Item no. 04

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice T.S. Sivagnanam
And
The Hon'ble Justice Hiranmay Bhattacharyya

MAT 451 OF 2022
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IA NO.CAN 1 OF 2022

SRI RAVI SHANKAR MALANI
VS.
STATE BANK OF INDIA & ORS.

For the Appellant : Mr. Soumya Majumder
Ms. Shagun Baid

For the Respondents : Mr. Susanta Pal

Heard on : 18.04.2022

Judgment on : 18.04.2022

T.S. Sivagnanam J.:

Affidavit-of-service filed in Court today be kept on record.

This intra-Court appeal at the instance of the first respondent in the writ petition is directed against the order dated 02.03.2022 passed in WPA 16222 of 2021 filed by the State Bank of India. The undisputed facts are that State Bank of India challenged the order dated 31.07.2018 passed by the Controlling Authority under the provisions of Payment of Gratuity Act, 1972 (in short “the Act”) computing the gratuity payable to the appellant at Rs.4,66,444/- which includes simple interest at the rate of 10% on the total amount of gratuity so computed. The State Bank of India filed an appeal before the Appellate Authority under the provisions of the said Act. The Appellate Authority by order dated 31.07.2019 dismissed the appeal and affirming the order passed by the Controlling Authority. Challenging the said order, the State Bank of India preferred the writ petition.

The first contention raised before the learned writ Court is that the appointment of the appellant was purely contractual and he was appointed as a contractual Chartered Accountant and that his contract though was for eight years, it was on yearly basis or renewable once in two years. The appellant having accepted the terms and conditions of the contract, not covered under the State Bank of India Employees Gratuity Fund, was not entitled to file an application before the Controlling Authority for computation of gratuity. The appellant contended that for all purposes he was treated as an employee of State Bank of India and was extended all benefits though the appellant would state that his service was contractual. Further, it was contended that under the relevant regulation there is a bar for the appellant to become a member of State Bank of India Gratuity Fund. But that will not disentitle him from being entitled to gratuity in terms of the provisions of the Act. Further, the appellant has rendered good service for the bank and every time he was recognized for his good service and enhanced emolument was also given to him. Further, the bank has issued a work experience certificate dated 30.06.2017 certifying that the appellant, who has been engaged in the State Bank of India from 14.11.2008 to 30.06.2017. He joined the bank as Credit Analyst on 14.11.2008 on contractual basis and at the time of relieving his designation was Vice-President (Chartered Accountant : Credit Analyst) in the Commercial Branch. Further, the certificate states that the conduct/performance of the appellant has been satisfactory during his employment in the bank.

Further, the appellant referred to the definition of employee as defined under Section 2(e) of the Act and the definition of wages as defined under Section 2(s) of the Act. The appellant places reliance on the decision of Hon'ble Supreme Court in **Allahabad Bank & Anr.** Vs. **All India Allahabad Bank Retired Employees' Association** reported in **(2010) 2 SCC 44** which dealt with Section 5 of the Act of 1972 which gives power to the government to exempt the provisions of the

Act in respect of certain establishment. In the said judgment the Hon'ble Supreme Court had held that there is no escape from payment of gratuity under the provisions of the Act until and unless the establishment has been exempted by the appropriate government. Further, it was held that the gratuity, being a statutory right, cannot be taken away except in accordance with the provisions of the Act.

The appellant also places reliance on the decision of Hon'ble Division Bench of this Court in a judgment delivered on 29th September, 2016 in **MAT 1298 of 2012**. The learned single Bench by the impugned order has allowed writ petition and set aside the order passed by the authorities under the Act.

On reading of the impugned order, particularly, paragraph 7 thereof, we find that substantial portion of the contention raised by the appellant has found favour of the learned writ Court. The only aspect on which the learned writ Court did not agree with the appellant was on the ground that the engagement of the appellant was contractual. Taking note of the contract, on this ground the learned single Judge has sought to distinguish the decision relied on by the appellant before the writ Court. We, thus, test the correctness of the order passed by the learned single Judge on this aspect.

The terms and conditions of the service of the appellant are governed by State Bank of India Chartered Accountants Appointed on Contract Service and Conduct Rules 2004. In Rule 8 thereof grades, emoluments and categorization of posts have been mentioned. It states that contractual appointment as Chartered Accountants will be on a consolidated emolument on cost to Bank basis as decided by Central Office Human Resources Committee and the remuneration on Cost to Bank basis as also eligibility criteria for appointment is subject to review by the Central Office Human Resources Committee of the Bank from time to time as per market conditions and shall consists of the components mainly, pay, house rent, conveyance, leave travel conveyance, medical expenses, subsidy on loans, supplementary allowance, variable pay. The remuneration payable has been categorized as pay or as wages had the appointment been classified under the workman category. Further, the contract entered into between the respondent bank clearly shows that the process of recruitment has been undertaken by the first respondent bank. Further, the terms of engagement of the appellant was to be governed by the rules and regulations of the bank including the power to initiate action for any misconduct or breach of any terms and conditions or stipulations mentioned in the contractual rules of the bank. The remuneration payable was referred to as salary. Apart from that the basic pay for various contractual employee based on certain parameters as mentioned under the rules. In the present facts and circumstances, it may be too late for the bank to take a stand that the appellant would have fallen within the definition of the term 'employee' as defined under Section 2(e) of the Act. Admittedly, the appellant was employed on wages and wages as defined under Section 2(s) of the Act means all emoluments which have earned by an employee while on duty and leave in accordance with the terms and conditions of his employment which are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and other allowances. Thus, under Section 2(s) wages has been defined in the widest possible term and the 'pay' will definitely fall within the definition of 'wages' as for all purposes to be treated as emoluments. If that be the case, then the appellant would fall within the definition of 'employee' as defined under Section 2(e) of the Act for the purpose of application of the provisions of Payment of Gratuity Act and not for other purposes. So far as the contract of employment is concerned, we find that though the contract of service is extended from time to time, these are all purely matters within the realm and control of the bank. Undoubtedly the service of the appellant was found to be good. Consequently, the contract was renewed from year to year or once in two years and the fact remains that the bank has always considered the appellant, who have been in continuous employment since 2008 till he resigned in the year 2017. The Controlling Authority under the provisions of the Act has taken note of the factual matrix and interpreted in the manner in which the service condition of the appellant has been couched and thereafter computed the quantum of gratuity payable. Thus, the order passed by the Controlling Authority dated 31.07.2018 was tested for its correctness by the appellate authority and after re-examining the fact the appellate authority by order dated 31.07.2019 has affirmed the order. Until and unless there was perversity in the approach of the authorities, the writ Court seldom interferes with the orders passed by the authorities exercising jurisdiction under labour social-welfare legislation. Further, on going through the offer of appointment dated 19.07.2008 we find that the rule of reservation has been adopted by the respondent bank, the appellant has been subjected to medical examination, his antecedents have been verified, non-compete agreement has been directed to be executed and more importantly the appellant was placed under probation for a period of six months. An employee, who has been recruited in an organization, is initially employed on temporary basis and placed under probation and upon successful completion he was absorbed into service. Thus, by placing the appellant under probation, for the purpose of considering the appellant as an employee as defined under Section 2(e) of the Act, the bank has treated him as an employee. Therefore, we find that the orders passed by the Controlling Authority as well as the Appellate Authority was just and proper and ought not to have been interfered by the learned writ Court especially in the absence of perversity.

Thus, for the aforesaid reasons, we are of the considered view that the order passed in the writ petition calls for interference. In the result, the appeal and the connected application are allowed and the order passed in the writ petition is set aside. Consequently the orders passed by the Controlling Authority as affirmed by the Appellate Authority are restored and the appellant shall be entitled to withdraw the entire amount of gratuity together with interest which is lying in the deposit before the Controlling Authority on production of a server copy of this judgment.

MAT 451 of 2022 and the connected application being CAN 1 of 2022 are disposed of.

Urgent photostat certified copy of this judgment, if applied for, be delivered to the learned advocates for the parties, upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

I agree.

(Hiranmay Bhattacharyya, J.)

RP/SB