



W.P.(MD)No.7324 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.11.2022

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7324 of 2017

P.Ganesan

... Petitioner

Vs.

1. The Chairman
Pandyan Grama Bank,
2-70-1, Collectorate Complex,
Virudhunagar.
2. The Regional Manager,
Pandyan Grama Bank,
Regional Office,
Thoothukudi.
3. The Branch Manager,
Pandyan Grama Bank,
Keela Eral, Kovipatti Taluk,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned reply letter sent by the office of the first Respondent in PAD/66/2016-17 dated 17.09.2016 declining the claim gratuity and other monetary benefits payable to the Petitioner, quash the same and further direct the Respondents to make



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payment of the eligible gratuity and other monetary benefits available to the Petitioner or any available to the Petitioner.

For Petitioner : Mr.V.Sasi Kumar

For Respondents : Mr.N.Dilip Kumar

ORDER

This writ petition is filed to quash the impugned order, dated 17.09.2016 and to direct the respondents to pay gratuity and other benefits payable to the petitioner.

2. The petitioner was appointed in the respondent's Bank as a Daily Deposit Collector from 02.07.1979. On 20.07.2016, the petitioner was disengaged from service on medical grounds. The claim of the petitioner is that since he has served from 1979 to 2016, he is entitled to gratuity and the respondents have rejected the same. Hence, the petitioner is seeking to quash the order and direct the respondents to give gratuity.

3. The respondents have filed a counter affidavit stating that



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the petitioner was working under NVN Scheme as a Collection Agent.

The petitioner is not a regular employee as per the Bank Service Regulations. Therefore, the respondents submitted that the petitioner is not entitled to any gratuity. Moreover, the respondents submitted that there is Contract Agreement between the petitioner and the Bank and the petitioner has executed the agreement. As per the agreement the petitioner is only the Collection Agent and he is not entitled to any benefits as per the agreement. Therefore, the respondents prayed to dismiss this writ petition.

4. Heard Mr.Sasikumar, learned Counsel appearing for the petitioner, Mr.N.Dilip Kumar, learned Counsel appearing for the respondents and perused the records.

5. The learned Counsel appearing for the respondents submitted that the issue of granting gratuity was considered by the Hon'ble Supreme Court in the case ***Indian Banks Association vs. Workmen of Syndicate Bank and others reported in (2001) 3 Supreme***



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Court Cases 36. Initially, the case was filed before the Tribunal. Subsequently, an appeal was filed before the High Court and the order was modified. Thereafter an appeal was preferred before the Hon'ble Supreme Court and the Hon'ble Supreme Court has confirmed the order passed by the High Court and dismissed the appeal filed by the Indian Bank Association.

6. The learned Counsel appearing for the respondents further submitted that the service regulation for the scheme “Nitham Valar Nidhi” under Clause 19 states that “the Collection Agent is not a regular employee of the Bank and as such any person is engaged under the scheme is not entitled to any benefit whatsoever which the regular employee of the Bank is entitled to.” On perusing the Scheme, this Court is of the considered opinion that the petitioner was not considered as a regular employee. Even as per the agreement also it is evident that the petitioner is not a regular employee. It also states that the agency will be terminated if the terms and conditions are violated by the petitioner. The contract further says that,



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“The Bank shall pay to the Collection Agent such remuneration for functioning as the publicity-cum-collection representative as may be determined by it from time to time and such payment may be subject to such deduction on account of penalties as may be provided by the Bank from time to time. The collection Agent shall not be entitled to or claim any other amount either by way of commission, remuneration, honorarium, allowances of any type or on any other account whatsoever. The remuneration and incentives at present determined by the Bank and the penalties may be changed, altered or modified by the Bank as its absolute discretion and from time to time.”

These conditions clearly shows that there is no time scale of pay or any other incentives or increments that is applicable to the regular employee. Therefore, this Court is of the considered opinion that the contract and scheme make it clear that the petitioner is not entitled to gratuity.

7. However, the issue was considered by the Honourable Supreme Court, where it has been stated that the Collection Agent shall not be considered as employee and is not entitled to absorption. But the Collection Agent shall be considered as worker and they are entitled to gratuity. Applying the said judgment, the petitioner being a worker may be entitled to gratuity.

8. The Learned Counsel appearing for the respondent submitted that the facts in the **Indian Banks Association** are different,



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since in those cases the aggrieved persons had approached the Tribunal, the evidence of the service of the collection agent were scrutinized, thereafter the Tribunal considered the case and passed an order. Therefore, the petitioner ought to approach the Tribunal and hence the present petition under Article 226 is not maintainable. It is seen from the records that the petitioner is nearly 66 years of age, at this stage and age, the petitioner cannot be directed to contest the case before any forum in order to ascertain whether the petitioner is entitled to any other benefits. Hence, this Court is of the considered opinion that the petitioner is entitled to some compensation alone. Therefore, this Court is fixing the compensation of Rs.35,000/- (Rupees Thirty Five Thousand only). This case may not be treated as precedent and it is granted only under Special circumstances.

9. With the above said direction, this Writ petition is disposed of. No costs.

24.11.2022

Index : Yes / No
Internet : Yes / No
jbr

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S.SRIMATHY, J

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