present case is the employee of the Bank. This test does not exclude other factors also, and indeed as Lord Macmillan, in the aforesaid case, rightly stressed the question in each case turns on its own cir- cumstar?ces and decisions in other cases are rather illustrative than determinative. To crystallise criteria conclusively is baffing but broad indications may be available from decisions. The 'beedi cases' turn on the reality of 'indepen- dent contractors' standing in between the Management and the beedi workers. This Court, in many such cases discovered that there was a common practice of using deceptive devices and the so-called independent contractors were really agents or workers of the Management posing as independent contractors for the purpose of circumventing the Factories Act and like statute which compel managements to meet certain economic and social obligations towards the workers. We have no doubt that if in this case there was evidence to show any colourable device resorted to by the Bank, our conclusion would have been



WEB COPY



W.A.No.548 of 2021

adverse to the Management. On the other hand, the evidence adduced before the Tribunal, oral and documentary, leads only to one conclusion that the Bank made available a certain allowance to facilitate the Area Manager, Shri Sharma privately to engage a driver. Of course, the jeep which he was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid by Shri Sharma as his employer who drew the same granted to him by way of allowance from the Bank. There is nothing on record to make out a nexus between the Bank and the driver. There is nothing on record to indicate that the control and direction of the driver vested in the Bank. After all, the evidence is clearly to the contrary. In the absence of material to make out that the driver was employed by the Bank, was under its direction and control, was paid his salary by the Bank and otherwise was included in the army of employees in the establishment of the Bank, we cannot assume the crucial point which remains to be proved. We must remember that there is no case of camouflage or circumvention of any statute. It is not unusual for public sector industry or a nationalised banking institution to give allowances to its high-level officers leaving it to them to engage the services of drivers or others for fulfilling the needs for which the allowances are meant. In this view, we are clear that the



W.A.No.548 of 2021

award fails as it is unsupportable. We, therefore, reverse the award.”

WEB COPY

8. However, in para.no.6 of the said Judgment, the Hon'ble Supreme Court of India considered and directed the Bank to pay ex-gratia sum of Rs.7,500/- in order to give *quietus* to the issue.

9. We have examined the facts as presented before us.

10. In the present case, employer and employee relationship did not exist, but the employment of the workmen was established as Driver. Thus, it would be appropriate to direct the appellant/Bank to pay ex-gratia amount of Rs.75,000/- taking note of the fact that the gratuity amount itself has been calculated as Rs.64,650/-.

11. Thus, we direct the appellant/Bank to settle a sum of Rs.75,000/- as ex-gratia to the 1st respondent/workmen within a period of six (6) weeks from the date of receipt of a copy of this order. On such payment, the appellant/Bank is at liberty to recover the said ex-gratia amount from the executives concerned proportionately.



W.A.No.548 of 2021

WEB COPY

12. Accordingly, the order dated 01.10.2020 passed in W.P.No.2891 of 2018 is set aside. Consequently, the Writ Appeal stands **allowed in part** with modifications. Connected miscellaneous petition is closed. However, it is made clear that the order passed in the present writ appeal cannot be treated as precedent.

[S.M.S.J.] [K.R.S.J.]
26.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
veda

To

1.The Appellante Authority under the
Payment of Gratuity Act, 1972 &
Deputy Chief Labour Commissioner (Central),
Chennai.

2.The Controlling Authority under the
Payment of Gratuity Act, 1972 &
Assistant Labour Commissioner (Central),
Chennai.



WEB COPY



W.A.No.548 of 2021

S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

veda

Judgment in
W.A.No.548 of 2021

26.03.2024