IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 721 OF 2008

Mr. Rui A. E. Ferreira,
House No. E-1,
Near Panjim Church,
Panaji-Goa. ….. Petitioner

V e r s u s

1. The Commissioner,
   Labour and Employment,
   Government of Goa,
   Shram Shakti Bhavan,
   2nd Floor, Patto Plaza,
   Panaji, Goa.

2. The Goa Urban Co-operative Bank Ltd.,
   With its Head Officer at
   Dr. Atmaram Borkar Road,
   Panaji Goa. …. Respondents

Petitioner in Person.

Mr. V. Sardessai, Government Advocate for Respondent no.1.

Mr. A. Carvalho, Advocate for Respondent no.2.

Coram:- C. V. BHADANG, J.
Date:- 20th February 2018.

ORAL JUDGEMENT:

The challenge in this petition is to the order dated 13/8/2008 passed by the first respondent/Commissioner of Labour and Employment, thereby recalling the recovery certificate dated 23/7/2008 issued in favour of the petitioner. The main contention of the petitioner, who appears in person is that the respondent no.1 had no jurisdiction to review his own order, by which the recovery certificate dated 23/7/2008 was issued.

2. The brief facts are that; the services of the petitioner (who was in the employment of respondent no.2, The Goa Urban Co operative Bank Ltd.) came to be terminated which was subject matter of a reference before the Industrial Tribunal. The Industrial Tribunal by a judgment and award dated 13/8/2003 allowed the reference directing the petitioner to be reinstated with fullback wages and continuity of service. This was challenged by the respondent no.2/bank before this Court in W.P. No.40/2004 in which the following interim relief was granted on 25/3/2004 :

> " Interim relief in terms of prayer clause 24(ii), as reproduced below, subject to the condition that the petitioner Bank shall pay to the respondent no.1, wages in accordance with section 1/B of the Industrial Disputes Act, 1947:
>
> 24(ii) Pending the hearing and the final disposal of the petition the impugned award dated 30/8/2003 may please be stayed.
>
> Stay is become effective only after the arrears of payment are made."

3. It appears that the petitioner filed a Contempt Petition No.9/2004 before this Court on the premise that there was non compliance with the order dated 25/3/2004 by the second respondent. This Court by an order dated 23/9/2004 directed the contempt petition to be heard along with the present petition.

4. It appears that by an judgment and order dated 21/7/2014 the W.P. No.40/2004 filed by the second respondent came to be partly allowed and while confirming the order of reinstatement, the order as regards payment of back wages was modified and was restricted to 75% of the back wages. This gave rise to two Special Leave Petitions before the Hon'ble Supreme Court, one each by the petitioner and the second respondent, being SLP (C) No.26748/2014 and SLP No (C) No.1511/2015. During the pendency of the two SLPs, the parties reached an amicable settlement and both the SLPS were disposed of by an order dated 8/2/2016 in the following terms :

> " We are happy to note that the Court is now in a position to finally settle the disputes between the parties once for all. In full and final settlement of all the dues to the respondent, the bank shall pay an amount of Rs. 42.50 lakhs to the workman within three weeks from today.
>
> The workman shall not be entitled to any other benefit on any count in respect of the services rendered by

> him in the Bank. For the Income Tax purpose, the workman shall complete the required procedural formalities within one week from today.
>
> Needless to say that in case the bank has made any deposit in the High Court, it will be open to the bank to withdraw the amount in view of the payment of lumpsum amount of Rs.42.50 lakhs to the workman.
>
> In view of the settlement as above, the parties shall withdraw all pending proceedings against each other before any forum."

5. Indisputably, in pursuance of the said settlement, the second respondent has paid an amount of Rs.42.50 lakhs to the petitioner after deduction of tax at source amounting to Rs.11,40,291/-. The petitioner who appears in person submits that there is non compliance with the order of the Hon'ble Supreme Court and as such the present petition can be entertained.

6. On hearing the learned counsel for the parties, I do not find that the challenge in the present petition survives, in view of the fact that there was an amicable settlement reached between the parties before the Hon'ble Supreme Court. Under the terms of the said settlement, an amount of Rs.42.50 lakhs was to be paid by the second respondent to the petitioner in 'full and final settlement' of the entire dispute. In view of the said settlement, the parties had also agreed to withdraw all pending proceedings against each other pending

before any forum. In view of this, it would be academic to go into the question whether the Labour Commissioner had jurisdiction to recall or review the order of issuance of the recovery certificate.

7. It transpired during the course of the arguments at bar that the petitioner has approached the Commissioner of Labour for directing the second respondent to pay the amounts of tax deducted at source, which according to the petitioner has been illegally deducted. The Labour Commissioner has allowed the said application by an order dated 11/5/2017 and 12/5/2017 which is subject matter of challenge by the second respondent in W.P. No.786/2017. That issue cannot be gone into in the present petition which is confined to the order/communication issued by the second respondent on 13/8/2008. The petitioner submits that out of the total amount of Rs.8,07,642/- deposited by the second respondent before this Court an amount of Rs.2.00 lakhs is withdrawn by the petitioner. The learned counsel for the respondent no.2 submits that the balance amount be refunded to the respondent no.2.

In such circumstances, the following order is passed:

ORDER:

(i) The petition is dismissed.

(ii) Rule is discharged with no order as to costs.

(iii) The amount deposited by the second respondent before this Court shall be refunded to the second respondent along with interest, if any, after six weeks from today.

C. V. BHADANG, J.

ap/-