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W.A.No.3346 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

**THE HONONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONONOURABLE MR. JUSTICE P.DHANABAL**

**W.A.No.3346 of 2023
and
C.M.P.No.27312 of 2023**

The Chairman
Tamil Nadu Grama Bank
Head Office
6 Yercaud Road,
Hasthampatti Post,
Salem - 636 007

..Appellant

Vs.

1. The Appellate Authority under the
Payment of Gratuity Act, 1972 &
Dy Chief Labour Commissioner (Central),
Chennai
Office of the Dy Chief Labour Commissioner
(Central)
5th Floor, Shastri Bhawan,
Chennai - 600 006.
2. The Controlling Authority under the
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central),
Madurai (I/c)
Office of the Regional Labour Commissioner



W.A.No.3346 of 2023

WEB COPY

(Central),
Kanaga Apartments, Suite No.III, I Floor,
13-A, Lady Doak College Road,
Chinna Chokkikulam,
Madurai - 625 002.

3. I.Veerapathiran
4. G.Mohamed Zafarullah
5. M.Muthukumar
6. P.Ramakrishnan
7. P.Murugesan
8. N.Sivasankara Subramanian
9. S.P.Sundarlingam
10. S.Esakkimuthu
11. M.Boominathan
12. A.Mohamed Abdul Kathar Jailani ... Respondents

Writ Appeal filed under Clause 15 of the Letters patent against the
order passed by this Court in W.P.No.19770 of 2023 dated 28.08.2023.

For Appellant : Mr.Raghunathan
for T.S.Gopalan and Co.

For Respondent : Ms.D.Geetha
for R3 to R12



W.A.No.3346 of 2023

WEB COPY

J U D G M E N T

This appeal has been filed against the order passed in W.P.No.19770 of 2023 dated 28.08.2023, by which, the order passed by the first respondent dated 20.09.2022 directing the appellant Bank to pay gratuity as claimed by the respondents 3 to 12, was confirmed.

2. The case of the appellant Bank is that the respondents 3 to 12 were not regular employees of the appellant Bank and they were mini deposit collectors engaged by the appellant and they were paid commission based on the amounts collected by them. They jointly filed an application for payment of gratuity under the Payment of Gratuity Act before the 2nd respondent and the 2nd respondent found that the gratuity was due to the respondents 3 to 12 and directed for payment of gratuity by the appellant. The appellant deposited the gratuity under protest and appealed to the 1st respondent stating that the respondents 3 to 12 were not the employees under section 2(e) of Payment of Gratuity Act and they were not entitled to payment of gratuity. However, the 1st respondent concluded that the respondents 3 to 12 were entitled to the payment of gratuity. Against the order of the 1st respondent, a writ



W.A.No.3346 of 2023

petition was filed before this Court and the learned Judge dismissed the writ petition holding that the respondents 3 to 12 fall within the definition of employee under section 2(e) of the Payment of Gratuity Act and the commission received by them were wages as per section 2(s) of the said Act. Hence, the present appeal.

3. (i) Learned counsel for the appellant would state that under Section 2(s) of the Payment of Gratuity Act, wages has been defined to exclude any bonus, commission, house rent allowance, overtime wages and any other allowance. Learned counsel would further state that the commission is not wages. All the Banks have small deposit schemes by engaging agents to canvass small time daily deposits. The said deposit collectors are held to be workmen within the meaning of Section 2(s) of the I.D.Act but not employees of the bank. As the deposit collectors were not getting wages but only commission, they were not entitled to gratuity under the Payment of Gratuity Act.

(ii) Learned counsel would further state that the deposit collectors raised industrial dispute as early as 1980 making several demands including the demand for payment of gratuity @ 15 days commission.



W.A.No.3346 of 2023

WEB COPY

There was an award to that effect by a specially constituted All India Central Government Industrial Tribunal and the matter went up to the Supreme Court where both the parties accepted that the deposit collectors were not entitled to gratuity under the Payment of Gratuity Act. He would further state that the definition of 'wages' under Section 2(rr) of the I.D. Act did not include commission. However, by way of an amendment, Act 46 of 1982 in the Industrial Dispute Act, commission was also included as wages, but the definition under the Payment of Gratuity Act, remains the same.

(iii) Learned counsel would also refer to the judgment of the Hon'ble Supreme Court reported in 2001 (1) LLJ 1045 (Indian Bank Association vs. Workmen of Syndicate Bank and others), wherein at para 25, it has been held that "Further, as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by deposit collectors is nothing else but wage, which is dependent on the productivity." In the instant case, the deposit collectors approached the authority under the Payment of Gratuity Act claiming gratuity under the Act.

(iv) Learned counsel would further state that subsequent to the decision of the Supreme Court, there was another reference of an



W.A.No.3346 of 2023

Industrial Dispute for the monetary benefits and other concessions for deposit collectors and the same was referred to a specially constituted Central Government Industrial Tribunal and one of the issues was gratuity. To get over the definition of Section 2(s) of the Payment of Gratuity Act, this time, the Tribunal gave the benefit of gratuity @ Rs.4000/- per year of service. It was neither commission nor wages but an adhoc amount, however, this award was set aside by the High Court and the matter is pending before the Supreme Court.

4. (i) Per contra, the learned counsel for the respondents 3 to 12 would state that the respondents have been employed by the appellant and though the amount paid to them is named as commission, it would fall within the ambit of wages. As per Section 2(s) of the Payment of Gratuity Act, 1972, "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. Thus, the commission received by them is wages and they are



W.A.No.3346 of 2023

not paid any wages separately.

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(ii) Learned counsel would further state Section 2(e) of the Payment of Gratuity Act defines "employee" which means any person other than an apprentice, employed on wages, in any establishment, factory or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity. In the present case, the respondents 3 to 12 are neither apprentice nor working in managerial capacity. Therefore, they would definitely fall within the four corners of the definition of 'employee' under Section 2(e) of the Act. Hence, they are entitled to gratuity.

5. Heard the learned counsel for the appellant, the learned counsel appearing for the respondents and perused the materials available on record.

6. The Appellant Bank introduced Nitham Valar Nidhi (NVN)



W.A.No.3346 of 2023

WEB COPY

Scheme in order to encourage the habit of savings among the rural people. To implement the said Scheme, the appellant Bank engaged the respondents 3 to 12 as deposit collectors. The duty of respondents 3 to 12 is to collect the amount and deposit the same into the Bank and they were paid commission by the bank. The respondents 3 to 12 claimed gratuity. However, the appellant Bank denied the same stating that as the deposit collectors were not getting wages but only commission, they were not entitled to gratuity under the Payment of Gratuity Act.

7. It is pertinent to point out that as per Section 2(s) of the Payment of Gratuity Act, 1972, "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. Thus, the commission received by them is wages as they are not paid any wages separately. Therefore, though the amount paid to them is named as commission, it would fall within the ambit of wages.



W.A.No.3346 of 2023

WEB COPY

8. Further, the Banks have control over the deposit collectors as the deposit collectors have to bring the collected amount and deposit the same into the banks by the very next day. They have to fill in various forms, maintain accounts, registers and pass books. They also have to do other clerical work as the Bank may direct. Therefore, they are accountable to the Bank and they are under the control of the Bank.

9. In 2019 (2) KHC 126 (South Malabar Gramin Bank vs. Regional Provident Fund commissioner), the Division Bench of Kerala High Court specifically dealt with the issue with regard to Deposit Collectors and held that the deposit collectors are entitled to receive provident fund in terms of section 2 of the Provident Funds and Miscellaneous Provisions Act, 1952, since they are coming under the definition of wages under section 2(s) of the said Act. Even as per Section 2(rr) of the Industrial Disputes Act, the commission received by deposit collectors is nothing else but wages, which is dependent on the productivity.



W.A.No.3346 of 2023

WEB COPY

10. Further, as per Section 2(e) of the said Act, "employee" means any person other than an apprentice, employed on wages, in any establishment, factory or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity. Since the respondents 3 to 12 herein are neither apprentice nor working in managerial capacity, they would definitely fall within the ambit of the definition of 'employee' under Section 2(e) of the said Act.

11. Basic wages means all emoluments earned by an employee while on duty or leave or on holidays with wage in either case in accordance with terms of the contract of employment and paid in cash to him. This definition therefore, comes within the scope of commission paid to the deposit collectors which would include only emoluments paid in accordance with terms of the contract of their employment. Thus, the deposit collectors are persons who come within the definition of 'employee' under the EPF Act and the commission paid to them comes within the expression 'basic wages'. Applying the said ratio, the Hon'ble



W.A.No.3346 of 2023

WEB COPY

Apex Court in *M/s. Bridge and Roof Co.Ltd., vs. Union of India* reported in *AIR 1963 SC 1474* has held that the deposit collectors are entitled to receive gratuity.

12. The Hon'ble Supreme Court in 2001 LLJ 1045 (*Indian Bank Association vs. Workmen of Syndicate Bank and others*) has held that the deposit collectors are workers. Though the said decision was in the context of the claim under the I.D. Act, 1947, the ratio is applicable to the claim of the respondents 3 to 12 with regard to gratuity also. The Hon'ble Supreme Court categorically held that "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."

13. Applying the above ratio laid down by the Hon'ble Supreme Court, in the decisions cited supra, we are of the opinion the respondents 3 to 12 are entitled to gratuity as per the provisions of Payment of Gratuity Act.



W.A.No.3346 of 2023

WEB COPY

14. For the aforesaid reasons, we find no infirmity or illegality in the order passed in W.P.No.19770 of 2023 dated 28.08.2023. Therefore, the Writ Appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)

Index : Yes / No

24.06.2024

Internet : Yes

vsi

To

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W.A.No.3346 of 2023

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W.A.No.3346 of 2023

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