

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7507 OF 2013**

General Manager, Petitioner
Oriental Bank of Commerce

Vs.

Mr. Sanjay Bhimrao Ghasti & Ors. Respondents

Mr. H. Kumar Vaidyanathan, Advocate for the Petitioner.
Mr. Jayprakash Sawant, Advocate for Respondents No. 1 and 2.

Coram : Smt. R.P. SondurBaldota, J.

Date : 9th April, 2015.

P.C.

1 By this petition, the petitioner-employer challenges the award dtd. 10th December, 2012 passed by the Central Government Industrial Tribunal No.2, Mumbai, allowing the Reference at the instance of respondents no.1 to 3. The award declares that the contracts between the petitioner and it's contractors are sham, bogus and mere camouflage to deprive respondents no. 1 to 3 from getting the benefits of permanency and that these respondents are the employees of the petitioner. The impugned award further directs the petitioner to reinstate respondents no.1 to 3 in service as Office Boy-cum-Peon forthwith with 10% back-wages from 1st December, 2005 till the date of their reinstatement and grant them benefits of permanency

with continued service. They are directed to be treated as permanent after the period of probation of two years from the date of their respective initial appointments and pay the difference in their pay and allowances from the date of completion of their respective probation period till the date of their termination.

2 The terms of the reference made by the Government of India, Ministry of Labour and Employment read as follows:

“Whether the action of the management of Oriental Bank of Commerce, Mumbai by terminating the services of S/Shri Sanjay Ghasti, Reghavendra Billava and Harish Karkera w.e.f. 30-11-2005 is justified? If not, what relief these three workmen are entitled to?”

3 The brief factual background of the Reference is as follows:

Respondent no.1 was working as Office Boy with Global Trust Bank in it's Opera House Branch at Mumbai w.e.f. 18th November, 1994. He was attending the work in the nature of data entry, collecting cheques from RBI for clearance, cheques in outward as well as inward department. Though he was working under direct control and supervision of the bank, he was paid wages through agencies, M/s Bombay Pesticides Pvt. Ltd. and Sweeptech (HUF) Limited, appointed by the management. For the initial period of November, 1994 to December, 1996, the agency concerned was M/s Bombay Pesticides Pvt. Limited. For the subsequent period i.e. 1st January, 1997 to 31st January, 2001, the second agency that came into operation was

Sweeptech (HUF) Limited. Thereafter the management of Global Trust Bank paid wages to respondent no.1 directly for the period 1st February, 2001 to 31st August, 2005.

4 Respondents no.2 and 3 were also employed by Global Trust Bank under the designation of Senior Executives w.e.f. 11th September, 2000. They were in continuous employment of the bank, carrying out work of doing data entry, collecting cheques from RBI for clearing the cheques in connection with inward and outward department. Though, they were working under the direct control and supervision of Global Trust Bank, they received their wages through the agency appointed by the management. For the period 11th September, 2000 to 19th December, 2002, they received wages from M/s Pioneer Classics and thereafter for the period 20th December, 2002 to 31st August, 2005 directly from Global Trust Bank.

5 Thereafter Global Trust Bank amalgamated with the petitioner-bank and the petitioner started paying wages to all the three respondents through its agency M/s A.M. Bhatkal Financial Services from 2nd September, 2005. The services of all the three respondents came to be terminated on 30th November, 2005. The respondents alleged that the agencies engaged by the Global Trust Bank and after amalgamation by the petitioner are sham and bogus and that the real employers of respondents no. 1 to 3 are the Global Trust Bank and the petitioner. The respondents have been treated as the employees of the

contractors so as to deprive them from getting benefits of permanency with the petitioner. It is alleged that the termination of these respondents is also at the instance of the petitioner.

6 The petitioner had contested the Reference contending that the Global Trust Bank had merged with it in the month of August, 2004. At that time, respondents no.1 to 3 were engaged by Global Trust Bank on contractual basis for a specific period in the supervisory category i.e. Clearing Executives. The contract of service between respondents no.1 to 3 and Global Trust Bank executed in the third week of December, 2003 clearly specified that the services of these respondents were purely contractual and were for a maximum period of one year only. The contract of amalgamation between Global Trust Bank and the petitioners specified that a person employed by another employer or employed for a specific period on contractual basis, cannot claim regular employment or absorption in the petitioner bank. Therefore, there was no legal binding on the petitioner to absorb respondents no.1 to 3 in the regular employment.

7 The petitioner also contended that the respondents were employed in the supervisory category i.e. as Clearing Executive and were drawing salary more than Rs.5,000/- per month, as such they were not covered by the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947. They also challenged the Reference on the ground of non-joinder of the contractors to the Reference.

8 The Industrial Court considered the nature of the work done by the respondents no.1 to 3. It noted that these respondents in their statement of claim as well as the affidavits of evidence stated that they were working as Office Boys and used to do the work of data entry, collecting cheques from R.B.I. for clearance to outward as well as inward departments. These statements in evidence were not challenged in the cross-examination. The Industrial Court also noted that the formal education of respondents no.1 to 3 is also not high enough to appoint them to the supervisory post of Clearing Executive. Therefore, it treated respondents no.1 to 3 as workmen within the definition provided under Section 2(s) of the Industrial Disputes Act. In my opinion, considering the facts that stand established by the evidence on record, there is no infirmity in the finding.

9 The impugned award further holds that respondents no.1 to 3 are direct employees of the petitioner and not the contractual employees. It has held that the contractors of the Global Trust Bank as well as contractors of the Petitioner named by it are sham and bogus and it was an exercise to deprive respondents no.1 to 3 of the benefits of permanency with the petitioner. Although the contractors have been specifically named, there is no dispute that there was change of contractors by the Global Trust Bank with the employees remaining same. Further for a substantial period prior to the amalgamation, the wages of respondents no.1 to 3 were paid directly by the Global Trust

Bank. These facts are not disputed and the facts have led the Industrial Court to observe that the contracts are sham, bogus and mere camouflage to deprive respondents no.1 to 3 of the benefits of permanency. It is seen that respondent no.1 has worked for about nine years and respondents no.2 to 4 for four years, prior to the termination of their services. Thus, there is no infirmity in the second finding also.

10 As regards the direction for payment of back-wages to the extent of 10%, the impugned award observes that since the date of termination, respondents no.1 to 3 may be working elsewhere to maintain themselves and hence awarding full back-wages would burden the petitioner unnecessarily, but at the same time denial of back-wages to respondents no.1 to 3 would amount injustice to them and has awarded back-wages to the extent of 10% from the date of termination of their services till their reinstatement. This direction is also fair and reasonable. Hence, I am not inclined to interfere with the third finding also.

11 The petition is dismissed.

(Smt. R.P. SondurBaldota, J.)