



WEB COPY



W.P.No.19770 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.19770 of 2023
and W.M.P.No.19057 of 2023

The Chairman,
Tamil Nadu Grama Bank,
Head Office,
6 Yercaud Road,
Hasthampatti,
Salem – 636 007.

... Petitioner

Vs.

- 1.The Appellate Authority under the
Payment of Gratuity Act, 1972 &
Deputy Chief Labour Commissioner (Central), Chennai,
Office of the Deputy Chief Labour Commissioner (Central),
5th Floor, Shastri Bhawan,
Chennai – 600 006.
- 2.The Controlling Authority under the
Payment of Gratuity Act, 1972 &
Regional Labour Commissioner (Central), Madurai (I/c),
Office of the Regional Labour Commissioner (Central),
Kanaga Apartments, Suite No.III, I Floor,
13-A Lady Doak College Road,
Chinna Chokkikulam,
Madurai – 62 002.
- 3.I.Veerapathiran
- 4.G.Mohamed Zafarullah



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5.M.Muthukumar
6.P.Ramakrishnan
7.P.Murugesan
8.N.Sivasankara Subramanian
9.S.P.Sundarlingam
10.S.Esakkimuthu
11.M.Boominathan
12.A.Mohamed Abdul Kathar Jailani ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent leading to the order dated 30.05.2023 in GA Nos.52 to 61 of 2022 and quash the same.

For Petitioner : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co
For Respondent : Mr.S.Janarthanam
Senior Panel Counsel [R1 & R2]
Ms.D.Geetha [R3 to R12]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the first respondent leading to the order dated 30.05.2023 in GA Nos.52 to 61 of 2022 and quash the same.

2. The case of the petitioner is that, it is a Banking Company governed by the provisions of the Bank Companies Act. They introduced Nitham Valar



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Nidhi (NVN) Scheme in order to inculcate the habit of savings amount the rural masses. In the year 1980, the respondents 3 to 12 were engaged as deposit collectors in order to implement NVN Scheme and to make the remittance of savings hassle free under the NVN Scheme. They were paid commission as per the agreement. While so, the respondents 3 to 12 made application before the second respondent claiming gratuity and the second respondent passed an order directing the petitioner Bank to pay gratuity as claimed by them vide order dated 20.09.2022. Aggrieved by the same, the petitioner Bank preferred an appeal before the first respondent on 09.12.2022 and the first respondent passed an order confirming the order passed by the second respondent vide impugned order dated 30.05.2023. Challenging the same, the petitioner Bank has filed the above writ petition before this Court.

3. The learned counsel appearing for the petitioner Bank submits that, the original authority as well as the appellate authority passed order in favour of the respondents 3 to 12 following the decision of the Apex Court in **2001 (3) SCC 36**. Further, he submits that, issue that arose before the Apex Court is in respect of dispute under the Industrial Disputes Act, 1947 (in short 'I.D. Act') and the said ratio cannot be made applicable to the case on hand falling



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under Payment of Gratuity Act, 1972 (in short 'the Act'). The definition of employee under the I.D. Act and the Payment of Gratuity Act is completely different. However, the meaning of employee is very wider in the Act, whereas, the workman defined in the I.D. Act has restricted meaning only in respect of person mentioned in Section 2(s) of the I.D. Act and the wages mentioned in Section 2(rr) of Act differs from the wages mentioned in Section 2(s) of the Act. However, the Labour Court wrongly applied the decision in the present case and held in favour of the respondents 3 to 12, which is not sustainable. Further, the issue before the Apex Court is under the I.D. Act and not under the Gratuity Act. However, applying the ratio rendered by the Apex Court to the present case is not sustainable and the impugned order is perverse and liable to be interfered with. Accordingly, he prays for allowing the writ petition.

4. Per contra, the learned counsel appearing for the respondents 3 to 12 submitted that, the law laid down by the Apex Court in respect of deposit collectors is applicable to the Gratuity Act also. Applying the law laid down by the Apex Court, the same was extended to the respondents 3 to 12/workmen, which cannot be interfered with. Apart from the Apex Court,



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the Division Bench of Kerala High Court specifically dealt with the issue with regard to Deposit Collectors under the Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'EPF Act') and held that the Deposit Collectors are entitled receive the provident funds in terms of Section 2 of the Act, since they are coming under the definition of wages under Section 2(s) of the Act. The commission received by the Deposit Collectors is that of wages and rendered its opinion and the same decision is applicable to the present case. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the parties and perused the materials available on records.

6. The issues arises in the present writ petition are whether the Deposit Collectors working in the petitioner Bank are entitled to receive gratuity amount and whether they come under the definition of 2(e) of the Act and wages payable under Section 2(s) of the Act. For better appreciation, the relevant provisions are as follows :-

Section 2(e):

“employee” means any person (other than an apprentice) employed on wages in any establishment, factory, mill, oil field, plantation, port, railway company



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or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Section 2(s):

“wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, over time wages and any other allowance.

7. A perusal of the Section 2(e), makes it clear that, 'employee' means any person other than an apprentice, employed on wages in any establishment, factory or shop, to do any skilled, semi-skilled or unskilled, whether the terms of such employment are express or implied and whether or not such person is not employed in a managerial or administrative capacity.

8. The first issue arises in the present case is whether the respondents would fall within the definition of employee under section 2 (e) of the Act. In the case on hand it is not the case of petitioner that the respondents 3 to 12 are either apprentice or working a managerial capacity. That being the



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admitted position, the respondents being neither apprentice nor working in managerial capacity, the respondents 3 to 12, employed as Deposit Collectors, would squarely fall within the ambit of the definition of employee under section 2 (e) of the Act.

9. The next issue is whether the commission received by the respondents 3 to 12 would fall within the definition of 'wages' under Section 2 (s) of the Act. As per Section 2(s) of the Act, 'wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowances but does not include any bonus, commission, house rent allowance, over time wages and any other allowance. In the present case, the learned counsel appearing for the petitioner vehemently contended that the commission is not available under Section 2(rr) of the I.D. Act, however, the commission is available under Section 2(s) of the Act. However, it is stand of the respondents that the commission received by them is wages and, therefore, they are not separately paid any wages. Further, it is also the case of the petitioner that respondents 3 to 12 were employed for the purpose of collecting the dues from the



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depositors. Respondents 3 to 12 having been employed by the petitioner, merely because the amount paid to respondents 3 to 12 have been connoted as commission cannot be the basis to hold that it would not fall within the ambit of wages. Any person in employment would be entitled to wages and there being no wages separately paid to respondents 3 to 12 by the petitioner, the commission paid to respondents 3 to 12 have to be given the meaning of wages. Further, a perusal of the decision rendered by the Apex Court in respect of Deposit Collectors case, it is clear that the commission payable for promotion of sales or business or both, which is received by the Deposit Collectors for promotion of business of the Bank receiving deposits from the investors, when no separate wages is being paid, and they are receiving only commission, the said commission would partake the character of wages. That being the ratio laid down, unless the petitioner Bank demonstrate that the commission received by respondents does not partake the character of wages defined under 2 (s) of the Act by placing reliance on any document including the agreement between the parties, the commission received by the respondents 3 to 12 would have to definitely fall within the four corners of the definition of “wages” provided under Section 2 (s) and in such a backdrop, the decision of the Apex Court would stand squarely attracted to



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the case on hand and the respondents 3 to 12 would be entitled to gratuity as per the provisions of the Payment of Gratuity Act.

10. For the reasons aforesaid, there is no perversity or arbitrariness in the orders impugned herein and the same does not warrant any interference at the hands of this Court and this Court is not inclined to interfere with the factual findings rendered by the authorities and the writ petition is liable to be dismissed.

11. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

28.08.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

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