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W.P.No.15008 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15008 of 2016

And

W.M.P.No.13095 of 2016

Zonal Manager
Central Bank of India
Zonal Office
48/49, Montieth Road,
Egmore,
Chennai 600 008.

... Petitioner

Vs.

1.Deputy Chief Labour Commissioner (Central),
Chennai,
Appellate Authority under Payment of Gratuity Act,
26, Haddows Road,
Shastry Bhavan,
Chennai – 600 006.

2.Controlling Authority under the Payment of
Gratuity Act and the Assistant Labour Commissioner
(Central), Chennai,
26, Haddows Road,
Shastri Bhavan,
Chennai – 600 008.

3.A.Kuppuswamy
rep. through K.Venkatesan
Authorised Representative

... Respondents



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Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in GA.No.111 of 2015 and quash its order dated 09.02.2016 confirming the order of the second respondent dated 07.11.2014 in Gratuity Application No.215 of 2011.

For Petitioner : Mr.G.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondents : Mr.K.M.Ramesh for R3
Senior Counsel
for M/s.V.Subramani

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the first respondent in GA.No.111 of 2015 and quash its order dated 09.02.2016 confirming the order of the second respondent dated 07.11.2014 in Gratuity Application No.215 of 2011.

2.The facts of the case is that the petitioner is a Nationalized Bank having its Central Office at Mumbai and Zonal Offices at various places including Chennai. The third respondent was carrying on



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business of courier agency under the name of 'VM Couriers'. The petitioner used to send instruments and communications through such courier. In that contact, the third respondent used to call daily at the Office of the petitioner, collect the tapals, make entries in the delivery books, deliver the letters and return the delivery book to the petitioner and based on the number of letters delivered, the third respondent used to submit bill which will be settled by the petitioner.

3. According to the petitioner the third respondent had no letter of appointment, nor he was employed in the office of the Bank. He was only a freelancer, a professional courier and the same would not create master and servant relationship between the petitioner and the third respondent. However, the third respondent made application to the second respondent stating that the petitioner had engaged him to deliver cheques and was asked to take care of daily tapals of the zonal/ regional offices and all the branches of the Bank in the city and that he had put in more than 18 years of service and sought for gratuity. The second respondent passed award in favour of the third respondent. Aggrieved by the same, the petitioner preferred appeal under Section 7(7) of the Payment of Gratuity Act before the first respondent. The first respondent passed the impugned award



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confirming the award passed by the second respondent. Hence, this writ petition.

4.The learned counsel appearing for the petitioner submitted that, the third respondent was carrying on business of courier agency under the name of 'VM Couriers'. The third respondent had no letter of appointment and he was also not employed in the office of the Bank. He was only a freelancer, a professional courier and the same would not create employer and employee relationship between the petitioner and the third respondent. The petitioner used to send instruments and communications through the third respondent's courier for which the third respondent used to submit bill which will be settled by the petitioner. However, respondents 1 and 2 under the presumption that the third respondent has been engaged as a casual labourer without any agreement, passed award in favour of the third respondent, which is not sustainable one.

5.The learned Senior Counsel appearing for the third respondent submitted that the third respondent is an individual person and the petitioner forced the third respondent to raise the bill and hence the third respondent raised the bill. The third respondent was



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continuously employed as employee of the petitioner and delivered all the instruments and was asked to take care of daily tapals of the zonal/ regional offices and all the branches of the Bank in the city and further submitted that the employer and employee relationship was well established before the respondents 1 and 2 and hence, the impugned award warrants no interference.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts in the present case is not in dispute. Admittedly, the third respondent raised gratuity claim before the second respondent. The second respondent allowed the petition and the first respondent confirmed the same. However, in the present case, petitioner claim that the third respondent was carrying on business of courier agency under the name of 'VM Couriers'. To substantiate the same, the bills produced by the third respondent were marked as Ex.R1 series. Perusal of Ex.R1 series, makes it clear that the third respondent was carrying on business of courier agency under the name of 'VM Couriers' at No.16/17, Vallalar Street, Mogappair West, Chennai and collected instruments and communications from the petitioner, for



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which the third respondent used to submit bill which will be settled by the petitioner.

8.Further, this Court perused the order dated 07.11.2014 passed by the second respondent and it reveals that the Management of the petitioner did not produce any copy of the agreement or work order for the freelancer service of the third respondent to the petitioner. However, delivered the instruments and communications through the third respondent without any agreement. There is no need for any agreement for engaging the courier service.

9.Respondents 1 and 2 did not take into consideration that there is no agreement inbetween the petitioner and the third respondent for delivering the instruments and communications. Hence, there is nothing to substantiate that there exists employer and employee relationship inbetween the petitioner and the third respondent. In the absence of employer and employee relationship inbetween the petitioner and the third respondent, the award passed by the respondents 1 and 2 are perverse and are liable to be set aside.

10.Accordingly, the order dated 09.02.2016 passed by the first



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respondent in GA.No.111 of 2015 and the order dated 07.11.2014 passed by the second respondent in Gratuity Application No.215 of 2011 are hereby set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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