IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14194 OF 2017
WITH
WP14196/17,WP14197/17,WP14198/17,WP14199/17,WP14200/17,
WP14201/17,WP14202/17,WP14203/17,WP14204/17,WP14205/17,
WP14206/17,WP14207/17,WP14208/17,WP14209/17,WP14248/17,
WP14249/17,WP14250/17,WP14251/17,WP14252/17,WP14253/17,
WP14254/17,WP14255/17,WP14261/17,WP14262/17,WP14263/17,
WP14264/17,WP14268/17,WP6918/18,WP6919/18,WP6920/18,
WP6921/18,WP6922/18,WP6923/18

GORAKH SAMBHAJI KAMBLE
VERSUS
OSMANABAD JANTA CO-OPERATIVE BANK LIMITED

Advocate for Petitioners : Mr. A.V. Patil Indrale
and Mr. Manoj D. Shinde.
Advocate for Respondent : Mr. A.N. Irpatgire.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 29th June, 2018

PER COURT :-

1. In all these petitions, the petitioners are identically placed. The respondent is the same Co-operative Bank. All these petitioners are challenging an identical order passed by the Labour Court on a preliminary issue framed, by which, the Application (IDA) No. 26/2015, and connected cases filed by the petitioners under Section 33(C)(2) of the ID Act, 1947, praying for recovery of money, have been held to be untenable, as disputed questions arise in the said proceedings.

2. A large group of petitions were filed and registered in the year 2017 and a small group was registered in the year 2018. Since the first group of petitions is of the year 2017 and pertains to this Court, the petitions of the years 2018 are being tagged, by the consent of the parties.

3. After these matters were heard for quite some time on 20/06/2018, 28/06/2018 and 29/06/2018, it is apparent that the issue involved is with regard to clause 49 of the Osmanabad Janata Sahakari Bank Limited, Osmanabad, Sevak Seva Niyam, 1985. The petitioners are identically relying upon clause 49 under chapter 7 which pertains to the 'Seva Paritoshik' which has to be paid to every employee, who superannuates from employment or for other reasons enumerated therein. A 'Seva Paritoshik' is a payment of a particular amount to a person who is retiring from service or for the reasons stated in clause 49. This payment is to be made from a contribution to the 'Sevak Kalyan Nidhi'. This contribution is 10 % of the salary of the concerned employee.

4. The dispute that arose before the Labour Court and before this Court is that the Bank contends that there was no deduction of even a single paisa from the salaries of these petitioners under

the ‘Sevak Kalyan Nidhi’ as per clause 49. A document is placed before this Court, by the Bank, which was admittedly not before the Labour Court, in the form of an agreement, with regard to wage revision between the employees union and the Osmanabad Janata Sahakari Bank Limited, Osmanabad, dated 30th December, 2012, wherein a particular sentence, mentioned on the internal page No. 5 of the said agreement pertaining to ‘Sevak Kalyan Nidhi’, is said to have been deleted. Learned counsel for the Bank submits that clause 49 has been completely deleted in the year 2000.

5. Learned Counsel for the petitioners submits that this deletion is to be carefully scrutinized and interpreted because the petitioners contend that only the portion to the extent of ‘Sevak Kalyan Nidhi’ (The fund from which the ‘Seva Paritoshik’ is to be paid) has been deleted and clause 49 pertaining to extending the benefits of ‘Seva Paritoshik’ has not been deleted. It is further contended that the Chairman and the CEO are also paid ‘Seva Paritoshik’ in the year 2005 to 2007, which is denied by the Bank.

6. Considering the disputed issues, as noted above, and keeping in view the law laid down by the Hon’ble Apex Court in

the matter of **A. Satyanarayana Reddy and others Versus Presiding Officer, Labour Court and Others [2016 AIR SC 4556],** it is obvious that a serious dispute exists with regard to the existence of clause 49. Until this dispute is adjudicated upon, the payment as 'Seva Paritoshik', cannot be sanctioned.

7. Learned counsel for the petitioners submits that the respondent/Bank has engaged these petitioners in series of litigation and for every act of injustice, these petitioners are forced to approach different Courts. He, therefore, submits, on instructions, that these petitioners would file a Complaint (ULP) for the present cause of action which is of a recurring nature, within four weeks, before the Industrial Court at Latur and the said proceedings be expedited. Learned counsel for the Bank refutes these allegations and submits that they have no reason to delay the proceedings.

8. Considering the above and the statement recorded, these petitions are disposed of, with the following directions :-

(a) These petitioners are at liberty to file their Complaints (ULP) under Section 28 (1) read with Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971, within six weeks from today.

(b) They are at liberty to serve copies of the complaints with annexures, if any, on the respondent/Bank, under Regulation 115 of the Industrial Court Regulations, 1970.

(c) Respondent bank would not refuse to accept such notice and case papers.

(d) After appearing before the Industrial Court, or after receiving the case papers under Regulation 115, the respondent/Bank shall enter its written statement in these matters within four weeks.

(e) If no interim relief is sought, the Industrial Court would be at liberty to frame the issues within six weeks, after the pleadings are completed and thereafter proceed to decide these Complaints expeditiously and preferably within one year from the date of the framing of issues.

(f) Since an identical issue is involved and all these petitioners are praying for identical reliefs, they are at liberty to lead evidence through one Complaint, if so advised and the same principle would apply to the respondent/Bank.

9. It is made clear that this Court has not assessed the merits of the contentions of the litigating sides and the Industrial Court would be at liberty to decide the same on their own merits. Since a recurring cause of action is involved, the respondent would not raise an objections of delay, more so, since the

petitioners have spent time before the Labour Court from August, 2015, onwards and in this Court till the passing of this order.

10. Learned advocate for the Bank submits that few of the petitioners have retired in the year 2009 and have approached the Court in the year 2015. Though, this is a recurring cause of action, they should be deprived of the interest component. This aspect of approaching the Labour Court, in the first instance, after a passage of time is kept open for the Industrial Court to adjudicate upon, as to whether these petitioners should be deprived of any interest component or any other relief. Parties are at liberty to agitate on this issue.

(RAVINDRA V. GHUGE, J.)

S.P.C.