IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.) CWP No.17746 of 2011 (O&M)
Date of Decision:-31.07.2017.

Sanjiv Tayal

......Petitioner

Versus

State Bank of India and others

......Respondents

(2.) CWP No.11525 of 2012 (O&M)

Hari Singh and others

.....Petitioners

Versus

State Bank of India and others

......Respondents

(3.) CWP No.4603 of 2013 (O&M)

Parveen Kumar and others

.....Petitioners

Versus

State Bank of India and others

......Respondents

(4.) CWP No.9008 of 2013 (O&M)

Sikandar Kumar

.....Petitioners

Versus

State Bank of India and others

......Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

****

Present: Mr. R.K. Arora, Advocate for the petitioner(s) in
CWP Nos.17746 of 2011, 11525 of 2012 and 9008 of 2013.

Mr. Ishwar Lal, Advocate for the petitioner in
CWP No.4603 of 2013.

Mr. R.K. Chopra, Senior Advocate with
Mr. Kapil Kakkar, Advocate and
Mr. Gaurav Sharma, Advocate for
the respondent Bank in CWP Nos.17746 of 2011,
11525 of 2011, 4603 of 2013 and 9008 of 2013.

Mr. K.K. Chahal, Advocate for respondent No.8 in
CWP No.4603 of 2013.

****

P.B. BAJANTHRI, J. (Oral)

By this order, above numbered writ petitions shall be disposed of as the controversy involved in all these cases is identical. For brevity, facts are being extracted from CWP No.17746 of 2011.

In the instant writ petition, petitioner has questioned the circular dated 11.04.2012 and further orders passed by which the petitioner's services are stated to have been terminated.

State Bank of India-respondents have evolved a scheme for the purpose of smoothening the process of loan granted and recovery etc. by appointing qualified persons and they have been named as Extension or Banking Services/Business Facilitators. Pursuant to the policy decision of the State Bank of India, petitioner is stated to have been appointed on 19.7.2008 (Annexure P-1). Pursuant to Annexure P-1, respondent-Bank have entered into an agreement between each of the Business Facilitators who were appointed. The respondents-Bank took a decision relating to review of functioning of Business Facilitators' discontinuation of engagement of individual Business Facilitators termination of individual Business Facilitators on expiry of agreement on 11.4.2012 by means of communication to the Chief Manager Rural of Circles (Annexure P-15). By virtue of such communication, respondents proceeded to discontinue the services of Business Facilitators without passing or issuing order of discontinuation as Business Felicitator. Thus, the present petition.

Learned counsel for the petitioners submitted that in para 2 of the circular dated 11.4.2012 which reads as under:-

> *"2. However, over a period of time, it is observed that the purpose of engaging BFs in achieving the Financial Inclusion goal of the Bank has not been served. We have also been receiving complaints regarding BFs (Individuals) not functioning as per laid down instructions and indulging in certain wrong practices."*

The above decision is in general and very vague if the petitioners' services are discontinued as Business Facilitators with reference to Circular dated 11.4.2012, it attaches stigma so as to deny them appointment elsewhere. It was further submitted that as per the agreement entered into between the respondent-Bank and petitioners, it is evident from para 8 – Term & Termination. One of the clause relates to terminating the agreement between the parties by giving a month's notice in writing to the other party is required to be complied. In the present case, respondents have merely relied on the communication dated 11.4.2012 vide Annexure P-15 and proceeded to discontinue the petitioners' service from the post of Business Facilitators on oral by the respective circle. Thus, there is a violation of agreement in discontinuing the petitioner as Business Facilitators by the respondents-Bank.

Per contra learned counsel for the respondents submitted that a policy decision has been taken by the respondents-Bank to review the functioning of Business Facilitators and discontinue Business Facilitators as they have received complaints regarding Business Facilitators (individual) not functioning as per the laid down instructions and indulging in certain wrong practices etc. Thus, respondents proceeded to discontinue the engagement of fresh individual Business Facilitators terminated existing Business Facilitators on expiry of their agreement etc. Learned counsel for the respondents relied on the decision passed in LPA No.1274 of 2015 passed by the High Court of Judicature at Patna. From the judgment it was pointed in respect of Para 12 and 16 which read as under:-

> *"12. On the other hand, learned counsel for the Bank submitted that the engagement of the Business Facilitators was on contract basis and there was no employee and employer relationship. The Business Facilitators were engaged on commission basis and that it is a policy decision as to whether the Bank would like to continue to engage Business Facilitators with the object of having financial inclusion or not. Since the appointment of the appellants was contractual, purely on commission basis, and the fact that the appellants have joined the Business Facilitators knowing well the terms and conditions, there cannot be any plea of promissory estoppel as none was made at any stage. The engagement was purely contractual on commission basis and, thus, could be terminated at any point of time in terms of the agreement entered upon. Therefore, the appellants have no justified cause to invoke the extra-*

ordinary jurisdiction of this Court. Reliance is placed upon judgments of the Hon'ble Supreme Court in the cases of State of M.P. and others v. Nandal Jaiswal, (1986) 4 SCC 566; State of Orissa & Ors. V. Gopinath Das & Ors, (2005) 13 SCC 495; and M/s Bajaj Hindustan Ltd. V. Sir Shadi Lal Enterprises Ltd. & Ors. (2011) 1 SCC 640.

"16. The question to be examined is what is the nature of the employment? The process of appointment of Business Facilitators was initiated on the basis of the Circular of the Reserve Bank of India dated 25th January, 2006. The purpose was to ensure greater fiancial inclusion and to increase outreach of the Banking Sector. The Circular itself contemplated engagement of Business Facilitators on payment of reasonable commission. It is thereafter, the Bank circulated a Scheme on 3rd of April, 2007. The Scheme also contemplated payment of commission relating to work performed. In the advertisement issued, there is no promise that the Business Facilitators shall be conferred status of regular employees at any stage. After selection, the agreement executed again shows that it is a contract for a limited term which can be extended from time to time. There is a specific condition that the Business Facilitators shall act as an independent service provider and shall not be deemed to be an agent of the Bank, except in respect of transactions/ services which give rise to Principal Agent relationship by implication. With such conditions, in the policy, circulars and in the agreement, the services of the appellants are nothing but purely contractual for a fixed period and on a commission corresponding to work performed. In terms of the conditions in the agreement, the appellants are not even the agents of the Bank and are independent service

> *provider. Therefore, the appellants cannot claim to have any right of employment against the Bank either on basis of doctrine of promissory estoppel or in terms of the contract."*

It was also submitted that it was only a contractual agreement between the petitioner and the respondents-Bank. Therefore, petitioner has no right to continue him as on Business Facilitators (individual) for the purpose of discharging the duties relating to loan matter.

Heard learned counsel for the parties.

Perusal of Annexure P-15, it is evident that it is an internal communication between the Chief General Manager of Rural Business and the Chief General Manager of Circles. Based on the communication dated 11.4.2012 (Annexure P-15) concerned respondent has taken a decision to discontinue the petitioner as Business Felicitator (individual). As per the agreement entered into between the petitioner and the Bank in particularly para 8 – Terms & Termination which reads as under:-

> ***"8. Term & Termination***
>
> *8.1. The agreement shall be valid for a period of one year from the date of its execution and may be renewed for such further periods as may be mutually agreed between the parties.*
>
> *8.2. The Bank as well as SP shall have right to terminate the agreement by giving a month notice in writing to the other party. In the event of termination of the agreement by SP, all record, information including documents etc. shall be returned by SP to the Bank as per instructions of the Bank.*
>
> *8.3. The Bank shall have a right to terminate the agreement immediately by giving a notice in writing to SP in the following eventualities.*

xxx xxxx

> *8.4. In the event of the termination of the agreement by the Bank pursuant to clause 8.3. hereinabove, SP shall be liable and responsible to return all records and information in its possession as envisaged under clause 8.2. above."*

The aforesaid agreement stipulates that it will be for the period of one year and further it would be renewed on mutual agreement between the parties and in the event of termination of agreement, a month's notice is required to be given in writing by either of the party and also Bank reserves their right to terminate the agreement immediately by giving a month's notice to the Business Facilitators in the eventualities. Firstly, the respondent Bank has not acted upon communication dated 11.4.2012 (Annexure P-15) to the extent of discontinuing the petitioner's service by issuing an individual order by the competent authority. In other words, petitioner has been discontinued orally from the Business Facilitators. Secondly, the respondents have violated para 8 of the agreement. Further perusal of para 2 of the communication dated 11.4.2012 attaches stigma since the respondents-Bank have received complaints regarding Business Facilitators (individuals) in not functioning as per laid down instructions and indulging in certain wrong practices. The communication dated 11.4.2012 has been applied to all the Business Facilitators (individual) in respect of whether complaints have been received against like petitioner or not. In other words there is a total non application of mind. Therefore, the communication dated 11.04.2012 which has been taken into consideration for the purpose of discontinuing the petitioner as Business Facilitators is highly arbitrary and without application of mind and liable to be set aside and accordingly, it is set aside.

The respondents' submission that identical issue was considered by the High Court of Judicature at Patna in LPA No.1274 of 2015. Perusal of para 12 and 16, nowhere the Court has examined in respect of whether either of the parties have issued a notice or not. Bank which reserves the right to terminate the agreement by giving notice has been complied was the subject matter and it was also not discussed whether Term and Termination entered into between the respondents-Bank and Business Facilitators could be ignored. In other words para 8 of agreement was not the subject matter and it was also not considered and rejected. Therefore, the cited decision do not assist in any manner in respect of the present case. Accordingly, the above contention of the respondents-Bank is hereby rejected.

Petitions stand allowed. The respondents are hereby directed to take appropriate decision in writing and communicate by following para 8 of the agreement if they intend to discontinue the services of the petitioner. During the intervening period, petitioners are entitled for monetary benefits. The same shall be calculated and disbursed to the petitioner within a period of 3 months.

At this stage, learned counsel for the respondents submitted that petitioners were appointed on commission basis. Therefore, question of extending any arrears benefit do not arise. In that event, petitioners are entitled for cost of the petition. Respondents are hereby directed to pay ₹ 50,000/- to each of the petitioners within a period of 3 months from today. Failing which petitioners are entitled to interest @ 8% per annum from the date of filing the CWP.

At this stage, learned counsel for the petitioners submitted that certain arrears are required to be settled by the respondents-Bank. In this regard, concerned Branch Manager has recommended that due to pendency of litigation, no action has been taken by the respondents. The concerned respondents are hereby directed to take action in respect of arrears which is stated to be due to the petitioner. In this regard, concerned respondent is hereby directed to extend monetary benefits if the petitioners are otherwise eligible or to pass a speaking order and communicate the same to the petitioners within a period of 3 months from today.

(P.B. BAJANTHRI)
JUDGE

July 31, 2017.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.