

HOMAGE

COM SHANTHA RAJU DOYEN OF OFFICERS' TRADE UNION MOVEMENT PASSES AWAY

With profound grief we have to inform that Com Shantha Raju, former General Secretary, AIBOC and AISBOF, the doyen of supervisory cadre trade union movement is no more. We lost a veteran and one of the ardent and most passionate trade unionist, who succumbed to the Covid-19 virus on 12th April, 2021. Having joined as a clerk in State Bank of India on 01.07.1970, Com Shantha Raju entered the officers' fraternity in State Bank of India as a Trainee Officer in September

1977. He was a Commerce and law graduate and a Certified Associate of Indian Institute of Bankers. He had decided to dedicate himself to espouse the cause of officers at an early age and sacrificed his career. A close aide of Com R N Godbole, the legendary leader of bank officers' trade union movement, Com Shantha Raju, progressed through the ranks through his mettle, perseverance and dedication to lead the bank officers' movement. His trade union career was illustrious. He was the President of Dakshina Kannada Unit of AICOBOO, Secretary of All India State Bank Officers' Federation (AISBOF), President of State Bank of India Officers' Association (Karnataka), General Secretary of AISBOF and AIBOC. He was an Officer-Director



on the Central Board of SBI for two successive terms and was instrumental in clinching many benefits for the community. He was a Special Invitee to the 2nd UNI Finance Global Union World Conference at Geneva from 23rd to 25th May, 2006. He had strongly advocated unity amongst the entire banking fraternity and worked for the consolidation of UFBU. He became the UFBU Convenor during 2002-2006 and was instrumental in clinching numerous benefits in the historical 5th Joint

Note, which was signed on 2.6.2005 viz. removal of anomaly in D.A. and neutralization of D.A. @ 100% for officers, introduction of encashment of LFC facility et al and he had laid the foundation stone of achieving one more option for pension. It was a result of his foresight, persuasion and negotiating skill that IBA principally agreed and assured to continue negotiations on Second Option for pension during the negotiation process of 2005. Finally, the Second Option for Pension in the industry could be clinched only during the 6th Joint Note (IXth BPS) inked on 27th April, 2010 i.e. nearly after four years from the date of laying down his office. He also made efforts to bring in trade unions of the financial sector on a common platform. The grit and determination of Com Shantha Raju was

A JUG FILLS DROP BY DROP



displayed when he spearheaded the joint indefinite strike in SBI in April, 2006 on pension issues which ultimately achieved success.

His contribution to Confederation and supervisory cadre trade union movement is colossal. He played a leading role in formation of the NATURE (National Academy of Trade Union Research and Education), which is engaged in training the members and activists of various affiliates of AIBOC through Cadre Development Programmes, Leadership Development Programmes and imparting skills in handling disciplinary matters was exemplary. He has handled the sessions in almost every programme on disciplinary matters

since its commencement, even after retirement. He was the Editor of “‘Common Bond’, the official publication of AIBOC; ‘Officers’ Cause’, ‘Domestic Enquiry’, ‘Social Concern’ and ‘Labour Research’, official publications of AISBOF. Though he retired from Bank’s Service on 31.8.2006, he continued to serve the officers’ fraternity in many ways. He was also the President of SBI Pensioners’ Association (Karnataka) and had visited the Association office as well as AISBOF office at Bangalore the week before he passed away.

Com Shantha Raju was humility personified, which is the hallmark of a great leader. His unflappable demeanour and his ability to remain composed during testing situations were appreciated by one and all. His demise will leave a permanent void. He will continue to dwell in the hearts of our fraternity. He would live in every benefit that he was instrumental in achieving for the officers’ fraternity. His contribution would be forever etched in golden letters in the annals of the glorious history of our Confederation. He would be alive in all the struggles of our Trade Union movement. Common Bond recalls the glorious times when he was the editor of this journal. It assures that it will traverse the path laid down by legends like Com Shantha Raju as it gears it up for the upcoming battle against privatization. We will remain ever indebted to him for all the guidance and support that we have received. He had been a true friend, philosopher and guide and a constant source of encouragement and inspiration.

We extend our deepest condolences to the bereaved family.

COM SHANTHA RAJU AMAR RAHE!

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

This issue will reach the hand of its readers post 1st May, 2021. We recall that we could not reach our readers in May 2020. As we are preparing this issue, the pandemic is sweeping the country fatally. We had lost our ex-editor Com Shantha Raju in the cruel hands of covid. Covid also snatched a leading 21st century poet belonging to socially sensitive cultural movement in Bengal, Sankha Ghosh. Banking fraternity did lose hundreds of frontline bankers last year while they were serving the nation with a smile during the days of lockdown and phases of unlocking the economy. The loss of life and resources are more colossal in the wider national spectrum when thousands of migrants had to leave their work place with whatever belongings they had only to breathe a little fresher air in the four wall of their homes, thousands mile away from their work place. History is repeating. Possibly, it is repeating a little more cruelly.

However, the festivals do knock our doors as calendar rolls in. We had just celebrated the commencement of the harvesting season celebrated under the nomenclature, Vishu, Poila Boishak, Baisakhi, Bihu, Gudi Padwa, Jursital, Puthandu, Ugadi, Chaitra Pratipada, Navreh, etc. We join the millions in our country in wishing a prosperous coming year for the nation. But we cannot forget that thousands year back, our ancestors conceived all these festivals with the fond prayer for a bountiful monsoon to ensure enough food and prosperity for their children. Through the centuries, the common folk survive with the prayer that each New Year will wipe out the tears from their eyes making the world a better place to live in. Time passes. Festival assumes new colours, new hope and new aspirations. But the basic thread remains the same, prosperity for the mankind.

It is in this backdrop, the working people will embrace 1st May, 2021. The international celebration of May Day commenced in the year 1904 responding to a call of international socialist

conference at Amsterdam commemorating the sacrifice of the militant work force fighting for their right for survival in the hands of ruthless police administration at Chicago USA in the year 1886. In India, the result of the mini general election will be known on 2nd May. Common Bond knows for certain that whatever be the outcome of the election, our struggle for expanding and upholding the dominant role of public sector banking will continue. We have to intensify our struggle and commitment to the impending challenges of privatization in the name of injecting so called efficiency in the national economy. May'21 calls us that such unified response has to be built by ensuring the widest possible unity within the working class movement in general and within our rank in particular irrespective of caste, creed and religion.

Bank employees' movement under the leadership of militant AIBOC will definitely re-write the history as it builds up a combative movement against the move to privatization. But we just cannot forget that possibly very little have changed since the working people marched on the streets demanding regulatory working hours so that they can live with some dignity ensuring a work-life balance. This reality imposes the responsibility on the organised working-class movement to stand by the exploited work force in the unorganized sector. Such forward looking attitude will strengthen the bond within the movement; expand the horizon of camaraderie and work as an armour against the ongoing anti-privatisation struggle.

The lockdown year 2020 had seen the successful conclusion of the wage revision talks. This could be achieved at a time when the government effected the mega consolidation of public sector banks. National economy witnessed its worst ever contraction. Thousands were laid off. Nation had seen the march of unorganized work force along its modern highway in search of food and shelter. The pandemic is raising its ugly head

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

once again. The worst victim will be the national economy itself. There will be further loss of jobs, wage cut and may be another stream of migrant workers walking down the national highway for their sheer survival. A beleaguered government will try to respond by more privatization, selling of precious national assets and imposition of more regressive labour laws.

Within the banking sector, more attacks will come in the form of not only privatization of some selected banks but also rationalization of work forces, halt on recruitment, further tweaking of accounting standards, concession to corporates in the guise of providing relief in the distressed times. New form of attack deserves development of new weapons of resistance. We have to relook at the traditional weapons of strike and other forms of agitation and build a new symphony which touches the chords of our real resistance army, the common working people of the country. In other words, an organic relationship needs to be built with the entire spectrum of toiling democratic masses for building this movement of confrontation. We have to appreciate that privatization today will bring back FRDA Bill in a revised format tomorrow ensuring a double sword attack on the depositors money. Their savings will be at stake in the hands of the crony private owners and further it will be at stake through the new FRDA Bill when they will be asked to pay off the liability of the bank due to the failure of the corporate borrowers to repay the loan. This message of impending liquidation of banks needs to be percolated downwards and to the ears of the

customers with all the force that it deserves.

Let us take a resolute vow on the occasion of May Day that we will do with whatever forces we have in our command to reverse the attempted privatization. This will only be the beginning of a long drawn struggle to reclaim the space that we have lost to the fierce attack of capital during the last few decades. The capital has now thrown its semblance of decency to the regressive gale sweeping across all the democratic institutions targeting the workers covering it with a veil of social division amongst caste and religious line. These challenges also need to be negotiated.

History has given us an onerous responsibility. We need to make ourselves capable for discharging our duties. This May Day let us take an oath that we will not allow even an inch of diversion from the path which is laid down before us by such legendary leaders like Com Shantha Raju and inflict a decisive defeat to the policies of privatisation and all its associated off shoots for the benefit of the crony capitalists. Common Bond extends its revolutionary May Day greetings to all its readers, well-wishers, patrons, their family members and the vast AIBOC family. It also bows down its head in revered memory of all the comrades who laid down their lives fighting for justice and protecting the hard earned rights of the working people. Their sacrifices will not go in vain. We will reclaim and recapture our due share in the national economy. We will meet on the streets. We will script new version of our victory march.

Shared Article

TALE OF PSBS' WOE CONTINUES

We share with pleasure this article published in the Nagaland Post on 4th April, 2021 by Shri Kamal Baruah a former air warrior, now working in SBI which we find very much pertinent for our readers.

It was in the year of 1969, when 14 largest private banks were nationalized to promote rapid growth in agriculture, small industries and export thereby encouraging new entrepreneurs and developing

backwards areas. Imperial Bank was nationalized and renamed as SBI in 1955; big industrialists owned private banks were not willing to provide credit in agriculture. The share of agriculture in credit was just 2% in 1951 in compare with 34% for industry (64% in 1967). The war with China (1962) and Pakistan (1965) followed by two droughts made things worse leading to negative GDP growth rates and double digit inflation. Foreign exchange declined and rupee devaluated from 4.76 to 7.5 per

OVERCOME ANGER BY LOVE, EVIL BY GOOD

\$ in 1966. Then government was criticized for selling out to Americans.

But bank nationalization was a radical economic reform. It pushed 85% of banking assets under the control of the state. ₹ 50 crore in deposits was set as the threshold level for nationalization. Banking Laws (amendment) Act, 1968 gave guidelines to help agriculture and Small Scale Industry. As devaluation helped to improve the Balance of Payment, the Green Revolution began to ease the food constraints. Another nationalization of six more banks followed in 1980. The one positive impact of nationalization was the financial savings rose up to 91% as lenders opened new branches in unbanked areas helping Financial Inclusion. The economic boom driven by private sectors was overwhelmingly funded by PSBs (Public Sector Banking).

Nationalization no doubt gave government more control of credit delivery but political influence to PSBs continued. Bad loans mess weighed down Indian economy as defaulters are exposed in stress sectors. Rising energy prices and failed monsoons played stagnation for growth. SBI completed mergers of five associate banks along with BMB in 2017. In 2019, the government decided to bring down the number of PSBs to 12 from 27 by announcing merger of 10 PSBs. Now IOB, CBI and UCO of the 12 PSBs are under RBI's Prompt Corrective Action framework due to poor asset quality and loss of profitability.

In Union Budget 2021, the finance minister took an ambitious plan to privatize 12 PSUs to meet ₹ 1.75 lakh crore Disinvestment Targets. The government would like to have at least one company for each strategic sector and sell off everything else. Stakeholder, trade unions and banking industry have opposed the government for denying PSBs social responsibility. Distressed by the government decision for pursuing adverse banking reform policy, PSBs under the umbrella body of Union Forum of Bank Unions (UFBU) have called for a two-day strike on March 15 and 16 as a mark of protest against privatization. Instead of reforms of PSBs management, the government plan to raise funds by reducing fiscal

burden and avoiding recapitalize PSBs.

The NITI Aayog suggested that Punjab & Sind Bank, UCO and the Bank of Maharashtra be sold off. RBI advises government to reduce share in PSBs to 26%. Others recommended that healthy PSBs should also be privatized. The arguments are that the private sectors are more efficient and they will cut the flab and make more profitable. Government needs money by selling shares to raise funds. Finally, there are issues of NPAs as PSBs are saddled with highest gross bad loans. Are these hard reforms needed to attract investors?

It is ironical that said campaign is coming at a time when India's private banks have shown serious signs of mismanagement. ICICI had to sack its MD after allegations of nepotism. HDFC is under a cloud over conflict-of-interest allegations in auto-loan. Yes Bank had to be saved by SBI. RBI asked DBIL to take over the operation of Lakshmi Vilas Bank. Do bank bailouts really use taxpayers' money? So much for that private sector efficiency! Government is responsible for the current state of PSBs for fulfilling welfare function forcefully.

Banks collect public savings and lend capital for investment. But privatization promoters feel that the market is the most efficient allocator of capital. PSBs shares of social responsibility are larger than quarterly P&L Statement. But banks have to meet Liquidity Coverage Ratio as well as RBI's SLR and CRR. PSBs are not ready for BASEL III norms as they fall short of capital requirements and our gross NPA rise to 10% now. PSBs earn good operating profits and instead of strengthening them the government is not ready to infuse required capital, human resources and now proceeding disinvestment and privatization.

Privatizing PSBs are unjustified and regressive idea. There are speculations that agriculture sector might not get access to credit. PSBs helped in building the nation, looking after by supporting infrastructure development, industry advancement and social security, the financial empowerment and agricultural growth. When the global financial crisis (2008) hit, depositors shifted their money to SBI as they felt government to come for rescue.

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

Government claims Jan Dhan Yojana was a big success and it is possible because of PSBs initiative for 80% Indian accessing banking facilities. Taking recovery from corporate assets

would be beneficial. Government must make statutory framework to recover NPAs. Are there any other economic reasons to privatize PSBs now?

ECONOMY & BANKING - (A MOVE TOWARDS PRIVATISATION)

FINTECH FIRMS LIKE PHONPE, PAYTM AMONG OTHERS WILL SOON PROCESS RTGS & NEFT PAYMENTS

The Reserve Bank of India (RBI) unveiled a set of digital payment-related initiatives on 7th April, 2021, including enabling fintech firms to process RTGS and NEFT transactions and establishing new seamless integration and cash withdrawal standards for digital payment wallets. These steps seek to balance the competitive ground between non-bank payment operators and banks while simultaneously lowering settlement risks by growing the fintech ecosystem. Paytm, MobiKwik, ClearTax, MoneyTap, MoneyView, Visa, Mastercard, and PhonePe, and etc, will be able to accept RTGS and NEFT payments in the near future. In his Monetary Policy Committee (MPC) address, central bank governor Shri Shaktikanta Das stated that fintech firms such as prepaid instrument issuers (PPIs), card networks, and TReDS providers, etc., will now be able to join the central bank's centralised payment systems, such as RTGS and NEFT. This step is important because these networks, which are usually used for handling big-ticket interbank transactions and business payouts, were previously only open to banks. Shri Shaktikanta Das, the governor of the central bank, said that "Membership to the RBI-operated Centralised Payment Systems (CPSs) - RTGS and NEFT - is currently limited to banks, with a few exceptions."

He also added that "It is now proposed to enable non-bank PSOs like PPI issuers, card networks, white label ATM operators and Trade Receivables Discounting System (TReDS) platforms regulated by RBI, to take direct membership in CPSs." RTGS, or Real Time Gross Settlement System, is widely used for transactions of more than ₹ 2 lakh between businesses. Even though the central bank made it operational around the clock in 2020, its adoption by retail customers is minimal. Similarly, NEFT, or National Electronic Funds Transfer, is a payment system that allows funds to be transferred between banks. The RBI also declared it compulsory for digital wallets to be fully compatible on 7th April, 2021,

thus relaxing full-KYC PPIs' cash withdrawal and account balance cap standards. Although the RBI released regulations in October 2018 for full-KYC PPIs to implement interoperability on a voluntary basis, Das added that the migration toward interoperability has not been meaningful. To convert more PPIs, such as semi-KYC closed-loop wallets, into complete KYC digital wallets, the account balance cap on these PPIs has been raised to ₹ 2 lakh from ₹1 lakh. According to source (The Economic Times) Das also added that "To incentivise the migration of PPIs to full-KYC, it is proposed to increase the current limit on outstanding balance in such PPIs from ₹ 1 lakh to ₹ 2 lakh." Cash withdrawals are now restricted to full-KYC PPIs issued by banks, such as debit and credit cards. With this initiative, a payment wallet or prepaid card from Paytm, PhonePe or Mobikwik will now be used to withdraw cash from ATMs, micro-ATMs, and registered Point of Sale terminals. In addition, the central bank will authorise payments banks to raise their customers' account limits from ₹ 1 lakh to ₹ 2 lakh. Das explained that the aim is to expand payment banks' services to small merchants and other businesses.

Das further added that "The measure, in conjunction with the mandate for interoperability, will give a boost to migration to full-KYC PPIs and would also complement the acceptance infrastructure in Tier III to VI centres." The Reserve Bank of India has also introduced to allow full-KYC PPIs to be used for cash withdrawals. In a post-MPC press conference, RBI ED Rabi Shankar stated, "This is to level the playing field between banks and non-bank PPI issuers."

"The fact that PPI holders will have the comfort of knowing that they can access cash whilst holding balance in their PPI accounts will give fillip to digital payments," Shankar said.

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

CIRCULARS

36 dated 25th March, 2021: Text of the joint communiqué from four officers' organisations, i.e., AIBOC, AIBOA, INBOC and NOBO addressed to the Secretary, DFS dated 25.03.2021 on the 229th Report of the Department related to Parliamentary Standing Committee on Home Affairs on Management of Covid 19 pandemic and related issues - Recognition of Bank employees as frontline Covid-19 Warriors.

37 dated 30th March, 2021: Text of UFBU Circular No.2021/10 dated 28.03.2021 on the campaign Programme urging upon all our Affiliates/ State/ District Units to chalk out a sustained agitation programme as detailed in the circular and also come up with innovative ideas to protest against the draconian decision of the Central Government.

38 dated 03rd April, 2021: Text of UFBU Letter No.2021/02 dated 03.04.2021 addressed to the Secretary, DFS on the wage revision for employees and officers of Regional Rural Banks regarding DFS communication dated 01-04-2021.

39 dated 08th April, 2021: Text of UFBU Letter No. 2021/03 dated 07.04.2021 addressed to The Secretary, DFS on i) the Improvement in rate of Family Pension of Bank employees and ii) Increase in rate of contribution under Contributory Pension

Scheme.

40 dated 08th April, 2021: Text of UFBU Letter No. 2021/04 dated 07.04.2021 addressed to The Chairman, IBA for the discussions on residual issues.
41 dated 08th April, 2021: Text of UFBU Letter No. 2021/05 dated 08.04.2021 addressed to The Secretary, MOH&FW on COVID-19 vaccination drive - Extension of time for registration for FLWS

42 dated 08th April, 2021: Text of UFBU Letter No. 2021/06 dated 08.04.2021 addressed to The Chairman, IBA on Revision in Ex-Gratia payable to Pre-1986 Bank Retirees

43 dated 12th April, 2021: Circular on the sad demise of Com Shantha Raju, doyen of Officers' trade union movement.

44 dated 15th April, 2021: Text of UFBU Letter No.2021/07 dated 15.04.2021 addressed to the Secretary, DFS on COVID19 pandemic-measures to ensure steps/action to ensure availability of banking facility

45 dated 21st April, 2021: Text of UFBU Letter No. 2021/08 dated 21.04.2021 addressed to the Chairman, IBA on Spread of Covid 19 Pandemic - Urgent Measures to be initiated

Judicial Verdict

2021 LLR 366

DELHI HIGH COURT

Hon'ble Ms. Prathiba M. Singh, J

W.P. (C)3269, 3293, 3295, 3296 AND 3304/2018

AND C.M. Applns. 10178, 10313, 10312, 10179,

10311/2019 and 12923, 48637/2018 AND 17218, 16861,

16862, 16864, 17219/2020, Dt/-4-12-2020

Union Bank of India

Vs.

Mujahid Qasim

A. EMPLOYER-EMPLOYEE RELATIONSHIP – Factors to be considered – Employees were engaged by the Bank as Drivers but they were to perform duty of Peon also – These drivers were not personal drivers of executives of the Bank – When their services terminated, they industrial disputes – Industrial Tribunal passed award in their favour – Management challenged the award in writ petition – Held, for determination of

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

employer-employee relationship, several factors have been considered such as who pays salary, who is exercising control and supervision, who can take disciplinary action, how long the service lasts, nature of job i.e., professional or skilled work, nature of establishment, continuity of service, who supplies tools and materials, whether the employee was integrated into the employer's concern etc. Employees besides performing duty of picking up parcels, computers, sundry jobs, claiming reimbursement from the Bank – Log book was maintained to supervise their day-to-day activities – The drivers were integral part of day-to-day working – Tribunal has rightly held that services of employees in view of length of service deserve to be regularized – No ground to interfere in impugned award – Writ petitions are dismissed.

B. REGULARIZATION – Justification of – Termination was illegal since no approval as required under Section 33 of the Industrial Disputes Act, 1947 was obtained from the Court – Regularization as per settled law may be ordered by the Industrial Adjudicator where employer is found indulged in unfair labour practice either by not filling up permanent post or reducing the benefits of the labour the labour by not paying them bonus, gratuity being paid to regular employees, permanent or regular posts are lying vacant, where employer has already regularized services of some other employees of same category – Regularization is prerogative of management but unfair labour practice cannot be allowed – Since similar drivers have already been regularized, not extending same benefit to petitioners would be discriminatory in nature and violative of Article 14 of the Constitution – Hence, reinstate of the petitioners is upheld – Bank is directed to regularize services of petitioners.

C. UNFAIR LABOUR PRACTICE – When would come into existence – When employer engages workmen as badlis, temporaries or casuals for years together with the objective of depriving them benefits payable to permanent workmen but employing such workmen on the jobs of perennial nature, it would be inferred that employer is indulged in unfair labour practice – In such cases, awarding regularization of services of such temporary employees by Labour Court is proper.

IMPORTANT POINTS

Determinative factors for establishing employer-employee relationship, there are several factors including but not excluding others for consideration such as;

- I) who is appointing authority of the workmen;
- II) who pays salary to workmen;
- III) who is exercising control and supervision of the workmen;
- IV) who can take disciplinary action and against the workmen;
- V) how long the service lasts;
- VI) nature of job i.e., professional or skilled work;
- VII) nature of establishment;
- VIII) continuity of service;
- IX) Who supplies tools and materials;
- X) Whether the employee was integrated into the employer's concern etc.

Termination of services of employees is illegal if required approval as per under Section 33 of the Industrial Disputes Act, 1947 is not obtained from the court.

Regularization as per settled law may be ordered by the Industrial Adjudicator where;

- i) employee is found indulged in unfair labour practices either by not filling up permanent post or reducing the benefits of the labour by not paying them bonus, gratuity being paid to regular employees;
- ii) permanent or regular posts are lying vacant;
- iii) where employer has already registered services of some other employees of same category;
- iv) Regularization is prerogative of management but unfair labour practice cannot be allowed.

Unfair Labour Practice on the part of employer would come into existence when it is proved that employer engages workmen as badlis, temporaries or casuals for years together with the object of depriving them benefits payable to permanent workmen but employing such workmen on the jobs of perennial nature, it would be inferred that employer is indulged in unfair labour practice.

THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE

JUDGEMENT

PRATHIBA M. SINGH, J. - 1. The judgment is pronounced through video-conferencing.

2. All these petitions raise a common question – whether drivers, who were serving various Executives in the erstwhile Corporation Bank, which is now merged with the Union Bank of India (hereinafter, 'Petitioner/Bank'), are employees of the Bank. And if so, whether they are entitled to regularization. The Petitioner has filed these petitions challenging two sets of orders.

3. In W.P(C) 3296/2018, the challenge is to the industrial award dated 29th November, 2017 passed by Central Government Industrial Tribunal ("CGIT") in ID No. 1/2014, wherein it was held that all the drivers/claimants are 'Workmen' and that there is an employer-employee relationship between the Bank and them. Accordingly, the Tribunal held that the demand of the drivers for regularization of their service was both legal and valid and had directed regularization of all these drivers.

4. A second set of awards were passed on the same date i.e. 29th November, 2017 in complaints filed by the drivers, wherein the Tribunal held that the termination of drivers from employment, is contrary to law and therefore, they were directed to be reinstated in service. The challenge in the other writ petitions is to the various awards passed directing regularization of the Respondent-drivers.

Analysis and Findings.

The short question is whether there exists an employer-employee relationship between the Bank and all the Respondents who were employed as drivers.

The case of the Union was that the drivers were appointed against sanctioned posts, after obtaining approvals from the Head Office. They used to work, not merely with the executives but would perform various other tasks including taking clearance from one branch to others, collection of Cheque Books from one to another, carrying cash from one branch to another, taking deliveries of gadgets such as computers and their accessories from one branch to another, taking deliveries of the goods that were consigned to the respective branches from different airlines, taking deliveries of TDS cheques from other customers like the ministries, carrying cash against NSC/ deposits from post office, and other sundry works.

The Union also claimed that the cleaning expenses, salaries, petrol reimbursement etc. were given by the Bank. The Workmen then sought regularization which was not acceded to by the Bank. Upon the demand of regularization being raised by the Union, the Bank's attitude towards the drivers completely changed.

The drivers had worked for more than 240 days in each calendar year and some drivers were being selectively regularized. The Union representing the drivers approached the CGIT, on the ground that the drivers are entitled to be regularized from the date of initial appointment.

The Bank's case before the CGIT was that the drivers were the personal car drivers of the Executives, and it further pleaded that recruitment is by a proper process through the employment exchange only after the candidate fulfils the eligibility criteria. Their submission was that ad-hoc drivers cannot be given regularization as there is no master servant or employer-employee relationship.

The Bank disputed the averments of the Union. It, however, admitted that the expenses for maintenance, petrol and oil requirements, and reimbursement of salaries was given by the Bank, as they were fulfilling the needs of the higher-level officials in the Bank and were rendering services to them. The Union filed a large number of documents, including letters, vouchers, logbooks etc. supporting its claim. Evidence was led before the CGIT, both by the Workmen and as also the Management. The Workmen exhibited all the documents including the vouchers for payment, voucher for overtime, travel allowance voucher, letters regarding outdoor duty, appointment letters, etc.

The witness on behalf of the Management confirmed that the bio-data photograph, driving license, address proof etc. of the drivers was sent to the Head Office of the Bank for ratification. The witness also confirmed that the parameters for engaging drivers was issued by the Head Office. He also admitted that logbooks are maintained, which show the activities conducted by drivers. He further admitted that posts for peon-cum-drivers have also been sanctioned. The witness, however, could not give the figures of personal drivers absorbed by the Bank into its service. He confirmed that three of the drivers were absorbed during the pendency of the dispute.

In the light of the above decisions, the factors which are to be considered, to determine as to whether an

EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE

employer- employee relationship exists would inter alia, include:

- (a) who is the appointing authority;
- (b) who is the pay master;
- (c) who can select and dismiss;
- (d) how long does the alternative service last;
- (e) the extent of control and supervision;
- (f) the nature of the job, e.g., whether it is professional or skilled work;
- (g) nature of the establishment;
- (h) the right to reject;
- (i) who can take disciplinary action;
- (j) whether there is continuity of service;
- (k) whether the person was fully integrated into the employer's concern (integration test);
- (l) who organizes the work, i.e., supplies tools and materials; and
- (m) who exercises control on when and how the work is to be performed.

An overall analysis of all the relevant judicial decisions, would show that the facts herein, are similar to the facts of Bank of Baroda v. Ghemarbhai Harjibhai Rabari (supra). In the said case, the Supreme Court was dealing with a situation wherein, the employees had produced cogent evidence in the form of vouchers to show that they worked as car drivers for the Bank. The Supreme Court held that the employees had discharged their onus by producing these vouchers and hence the award of the CGIT, reinstating the Workmen with full back wages, was upheld by the Supreme Court.

By applying the above tests, analyzing the case laws cited, and perusing the documents on record, as also the findings of the CGIT, there is no doubt that an employer-employee relationship exists between the Bank and the drivers. This is clear from an analysis of the documents placed on record which establishes the following facts:

- (a) All Respondents were working as drivers with various Executives of the Petitioner Bank.
- (b) At the time of appointment, the biodata of the drivers was submitted to the Bank, which was thereafter forwarded to the personnel administrative division of the Bank, located in the Head Office at Mangalore.
- (c) The salary for the drivers was being reimbursed by the bank to the Executives concerned, by means of vouchers.

(d) The drivers have served in the Bank for several years.

(e) The drivers did not merely work for the Executives, but also did various other sundry jobs such as collection/delivery of documents/packets/parcels/items/equipment from various locations for the Bank.

(f) Expenses incurred by them were reimbursed by the Bank.

(g) The Bank has issued letters confirming the salaries earned by the drivers.

(h) The Bank has facilitated the driving license being obtained by the drivers, by issuing them certificates that they are working in the Bank. The text of one such certificate is set out below: –

"This is to certify that Sh. Naresh kumar, s/o Sh. Daya ram is an employee of our bank. He is working with us since last four years. As per our records he is residing at D-5/103, Tisra Pusta, Vijay Colony, new Usman Pur, Delhi-110053.

This certificate is issued in his specific request as he has to produce for making driving license. We confirm the same."

(i) The vouchers issued by the Bank for the monthly payments to the drivers, mention the particulars as "amount drawn for reimbursement of driver" or the "amount paid to the driver. Reimbursed" @ page 120, 121 of the paper books "cash paid to Surinder on account of car driver salary month of May 2006 by AGM" @ page 124; etc.

(j) Copies of logbooks showing the details of travel of the car, petrol consumed, purpose etc. The above facts have been gleaned from the large number of documents placed on record and cannot be disputed by the Bank.

The documents on record also show that the drivers have not been exclusively used for the executives of the Bank but have also been serving the Bank in various roles including picking up parcels, computers, running errands, claiming reimbursements, taking delivery of cars and other sundry jobs. Further, the Bank has given them letters and certificates, repeatedly confirming that they are the drivers of the Bank for issuance of licenses and for renewal of driving licenses. The initial appointment was also made after confirmation with the Head Quarters of the Bank. Complete reimbursement of salaries and well as

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

expenses of the drivers has been given by the Bank. A logbook also has been maintained to supervise their day-to-day movements and activities.

Therefore, irrespective of whichever test is applied, whether it be the control test, or the integration test or any of the other tests, the above facts clearly show that the functions performed by the drivers was integral to the everyday working of the bank. The documents establish the existence of employer-employee relationship and that the drivers were the employees of the Bank. They were not retained through an independent contractor and that is not even the case of the Bank. The Bank's case that the drivers were exclusively working for Executives is also negated, as it has been proved, on record, that the drivers would continue to remain in the same place irrespective of the transfer or retirement of the Executive and they would be placed under different Executives or the incumbent. The case of the Bank that they were employees of the Executives is thus belied.

Hence, in view of the above facts and discussion, this Court has no doubt that the drivers were the employees of the Bank.

Dealing with the question of regularization of the drivers in the Bank, the bank itself was willing to regularise the employees as recorded in the order dated 6th April 2018 which reads:

W.P.(C) 3269/2018 & CM No.12882/2018 (stay)

1. By impugned Award dated 29.11.2017 the Industrial Adjudicator while allowing the complaint under Section 33A of the Industrial Disputes Act, 1947 (in short "I.D. Act") filed by the respondent directed his reinstatement with the petitioner Bank observing that at the time of terminating his services no approval as required under Section 33 of the I.D. Act was obtained from the Court and termination was illegal.

2. Learned counsel for the petitioner submits that the respondent was personal Driver of the Executive/ Manager of the petitioner Bank and there was no relationship of employer and employee between the parties. However, he submits that there is a policy of regularisation of such personal Drivers with the petitioner Bank as per the policy/guidelines subject to meeting out the requisite criteria.

3. On taking steps, issue notice to the respondent by all permissible modes.

4. List on 19.11.2018. Meanwhile, no coercive steps shall be taken against the petitioner till the next date of hearing. Even during oral arguments, Ld. Counsel for the bank has submitted that the bank is willing to regularise, however, subject to certain conditions such as fulfilment of eligibility criteria etc.,

The Supreme Court has recently considered the parameters for regularization of employees in Oil and Natural Gas Corporation v. Krishan Gopal (supra). The Court held:

"xxx

The following propositions would emerge upon analysing the above decisions:

(i) Wide as they are, the powers of the Labour Court and the Industrial Court cannot extend to a direction to order regularisation, where such a direction would in the context of public employment offend the provisions contained in Article 14 of the Constitution;

(ii) The statutory power of the Labour Court or Industrial Court to grant relief to workmen including the status of permanency continues to exist in circumstances where the employer has indulged in an unfair labour practice by not filling up permanent posts even though such posts are available and by continuing to employ workmen as temporary or daily wage employees despite their performing the same work as regular workmen on lower wages;

(iii) The power to create permanent or sanctioned posts lies outside the judicial domain and where no posts are available, a direction to grant regularisation would be impermissible merely on the basis of the number of years of service;

(iv) Where an employer has regularised similarly situated workmen either in a scheme or otherwise, it would be open to workmen who have been deprived of the same benefit at par with the workmen who have been regularised to make a complaint before the Labour or Industrial Court, since the deprivation of the benefit would amount to a violation of Article 14; and

(v) In order to constitute an unfair labour practice Under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act, the employer should be engaging workmen as badlis, temporaries or casuals, and continuing them for years, with the object of depriving them of the benefits payable to permanent

DO NOT DWELL ON THE PAST OR FUTURE. CONCENTRATE ON THE PRESENT MOMENT

workmen.

xxx"

Thus, regularization is not to be directed in a mechanical manner. The regularization of employees is the sole prerogative of the management. Unless and until the employee has indulged in an unfair labour practice, temporary or daily wage employees/ad-hoc employees cannot be regularized. The exception to that is contained in paragraph 23 (iv) of the said judgment, where the Supreme Court has held that if similarly situated workmen have been regularized, then other workmen cannot be deprived of the same benefit. In view of the fact that various drivers who were similarly situated have already been regularized by the Bank, not extending the same benefit to the 11 drivers, to whom these petitions relate to, would be discriminatory in nature, and violative of Article 14 of the Constitution.

For whatever reasons, the drivers who were similarly placed have already been regularized and they as well as the others have rendered long service. Each of the drivers, in these petitions, has been employed

with the Bank for at least 10 years. Considering the long duration of service and the fact that they are clearly employees of the Bank, their services deserve to be regularized in accordance with the judgment of the Supreme Court in Oil and Natural Gas Corporation v. Krishan Gopal (supra).

Mr. Arora, Id. Counsel for the Bank, has raised a fine distinction in the wording of the reference and the manner in which the CGIT considered the documents in evidence, on record. The distinction between an "employee" and a "workman" though existing in law, the conflation between the two by the CGIT would not affect the final relief being granted in these cases, as the facts show that there exists an employer-employee relationship.

Accordingly, the impugned order by the CGIT does not warrant any interference. The reinstatement of the employees is upheld. It is directed that the bank shall regularize the services of the 11 drivers whose names are mentioned in the paragraph above.

All writs and pending applications are dismissed in the above terms. Necessary steps shall be taken by the Bank within 6 weeks.

..Subscribe.....Establish....."Common Bond"

An Official Publication Of AIBOC

EDITORIAL BOARD

Editor: Soumya Datta

Member: Comrade Murali Soundararajan T.

RATES OF SUBSCRIPTION: ANNUAL: ₹ 30/-

Drafts Should be Drawn

IN FAVOUR OF AIBOC AND MAILED TO

ALL INDIA BANK OFFICERS' CONFEDERATION

**C/O STATE BANK OF INDIA OFFICERS' ASSOCIATION
(Bengal Circle)**

**6th Floor, E-Block, Samridhi Bhavan, 1, Strand Road,
"Kolkata - 700001" ☎ 2210-1234, Fax (033)2210-2210**

E-mail: aiboc.sectt@gmail.com

Web site: http://www.aiboc.org

REGISTERED NEWS PAPER

**LICENSED TO POST
WITHOUT
PREPAYMENT**

TO

If Undelivered Please Return To

The All India Bank Officers' Confederation

SBI Buildings, St.Mark's Road, Bangaluru - 560 001.

Printed & Published/Edited by Shri Soumya Datta on behalf of AIBOC. at State Bank Building, St.Mark's Road Bangaluru-560 001.
Printed by Shri. Ranga Reddy, at L. V. Graphics 3968, 7th Cross, 2nd Main, Gayathri Nagar, Bangaluru - 560 021.