

(2013) 12 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 18551 of 2012 and M.P. No. 1 of 2012

V. Palanivel

APPELLANT

Vs

The Manager, Kuravapulam Branch, Canara Bank

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 1 LLJ 452

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : K.S. Elangovan for M/s. Achari and Antoni, for the Appellant; S. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has filed the instant Writ of Certiorarified Mandamus praying for an issuance of order by this Court in

calling for the records pertaining to the order of the Respondent Kurav Jewel App 2012, dated 10.06.2012 received by the Petitioner on

19.06.2012 and quash the same. Also, the Petitioner has sought for passing an order by this Court in directing the Respondent/Bank to consider

the Petitioner's Representation dated 10.07.2012. According to the Petitioner, he was a jewel loan appraiser in the Respondent/Bank since

20.02.1988. The Respondent/Bank paid him commission for the service rendered by him. The jewel loan commission was paid to him at Rs. 5/-

for every Rs. 1000/- loan advanced by the Bank. He earned Rs. 12,000/- to Rs. 15,000/- per month.

2. The stand of the Petitioner is that he was suffering from renal disorder and took treatment for the same in Madurai for the past 3 years and spent

nearly Rs. 2 lakhs for the treatment. Further, he has to spend Rs. 26,999/- for every month towards medical expenses inclusive of dialysis.

3. At this stage, the Learned counsel for the Petitioner submits that the petitioner's health condition was known to the Respondent/Bank and even

though the Respondent/Bank has not pointed any discrepancies or shortcomings in his work to the petitioner, issued a proceedings dated

10.06.2012 and informed that since he was not well, Bank terminates his service as appraiser to their branch and terminated his service after giving

30 days period of work. The said order of the Respondent/Bank was received by the Petitioner on 19.06.2012. The Petitioner sent a reply notice

through his Advocate and also sent a Representation to the Respondent/Bank on 10.07.2012.

4. It is the submission of the Learned counsel for the Petitioner that the impugned order passed by the Respondent/Bank dated 10.06.2012 is

against law and probability of the case. Further, the said order is in violation of Article 14 and 21 of the Constitution of India.

5. The Learned counsel for the Petitioner urges before this Court that the impugned order dated 10.06.2012 passed by the Respondent/Bank is in

violation of the principle of natural justice.

6. The Respondent/Bank has not filed counter.

7. Conversely, it is the submission of the learned counsel for the Respondent/Bank that the petitioner was employed as jewel loan appraiser as per

the agreement entered into between the jewel appraiser and the Respondent/Bank (Special Contract). The said contract came into force on

26.02.1988 and since in the agreement itself in clause (2), it was specifically mentioned that ""jewel appraiser is not an employee of the Bank but he

is executing this agreement as a special contract and none of the provisions of the Canara Bank Code will apply to him nor any other regulations

governing the employees of the Bank from time to time and he is no way required to subject himself to the general discipline of the Bank as is

applicable to an employee of the Bank"" and hence, the Petitioner is not entitled to seek an order from this Court in setting aside the impugned

order dated 10.06.2012 passed by the Respondent/Bank.

8. To lend support to the contention that there was no relationship as "Master and Servant" between the Petitioner and the Respondent/Bank (and

further that the Petitioner being a Jewel Appraiser appointed on a special contract), the Learned counsel for the respondent relies on the judgment

of the Honourable Supreme Court in General Manager, Indian Overseas Bank Vs. Workmen, All India Overseas Bank Employees Union, ,

wherein it is observed and laid down as follows:

The appointment of regular employees is subject to the qualification and age prescribed. Their recruitment is made through employment

exchange/Banking Service Recruitment Board. They have fixed working hours and monthly wages and are subject to disciplinary control.

Control/supervision is exercised not only with regard to the allocation of work, but also the way in which the work is to be carried out. There is a

retirement age. They are subject to transfer and while in employment they cannot carry on any other occupation. On the other hand, the

engagement of jewel appraisers is not subject to any qualification/age. They are engaged directly by the local Manager. There are no fixed working

hours for them and no guaranteed payment. Only commission is paid to them. They are not subject to disciplinary control. There is no

control/supervision over the nature of work to be performed. Their charges are paid by the borrowers. There is no retirement age and no bar to

carry on any avocation or occupation. The Bank though has a list of appraisers, it is not obligatory for it to allot work to any particular jewel

appraiser. Therefore, the jewel appraisers are not employees of the Bank.

9. At this stage, this Court worth recalls and recollects the decision of the Honourable Supreme Court in Management of Puri Urban Cooperative

Bank Vs. Madhusudan Sahu and Another, , wherein it is held as follows:

The test of master and servant relationship is the existence of the right in the master to supervise and control the work done by the servant not only

in the matter of directing what work the servant is to do, but also the manner in which he shall do his work. Gold appraiser is engaged by the bank

to weigh the ornaments brought for the purpose of pledge and to appraise the quality, purity and value. Bank could direct the gold appraiser to do

this work, but not the manner in which he shall do it, and that was left to the gold appraiser exclusively as it depended on his skill, technique and

experience. The indemnity bond executed by the appraiser makes the gold appraiser responsible for all his acts as an appraiser and be accountable

for the loss sustained by the bank on account of under-valuation of the gold pledged. These terms inhered in the Bank the power to warn the gold

appraiser and to remind him that he was not expected to be negligent in his duty. Still there was a fair element of freedom though coupled with

responsibility for the gold appraiser in the manner in which he could do his work. The bank has got a list of gold appraisers and it is not obliged to

allot work to any one of them. In no event, gold appraiser can ask for work or periodic remuneration or idling wages. It is difficult to uphold

therefore that any master and servant relationship stood established in engaging the respondent as an appraiser of ornaments. Therefore Gold

appraiser is not workman within the meaning of Sec. 2(s) of the Industrial Disputes Act.

10. In view of the fact that the petitioner as a jewel appraiser of the Respondent/Bank was not an employee of the Bank and also this Court taking

note of the fact the Honourable Supreme Court in the decision General Manager, Indian Overseas Bank Vs. Workmen, All India Overseas Bank

Employees Union, has clearly held that "jewel appraisers are not employees of the Bank", this Court holds that the Petitioner is not entitled to seek

the relief of setting aside the impugned order dated 10.06.2012 passed by the Respondent/Bank. As such the Writ Petition filed by the Writ

Petitioner sans merits. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected

Miscellaneous Petition is also dismissed. It is made clear that the dismissal of the Writ Petition will not preclude the petitioner to seek appropriate

remedy before the competent forum in the manner known to law and in accordance with law.