



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No.21601 of 2018
and W.M.P.Nos.19506 and 19507 of 2018

T.Vijayan

... Petitioner

-vs-

1. The Divisional Manager,
Canara Bank
Regional Office,
Tirunelveli

2. The Branch Manager,
Canara Bank
Valliyoore Branch
Valliyoore,
Tirunelveli District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the 2nd respondent herein in his proceedings Nil dated 13.08.2018 and quash the same as illegal and further direct the 1st respondent herein to permit the petitioner to function as Jewel Appraiser and continue employment in 2nd respondent Bank.

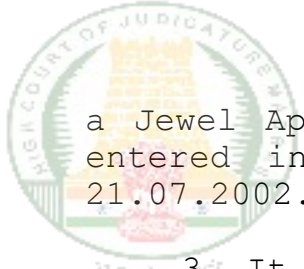
For Petitioner Mr.V.Meenakshi Sundaram

For Respondents: Mr.Pala Ramasamy

O R D E R

This Writ petition has been filed challenging the order passed by the second respondent dated 13.08.2018 and for a consequential direction to the first respondent herein to permit the petitioner to function as Jewel Appraiser and continue in the second respondent Bank.

2.The petitioner states that he belongs to a Goldsmith family and after completing SSLC, he has undergone apprentice training and obtained a Certificate for being recognized as an appraiser of Jewels. The petitioner was appointed in the respondent Bank as Appraiser on contract basis. Though the petitioner was appointed as



a Jewel Appraiser on 07.06.2002, it is stated that the petitioner entered into an agreement with the second respondent Bank on 21.07.2002.

3. It is the case of the petitioner that as per Circular dated 02.04.2014, some modifications were made in the guidelines for agricultural gold jewel loan Scheme in the respondent Bank. It is further stated that as per the said Circular, the maximum age limit for Jewel Appraiser was modified as 70 years. However, by subsequent Circular, dated 21.04.2018, the age limit was reduced to 60 years from 70 years for the post of Jewel Appraiser. Following the circular, the impugned order dated 13.08.2018 has been issued terminating the appointment of the petitioner as Jewel Appraiser in the respondent Bank. Since the impugned order has been passed only on account of the reduction of age from 70 years to 60 years, it is contended by the petitioner that the impugned order terminating the petitioner from service suffers from legal malafides.

4. Learned counsel for the petitioner submitted that the policy of the respondent Bank in reducing the maximum age limit for the post of Jewel Appraiser from 70 years to 60 years by a circular is without notice to the Jewel Appraisers and that as such, the impugned order, based on such Circular, is not valid in the eye of law. It is further contended that the second respondent has passed an order without an application of mind, and it is in a printed format. It is submitted that the impugned order is in violation of principles of natural justice, inasmuch as the petitioner was not given a show cause notice or opportunity before terminating the services of the petitioner. It is further submitted that the petitioner is in service for quite number of years and that his experience and knowledge, as the Jewel Appraiser should be appreciated and the order of termination without considering the relevant facts cannot be sustained.

5. From the impugned order, it can be seen that the petitioner was terminated from service giving one month time. It is not in dispute that the petitioner has entered into an agreement with the respondent Bank on 31.07.2002. As per Clause 13 of the said agreement, the respondent can terminate or either party can terminate any contract by giving one month notice in writing.

6. Clause 13 reads as follows:

"13. This Contract may be terminated by either party to the contract, giving to the other one month's notice in writing of his or its intention to do so. The contract shall stand determined at the expiration of one month from the date of receipt of notice by the party receiving it provided always that if the Jewel Appraiser or his authorised person is considered by the Bank on account of his/authorised Agent's negligence or carelessness in the performance of his duties or has committed fraud or practiced dishonesty or has committed



gross misconduct or if there shall be a breach by the Jewel Appraiser/authorised Agent of any of the stipulations and conditions hereinbefore contained it shall be lawful for the BANK to put an end to this contract forthwith by giving the Jewel Appraiser written notice of its intention to determine it forthwith and whether or not the circumstances in any particular case justify the BANK in summarily putting an end to this agreement shall be decided solely by the BANK whose decision shall be final and binding on the Jewel Appraiser."

From the terms of the contract, it cannot be disputed that the respondent Bank has power to terminate the contract/terminate the service, after giving one month time.

7. When the petitioner has been terminated from service, as a result of termination of contract and in accordance with the terms of the contract, it is not open to him to challenge the impugned order by filing the present writ petition. Secondly, the only ground that was focused by the learned counsel for the petitioner is that the age limit of the Jewel Appraiser has been reduced from 70 years to 60 years and that the impugned order has been passed only by way of implementing the policy decision of the respondent Bank.

8. This Court is unable to agree with the submission of the learned counsel for the petitioner for two reasons:

First of all, it is admitted in this case that the petitioner was appointed in the year 2002. Even according to the petitioner, the respondent Bank has increased the age limit from 60 years to 70 years, only after he was given appointment on contract basis as Jewel Appraiser. The subsequent policy decision of the Bank in reducing the age limit from 70 years to 60 years will not confer the petitioner a right that is available and recognized in favour of an employee under the terms and conditions of service. Withdrawal of earlier circular and reduction of age limit from 70 years to 60 years cannot be challenged or found fault with by the petitioner on any account as he was appointed when the age limit was 60.

Secondly, the petitioner is not an employee of the bank. It has been held by the Hon'ble Supreme Court in the case of **General Manager, Indian Overseas Bank v. Workmen All India Overseas Bank Employees Union (MANU/SC/1367/2006)** that the Jewel Appraisers engaged by the Bank on contract basis are only service providers and that they cannot be considered as workmen.

9. In such circumstances, the contention of the learned counsel for the petitioner has no merits. When the petitioner is only a service provider and not a workmen and his engagement is only as per the terms of the contract, the petitioner is bound by the said contract. It is not in dispute that the respondent Bank has a right to terminate the service of the petitioner, after giving one month notice. Hence, it is not necessary that the respondent Bank should

give any reasons for terminating the contract.

10. Under such circumstances, when the termination of the contract is perfectly in tune with the terms of the agreement, the impugned order cannot be treated as one, which is illegal or arbitrary, order does not carry any stigma. Hence, want of notice before termination of contract cannot be a reason to quash the order of termination of a contract, terminating the services of the petitioner.

11. Learned counsel for the respondent also relied upon another judgment of the learned Single Judge of this Court in the case of **V.Palanivel v. The Manager, Karuvapulam Branch, Canara Bank**, (MANU/TN/2669/2013) wherein it is held that the Jewel Appraiser of the Bank is not an employee of the Bank and that the Jewel Appraiser is not entitled to seek any relief to set aside the order of termination of contract/services in a writ petition.

12. In view of the discussions made above, this Court is unable to find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

1. The Divisional Manager,
Canara Bank
Regional Office,
Tirunelveli
2. The Branch Manager,
Canara Bank,
Valliyoore Branch,
Valliyoore, Tirunelveli District.

+ 1 cc TO Mr.PALARAMASAMY , Advocate in SR No. 90920
+ 1 cc TO Mr.D.NALLATHAMBI , Advocate in SR No. 90914

RR

AE-DS/RSK/15.11.2018/4P/5C

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