(2013) 02 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition (C) No. 10991 of 2011

South Malabar Gramin Bank — APPELLANT

Vs

Regional Provident Fund Commissioner — RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(a), 7A(b)
Industrial Disputes Act, 1947 — Section 2(rr), 2(s)

Citation : (2013) 02 KAR CK 0061

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; Thomas Mathew Nellimoottil and K. Sasikumar, for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—The short question is as to whether Nithya Nidhi Deposit Collectors of the South Malabar Gram in Bank (''the Bank'' for short) are ''employees'' to whom the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act" for short) apply? The Regional Provident Fund Commissioner has by Ext. P8 order passed u/s 7A of the Act held that such deposit collectors are employees to whom the Act apply. The same is affirmed by Ext. P10 order in appeal by the Employees'' Provident Fund Appellate Tribunal, u/s 71 of the Act. Exts. P8 and P9 orders are impugned in this Writ Petition by the Bank contending that the deposit collectors are not ''employees'' under the Act. It is the case of the Bank that no contribution is liable to be paid in respect of deposit collectors as per the Scheme framed under the Act.

2. I heard Mr. George Poonthottam, Advocate on behalf of the Bank, Mr. Thomas Mathew Nellimoottil, Standing Counsel on behalf of the Regional Provident Fund Organisation and Mr. K. Sasikumar, Advocate on behalf of the deposit collectors.

3. Section 2(f) of the Act defines ''employee'' as follows:--

"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets, his wages directly or indirectly from the employer, and includes any person,--

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment,

(emphasis supplied)

Section 2(b) of the Act defines ''basic wages'' as follows:--

"basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include--

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer.

(emphasis supplied)

Ext.P1 agreement of agency entered into between the Bank and the deposit collectors contains several terms and conditions and clause 15 thereof is as follows:--

15. The Bank shall subject to the Rules for the time being in force pay to the Agent commission at the rate/rates determined by the Board of Directors of the Bank from time to time. The Agent shall not be entitled to or claim any other amount either by way of commission, remuneration, honorarium allowances, benefits of any type or on any other reasons whatsoever.

(emphasis supplied)

It is evident therefore that the deposit collectors are entitled to commission at the rates determined by the Bank from time to time. Such Commission would definitely form part of the emoluments earned by them in accordance with the terms of the contract of employment liable to be reckoned as ''basic wages''.

4. The deposit collectors are definitely employed in connection with the work of

the Bank to qualify for becoming an ''employee''. The nature of work of deposit collectors has been succinctly stated in Indian Banks Association Vs. Workmen of Syndicate Bank and Others etc. etc., as follows:--

25. Further, as seen from section 2(rr) of the Industrial Disputes Act, the commission received by Deposit Collectors is nothing else but wage, which is dependent on the productivity. This commission is paid for promoting the business of the various banks.

26. We also cannot accept the submission that the banks have no control over the Deposit Collectors. Undoubtedly, the Deposit Collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such Deposit Collectors because they have to go to various depositors. This would have to be done at the convenience of the depositors and at such times as required by the depositors. If this is so, then no time can be fixed for such work. However, there is control inasmuch as the Deposit Collectors have to bring the collections and deposit the same in the banks by the very next day. They have then to fill in various forms, accounts, registers and passbooks. They also have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank.

(emphasis supplied)

5. The definition of ''employee'' in the Act is more elastic and embracing than the definition of ''workman'' u/s 2(s) of the Industrial Disputes Act, 1947. The Supreme Court has held that deposit collectors are ''workmen'' even under the Industrial Disputes Act, 1947. There can be no doubt that the deposit collectors are ''employees'' and the Commission earned by them forms part of ''basic wages'' as defined in the Act. The decisions in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., and Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, do not relate to deposit collectors and are clearly distinguishable. The Assistant Provident Fund Commissioner is yet to determine the amount due from the Bank u/s 7A(b) of the Act. Only the dispute regarding the applicability of the Act to the deposit collectors u/s 7A(a) thereof has been dealt with now. It is open to the Bank to file returns indicating the commission paid to the various deposit collectors in order to decipher the contribution liable to be paid under the Act. There is no warrant for any interference with Exts. P8 and P10 orders passed by the authorities at this juncture.

The Writ Petition is dismissed. No costs.