IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.26987 OF 2004
AND
W.P.M.P.NO.32873 OF 2004

The Lakshmi Vilas Bank Limited,
Kathaparai, Karur,
Karur District,
rep.by its Chairman .. Petitioner

Vs.

1. The Presiding Officer,
   Central Government Industrial Tribunal
   Shastri Bhavan, First Floor,
   'B' Wing, 26, Haddows Road,
   Chennai - 600 006

2. S.Subramaniam .. Respondents

Prayer :
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.342 of 2001 and quash its Award dated 14.01.2004.

For Petitioner : Mr.S.Haroon AL.Rasheed
For M/s.T.S.Gopalan & Co

For Respondents : R1 - Tribunal
Mr.K.M.Ramesh
[For R2]

O R D E R

The Award dated 14.01.2004 passed in I.D.No.342 of 2001 is under challenge in the present writ petition.

2. The writ petition in W.P.No.26987 of 2004 was filed by the Management of the Lakshmi Vilas Bank Limited. The writ petition in W.P.No.27238 of 2004 was filed, challenging the very same Award by the workman namely Mr.S.Subramaniam. The facts in

both the writ petitions are one and the same. The common facts required to be considered in both the writ petitions are that the workman namely Mr.S.Subramaniam was appointed as Jewel Appraiser on commission basis. On account of non-employment, the workman was constrained to raise an industrial dispute before the Central Government Industrial Tribunal-cum-Labour Court, raising several grounds and ultimately, sought for the relief for reinstatement with back wages. The Industrial Tribunal, in lieu of reinstatement, awarded compensation and not satisfied with the compensation, the workman filed the writ petition and the Management of the Lakshmi Vilas Bank filed the writ petition on the ground that the Jewel Appraisers are not the regular employees of the Bank and they are engaged on commission basis and therefore, the workman is not entitled for any relief.

3. The learned counsel appearing on behalf of the Management of Lakshmi Vilas Bank reiterated that the Bank engaged the Jewel Appraisers on commission basis and therefore, they cannot claim any permanent status. The Bank used the jewel loan to the customers and in order to assess the value of the gold jewellery, the Bank used to engage the Jewel Appraisers in order to find out the quality and the weight of the jewels submitted by the borrowers. The work of the Jewel Appraisers does not require control or supervision by the Bank officials. The traditional Goldsmiths are invariably engaged as Jewel Appraisers and they have their own occupation. Such a practice is being adopted by other Banks also. Some other banks engaged jewel appraisers on retainer basis. The charges to be paid to the Jewel Appraisers are debited to the account of the borrower and therefore, the services rendered by the Jewel Appraiser are only the services rendered to the borrower. There is no minimum guaranteed remuneration to the Jewel Appraisers. They are paid only commission on the value of the jewel loans sanctioned subject to a minimum amount for each loan. They are free to carry on their own occupation, the only condition being that they should not undertake the work of jewel appraisal for any other bank or financial institution. They are not required to attend to any work other than appraisal of gold jewels. They are not subject to disciplinary control of the Bank officials. The engagement of Jewel Appraisers is similar to the engagement of a Lawyer, Auditor or a Medical Consultant. The Jewel Appraisers are also clearly informed that their engagement would not amount to employment in the services of the Bank.

4. On 29.05.1989, the workman Mr.S.Subramaniam was engaged as jewel Appraiser on commission basis with effect from 01.06.1989 at Tirunelveli Branch. On receipt of application for Jewel loans, the workman used to attend the Bank only on Tuesdays, Wednesdays and Thursdays. The Jewel Appraiser is to be present in the Bank only between 10 a.m and 11 a.m on those

three days in a week. During the year 1994, the workman expressed that he was not willing to continue as a Jewel Appraiser on the existing arrangement, but he wanted to be absorbed as a permanent employee in the Bank. Thus, the Management of the Bank has refused to grant any such permanent absorption and thereafter, disengaged the workman from 07.05.1994. The workman raised an Industrial Dispute and based on the failure report, I.D.No.342 of 2001 was filed before the Central Government Industrial Tribunal.

5. The learned counsel appearing on behalf of the Management of the Bank, citing the deposition of the workman concerned during cross-examination, reiterated that the workman himself admitted that he was having a Jewelery shop in Tirunelveli town and the terms and conditions of such engagement of Jewel Appraisers, which made known to these workman and in spite of that he claimed permanent absorption. In the cross examination, the workman deposed as follows:

> "CROSS EXAMINATION:-
>
> I have studied upto V standard. I was born in 1949. Ex.M1 is the application I have given to bank. In that I have mentioned I was running a goldsmith shop. It is our family trade. In that I am running a pattarai. That is a jewel making shop. I have gained experience from my goldsmith shop. Myself and father were doing this work. We are called as goldsmith community. Even after 1989, our jewellery shop was running. The parties who want jewel loan will deposit the jewel in the bank. Then the Manager will hand over the same to me to issue certificate with regard to its genuineness. In a week from Tuesday to Thursday jewel loan will be given. Jewel loan application can be given from 10.00 am to 2.00 pm in the bank. The bank will work till 4.30 pm. In the bank no one can appraise the jewel except me. I cannot also assign the work to anybody else. When the jewel loan applied by customer, certificate should be given immediately. No one can assist me in appraiser job. No one can give direction how to appraise the jewel. In my shop also, I have got scales for weighing jewels. The scales will be verified by Inspectors of Labour i.e. they are called stamping Inspectors and they will affix their seal. In Tirunelveli town the respondent Bank has got two branches. I was working in the town branch. I have not been transferred to other branches of respondent bank. If I remained absent, jewel loan will not be given on that day. The applications will be kept for next day. I don't know English. In the Bank, there were Officers,

Clerk, Sub-staff and Sweeper and Scavengers. Scavengers are doing their work in morning and they will come in the evening also. The Scavengers and Sweepers are permanent staff. Every month they will get their salary through vouchers. I don't know how much amount they are receiving as salary. I don't know whether they are part time employees. In the registers Ex.M4 to M8 in every page the upper portion with regard to name and address I have written and with regard to 'To Loan' I have written. My earning will be according to the jewels I have appraised. Therefore, every month my earnings will be differed. My earnings will be paid by jewel loan borrowers. I I have stated for a jewel, it is spurious, then no amount will be paid for my service rendered. Even in case, where loan has not been sanctioned, I will not be paid for my service in that loan. The bank has not objected for running my jewellery making shop. After they have stopped from engaging me, I am not doing any jewel making work. The shop was also closed. The respondent Bank has also jewel appraisers in other branches. Jewel loan will be given only in urban and semi-urban branches. Lastly my earning was Rs.2500/- per month. I am aware that the dispute was raised for jewel appraisers should be regularised in the respondent bank. I am also asking the same relief. I am not interested to work as an appraiser in the old method. There was no guarantee for minimum wages for my job. I used to fill up the application of the borrower and all other connected writing works also. The borrowers used to approach me for writing the applications. I don't know whether bank has instructed the bank appraisers should not write the registers / applications. It is also not correct to say that bank has not asked me to write registers and I have written on the request of borrowers and also on my own enthusiasm. There may be a occasion when no one turned up for jewel loan to bank and I was present in the bank and on that day there will be no writing and on that day there will be no income. I will be paid for the jewel appraiser work alone. The retirement age in the bank is 58.”

6. The Industrial Tribunal also considered the fact that the workman is not interested to continue in casual employment. However, the Tribunal held that the Tribunal has got every power to impose new obligations on the Bank Management in the interest of social justice and the Tribunal can pass an order of reinstatement of the workman and also to make him a permanent employee of the Bank. Thus, the Tribunal has proceeded on the basis that a new obligation on the employer can be imposed by

the Tribunal in view of the judgment in 2003 1 LLJ 700 and accordingly, awarded compensation in lieu of reinstatement. The amount of compensation was granted based on the statement made by the workman that he has not interested in casual employment as Jewel Appraiser. Thus, the Tribunal granted compensation in lieu of reinstatement.

7. The learned counsel appearing on behalf of the workman disputed the contentions raised on behalf of the Management by stating that the terms and conditions of the appointment issued by the Lakshmi Vilas Bank states as follows:

“2.Not to appraise jewels for other Banks.

3.You should carry out the work of appraisal in the presence of officials of the Bank and use the instruments supplied by the Bank.”

8. The terms and conditions stipulated in the order of appointment, reveals that the workman was engaged on permanent basis and therefore, the workman is entitled for reinstatement with full back wages. The learned counsel for the workman is of an opinion that the Industrial Tribunal though considered the fact that the workman is entitled for the relief granted, the compensation alone, instead of reinstatement with back wages. Thus, the workman is constrained to file a writ petition, challenging the award.

9. The learned counsel for the workman cited the judgment of the Hon'ble Supreme Court of India in the case of General Manager, Indian Overseas Bank Vs. Workmen, All India Overseas Bank Employees Union made in Civil Appeal No.7986 of 2004.

10. The learned counsel for the workman relied on the observation made in paragraph 11 of the judgment and the same reads as under:

> “A few distinguishing facts need to be noted. In Indian Bank’s case (supra) there was evidence to show that the jewel appraisers work regularly for four hours. It was clearly admitted in the instant case by the witness of jewel appraisers that there were no fixed period of work and they could come and go at any point of time. In Indian Bank’s case (supra) the bank had disciplinary control on the jewel appraisers. In the instant case it was admitted by the witnesses that the Bank did not exercise any disciplinary control. In Indian Bank’s case (supra) conditions were to be fulfilled before any leave was granted. In the present case the jewel appraisers

were not required to sign attendance register and also were not required to make any leave application. The most relevant factor in Indian Bank's case (supra) was that the jewel appraisers were paid a minimum amount per month which was somewhat akin to salary. In the instant case, the amount was paid on commission basis by the loanee and not by the bank."

11. Relying on the above paragraph No.11, the learned counsel contended that the facts and circumstances in respect of the Jewel Appraisers engaged by the Indian Overseas Bank and Indian Bank are distinct and different. The Hon'ble Supreme Court of India distinguished the conditions of engagement and therefore, the terms and conditions imposed by the Management in the present writ petition namely Lakshmi Vilas Bank is also to be distinguished and the contention of the Management that the Indian Bank case should be followed, cannot be entertained at all.

12. This Court is of an opinion that in the very same judgment, the Hon'ble Supreme Court of India in paragraph 15, held that the distinction between the Jewel Appraisers and the regular employees of the Bank can be noted. The Apex Court settled certain principles regarding the nature of regular employment and the nature of appointment of Jewel Appraisers in the Bank. In comparison, the Apex Court held that the Jewel Appraisers are not the employers of the Bank and paragraph 15 of the judgment cited supra, is extracted hereunder:

Regular employees	Jewel appraisers
1. Subject to qualification and age prescribed.	1. No qualification/age.
2. Recruitment through employment exchange/Banking Service Recruitment Board.	2. Direct engagement by the local Manager.
3. Fixed working hours.	3. No fixed working hours.
4. Monthly wages.	4. No guaranteed payment, only commission paid.
5. Subject to disciplinary control.	5. No disciplinary control.

6. Control/supervision is exerci-sed not only with regard to the allocation of work, but also the way in which the work is to be carried out.	6. No control/supervision over the nature of work to be performed.
7. Wages are paid by the Bank.	7. Charges are paid by the borrowers.
8. Retirement age.	8. No retirement age.
9. Subject to transfer.	9. No transfer.
10. While in employment cannot carry on any other occupation.	10. No bar to carry on any avocation or occupation.

13. Let us now consider the principles derived by the Apex Court in the above judgment, more specifically, in paragraph 15, it is stated that the persons appointed as regular employees must have the qualifications as well as other criterias fixed including age. Recruitment and appointment must be through Employment Exchange or through the Bank Services Recruitment Board. The Regular employees have to work for fixed working hours as well as they are entitled to get monthly wages. Thus, permanent employees are falling under the disciplinary control of the Management. The wages are paid by the Bank. The general retirement and the transfer policies are applicable to the regular employees. The regular employees cannot carry on any other occupation through their employment.

14. However, the Jewel Appraisers engaged on commission basis are not on such terms and conditions, which all are applicable to the regular employees of the Bank. The Jewel Appraisers are engaged on commission basis, no qualification or age is prescribed and they are directly engaged by the Manager of the Branch or by the Chief Manager concerned. There is no fixed working hours and there is no guaranteed payment and the commission only paid based on the Jewel loans. They are not under the disciplinary control of the Management of the Bank. The charges are paid by the borrowers and they are not subjected to transfer policy of the Bank and there is no retirement age as well as these Jewel Appraisers are at liberty to carry on any avocation or occupation.

15. Let us now look into the facts and circumstances of the present case on hand. The workman, Mr.S.Subramaniam was engaged as a Jewel Appraiser. He was engaged in Tirunelveli Branch. As contended by the Management, the traditional Goldsmiths are engaged as Jewel Appraisers and they have their own occupation. The charges are paid to the Jewel Appraisers are debited to the

account of the borrower and therefore, the services rendered by the Jewel Appraisers are only services rendered to the Borrower. There is no minimum guaranteed remuneration to the Jewel Appraisers. They are paid only commission on the value of the jewel loans sanctioned subject to a minimum amount for each loan. They are free to carry on their own occupation, the only condition being that they should not undertake the work of jewel appraisal for any other bank or financial institution. They are not required to attend to any work other than appraisal of gold jewels. They are not subject to disciplinary control of the Bank officials.

16. This being the terms and conditions of the engagement of the Jewel Appraisers in the Management of the Lakshmi Vilas Bank, this Court is of an opinion that the judgment of the Hon'ble Supreme Court of India in the case of General Manager, Indian Overseas Bank Vs. Workmen, All India Overseas Bank Employees Union made in Civil Appeal No.7986 of 2004, would be applicable and accordingly, this Court has no hesitation in coming to the conclusion that the jewel appraisers engaged by the Management of the Lakshmi Vilas Bank Limited are not the employees of the Bank and accordingly, the question is answered.

17. In view of the discussions in the aforementioned paragraphs, the Award dated 14.01.2004 passed by the 1st respondent in I.D.No.342 of 2001 is quashed and the writ petition in W.P.No.26987 of 2004 stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

kak
To

1. The Presiding Officer,
   Central Government Industrial Tribunal
   Shastri Bhavan, First Floor, 'B' Wing,
   26, Haddows Road, Chennai - 600 006

+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.90743
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.90653

W.P.No.26987 of 2004

SS(CO)
CS/03/12/2019