

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 8819 OF 2018

K.Balasaravanan

.. Petitioner

- Vs -

1. The Union of India
Dept. of Labour & Employment
rep. By Section Officer
Shram Sakthi Bhawan
Rafi Marg, New Delhi 110 001.
2. The Regional Labour Commissioner (Central)
Kanaga Apartments
Suite No.III, I Floor
13-A, Lady Dock College Road
Chinna Chokkikulam
Madurai 625 002.
3. The General Manager
Indian Overseas Bank
Central Office
763, Anna Salai, Chennai 600 002.
4. The Assistant General Manager
Indian Overseas Bank
Zonal Office
No.11/952, Cross Cut Road
Gandhipuram, Coimbatore.
5. The Management of
Indian Overseas Bank, rep. By
its Branch Manager
Maranthai Branch
No.3/332, Courtallam Main Road
Alangulam Taluk, Tirunelveli Dt.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records in connection with the impugned order issued by the Section Officer of the 1st respondent bearing Ref. No.12012/65/2017-IR(B-II) dated 16.01.2018 and quash the

same and further direct the 1st respondent Government of India to refer the industrial dispute raised by the petitioner against his termination from service with effect from 18.12.2015 covered by the Conciliation Failure Report of the 2nd respondent bearing Ref. No.7/2/2017 RM dated 27.07.2017.

For Petitioner : Mr. K.Sudalaikannu

For Respondents: Mr. T.R.Sundaram for RR-1 & 2
Mr. K.Srinivasamurthy for
M/s. N.G.R.Prasad for RR-3 to 5

ORDER

The present petition has been filed against the order passed by the 1st respondent refusing to refer the dispute raised by the petitioner on the ground that he was not a workman within the definition of the Industrial Disputes Act.

2. According to the learned counsel for the petitioner, the petitioner was working as jewel appraiser in the respondent bank and his services were terminated and, therefore, he went before the Government for raising a dispute and the Government/1st respondent refused to refer the dispute and, therefore, he is before this Court challenging the order passed by the 1st respondent in declining to refer the dispute for adjudication before the Industrial Tribunal/Labour Court.

3. On notice, Mr.Srinivasamurthy, learned counsel appeared on behalf of the respondent/bank and submits that the issue whether jewel appraiser is a workman or not has been settled by the Hon'ble Supreme Court as well as this Court and, therefore, the same is no more res integra. Learned counsel for the respondent bank straightaway drew the attention of this Court to the decision of the Hon'ble Supreme Court in Indian Overseas Bank - Vs - Workmen (2006 (3) SCC 729), wherein the Hon'ble Supreme Court, has given detailed findings into the nature of employment of the jewel appraisers in the respondent Bank in paras 18 and 19, which are extracted hereinbelow for reference :-

"18. At this juncture the distinction between jewel appraisers and the regular employees of the Bank can be noted.

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 exercised 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.

Therefore, the jewel appraisers are not employees of the Bank.

19. Above being the position, the judgment of the Division Bench affirming the views of the learned Single Judge and the Tribunal is clearly indefensible, deserves to be set aside which we direct."

According to the Hon'ble Supreme Court, the jewel appraisers cannot be construed as employees of the Bank and, therefore, they cannot claim any relief as against the Bank.

4. Learned counsel for the respondent bank further drew the attention of this Court to a detailed order passed by a learned single Judge of this Court in a batch of writ petitions in the case of All Bank Appraisers' Federation - Vs - Government of India (W.P. Nos.7199 to 7204/2004, etc. Batch - Dated 7.8.2009). In the said order, the learned Judge, after adverting to the

various decisions, in para-37 of the said order, has ultimately held that no direction could be given to the Government to make a reference for adjudication in respect of jewel appraisers, which would only mean directing the Government to refer a frivolous issue as has been held by the Courts in the earlier litigation, which is extracted hereunder for reference :-

"37. Considering the above said fact that any direction to the Government to make reference for adjudication would be again amounting to directing the Government to refer a frivolous issue, I am of the considered view that the writ petitioner Federation is not entitled for any relief claimed."

5. Since the above issue has been settled as against the jewel appraiser that they are not workmen or employees, it is submitted that the Government has rightly taken a decision not to refer the dispute and, therefore, the present writ petition is not maintainable.

6. However, Mr.Sudalaikannu, learned counsel appearing for the petitioner referred to a judgment of the Division Bench of this Court in Karur Vysya Bank Ltd. - Vs - Karur Vysya Bank Employees' Union (2007 (3) LLN 440), wherein the Division Bench has taken a contra view that jewel appraisers of the appellant bank therein have a right to be regularised or not has to be adjudicated by the Labour Court. Attention of this Court was drawn to paras 19 to 21 of the judgment, which is extracted hereunder for reference :-

"19. As mentioned earlier, the particulars furnished in the affidavit filed in support of the writ petition before the learned Judge show that the jewel loan is granted to the customers everyday except Sundays and holidays. Thus, the jewel loan is given throughout the year and on all working days. The Jewel Appraisers will have to report for duty every day and they will have to be present throughout the banking hours. They cannot take leave without prior permission of the Bank. Before sanctioning/granting of every jewel loan, the quality and weight of the jewel to be pledged will be necessarily assessed and weighed by the Jewel Appraisers. The Jewel Appraisers alone are ensuring the quality of jewels and protecting the interest of the Bank from being cheated, resulting in loss. The appraisal work, viz., assessment and weightment, have to be done in the Bank premises in the presence of the Bank officials. Apart from this, the appraisers have to fill up the jewel loan

application, write the name and address of the customers, description, quality and weightment of jewel and they also have to get the signatures of the customers in the loan application. After sanctioning of jewel loan, the Jewel Appraiser will open ledger for each customer and will make necessary entries of loan. The Jewel Appraisers have to prepare monthly statement/figures relating to jewel loan. Further, they have to calculate the interest of jewel loan for each customer and record the same in the ledger. Similarly, on repayment of jewel loan together with interest, the Jewel Appraisers will make entries in the ledger. They have to prepare a defaulters list and after preparation of such list they will make arrangements to send individual auction notice to defaulting customers. They will prepare details of jewel loan verification report mentioning several details. It is their claim that they are workmen doing appraisal, clerical and other banking activities directly under the control and supervision of the Bank. Further, the Bank collects Rs.10,000/-as security deposit from each Jewel Appraiser and they are paid salary at the end of the month and if they are absent, the salary is deducted proportionately. By pointing out those averments it is asserted that the work being done by the Jewel Appraisers is continuous, permanent and perennial throughout the day and throughout the year without which the advancing of jewel loan is not possible. Though the Bank filed a counter affidavit disputing the claim of the appraisers, as pointed out in the above mentioned decisions, these details cannot be gone into by the Government as an adjudicating authority and it is for the appropriate Industrial Tribunal/Labour Court to arrive at such conclusion based on the materials.

20. It is brought to our notice that in Indian Bank, a Scheme of service conditions for Jewel Appraisers was framed. When similar dispute was raised by the appraisers of the Indian Bank, the same was referred to Industrial Tribunal, Madras, as I.D.No.25 of 1977 and the Tribunal by award dated 012.1979, held that the appraisers employed by the management-Bank (Indian Bank)

are entitled to wages and other conditions of service applicable to regular clerical "Award Staff" as part-time employees of the Bank and they are entitled to such proportionate wages and benefits as enjoyed by the clerical staff with effect from 01.04.1977. When the said award was challenged by the Bank, learned single Judge of this court in W.P.No.9206 of 1983 by order dated 112. 1986 upheld the award and dismissed writ petition filed by the Bank. The said order was confirmed by the Division Bench in W.A.Nos.330 and 350 of 1986 on 03.05.1990. The said order of the Division Bench was confirmed by the Supreme Court in Special Leave Petition No.10054 (s) of 1990 by order dated 10. 1990. It was brought to our notice that in the minutes of discussion between all Banks Appraisers Federation and the management of Karur Vysya Bank with regard to subject 17, viz., regular employment to all the appraisers, it was agreed that "the

case in respect of the issue filed by the Indian Bank is pending in the High Court of Madras. The matter will be discussed after the judgment of the High Court". The above conclusion was arrived at in the joint discussion held between Karur Vysya Bank Management and Karur Vysya Bank Employees Union on 15.05.1985 and 16.05.1985. We have already referred to the decision of the High Court and the Supreme Court, confirming the award of the Industrial Tribunal and dismissing the stand taken by the Indian Bank. In those circumstances and in the light of the abundant factual details, we are of the view

that the conclusion arrived at by the Supreme Court in Puri Co-operative Bank and Indian overseas Bank (cited supra) is not applicable to the case on hand. We make it clear that we have not expressed any definite conclusion as to the claim of the employees Union or the stand taken by the Bank. However, as pointed out earlier, all the above mentioned factual details have to be agitated before appropriate Industrial Tribunal or Labour Court, whereupon, a final decision is to be arrived at by the Tribunal/Court. We make it clear that only by proper adjudication by the concerned Tribunal or Labour Court, it could be ascertained as to what is the duty of appraisers herein and its nature,

and whether the duties discharged by them are similar to that of Jewel Appraisers concerned in Puri Urban Co. operative Bank (cited supra) as relied on by the Central Government. Though the order of the learned single Judge is very brief, we are satisfied that his ultimate conclusion cannot be faulted with and we are in entire agreement with the same.

21. Under these circumstance, we do not find any merit in the appeal filed by the Bank and consequently, the same is dismissed. In view of the dismissal of the appeal of the Bank, the second respondent - Government of India, Ministry of Labour, New Delhi, is directed to refer the dispute, viz., whether the Jewel Appraisers of the appellant Bank have a right to be regularised or not, to the appropriate Court for adjudication within a period of 30 days from the date of receipt of a copy of this order."

7. Learned counsel for the respondent bank submits that that the said decision was in respect of a different bank, viz., Karur Vysya Bank, whereas the present petitioner claims himself to be a employee of the Indian Overseas Bank and the order of the Hon'ble Supreme Court, which is referred to supra relates to Indian Overseas Bank. Therefore, it is submitted that the petitioner cannot seek to have a different treatment taking the aid of the order passed by the learned Division Bench of this Court relating to a different bank.

8. This Court is in agreement with the submission made by the learned counsel appearing for the respondent bank. Once the Hon'ble Supreme Court has held that jewel appraisers of the respondent bank are not employees in the decision noted supra, this Court cannot take any different view and is bound by the orders passed by the Hon'ble Supreme Court. Even otherwise, learned single Judge of this Court, in a batch of petitions has held that jewel appraisers are not employees and, therefore, this Court cannot direct the Government to refer the dispute. In any event, so far as the respondent bank is concerned, it was a party to the litigation, which went upto the Supreme Court and the Supreme Court ultimately rendered a decision that the jewel appraisers cannot be construed as employees. In the above circumstances, this Court does not find any infirmity in the impugned order passed by the Government and the same does not call for any interference from this Court in view of the settled legal position.

9. For the reasons aforesaid, this writ petition is devoid of merits and the same is liable to be dismissed and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Section Officer
The Union of India
Dept. of Labout & Employment
Shram Sakthi Bhawan
Rafi Marg, New Delhi 110 001.
2. The Regional Labour Commissioner (Central)
Kanaga Apartments
Suite No.III, I Floor
13-A, Lady Dock College Road
Chinna Chokkikulam
Madurai 625 002.
3. The General Manager
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763, Anna Salai, Chennai 600 002.
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5. The Branch Manager
The Management of
Indian Overseas Bank, rep. By
Maranthai Branch
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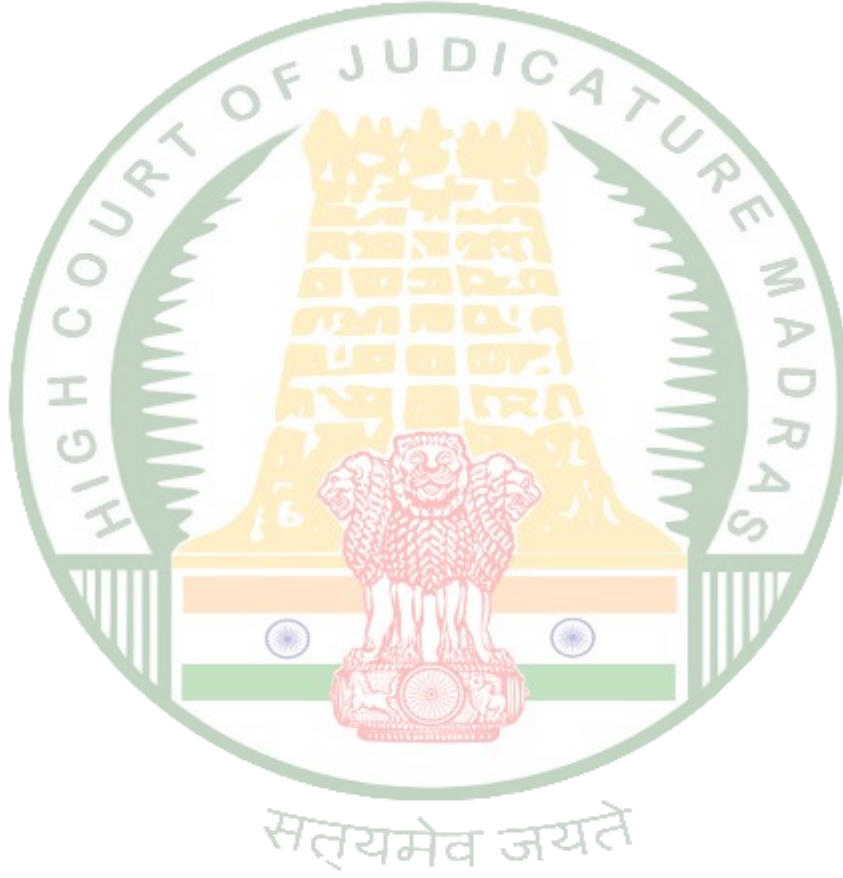
+2cc to Mr.T.R.Sundaram, Advocate SR.No.30565

+1cc to Mr.NGR.Prasad, Advocate SR.No.30837

+1cc to Mr.K.Sudalaikannu, Advocate SR.No.31133 (17/06/2019)

W.P. NO.8819 OF 2018

MP (CO)
GMY (10/05/2019)



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