



W.P.No.12253 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.12253 of 2016

N.Krithika

... Petitioner

Vs.

1. The City Union Bank Limited
rep. By its General manager,
Administrative Office, 'Narayana'
24-B, Gandhi Nagar,
Kumbakonam – 612 001

2. R.Venkatasubramanian

...Respondents

Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the impugned order dated 22.01.2016 passed by the 1st respondent herein and quash the same and direct the 1st respondent bank to pay the petitioner a sum of Rs.8,40,340/- towards arrears of salary, exgratia and amount of privilege leave encashment.

For Petitioner : Mr.J.Nandagopal
For Respondents : Mr.P.Raghunathan for
M/s.T.S.Gopalan & Co.,



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ORDER

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The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the impugned order dated 22.01.2016 passed by the 1st respondent herein and quash the same and direct the 1st respondent bank to pay the petitioner a sum of Rs.8,40,340/- towards arrears of salary, exgratia and amount of privilege leave encashment.

2. The brief case of the petitioner is as follows:-

(i) The petitioner had achieved a total business to a tune of Rs.65 Crores in a period of 4 ½ years during the tenure as branch manager in Nachiyarkoil branch. After petitioner's transfer to Mannargudi, the petitioner has corrected 532 number of irregularities committed by the past manager, whose retirements were settled on the day of retirement itself and was relieved without giving charges. The petitioner was called for enquiry by the 1st respondent-bank for the mistake committed by the second line staff that too it was proved that no monitory fraud or bad name for the respondent -bank was done, but the 2nd respondent harassed the petitioner to a great extent using harsh words and even asking the petitioner to bring the relevant vouchers from Nachiyarkoil in the late night.



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(ii) Further, the petitioner submits that frequent enquiries lasting for long hours has given mental agony to the petitioner and also affected the petitioner's good reputation that has been maintained for all the past 26 years with the subordinates and petitioner's co-manager. The petitioner has applied for medical leave for six months from 14.06.2014 and further extension of leave for six months from 15.12.2014 and these letters were conveniently ignored by the HRMD and not even considered during the disbursement of petitioner's termination benefits.

(iii) The petitioner made a representation for payment of the exgratia amount of Rs.80,000/- on 08.06.2015 and another representation letter on 02.07.2015 for payment of the encashment amount of privileged leave of 46 days which amounts to Rs.81,032/-, however, the respondent / bank has not considered the representation of the petitioner, therefore, a Writ Petition No.33216 of 2015 has been filed and by order dated 15.10.2015, this Court directed the respondent to consider the representation of the petitioner. The 1st respondent without affording opportunity of personal hearing, disposed of the representation of the petitioner by an impugned order dated 22.01.2016 and rejected the claim of arrears of salary, payment of exgratia except privilege leave encashment of 38 days. The act



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of the 1st respondent Bank in not paying salary for the period between 13.06.2014 and 06.03.2015 is unfair. The impugned order is illegal, arbitrary and without following the principle of natural justice and it is liable to be set aside. Hence this petition.

3. The learned counsel for the petitioner would submit that the impugned order is liable to be set aside on the sole ground that the respondent-bank had not given an opportunity of personal hearing to the petitioner before rejecting the same. Further, rejecting the claim of salary from 01.07.2014 to 20.06.2015 is vexatious, arbitrary, illegal, that too when the petitioner was relieved from job only on 06.03.2015 and also accepted her request for leave on the said periods.

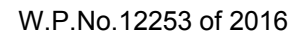
4. The learned counsel for the petitioner contends that the allegations made against the petitioner in the impugned letter are repetition of their show cause notices, which was replied by the petitioner through her letter dated 07.11.2013 and it is self explanatory. The respondent somehow or other wanted to reject the claim of the petitioner by reopening the issue, which was explained long back and rejected it.



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5. The learned counsel for the petitioner also submits that even though the 1st respondent is a private bank, they are amenable to writ jurisdiction when the private bank failed to enforce a statutory obligation. The respondent bank has committed gross negligence and forced the petitioner to quit the job and thereby caused untold mental agony and hardship to her. The respondent bank is liable to pay a sum of Rs.6,79,308/- and a sum of Rs.1,61,032/- in all together a sum of Rs.8,40,340/- The payment of salary to an employee by a private bank and exgratia are all statutory liability of an employer and when the said liability are not discharged by the employer, the employee can very well maintain a Writ Petition under Article 226 of the Constitution of India against the employer.

6. Per contra, the learned counsel for the respondents – bank filed a detailed counter and the first and foremost submission is that the respondent is a private bank and it is neither state nor other authority under Article 12 of the Constitution. It does not owe any positive public duty to the petitioner under any statute and as such, not amenable to the issue of a Writ as held by the Hon'ble Supreme Court in (2003) 10 SCC 733 (Federal Bank Limited Vs. Sagar Thomas) and (2005) 6 SCC 657 (Binny



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7. That apart, the learned counsel for the respondents submits that on 02.06.2015, the petitioner was paid a sum of Rs.8,19,135/- and on 22.06.2015, the petitioner received a sum of Rs.17,03,546/- respectively, in full and final settlement of her gratuity and provident fund. The petitioner has been receiving a sum of Rs.7,179/- every quarter, by way of pension with effect from 01.07.2015 under the annuity purchased by the Bank from the Life Insurance Corporation of India, under the group superannuation fund scheme.

8. Besides the above, the learned counsel for the respondents contends that the bank had sanctioned two housing loans to the petitioner and the said loans had become irregular and penal interest was debited to her account in accordance with the housing loan contract. The petitioner requested for waiver of penal interest and charge interest only upto 13.06.2014 (her date of relieving) The said request for waiver of penal interest was accepted, to enable her to close the loans and redeem her property. Despite the above payments, the petitioner seeks payment of exgratia during the period from July 2013 to June 2014 and the same is payable only to those employees, who continued to remain in service till 30.09.2014 and hence the Bank could not consider the same, thereby pleaded to dismiss the petition.



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9. Heard the learned counsels on either side and perused the documents placed on record.

10. It is the first and foremost contention of the learned counsel for the respondents that the 1st respondent / bank, is run by the shareholders and it is not a state or authority within the purview of Article 12 of the Constitution and they are not amenable to writ jurisdiction.

11. On going through the records it is seen that the petitioner was a Branch manager and even though assuming that there were some irregularities committed by the petitioner, as alleged by the respondents, no action was not been taken by the respondents. Further, the petitioner from the date of resignation to the date of acceptance of the resignation has not chosen to attend the office / respondent / bank and she has not performed her duty as an employee. While so, there is no question of releasing of her salary, as no work no pay principle has to be considered and applied.

12. As far as the other aspects with regard to encashment of leave and salary, the same shall be considered and paid by the respondent-bank to the petitioner as expeditiously as possible.



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With the above observation, the present petition is disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
ssd

To

The City Union Bank Limited
rep. By its General manager,
Administrative Office, 'Narayana'
24-B, Gandhi Nagar,
Kumbakonam – 612 001



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V.BHAVANI SUBBAROYAN, J.,

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