IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

W.P.(C).No. 7127 of 2007 (W)

PETITIONER:

THE DEPUTY GENERAL MANAGER,
CANARA BANK, CIRCLE OFFICE, TRIVANDRUM.

BY ADV. SRI. RAJU ABRAHAM PULPARA

RESPONDENT(S):
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1. **SRI. A.K.NARAYANAN, S/O. A.A.KESAVAN,**
   KENDANASSERY, ARIYANNOOR, THRISSUR - 680 102.

2. **THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**
   ERNAKULAM.

R1 BY ADV. SRI.P.RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).No. 7127 of 2007 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P-1: COPY OF THE AWARD DTD. 24.07.1995 IN I.D. NO.5/92.

EXT. P-2: COPY OF THE AFFIDAVIT AND PETITION FILED BY THE RESPONDENT IN O.P. 19961/95.

EXT. P-3: COPY OF THE PASS SHEET.

EXT. P-4: COPY OF THE REVISED CALCULATION STATEMENT DATED 15.01.07.

EXT. P-5: COPY OF OBJECTION TO REVISED CALCULATION STATEMENT AND STATEMENT OF THE OPPOSITE PARTY FILED BY THE PETITIONER BANK.

EXT. P-6: COPY OF ORDER DATED 30.1.2007 OF THE 2ND RESPONDENT IN C.P.2/2006.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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P.V. ASHA, J.

W.P.(C). No. 7127 of 2007

Dated this the 26th day of October, 2015

JUDGMENT

The Canara Bank - the respondent in C. P No.2/2006, filed by the 1st respondent herein under Section 33(C)(2) of the Industrial Disputes Act, 1947, is challenging the order Ext.P6 passed in it by the Industrial Tribunal-Cum-Labour Court, Ernakulam.

2. The 1st respondent herein was working as Nityanidhi Deposit Collector ('NND Collector' for short) and as a Jewel Appraiser in the Canara Bank, Circle Office, Thiruvananthapuram. Consequent to the denial of the employment to 1st respondent herein, Government of India referred the matter to the Industrial Tribunal, as follows:

> *"Whether the action of the management of Canara Bank in terminating the services of Shri. A.K. Narayanan, NND Agent and Jewel Appraiser, Guruvayoor Branch with*

effect from 7.10.1987 is justified? If not, to what relief Shri. Narayanan is entitled?"

3. By Ext.P1 award the Industrial Tribunal, Alappuzha, in I.D. No.5/92 held that termination of service of the 1st respondent was illegal. The operative portion of the award reads as follows:

> *"12. In the result, an award is passed holding that the termination of service of the workman concerned who was a Nithyanidhi Deposit Collector is declared as illegal. He is entitled to continue in service of the Management Bank till his service is terminated in accordance with the provisions contained in the Industrial Disputes Act. During the period in which he was kept out of service, he shall be paid half the wages. The basis for determination of his monthly wages shall be the average of the remuneration or commission whatever it be he had been receiving during the period of one year immediately preceedings the date of termination."*

4. The Bank took up the matter before this court filing O.P. No.19961/95, which was dismissed on 27.07.20015. Writ Appeal No.2624/05 filed by the Bank against that judgment in O.P.No.19961/95 was also

dismissed on 11.08.2006. The Bank took up the matter before the Supreme Court in SLP No.18751/2006, which was also dismissed.

5. Aggrieved by the denial of back wages as directed in the award, the 1st respondent filed a petition -C. P No.2/2006 under Section 33(C)(2) of the ID Act, before the Industrial Tribual cum Labour Court. A revised statement-Ext.P4 was filed claiming a sum of ₹ 2,70,836.55 for the period from 07.10.1987 to 21.08.1995 ie. from date of termination from service to the date of publication of Award.

6. The Bank filed Ext.P5 objections disputing the calculation. The main contention raised was that the entire commission received as NND Agent as well as Jewel Appraiser was taken while filing the revised calculation statement and that the question raised before the Tribunal was only as to the termination of service as NND agent. The Bank further contended that after

termination of the employment in the Bank, whether the workman was gainfully employed or not was one of the factors to be considered while determining whether or not reinstatement should be with or without backwages or with half back wages or with full wages. The Bank furnished their statement on its own calculation, according to which the amount due to the 1st respondent was only a sum of ₹41,895/-.

7. The claim petition was disposed of as per Ext.P6 order, after conducting a full fledged trial in which the 1st respondent got himself examined as PW1 and marked Exts.P1 to P4 documents. On the other hand the Bank, the petitioner herein did not adduce any oral evidence. The only document they produced was Ext.B1, a copy of the affidavit filed by the 1st respondent before this Court in O.P. No.19961/95. In paragraph 6 of the order, the Industrial Tribunal, has discussed the issue with reference to the materials before it and found that

the commission received by the 1st respondent from the Bank, as evident from the documents produced by him, in the year 1987 i.e., on 06.04.1987 and 06.06.1987 were ₹1,376.87 and ₹1,574.23 which came to a sum of ₹2,951 and that the average monthly remuneration came to ₹ 1,475.50. As per the direction in the award Bank has to to pay 50% of the back wages. The Tribunal found that 50% of the average wages for the purpose of back wages would be ₹737.75. Accordingly the Bank was directed to pay the 1st respondent a sum of ₹2,70,836.55 as claimed in the petition filed by him.

8. The contentions raised by the Bank were considered before arriving at the quantum of back wages as can be seen from paragraph 6 and 7 of the order, Ext.P6. Regarding the contention of the Bank, that the 1st respondent claimed the remuneration as jewel appraiser also in addition to that of NND, it was found that from the documents produced by the petitioner, it was evident that

the NND commission was noted separately. It was further found that the Bank must be having account books to show the commission received by petitioner separately for NND Agency and towards Jewel Appraising work. But the Bank had not produced the same. The Bank had only relied on the affidavit filed by the petitioner therein before the High Court in support of his petition filed under Section 17B of the ID Act. In that affidavit the petitioner has stated that his last earned wages was ₹1,250/-.

9. According to the Bank the 1st respondent could not have claimed wages above ₹1,250/-, which he had claimed in the affidavit. But in the Award passed i.e., in Ext.P1 there was a specific direction that the basis for determination of monthly wages shall be average of the remuneration or commission he had been receiving during the period of one year immediately preceding the date of termination of employment. The claim of the 1st

respondent is on the basis of Ext.P3 which is the copy of the pass sheet in his name with SB A/c No.184. The entries therein as on 06.04.1987 and 06.06.1987 are specifically shown as NND Commission and the amount credited in that account alone is taken for arriving at the monthly wages. It is under the above circumstances that the claim petition was decided.

10. I heard the learned counsel appearing for the petitioner as well as the respondent.

11. The learned counsel appearing for the Bank relied on the judgments of the Apex Court in ***A.P.SRTC & Another v. B.S. David Paul*** **[(2006) 2 SCC 282]** in support of his contention that back wages cannot be determined in the absence of any specific direction to pay back wages. He further relied on the judgment of this Court in ***Union of India v. Kankuben*** **[2006(2) KLT (SC) S.N. No.35]**. That was a case where the Apex Court held that a workman is not entitled to all his

arrears of pay and allowances without looking into various factors in order to find out whether he is entitled to back wages at all and to what extent. In that case the Award therein was found to be one directing reinstatement without stating anything more as to back wages and it was in that back ground the Apex Court held that the relevant circumstances should be gone into for adjudication of the claim for back wages. But in this case the Award is specific as to the manner in which backwages are to be determined.

12. The 1st respondent should be given half the back wages for the period during which he was kept out of service. The question regarding the illegal termination and entitlement of 50% back wages is already decided in Ext P1 award and has become final. While deciding the illegality of the termination, the Industrial Tribunal has directed payment of half the back wages. It has also specified how the wages should be determined for that

purpose. Therefore the judgments relied on by this petitioner do not apply in the present case.

In the above circumstances, the impugned order-Ext.P6, which is passed on the basis of the materials on record which are relevant, on the basis of the evidence adduced in a trial in which the petitioner got sufficient opportunity, does not warrant any interference under Article 227 of the Constitution of India.

In the above circumstances, the writ petition fails and is accordingly dismissed.

Sd/-
P.V. ASHA
JUDGE

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