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

% *Judgment Reserved on : October 01, 2015*
Judgment Delivered on : October 05, 2015

\+ **LPA 429/2015**

STATE BANK OF HYDERABAD ..... Appellant
Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents
Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 432/2015

KOTAK MAHINDRA BANK LTD ..... Appellant
Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents
Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 433/2015

VIJAYA BANK ..... Appellant
Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 434/2015

KARNATAKA BANK LTD ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with
Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 436/2015

SOUTH INDIAN BANK LTD ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with
Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 437/2015

CENTRAL BANK OF INDIA ..... Appellant
Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents
Represented by: Mr.Inderjit Singh, Advocate for R-1 Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 441/2015

STATE BANK OF MYSORE ..... Appellant
Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents
Represented by: Mr.Inderjit Singh, Advocate for R-1 Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 446/2015

STATE BANK OF PATIALA ..... Appellant
Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 573/2015 & CM No.17172/2015

LAKSHMI VILAS BANK LTD ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with
Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 454/2015

FEDERAL BANK LTD ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with
Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 455/2015

CORPORATION BANK ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1 Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 497/2015

ANDHRA BANK ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1 Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 498/2015

DENA BANK ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 513/2015

CANARA BANK ..... Appellant

Represented by: Mr.Naveen R. Nath, Advocate with
Ms.Hetu Arora, Advocate

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 516/2015

SYNDICATE BANK ..... Appellant

Represented by: Mr.Naveen R. Nath, Advocate with
Ms.Hetu Arora, Advocate

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan

Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 551/2015

INDIAN BANK ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1 Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 350/2015

PUNJAB NATIONAL BANK ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with Mr.Rajat Arora and Ms.Ritu Arora, Advocates

versus

ALL INDIA BANK DEPOSIT COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1 Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

LPA 351/2015

UNION BANK OF INDIA ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with

Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 357/2015

UCO BANK ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with
Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with
Ms.Rashmi B.Singh, Mr.Sudarshan
Rajan, Mr.Vijay Sharma and
Mr.Arjun, Advocates for R-2

LPA 359/2015

STATE BANK OF BIKANER AND JAIPUR ..... Appellant

Represented by: Mr.Jagat Arora, Advocate with
Mr.Rajat Arora and Ms.Ritu Arora,
Advocates

versus

ALL INDIA BANK DEPOSIT
COLLECTORS FEDERATION & ANR ..... Respondents

Represented by: Mr.Inderjit Singh, Advocate for R-1
Dr.K.B.S.Rajan, Advocate with Ms.Rashmi B.Singh, Mr.Sudarshan Rajan, Mr.Vijay Sharma and Mr.Arjun, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Syndicate Bank was the original pioneer of a movement to penetrate banking in small muffasil towns when it introduced a Pigmy Deposit Scheme. By virtue of the deposits Syndicate Bank grew from a pigmy to a giant. Others followed, giving it names such as Honey Bees Scheme, Small Depositors Scheme, Mini Deposit Salap Sanchey, Pragati Deposit Scheme, Nityha Laxmi Deposit Scheme, Timely Deposit Collection Scheme, Honey Deposit Collection Scheme, Janta Deposit Scheme etc. As per the scheme, the banks appointed Deposit Collectors who would go to the house or the work place of the customers and collect a daily deposit which was credited to the account of the customer. The customer would earn interest on the deposit and the bank would augment its resources. It was a win-win situation for the bank as well as the customer. The daily Deposit Collector would earn a commission on the deposit collected.

2. The daily Deposit Collectors called Commission Agents by some banks, formed associations which marched under the banner of a Federation. Through the Unions as also the Federation these Commission

Agents/Deposit Collectors made a demand to be given regular employment. Conciliation proceedings resulted in a failure, leading ultimately to a reference being made by the Government of India to the Industrial Tribunal on October 03, 1980, which reads as under:-

> *"Whether the demands of the Commission Agents or as the case may be Deposit Collectors Employed in the Bank 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 are the workmen concerned entitled and from which date?"*

3. Another reference was made to the Industrial Tribunal by the Central Government (date not known), but resulting in registration of ID No.108/84, which reads as under:-

> *"Whether the demand of the Commission Agent or as the case may be Deposit Collector employed in the Bank listed in the Annexure that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of these Banks is justified? If not, to what relief are the workmen concern entitled and form which date?"*

4. Succinctly stated, case pleaded by the Deposit Collectors/Commission Agents was that to fulfil its objective the banks appointed them as workmen to go to the houses or work place of the customers and collect a deposit daily. The money collected was remitted to the bank(s) concerned on the very next day, as per the terms of the employment. The Deposit Collectors performed canvassing of all types of deposits such as Saving Bank Account, Fixed Deposit, Recurring Deposits without any remuneration, this they did in addition to their normal duty of daily collection of money from the customers at the door steps of the customers. For these additional duties

performed by them they were not paid any commission. They used to attend the bank every day in the early hours and made entries in the collection register(s) maintained by the bank(s). In some branches they used to prepare the ledgers as well. They prepared cards in which particulars of the amount received by them from the depositors during the seven days of the week were recorded. Some of the banks maintain pass book instead of cards. In such cases, entries were made by the Deposit Collectors in the pass book. They used to go to the depositors as and when the depositors wanted, irrespective of the timings. In short, the work performed by the Deposit Collectors was equivalent to the work performed by the cashiers in the banks as well as the clerical staff. They claimed that the work done by them was an integral part of the banking industry. They claimed to be working under the direct control and supervision of the bank management, and that the management of the bank was their pay master. Thus, they claimed that there was a relationship of employer and employee between the management and them. As per them the benefit of the services rendered by them was for the bank. The livelihood of the Deposit Collectors substantially depended on the labour rendered by them, to produce services for the benefit and satisfaction of the banking enterprises. Considering the overall position and the circumstances in which these Deposit Collectors rendered service and labour to the banks, and taking into consideration the remuneration paid to them, they claimed that the agreement taken by the management of the banks was nothing but deceptive devices invented for the purpose of denying them the scales, allowances and other conditions available to regular clerical employees of the banks.

5. The banks denied the case pleaded by the daily Deposit Collectors

and urged that their status was that of Commission Agents. As per the banks the Deposit Collectors were free to chose their working hours and the number of customers they would contact. Relevant would it be to note that the banks admitted the averments in the statement of claim regarding nature of duties performed by the Deposit Collectors.

6. In view of the evidence led, vide award dated December 22, 1988, ID No.14 of 1980 and connected Industrial Disputes in which references were made were disposed of by the Industrial Tribunal giving the following directions:-

> *"1) All those Deposit Collectors and Agents who are below the age of 45 years on 3-10-1980 (the date of the first reference of this industrial dispute) shall be considered for regular absorption for the post of Clerks and Cashiers if they are matriculates and above including qualified Graduates and Post Graduates. They may be taken to Banks service as regular employees if they pass the qualifying examinations conducted by the Banks. Those who are absorbed shall be treated on par with regular clerical employees of the Bank. Those who are qualified with 8th Class and below Matriculations shall be considered for absorption as Sub-Staff by conducting qualifying examinations.*
>
> *2) As regards the Deposit Collectors and Agents who are above 45 years of age on the date 3-10-1980 and also those who are unwilling to the absorbed in Regular Banks service they shall be paid the fall back wage of ₹750.00 per months linked with minimum deposit of ₹7,500.00 per month and they should be paid incentive remuneration at 2% for collection of over and above ₹7,500.00 per month and they should also pay uniform conveyance allowance of ₹50.00 per month for deposits of less than ₹10,000.00 and ₹100.00 per month for deposits of more than ₹10,000.00 upto or above ₹30,000.00 per month. They should be paid Gratuity of 15 days commission for each year of service rendered."*

7. Needless to state, the Industrial Tribunal accorded status of a workman to the daily Deposit Collectors and as a consequence of said status accorded, issued the directions in the award above-noted in paragraph 6. Pithily put the Deposit Collectors were held entitled to a minimum fall back wage of ₹750/- per month linked with minimum deposit of ₹7,500/- per month to be collected by them and above ₹7,500/- a commission of 2%. Besides a conveyance allowance of ₹50/- per month for deposits up to ₹10,000/- and ₹100/- per month for deposits above ₹10,000/- per month.

8. Aggrieved by the award dated December 22, 1988, the Indian Banks Association filed a writ petition before the High Court of Andhra Pradesh which was disposed of on March 28, 1997. The decision is reported as (1998) I LLJ 23 (AP) *Indian Banks Association Vs. Workmen of Syndicate Bank & Ors.*

9. Upholding the award in so far it accorded status of workmen to the Deposit Collectors, the High Court set aside the first direction in the award concerning regular absorption of the deposit collectors who were below the age of 45 years if they possessed the educational qualifications prescribed in the award. The second direction concerning fall back wages and conveyance allowance was upheld.

10. The onward march took the parties to the Supreme Court. Petitions seeking Special Leave to Appeal filed by the Indian Banks Association and the Association of the Daily Deposit Collectors against the decision dated March 28, 1997 of the Andhra Pradesh High Court were allowed. Leave to Appeal was granted. The resultant civil appeals were decided on February 13, 2001; and the decision is reported as 2001 SCC (L&S) 504 *Indian Banks*

Association Vs. Workmen of Syndicate Bank & Ors. Dismissing the appeals filed by the workers and upholding the decision of the Andhra Pradesh High Court that the daily Deposit Collectors could not be regularized and directions issued to said extent in the award were rightly set aside by the Andhra Pradesh High Court, the Supreme Court upheld the view taken in the award and upheld by the High Court that the daily Deposit Collectors were workmen; albeit part time workmen. Noting the definition of wages in Section 2(rr) of the Industrial Disputes Act, 1947 the Supreme Court held that the commission received by the daily depositors was a wage which was dependant on the productivity. (Para 25)

11. The journey which was commenced by the daily Deposit Collectors in the year 1980 came to an end in the year 2001. The second round of litigation commenced immediately. As per the Deposit Collectors the fall back wages determined vide award dated December 22, 1988, was with reference to the cost of living reckoned on the consumer price index of 100 with base year 1960. The daily Deposit Collectors took the stand that inflation and rise in the cost of living warranted an upward revision in the fall back wages. The demand for increase in fall back wages was raised by the various unions of the bank employees as also the federation of the unions upon the Indian Banks Association. The conciliation proceedings failed and a reference was made by the Central Government to the Industrial Tribunal of a dispute on August 06, 2003, which reads as under:-

> *"Whether the demand of All India Banks Deposit Collectors' Federation for linkage of fall back wages of ₹750.00 as determined by award dated 22.12.1988 by Industrial Tribunal, Hyderabad, which is based on Consumer Price Index at 500 points (Base 1960 = 100) to the present Consumer Price Index*

and their upward revision is justified? Whether the demand of All India Banks Deposit : Collectors' Federation for reimbursement of conveyance expenses at revised and enhanced rate is justified? If so, what relief the aid deposit collectors, employed by various banks represented by the Indian Banks' Association, are entitled to and from which date?"

12. The Indian Banks Association raised an objection to the reference on the plea that the daily Deposit Collectors were not its employees.

13. On the pleadings of the parties three issues were settled by the Industrial Tribunal as under:-

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

14. Not wanting to take any chance, the All India Bank Deposit Collectors Federation and the All India Bank Deposit Workmen Union, who were espousing the cause of the daily Deposit Collectors before the Industrial Tribunal filed an application on January 31, 2005 praying to implead 48 banks as respondents. The said application was allowed on July 19, 2005. 40 banks were impleaded as respondents for the reason 8 out of the 48 banks sought to be impleaded had ceased to exist and summons were served upon these banks, being : (1) Syndicate Bank, (2) State Bank of Hyderabad, (3) Indian Bank, (4) Vijaya Bank Ltd., (5) Vysya Bank Ltd., (6) Corporation Bank Ltd., (7) State Bank of India, (8) Central Bank of India, (9) Andhra Bank Ltd., (10) Canara Bank, (11) Tamil Nadu Bank, (12) Allahabad Bank, (13) Bank of Baroda, (14) Bank of India, (15) Bank of

Maharashtra, (16) Bank of Rajasthan Ltd., (17) Catholic Syrian Bank Ltd., (18) Dena Bank, (19) Dhana Lakshmi Bank Ltd., (20) Federal Bank Ltd., (21) Indian Overseas Bank Ltd., (22) Karnataka Bank, (23) Karur Vysya Bank Ltd, (24) Lakshmi Vilas Bank Ltd., (25) Lord Krishna Bank Ltd., (26) Oriental Bank of Commerce Ltd., (27) Punjab & Sind Bank, (28) Punjab National Bank, (29) Sangli Bank Ltd., (30) The South India Bank Ltd., (31) State Bank of Bikaner & Jaipur, (32) State Bank of Indore, (33) State Bank of Mysore, (34) State Bank of Patiala, (35) State Bank of Saurashtra, (36) State Bank of Travancore, (37) Syndicate Bank, (38) Union Bank of India, (39) United Bank of India, and (40) United Commercial Bank.

15. The impleaded banks filed a statement of defence; and the distillate of the mixture of the pleadings of the banks was that the Deposit Collectors were called Commission Agents and hence were not the employees of the bank. The banks pleaded that taking into account the payments made to the Commission Agents in terms of the Award dated December 22, 1988 and interest paid to the depositors; after defraying the administrative costs and staff costs, the banks were incurring a loss pertaining to the deposits in question. Thus, as per the banks, any revision in the fall back wages would make the scheme unviable, and that the claim to enhance the fall back wages, linked to the consumer price index, would be suicidal for the scheme. Some banks raised the plea that they were not having any such scheme. The banks which were impleaded as parties and claimed not to have any such deposit scheme are: (i) Bank of India, (ii) Punjab & Sind Bank (iii) Oriental Bank of Commerce, (iv) Bank of Baroda, (v) ICICI Bank (after the merger of Sangli Bank Ltd.), and (vi) Allahabad Bank. Two banks: (i) State Bank of Hyderabad, and (ii) State Bank of Patiala closed the daily deposit

schemes on February 20, 2010 and September 01, 2008 respectively.

16. Shri I.P.Ponnusamy, Shri Ashwani Vijh and Shri Ashish Bilala were examined by the All India Bank Deposit Collectors Federation to substantiate the claim. Shri Ashok Kumar and Shri A.N.Sivanand Babu were examined by the All India Bank Deposit Collectors Workmen Union to substantiate the claim. Shri K.Ganesan, Vice President of the Indian Banks Association was examined to establish its defence. Shri Neeraj Gupta (Assistant General Manager, Punjab National Bank), Shri Satheesh Kumar (AGM, South Indian Bank), Shri JNS Murali (Senior Manager Vijaya Bank), Shri Kusal Pal (Senior Manager, Central Bank of India), Shri L.Makkad (Manager (P), State Bank of Bikaner and Jaipur), Shri Shyamal Kumar Singh (Chief Manager, Indian Bank), Shri C.M.Duggal, (AGM, Federal Bank), Shri Ajit Kumar Srivastava, (Manager (Law) Canara Bank), Shri Sunil Prakash (Assistant Manager (Law) Union Bank of India), Shri Arun Kumar Tyagi (Deputy General Manager, Syndicate Bank), Shri Sudershan D.Sheth, (Chief Manager, Karnataka Bank), Shri Joginder Pal Bhagat (Chief Manager, UCO Bank), Shri Anil Kumar V (Chief Manager, State Bank of Travancore), Shri R.Venkatesh (Chief Manager, State Bank of Hyderabad) and Shri P.Venugopal (State Bank of Hyderabad) were examined by the banks to sustain their defence.

17. Vide Award dated October 07, 2013, with reference to Issue No.2 settled by the learned Industrial Tribunal, which has been noted by us in paragraph 13 above, the learned Presiding Officer of the Industrial Tribunal held that in view of the fact that the individual banks likely to be affected by the award were impleaded as parties on July 19, 2005, the said issue became a non-issue i.e. what was the consequence of there being no privity of

contract between the concerned workmen and the Indian Banks Association.

18. Referring to the definition of an industrial dispute as per Section 2 (k) of the Industrial Disputes Act, 1947 and the definition of a workman as per Section 2(s) of the said Act; noting various judgments of various courts on the scope of what would be an industrial dispute and who would be a workman, the Industrial Tribunal held that the Deposit Collectors were workmen and the dispute which they had raised concerned their wages and hence was an industrial dispute. The Industrial Tribunal discussed res-judicata, and with reference to the earlier litigation terminating in the opinion of the Supreme Court in which it was held that the daily Deposit Collectors are workmen and the remuneration received by them, called commission, would qualify to be a wage; the Tribunal reinforced its decision that these Deposit Collectors/Commission Agents were workmen.

19. The Industrial Tribunal thereafter noted various decisions concerning the power of an Industrial Adjudicator and concluded that an Industrial Adjudicator had very wide powers, to even vary the terms agreed to between the management and the workmen while settling the wages payable and conditions of employment.

20. Proceeding to note the evidence and the contention of the Union and the Federation in para 119 of the award and terminating the discussion in paragraph 166, succinctly noted by us the Tribunal highlighted that minimum wages were increased from time to time and that the concept of a minimum wage was by taking into account that the family of a workman would comprise three units, the husband and the wife as one unit each and two children constituting one unit. Daily calorie intake of 2700 calories for an average adult, clothing requiring 72 yards of cloth per family. Minimum

rent for housing and miscellaneous expenses for fuel etc. Wages of regular employees of the bank increased during this period which was ₹1,228/- per clerk in the year 1980 having gone up to ₹12,064/- per month as of the year 2001. Consumer price index, with base 100 as of the year 1960 which was 500 points as of the year 1980 having crossed 4400 points. The profits earned by the banks during the year 2005-06 and 2006-07. The Tribunal noted that a fair wage had to relate to the work load and a minimum remuneration so that a workman living in a modernized civilized society had sufficient means to sustain himself and the family. The Tribunal tabulated in para 150 of the award minimum wages notified on April 01, 2003 for unskilled, semi-skilled, skilled and highly skilled workmen in the fields of agriculture, stone crushing, sweeping and cleaning, watch and ward, loading and unloading, mining and construction activities. The Tribunal also noted minimum wages notified by the Government of Delhi as on April 01, 2013 for various scheduled employments. The Tribunal noted that areas were classified into category 'A' 'B' and 'C'.

21. The Industrial Tribunal recognized that the point of view of the banks had to be kept in mind, and for which we may highlight para 126 of the Award, in which the Tribunal recognized that the following counter balancing circumstances have to be taken into account:-

(i) Unreasonable inroads into the profit of the employer may have the tendency to drive the capital away from the fruitful improvement and may prejudicially affect the capital formation.

(ii) Wage-structure, which is beyond the financial capacity of the employer, may lead to the closure of the industry itself.

(iii) *Wage structure, being a long range plan, a long range view of the financial capacity of the industry should be taken into consideration.*

(iv) *For considering increase in the wage, increase should be correlated to minimum wage, in relation to financial capacity of the industry to bear the burden.*

(v) *Effect of increase on other similar industries in the region, should be taken into consideration, i.e. a wage structure should take into consideration on industry cum region basis, after giving careful consideration to the ability of the industry to pay.*

(vi) *Total pay packet of the workmen, including dearness allowance, other allowance and other benefits enjoyed by them.*

(vii) *Effect of rise in prices, resulting from the rise in wages, which may affect other members of the community and even prejudicially affect living conditions of the workmen themselves.*

(viii) *The effect of the rise in process on the international trade of the country.*

22. Thereafter in paragraphs 155 to 179 the Tribunal discussed the concept of a permanent employee, a temporary employee and a part time employee and that on April 27, 2010, the 9th Bipartite Settlement was arrived at between the association of the banks and the various unions, as per which a part time employee was one who worked for three hours a day; fixing wage of such employee at 1/3rd of the scale of pay in which a regular employee was to be paid wages. The Tribunal thereafter noted the pay scales of clerical staff and subordinate staff to bring home the point that as

per the bipartite settlement a clerical staff who had put in 20 years' service would receive basic pay in sum of ₹19,300/- and a subordinate staff would receive basic pay in sum of ₹11,350/-. On this standard the Tribunal held in para 158 that the fall back wage would therefore come to ₹2,400/- per month, being 1/3rd of what would be received by a regular employee performing clerical duties. This being the basic pay, the Tribunal noted that other allowances (not mentioned in the award, but obviously would be house rent allowance, city compensatory allowance and travelling allowance) would also be payable. The Tribunal thereafter noted the financial capacity of the banks and tabulated the same in paragraphs 175 to 180 of the award. Thereafter, the pith and substance of the reasoning of the Tribunal was recorded in paragraphs 183 to 190 of the award, which read as under:-

> "*183. With above standards in mind, the Tribunal thinks it expedient to fix minima limit of collection, to which a deposit collector should adhere in all circumstances. For ascertaining that limit of collection, it is to be taken note of as to what amount of money is being collected by the deposit collector in a month. Shri Ponnusamy unfolds that in the year 1978, he used to collect a sum of about ₹3 lac per month. As on date (he entered the witness box in May 2011), he is collecting a sum of ₹12 lacs approximately in a month. Shri Ashish Bilala declared that he is earning a sum of ₹12000.00 to ₹13000.00 per month, as fall back wages and incentive remuneration. He deposed in bold words that he is collecting a sum of ₹6,50,000.00 from the account holders per month. According to Shri Ashok Kumar, he collects a sum of ₹1,50,000.00 to ₹2 lac per month from the account holders. Shri A.K.Shivanand Babu deposed that he collects a sum of ₹3,50,000.00 to ₹3,75,000.00 per month from the account holders. Shri Ponnusamy operates in Chennai, which is 'A' area city while all other witnesses except Shri Bilala operates in 'B' area cities. Shri Bilala operates in 'C' area city. Facts detailed by*

above witnesses, relating to quantum of collection made by them, make me to conclude that a deposit collector in 'C' area city would be able to collect at least a sum of ₹3 lacs per month from the account holders. A deposit collector from 'B' area city can collect a sum of ₹4 lac, while a deposit collector from 'A' area city would be able to collect a sum of ₹5 lacs per month from the account holders. Resultantly, a minima ceiling of collection of ₹3 lac for 'C' area city, ₹4 lac for 'B' area city and ₹5 lac per month for 'A' area city is to be fixed for the deposit collectors. On a collection of ₹3 lac per month, the bank is required to retain roughly an amount of ₹90,000.00 towards cash reserve ratio and statutory liquidity ratio. A sum of ₹2,10,000.00 would be available with the bank for investment through advances to the general public. On this amount, the bank had to spend 5% as its cost. The bank may advance that amount at an interest rate of 14% per annum. When cost ratio of the bank is deducted, the bank earns 9% interest approximately per annum on the amount referred above. Cost ratio of the bank on the amount kept for CRR and SLR would be neutralized by the earnings of the bank on statutory liquidity ratio. Thus, an amount of ₹2,10,000.00 per month, so collected by the deposit collector for a year, would fetch an earning of ₹1,22,885.00 to the bank. Out of this earning, a sum of ₹8000.00 per month would be awarded as fall back wages to the deposit collectors working in 'C' area cities. In a year, he will get ₹4000.00 as gratuity. Thus, in a 'C' area city, the bank had to spend on fall back wages and gratuity, a sum of ₹1 lac out of the earning of ₹1,22,850.00.

184. On collection over and above ₹3 lac, but upto ₹5 lac, a deposit collector would get an incentive remuneration of 3% and on collection over and above ₹5 lac per month, he will get incentive remuneration of 2% only. Therefore, a deposit collector of 'B' area city who had to collect a minima of ₹4 lac per month, will get fall back wages of ₹8000.00 besides incentive remuneration of ₹3000.00 a month. His pay packet would come to ₹11000.00 in a month, besides a gratuity of ₹4000.00 a year.

185. A deposit collector in 'A' area city shall collect a sum of ₹5 lac per month. His pay packet would be ₹8000.00 as fall back wages and ₹6000.00 as incentive remuneration, besides a gratuity of ₹4000.00 in a year. If deposit collectors of any area collects over and above ₹5 lac in a month, he will get incentive of 2% on that amount. Thus, by collecting more than ₹5 lacs 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 wages, so notified. By making that payment to the deposit collectors, the banks would not be strained financially at all. The fall back wages and incentive remuneration, as referred above, can well be compared to the wages earned by a deemed part time clerical staff, employed in the bank and the minimum wages fixed for skilled clerical staff in scheduled employments.

186. One may advance argument that fixation of minima amount to be collected by the deposit collections of 'C' area, 'B' area and 'A' area city is a concept not prevalent in the banking industry or any comparable industry. However, that proposition is not factually correct. The insurance industry employs development officers on its role, who are paid wages and incentive on the basis of their performance. Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 1989 and General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 1987 provide an example in that regard. When these rules and schemes are scanned, it emerges over the record that the development officers, employed in insurance industry, are paid wages and incentive in accordance with the performance made by them. In case they fail to meet required standard of collection, incentive paid to them is deducted or stopped and decrements are made out of their wages. When a development officer continues not to attain the criteria fixed for him, his services are dispensed with. Therefore, it is evident that minima of collection as fixed for the deposit collectors for respective areas cannot be said to be a new concept. Minima of ₹3 lac in a month for 'C' area,

₹4 lac for 'B' area and ₹5 lac for 'A' area is the standard requirement of performance, expected of a deposit collector to sustain himself in the industry. He can meet that standard by collection of that amount in every month or by way of collection of ₹9 lac, ₹12 lac and ₹15 lac respectively, as the case may be for area-wise, at the end of the quarter ending 31st March, 30th June, 30th September and 31st December every year. In case a deposit collector is unable to collect the minima amount consecutively for two quarters, he would be bade farewell by the bank by terminating his contract of service. An inefficient person has no place in the industry. In case of failure of a deposit collector to meet the required standards, he would not be able to serve the bank, since his retention at the cost of loss to the bank is unwarranted.

187. Conveyance allowance is being paid to the deposit collectors at ₹50.00 per month for deposit of less than ₹10,000.00 and at ₹100.00 per month for deposits of ₹10,000.00 or above upto ₹30,000.00 per month. This quantum of conveyance allowance was demanded by the Federation, when it filed its claim before the Industrial Tribunal, Hyderabad in the year 1981. The Industrial Tribunal granted that relief in toto and fixed conveyance allowance for the deposit collectors at the above rates. Since 1981 till date, prices of petrol has rolled many a times. It is a matter of common knowledge that the deposit collectors had to reach persons of lower and middle income group, small traders, businessman, artisans, self-employed persons and housewives to collect money from them. A green grocery vendor sitting in subzi-mandi would like to give money to a deposit collector in early hours of the day, housewives would give their money during noon hours, when they are free from daily chores, a small trader or businessmen would give money in the evening, while persons employed in business centres and courts etc. may like to deposit their money during day hours. These facts bring it to light that a deposit collector has to reach his customer, according to the convenience of the latter. For that purpose, possibility of going for collection twice or thrice a day cannot be ruled out. One cannot dispute hat in

'C' area as well as 'B' area cities, the deposit collectors may have to travel in a radius of 10 kms daily. In 'A' area cities, 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 efficiency of running generally 60 kilometers per litre. A deposit collector in 'C' and 'B' area cities may have to travel roughly 500 kms in a month. For 'A' area city, a deposit collector may avail public transport also. Conspectus of all these facts makes me to comment that atleast 8 to 10 litres of petrol in a month is to be spent by a deposit collector. Keeping all these facts in mind, I am of the view that conveyance allowance of ₹750.00 per month at flat rate should be granted to all deposit collectors of all areas.

188. On above standard, a deposit collector would get a sum of ₹9000.00 in a year towards conveyance allowance. Adding that amount to the cost incurred on a deposit collector for collection of ₹3, lac, the bank had to spend only a sum of ₹96,000.00 on fall back wages + ₹4000.00 on gratuity + ₹9000.00 as conveyance allowance. In all, banks have to spend a sum of ₹1,09,000.00 out of the earning of ₹1,22,850.00. This arithmetic projects that by payment of that much of amount, the bank would earn something on a collection of ₹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 he award comes into forces 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 disputes 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 at least ₹3 lac, ₹4 lac and ₹5 lac per month respectively. They can meet the target every month or may collect a sum of ₹9 lac, ₹12 lac and ₹15 lac respectively on 31st March, 30th June, 30th September and 31st December every year. On a collection of ₹3 lac, a deposit collector would get fall back wages of ₹8000.00 per month, besides conveyance allowance of ₹750.00 per month. He will also get gratuity of ₹4000.00 every year. On a collection of over and above ₹3 lac and upto ₹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 ₹3000.00 and ₹6000.00 respectively per month as incentive remuneration on minima limit of their collection. On collection of over and above ₹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 ₹750.00 per month."*

23. As per the direction in para 192 of the award, the same has been made operative retrospectively from July 19, 2005 i.e. the date when the 40 banks were impleaded as respondents.

24. A correction was thereafter made by the Tribunal to its award by an order dated June 02, 2014; recording therein that instead of Collectors operating in areas 'A', 'B' and 'C' collecting ₹3,00,000/-, ₹4,00,000/- and ₹5,00,000/- respectively per month as per the award, it should read Collectors operating in areas 'C', 'B' and 'A' respectively. The reason is obvious. The Tribunal inverted the reference to the category of the area and the minimum deposit in the award.

25. The direction in the award concerning payment of gratuity to the daily Deposit Collectors having been set aside by the learned Single Judge vide impugned order dated April 20, 2015, by which order a batch of writ petitions filed by various banks have been disposed of. Rest of the award has been upheld by the learned Single Judge.

26. In the appeals we are thus concerned with the impugned award as upheld by the learned Single Judge concerning fall back wages.

27. We could terminate our discussion, and perhaps would have been justified in recording said aspect of the matter in the very first paragraph of our opinion, and dismiss the appeals, by noting one simple fact. The same would be that on a minimum deposit collected by a Deposit Collector of ₹3,00,000/- per month, as per the award dated December 22, 1988, which had attained finality when the seal of approval was accorded thereto by the

Supreme Court on February 13, 2001, the daily depositor would receive a sum of ₹750/- per month as the fall back commission on the deposit up to ₹7,500/- per month and on the remaining sum of ₹2,92,500/- (calculated @ 2% of the deposit as per the award), would receive a commission of ₹5,850/- and thus the total amount received would be ₹6,600/-. As per the impugned award dated October 07, 2013, the fall back wage would be ₹8,000/- for a deposit of ₹3,00,000/- per month. The difference is ₹1,400/-. On the base ₹6,600/-, the percentage increase in the fall back wages is only 21.22%. It would be perhaps ridiculous, and we use the expression with an apology, to argue that an award rendered in the year 1988 determining fall back wages by taking into account cost of living as of the said year should continue to operate indefinitely in the future, ignoring the rise in the cost of living and hence updation of the wages to be received on the concept of a fair wage to be receivable by a workman for the work done; benefit of which work would be to the employer. Surely, since the year 1988 the cost of living has increased by 21.22% over 17 years. This should be reason enough to dismiss the appeals.

28. Be that as it may we proceed to note that in the appeals learned counsel for the appellants did not dispute that the status of the daily Deposit Collectors as workmen has attained finality in view of the decision of the Supreme Court reported as (1998) I LLJ 23 (AP) *Indian Banks Association Vs. Workmen of Syndicate Bank & Ors.* Further, learned counsel had to concede that the payment received by the daily Deposit Collectors has to be treated as a wage in view of the said decision. Though a subtle attempt was made to urge that in view of the said decision of the Supreme Court the daily Deposit Collectors were accorded status of a workman only for the purposes

of giving them a locus to collectively bargain, but the argument was taken no further except for raising it as a point, sans any justification for the point.

29. In view of the decision reported as (1981) 1 SCC 315 *LIC Vs. D.J.Bahadur* wherein the Supreme Court observed that the Industrial Disputes Act, 1947 is a benign measure which seeks to pre-empt industrial tension, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of the partners in production may not be dissipated in counter-productive battles and the assurance of the industrial justice may create a climate of goodwill, as also the earlier decision of the Supreme Court reported as AIR 1950 SC 188 *Bharat Bank Ltd. Vs. The Employees of Bharat Bank Ltd.*, in which the Supreme Court observed that in settling the disputes between the employers and the workman, the function of the Tribunal is not confined to administration of justice in accordance with law and that the Tribunal can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement, learned counsel for the appellants did not even make an attempt to urge, a point which they had urged before the learned Industrial Tribunal and the learned Single Judge, that the Tribunal did not have the power to adjudicate the reference.

30. Four contentions were urged by learned counsel for the appellants in the appeals. The first contention urged was that the very reference of the industrial dispute to the Industrial Tribunal was vitiated in law because the unions of the daily Deposit Collectors and the Federation of the unions had raised the demand on the Indian Banks Association and for said reason, before the Conciliation Officer, the banks were denied a right to put forward their case. The argument was that it is possible that the Conciliation Officer,

after taking note of the case presented by the banks may have persuaded the unions and the Federation not to press the claim. The second contention urged was that the Industrial Tribunal was bound by the terms of the reference and could not traverse beyond the same in view of the law declared by the Supreme Court in the decisions reported as (1968) 1 SCR 515 *Sindhu Resettlement Corporation Ltd. Vs. Industrial Tribunal* and 1972 (25) FLR 26 *Jaipur Udyog Ltd. Vs. Cement Work Karamchari Sangh*. The third contention urged was that the award has rendered the daily Deposit Collection Scheme unviable, and for which argument it was agreed between learned counsel for the parties that the data provided by all the banks concerning cost benefit analysis of the schemes as was discussed in the award need not be captured; it being restricted to only two banks : (i) Indian Bank, and (ii) United Commercial Bank. Referring to the testimony of Sh.K.Ganesh MW-1 and the cost benefit analysis MW-1/1 to MW-1/9 of the daily Deposit Scheme (which we note comprises the data concerning 9 banks, including Indian Bank and United Commercial Bank, with the one concerning Indian Bank being MW-1/1 and United Commercial Bank being MW-1/9) proved by the witness, it was urged that notwithstanding the Tribunal noting in para 126 of the award the perspective from which the Tribunal had to approach the issue, and conceding it to be a correct perspective, the error committed by the Tribunal was to overlook the financial stress beyond the capacity of the banks, and for which the decision of the Supreme Court reported as (2003) II LLJ 1078 *A.K.Bindal Vs. UOI* was relied upon. Fourthly and lastly, it was urged that notwithstanding the Tribunal having the power to give retrospective operation to the award, it fell into error in the instant case to give retrospective operation to the award with effect from July 19, 2005. The argument was premised on the reasoning that as per the award the requirement of minimum monthly deposits in category 'C', 'B' and 'A' areas was increased to ₹3,00,000/-, ₹4,00,000/- and ₹5,00,000/- respectively with a further conditions that if targets were not achieved by the daily Deposit Collectors in two consecutive quarters, the banks would be justified in terminating their contract of service. The contention advanced was that since the banks had continued to avail the services of the daily Deposit Collectors and had paid them fall back wages as also commission in terms of the earlier award dated December 22, 1988, it was not possible for the banks while implementing the instant award to retrospectively terminate the services retrospectively and make recoveries.

31. As per Section 4 of the Industrial Disputes Act, 1947, Conciliation Officers have to be appointed by the appropriate Government, charged with the duty of mediating in and promoting the settlement of industrial disputes and as per Section 5 of the Act if an occasion arises the appropriate Government may constitute a Board of Conciliation for promoting the settlement of an industrial dispute. As per Section 10 of the Act, before referring an industrial dispute to a Labour Court or an Industrial Tribunal, the appropriate Government may refer the dispute to the Board of Conciliation for settlement. The concept of espousal of causes in representative capacities is recognized by the Industrial Disputes Act, 1947. The Indian Banks Association is admittedly a federal body of all the banks. When summoned by the Conciliation Officer the said Association did not take a stand that it was not the body competent to represent and put forth the point of view of the banks. Had the Association taken said stand before the

Conciliation Officer, the Conciliation Officer could have summoned the individual banks for purposes of trying out a settlement during conciliation. The first argument is thus sans any legal foundation; additionally for the reason an irregularity in the conciliation proceedings is of no consequences because the issue between the parties ultimately got resolved before an Industrial Tribunal after evidence was led and before that all banks were permitted to file their written statement of defence to the statement of claim filed by the Unions of the workmen and the Federation of the Unions.

32. Pertaining to the second contention advanced i.e. the Industrial Tribunal has exceeded its brief by going beyond the terms of the reference, we begin our discussion by referring to paragraph 11 of our opinion wherein we have reproduced the reference made to the Industrial Tribunal on August 06, 2003. The reference inter-alia is whether the demand of the daily Deposit Collectors Federation, based on linkage of fall back wages of ₹750/- per month determined by the award dated December 22, 1988 to the consumer price index at 500 points (base 1960 = 100) to the present consumer price index and upward revision is justified. Learned counsel urged that in para 165 of the award, the learned Labour Court has returned a categoric finding to the effect that the award dated December 22, 1988 was not premised on the consumer price index. Thus, it was urged that the Industrial Tribunal ought to have answered the reference by opining that since the award dated December 22, 1988 was not linked to the consumer price index as urged by the workmen, their Union and the Federation of the Union, the demand was unjustified.

33. The argument is too tenuous since it is based upon a play of words. We could do no better other than to reproduce the reasoning of the Tribunal

for the conclusion arrived at by the Tribunal (on which conclusion the argument was premised) and the further reasoning of the Tribunal as a take off point towards its destination in para 166 of the award. The two paragraphs read as under:-

> "*165. Except the above treatment to alternative reliefs of the Federation, the Tribunal nowhere linked relief of fall back wages and incentive remuneration to All India Consumer Price Index. As detailed above, the Tribunal had not linked fall back wages and incentive remuneration to be paid to the deposit collectors to All India Consumer Price Index. When High Court of Andhra Pradesh exercised powers of judicial review, none of the parties raised the issues to the effect that fall back wages and incentive remuneration were linked to All India Consumer Price Index. Therefore, there was no occasion for the High Court 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 delve the issue that fall back wages and incentive remuneration, awarded in favour of the deposit collectors, were linked to All India Consumer Price Index. In the reference order, the appropriate Government tried to project that the fall back wages and incentive remuneration, granted in favour of the deposit collectors, have linkage with All India Consumer Price Index. However, the mist created therein in the reference order melts away when award dated 22.12.1988 and findings of the Andhra Pradesh High Curt and the Apex Court, while making judicial review, are noted. Resultantly, it is concluded that fall back wages and incentive remuneration awarded to the deposit collectors, have no linkage with All India Consumer Price Index.*
>
> *166. As noted above, a deposit collector is paid fall back wages of ₹750.00 on a collection of ₹7500.00 per*

month, besides incentive remuneration of 2% on collection over and above ₹7500.00 per month. In case a deposit collector collects a sum of ₹3 lacs per month, he gets only a sum of ₹6600.00 (₹750.00 as fall back wages plus ₹5850.00 as incentive remuneration). Collection of a sum of ₹3 lacs per month is 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 wages, notified for a matriculate clerk. Evidently, fall back wages and incentive remuneration are not part of wage structure in technical sense, but nomenclature of fall back wages and incentive remuneration, given to wage packet of a deposit collector, would not denude this Tribunal of its obligation to fix a pay packet co-relative to minimum wages, notified from time to time. Therefore, the Tribunal would proceed ahead to devise a wage structure in the form of fall back wages and incentive remuneration for the deposit collectors, which should not be less than the minimum wages, so notified from time to time."

34. Claims have to be read meaningfully and not pedantically. References made to the Labour Court or Industrial Tribunals have likewise to be read meaningfully and not pedantically. At base was the demand for a revision of the fall back wages. While raising the demand, the justification given was the increase in the consumer price index and the linkage was to the fact that in the award dated December 22, 1988, while fixing the fall back wages, the consumer price index at 500 points with base year 1960 at 100 points was the basis for the award. The Industrial Tribunal, while considering the demand for increase in fall back wages was therefore entitled to decide on the justification of the demand, and merely because the factor justifying the demand was found to be wrong, did not result in the

Tribunal being without any power left in it to look at some other factor justifying the demand. The two decisions relied upon by learned counsel for the appellants which we have noted while noting the contentions of the counsel for the appellants in para 30 above, merely hold that being the creature of the reference an Industrial Tribunal cannot travel beyond the reference. The proposition of law stated therein has not been breached by the Tribunal in the instant case. The second contention advanced is rejected.

35. Concerning the third contention advanced, as we have noted above, in para 126 of the award the Tribunal recognized the principles to be kept in mind from the perspective of the employer while fixing a fair wage and to said extent the principle of law laid down by the Supreme Court in *A.K.Bindal*'s case (supra) has been kept in mind by the Tribunal, a fact conceded to by learned counsel for the appellant. The argument was that the evidence on said aspect of the matter was ignored by the Tribunal or alternatively the finding returned by the Tribunal is perverse.

36. We have already noted herienabove that the Tribunal has discussed the relevant evidence in paragraphs 129 onwards till paragraph 154 of the award, and we find that the Tribunal has discussed the evidence led by the Indian Banks Association and the individual banks. While noting the contention advanced by learned counsel for the appellant on the financial stress, in para 30 of our opinion we have already noted that it was agreed by learned counsel for the parties that cost benefit analysis of the daily deposit schemes may be looked into by us with reference to two banks : (i) Indian Bank, and (ii) United Commercial Bank, with reference to the testimony of Sh.K.Ganesh MW-1 and the cost benefit analysis MW-1/1 and MW-1/9 of the two banks.

37. In his affidavit by way of evidence, Sh.K.Ganesh has simply deposed : '*The deponent annexes herewith the copies of the cost benefit analysis studies conducted by the various banks which would show that the deposit schemes are not remunerative for the banks and as such it is becoming difficult for the banks to continue the same*'. The cost analysis benefit of various banks have been filed along with the affidavit. Concerning Indian Bank, the cost analysis benefit is Ex.MW-1/1. It is tabulated as under:-

Cost-Benefit analysis of the Tiny Deposit Scheme

(As on 31st March 2011)

	Particulars	*(Amount in Lakhs)*
a	*Aggregate deposits under the scheme*	*3913.00*
b	*No. of Deposit accounts*	*33,400*
c	*Commission paid to deposit collectors*	*118.03*
d	*Interest paid on deposits under the scheme*	*26.48*

COST BENEFIT STUDY

	Particulars	*Total per year (₹ in lakhs)*	*Per ₹100/- of Avg.Deposit ₹*
	BENEFITS		
a	*Income from CRR*		
b	*Income from SLR*	*73.76*	*1.88*
c	*Yield on Advances*	*286.47*	*7.32*
	Total Benefits	*360.23*	*9.20*
	COSTS		
a	*Interest paid*	*26.48*	*0.67*
b	*Commission paid to Deposit Collectors*	*118.03*	*3.01*

c	*Staff Cost*	*321.71*	*8.22*
d	*Other operating cost*	*70.64*	*1.80*
	Total Costs	*536.86*	*13.71*
	NET BENEFIT	*(-) 176.63*	*(-) 4.51*

The cost analysis benefit Ex.MW-1/9 concerning United Commercial Bank reads as under:-

Cost Benefit Analysis of Laghu Bachat Yojna
(based on figures for the year 2004-05)
If the deposit Collectors federation demands are accepted

BASIC DATA

	Particulars	*(Amount in ₹ Lacs)*
a.	*Average deposits under the scheme*	*21502.00*
b.	*Commission paid to deposit collectors*	*886.47*
c.	*Interest paid on deposits under the scheme*	*1039.50*

COST BENEFIT STUDY

	PARTICULARS *Benefits*	*Total per year* *₹*	*Per ₹100/- of Avg.Deposit* *₹*
a.	*Income from CRR*	*15.05*	*0.07*
b.	*Income from SLR*	*448.32*	*2.09*
c.	*Yield on Advance*	*1194.99*	*5.56*
d.	*Yield on investment of Surplus Deposits*	*-*	*-*
	Total Benefits	***1658.36***	***7.72***
	Costs		
a.	*Interest paid*	*1039.50*	*4.83*
b.	*Commission paid to*	*886.47*	*4.13*

	deposit collectors		
c.	*Conveyance paid to Deposit Collectors*	*56.45*	*0.26*
d.	*Gratuity paid payable to deposit Collectors*	*36.93*	*0.17*
	Cost of LBY Deposit	***2019.35***	***9.39***
e.	*Operating Cost i.e. staff cost and other cost 3%*	*645.06*	*3.00*
	Total Cost	*2665.41*	*12.39*

38. When cross-examined, Sh.K.Ganesh, who had exhibited his affidavit by way of evidence as MW-1/A, deposed:-

> *"Ex.MW-1/A is based on my personal knowledge as well as information gathered from other sources. Contents of para VIII, IX and X of my affidavit are based on information gathered from the documents in possession of Indian Banks Association. Those documents are not placed in record of this Tribunal. I have not brought those documents along with me today. It is incorrect that no documents are in possession of Indian Bank Association and I have made a false statement in contents of the above referred paragraphs. It is incorrect that Ex.MW-1/1 to Ex.MW-1/9 are prepared only with a view to file the same before this Tribunal. As per information collected 10274 deposit collectors were working in the year 2007 with various Banks. I have no information as to how much amount was being collected by them. From the contents of Ex.MW-1/1 to Ex.MW-1/9 I sway that deposit collectors schemes are not remunerative."*

39. Relevant would it be to highlight that the primary documents on which Ex.MW-1/1 and Ex.MW-1/9 were tabulated were neither filed nor produced by the witness of the banks. The banks are thus guilty of withholding the best evidence and in our opinion we would be justified in drawing a presumption against the bank keeping in view clause (g) to

Section 114 of the Indian Evidence Act, 1872. That apart, let us highlight MW-1/1, the cost benefit analysis concerning Indian Bank, which we have noted in paragraph 37 above. As per the same, as of March 31, 2011 a total sum of ₹39.13 crores was lying in deposit with Indian Bank under its Tiny Deposit Scheme. The outgoing reflected is commission paid to the Deposit Collectors in sum of ₹1.1803 crores and interest to be paid to the depositors under the scheme in sum of ₹0.2648 crores. As per the statement, interest which the bank would earn from the SLR to be maintained and advances to the customers of the bank would be ₹3.6023 crores. As per the bank the staff cost to the bank would be ₹3.2171 crores and other operating costs would be ₹0.7064 crores. The net loss shown is ₹1.7663 crores. We had repeatedly put it to the learned counsel for the appellant as to on what basis the bank had allocated ₹3.2171 crores as the staff cost relatable to the scheme and ₹0.7064 crores as the operating cost. There was no reply. It has to be kept in mind that the Deposit Collectors not only make entry in the pass book of the customers when they collect the daily amounts but also make entries in the corresponding ledger account of the customer maintained by the bank. Ex-facie the figure of ₹3.2171 crores as staff cost to the bank for the scheme is highly exaggerated, not only for said reason of it being ex-facie exaggerated, for the primary reason that the banks did not produce the primary documents nor gave justification for said apportionment vis-a-vis the total staff cost and the quantum of works performed by the staff for the other operations of the bank, we are of the opinion that the view taken by the Tribunal that the scheme would not become inoperative if for back wages are increased is correct. There is no perversity in the appreciation of evidence nor is there any oversight of any relevant evidence.

40. The last contention urged merits acceptance. The reason being that under the award the Tribunal has, within its power reworked the financial package i.e. the fair wage to be received by the daily Deposit Collectors as a fair wage simultaneously link in the same to the quantum of work to be performed, in the form of minimum targets to be achieved. Whilst it may be true that the Tribunal had the power to make its award operative from a retrospective date and has found a rational in the day being the one on which all banks were impleaded as respondents i.e. July 19, 2005, but has overlooked the fact that the repackaged remuneration was linked to higher targets to be achieved with right conferred upon the banks to terminate the contract of service if targets were not achieved in two successive quarters. Now, the banks cannot terminate the contract of service from a retrospective date and make recoveries. Further, the award is silent on the aspect of : What would be the consequence if the minimum target is not achieved in a month? Would it mean that the daily Deposit Collector would be entitled to a pro rata payment? The answer has to be in the negative for the reason the fall back wages has been determined by the Tribunal with reference to the minimum fair wage to be received by the daily Deposit Collectors and for which the underlying reasoning of the Tribunal is that keeping in view the nature of work performed by the daily Deposit Collectors, to achieve the targets set by the Tribunal they would have to work for about 3 hours a day. The Tribunal has taken note of the Bipartite Settlement under which part time workers of the bank who worked for three hours a day would receive 1/3rd of the basic wage payable to a full time employee of corresponding status + other emoluments such as house rent allowance, city compensatory allowance and travelling allowance. Thus, a daily Deposit Collector who

does not meet the target would presumably not be working for three hours a day. The linkage to the fall back wage increase with productivity cannot be snapped. Just as an employee who works for one hour a day cannot claim proportionate wages, the daily Deposit Collectors cannot claim pro-rata reduced fall back wages if they don't meet the target. And we emphasize that as per the Tribunal the banks would be entitled to terminate the contract of such daily Deposit Collectors, a termination which the banks cannot enforce retrospectively and make recoveries. The retrospective operation of the award would imperil the daily Deposit Collectors as well because they would be under a threat of recoveries. Till the award was pronounced these daily depositors were not working on the assumption that they have to achieve the targets of ₹3,00,000/-, ₹4,00,000/- and ₹5,00,000/- in category 'C', 'B' and 'A' areas respectively. Thus, on the facts of the instant case the rule of the game could not be changed retrospectively.

41. A contention not emanating from the award was sought to be urged. With reference to an additional affidavit permitted to be filed by the learned Single Judge and a statement annexed therewith it was sought to be urged that post the award the daily Deposit Collectors had started misusing the award by rotating the same amount in the name of a customer. The argument was that the scheme worked out under the award as the basis of linking productivity to minimum fall back wages had a serious loophole by permitting the daily Deposit Collectors to attain productivity by circulating the deposits. On facts reference could be made to one M.A.Shemeer, an account holder with Federal Bank Ltd. The data provided would evince that said Sh.M.A.Shemeer opened account No.10030600087410 with the Federal Bank on November 08, 2013 and through a daily Deposit Collector

deposited ₹26,400/- with the bank which he withdrew on December 03, 2013. The account remained operative for 25 days. Thereafter another account No. 10030600087600 was opened in his name on December 03, 2013 in which ₹24,000/- was deposited and after 28 days the account was closed on December 31, 2013. On same day account No. 10030600088111 was opened in his name in which ₹36,000/- was deposited and after 34 days on February 03, 2014 the account was closed. The very next day i.e. on February 04, 2014 another account No. 10030600088343 was opened in his name in which ₹21,600/- was deposited and after 27 days the account was closed on March 03, 2014. The very next day i.e. on March 04, 2014 account No. 10030600088467 was opened in his name in which ₹28,800/- was deposited. After 27 days the account was closed on March 31, 2014. On April 04, 2014 another account No. 10030600088855 was opened in his name in which ₹26,400/- was deposited and after 25 days on April 29, 2014 the account was closed. This gentleman opened account No. 10030600089358 on July 04, 2014 which remained operative for a month. And so on. Many such instances can be found in the tabular statement filed.

42. We find that the learned Single Judge has noted said aspect of the matter but has not dealt with the same.

43. The answer lies in the fact that when said rotation of money came to the notice of the bank they immediately took corrective action by issuing circulars fixing minimum duration of an account with penal consequence of premature closure or withdrawal resulting in commission paid to the daily depositor being deducted from the account and we find that in anticipation of rotation of the money, and probably some smart officer in the bank, as many intelligent litigants do from the queries being put by the Industrial

Adjudicator to the counsel when arguments were being advanced before the Industrial Tribunal, anticipated the award and in the case of Syndicate Bank issued a circular to said effect on June 01, 2013. (The award in question is dated October 07, 2013). We find that post, award Andhra Bank had issued a circular on November 27, 2013 fixing minimum duration of the deposit under its Bhagya Laxmi Deposit Scheme. Other banks have followed, and we need not note the dates on which the banks have issued circulars concerning minimum period of the deposit to be maintained.

44. We only have to highlight that the possible mischief from the award would not render the award liable to be set aside. The mischief is of a kind which could be prevented, and as a matter of fact has been prevented.

45. The appeals are accordingly disposed of modifying the impugned award dated October 07, 2013, in that, the award is made prospective in its operation. Rest of the award as modified by the learned Single Judge is upheld.

46. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 05, 2015
mamta