IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No. 7490 of 2004

Indian Bank Employees Union,
Rep. by its General Secretary,
25, Second Line Beach,
Chennai - 600 001.

... Petitioner

Vs

1.Indian Bank
Rep. by its Chairman and Managing Director,
66, Rajaji Salai,
Chennai 600 001.

2.The General Manager,
(Personnel and Human Relations),
Indian Bank,
66, Rajaji Salai,
Chennai 600 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, to direct the respondents forbear from recovering the amount of 1% incentive remuneration paid from 28.03.1997 onwards to the Tiny Deposit Collectors of Indian Bank who are members of the petitioner union, as part of their remuneration for the deposits mobilised by them.

For Petitioner : Mr.M.Rangarajulu
For Respondents : Mrs.Rita Chandrasekaran
for M/s.Aiyar & Dolia

O R D E R

The relief sought for in the present writ petition is for a direction to forbear the respondents from recovering the amount of 1% incentive remuneration, paid from 28.03.1997 onwards, to the Tiny Deposit Collectors of Indian Bank, who are members of the petitioner union, as part of their remuneration for the deposits mobilised by them.

2.The learned counsel for the writ petitioner made a submission that the petitioner is the Indian Bank Employees Union, represented by the General Secretary of the petitioner union, which is a registered trade union and a union recognised by the first respondent Indian Bank. The Tiny Deposit Collectors used to visit the customers of the Bank at their doorsteps, in their residences, shops or business places or trading venture and collect their money, to be deposited in their respective accounts with the bank. The Tiny Deposit Collectors act on the mandate of individual customers to close their account on maturity, collect the proceeds and hand over the same to the concerned account holder. Thus, the first respondent Bank reach out to their customers, by serving them at their door steps, through these Tiny Deposit Collectors. These Tiny Deposit Collectors, engaged for such purposes in the Indian Bank, were paid remuneration on commission basis, as per contract, entered into, by and between the parties. These amounts were called incentive remuneration, which is a percentage of deposits, mobilized by the Tiny Deposit Collectors.

3.The grievances of the writ petitioner are that, as per the original agreement, 3% incentive remuneration was agreed upon, between the parties. However, the said incentive remuneration was not paid, as per the terms and conditions. The first respondent Bank has taken a stand that these Tiny Deposit Collectors are entitled to receive 2% incentive remuneration and not 3%. Dispute arose between the parties and it is pertinent to note that in respect of payment of incentive remuneration, the matter was referred before the Industrial Tribunal at Hyderabad. The Industrial Tribunal adjudicated the issue in relation to the payment of incentive remuneration and passed an award in I.D.No.14 of 1980 on 22.12.1988. Para No.69 of the award, reads as under.

> "69.In the result I answer the reference in I.D.No.14 of 1980 as follows :
>
> 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. These who are qualified with 8th Class and below Matriculation 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 unwilling to be absorbed in Regular Banks service they shall be paid the fall back wage of Rs.750 per month linked with minimum deposit of Rs.7,500 per month and they should be paid incentive remuneration at 2% for collection of over and above Rs.7,500 per month and they should also pay uniform conveyance allowance of Rs.50 per month for deposits of less than Rs.10,000/- and Rs.100 per month for deposits of more than Rs.10,000 upto or above Rs.30,000 per month. They should be paid Gratuity of 15 days commission for each year of service rendered."

4.As per the award cited supra, the Tiny Deposit Collectors are entitled to receive incentive remuneration at 2% and challenging the said award, a writ petition was filed before the High Court of Andhra Pradesh in W.P.No.97839 of 1989. The High Court of Andhra Pradesh considered the issue, raised before the Tribunal, and passed an order, dated 28.03.1997, and the relevant paragraphs of the order are extracted hereunder:

"A further question has been raised by Mr.K.Srinivasa Murthy of the deposit collectors being intrinsically not able to be treated as workmen since in the event of their, being treated so, the provisions of Chapter V-A of them Industrial Disputes Act would not be workable in relation to them. It is the argument that since their remuneration is not fixed and is variable they cannot be paid any determined amount as is required under Section 25-F of the Industrial Disputes Act, in the event of their retrenchment. We do not think that this argument halts the conclusion of their being treated as workmen since it is by now well settled that even jobrated and piece-rated workers can be workmen as was pointed out in S.J.T. House case (supra) and some other cases. On conspectus of the consideration, we hence reach the conclusion that the Deposit Collectors are workmen of the respective Banks though they are not, and also cannot claim to be regular employees. In view of the conclusion it necessarily follows that the scheme evolved by the Tribunal in paragraph 69 of the award for absorption of the Deposit Collectors below the age of 45 years on October 3, 1980 has to go.

> But the award also directed the deposit collectors above the age of 45 years and those who are unwilling to be absorbed as regular employees to be paid full back wages of Rs.750/- per month linked with minimum deposit of Rs.7500/- per month plus the incentive remuneration at 2% for collection of over and above Rs.7,500/-. Besides such non-absorbed Deposit Collectors were also made entitled to conveyance allowance of Rs.50/- per month for deposit of less than Rs.10,000/- and Rs.100/- per month for deposits of more than Rs.10,000/- upto or above Rs.30,000/- per month. Besides, they were also entitled to gratuity of 15 days commission for each year of service rendered.
>
> Now that we find that all Deposit Collectors are only workmen and none can be absorbed as regular employees all of them have to be treated as only one category. We would hence uphold and apply the decision of the Tribunal for payment of full back wages and incentive commission as well as conveyance go allowance and gratuity to the Deposit Collectors as workmen. The award stands modified accordingly."

5.In fact, the award, passed by the Tribunal, was confirmed by the High Court of Andhra Pradesh, and it was held that the award also directed the Deposit Collectors, above the age of 45 years, and those who are unwilling to be absorbed as regular employees, to be paid the full back wages of Rs.750/- per month, linked with minimum deposit of Rs.7,500/- per month, plus, the incentive remuneration at 2% for collection of over and above Rs.7,500/-, besides, such non-absorbed Deposit Collectors were also made entitled to conveyance allowance of Rs.50/- per month for deposit of less than Rs.10,000/-, and Rs.100/- per month for deposits of more than Rs.10,000/- upto or above Rs.30,000/- per month. Thus, the High Court of Andra Pradesh also confirmed the award, passed by the Tribunal and passed an order, holding that these Tiny Deposit Collectors are entitled to receive 2% incentive remuneration.



6.The matter went to the Hon'ble Supreme Court of India in Civil Appeal No.3355 of 1998. The Hon'ble Supreme Court of India, also passed an order on 13.02.2001, confirming the award, passed by the Tribunal, as well as the order, passed by the High Court of Andra Pradesh. The Supreme Court of India also held that the Tiny Deposit Collectors are entitled to get 2% incentive remuneration.

7.The learned counsel for the petitioner contented that, undoubtedly, the award was passed, fixing the incentive remuneration at 2%, which was confirmed by the High Court of Andhra Pradesh, as well as, by the Hon'ble Supreme Court of India. However, there was a delay, in implementation of the award, by the respondent Bank and therefore, the incentive increment, originally agreed upon, that is, to say 3%, cannot be denied in respect of the period, which falls prior to the implementation of the award. The learned counsel for the petitioner is of an opinion that the retrospective recovery of such incentive remuneration is impermissible and the writ petitioner are not claiming incentive remuneration at 3%, after the implementation of the award.

8.The said contentions, raised on behalf of the petitioner, are disputed by the learned counsel, appearing for the respondents, on the ground that the award was passed on 22.12.1988 and the subsequent proceedings are judicial proceedings and the delay in implementation was caused on account of the pendency of litigation, and therefore, the writ petitioner are not entitled to claim 3% incentive remuneration, only on the ground that there was a delay in implementing the award, passed by the Industrial Tribunal at Hyderabad in I.D.No.14 of 1980.

9.This Court is of the considered opinion that the implementation of the award cannot be a point for granting incentive remuneration to these Tiny Deposit Collectors. Incentive remuneration at 2% was confirmed by the Industrial Tribunal in I.D.No.14 of 1980, by way of award, on 22.12.1988. Therefore, the rights of the parties are to be decided with reference to the date of the award, i.e. 22.12.1988 and not with reference to the date of implementation of the award by the respondent Bank, which was delayed on account of pendency of the Writ Petition and Civil Appeal, before the High Court of Andra Pradesh and Supreme Court of India, respectively.

10.This Court is of an opinion that the award, passed by the Industrial Tribunal at Hyderabad, was on 22.12.1988. The claim, made by the writ petitioner for payment of 3% incentive remuneration, was with effect from the year 1993. In view of the fact that, even prior to the date of claim, the award was passed by the Industrial Tribunal, confirming the incentive remuneration at 2%, to be paid by the respondent Bank to these Tiny Deposit Collectors, it is clarified that the said 2% incentive remuneration had already been paid to all the Tiny Deposit Collectors and the disputed 1% is withheld by the respondent Bank and the same has not been disbursed in favour of these Tiny Deposit Collectors. Thus, the question of paying the 1% incentive remuneration now, would not arise at all.

11.The fact remains that the award of the Industrial Tribunal at Hyderabad confirmed the payment of 2% incentive remuneration to these Tiny Deposit Collectors and the said award was confirmed by the High Court of Andhra Pradesh and the Hon'ble Supreme Court of India. The claim of the writ petitioner for payment of 3% incentive remuneration is with effect from the year 1993. In view of the fact that, the award was passed by the Industrial Tribunal on 22.12.1988, confirming the 2% incentive remuneration to the Tiny Deposit Collectors, the petitioner has not established any acceptable reason for the purpose of grant of 3% incentive remuneration and the question of recovery does not arise at all, in view of the fact that the 1% disputed incentive remuneration, has not been disbursed to these Tiny Deposit Collectors and it was withheld by the Bank itself. Thus, this Court is not inclined to issue any direction to the respondent Bank to pay the 1% excess incentive remuneration, more than the remuneration at 2%, which was already confirmed by the Hon'ble Supreme Court of India.

12.Therefore, this writ petition is devoid of merits and stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen/mkn
To

1.The Chairman and Managing Director,
Indian Bank,
66, Rajaji Salai,
Chennai 600 001.

2.The General Manager,
(Personnel and Human Relations),
Indian Bank,
66, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No.80286
+1cc to Mr.L.N.Praghasam, Advocate, S.R.No.80041

W.P.No. 7490 of 2004

VGI(CO)
GSP(26/12/2018)