

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.14028 of 2015 &
M.P.No.1 of 2015

1. State Bank of India,
Rep. by its Deputy General Manager,
Industrial Finance Branch,
155, Anna Salai, Chennai-600 002.
2. The Assistant General Manager and
Chief Operating Officer,
State Bank of India,
Industrial Finance Branch,
155, Anna Salai,
Chennai-600 002. Petitioners

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Chennai.
2. Mrs.Shanthi Umapathy Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records of the first respondent in I.A.No.274 of 2014 in I.D.No.4 of 2014 and quash its order dated 19.03.2015.

For Petitioner : Mr.V.Karthick
For Mr.T.S.Gopalan & Co.,
For Respondents : Mr.Balan Haridas for R2

O R D E R

The petitioner submits that consequent to the death of one S.M.Umapathy, a messenger of Egmore Branch, the second respondent was given compassionate appointment. At the time when she joined the service, though she wanted an employment in Clerical Cadre as she could not produce the SSLC certificate, she could not be considered for a clerical cadre post. However, she was offered appointment as a

Messenger. In the year 2010, the test was scheduled to be held for promotion to Clerical Cadre, on the merit channel, which would be based only on their qualification and performance in the test. The second respondent, who claimed that she had completed her SSLC, also appeared in the said Departmental test for promotion to Clerical Cadre and passed the same. She became eligible for promotion to clerical cadre. Accordingly, results were announced on 18.09.2010. In December 2010, there was an anonymous letter that the second respondent had produced false SSLC mark-sheets and the School Certificate from St. Raphael's Girls' Higher Secondary School, Santhome was also false. When the testimonials were got verified, it came to light that the SSLC mark sheets were fabricated and even the School Certificate contained false details.

2. The petitioner further submits that by letter dated 25.07.2011, the Directorate of Government Examinations, Chennai pointed out that the market sheets produced by the second respondent related to one N.Mohan. The School also gave details regarding the certificate issued by the School, which were found to be different from the details found in the School Certificate produced by the second respondent. By the proceedings of the Joint Director of Personnel, Education Department, Chennai on 06.09.2011, it was held that the second respondent had cheated the Department by changing the name in the mark-sheets that of N.Mohan to that of F.Fathima Shanthi Sowrirajan in the certified copy of the Certificate bearing No.159437 of March 1976 and on the basis of the fake certificate she had obtained the terminal examination mark-sheets Nos.611385 / March 1996, 566533 / October 1996 and 433584 / July 2005, and subsequently, after making unauthorized changes in the date of birth and therefore, the Certificate was cancelled. On 08.08.2011, the second respondent was placed under suspension, pending investigation on the charges levelled against her and during the period of suspension, she was placed on paid subsistence allowance.

3. The petitioner further submits that on 02.09.2011, a charge sheet was issued to the second respondent pointing out the irregularities in the Transfer Certificate and mark sheets and she was asked to show cause why disciplinary action shall not be initiated against her. She could not give a satisfactory explanation to the charge sheet. A Domestic Enquiry was held between 02.11.2011 and 25.04.2012. As the facts were bone out of records, the Presenting Officer felt that there was no need to examine the witnesses. On 03.09.2012, the Enquiry Officer gave his report holding that the charges levelled against the second respondent were proved. Ultimately, an order was passed on 23.02.2013 dismissing the second respondent from service. The second respondent raised an Industrial dispute challenging her dismissal dated 23.02.2013. The Dispute was taken to the first respondent Court for adjudication in I.D.No.4 of 2014. Before the first respondent, the petitioner wanted to lead evidence in proof of the charges levelled against the second respondent, de-hors, the evidence lead in the enquiry, for sustaining the punishment of dismissal. The second respondent made an endorsement

that it was giving up the Enquiry. The second respondent filed an application in I.A.No.274 of 2014, seeking an order directing the petitioner to pay her interim relief Rs.20,000/- per month with effect from 23.02.2013, the date of her dismissal from service, till the ID is disposed of. This was an application for interim relief pending disposal of the main case. On behalf of the petitioner, a counter affidavit was filed contending that by giving up the Domestic Enquiry, it would not result in the order of dismissal getting erased, that no interim payment can be claimed on the lines of Section 17B of the Industrial Disputes Act, that the decision of the Division Bench of the Madras High Court dated 22.09.2003 in W.A.No.611 of 2001 would not have any application to the facts of the present case, that by dismissing the application no prejudice would be caused to the second respondent, in as much as if she ultimately succeeds in the Main Dispute, she would be entitled to back-wages, including the period for which she was claiming interim payment, that once the Domestic Enquiry was held as a part of the Disciplinary Action, the bona-fides of the employers for her punishment cannot be called in question, and no prima facie case was made out for grant of interim relief and by giving up the enquiry no right can be said to have accrued in favour of the second respondent to seek an interim order.

4. The petitioner further submits that the second respondent has relied on the decision of the Division Bench of this Court dated 22.09.2003 in W.A.No.611 of 2001. At this stage, it is necessary to give a gist of the decision of the Division Bench of this Court in W.A.No.611 of 2001. In that case, where Sukumaran was dismissed without holding enquiry, the Labour Court held that the dismissal without Domestic Enquiry would amount to victimization and on that ground set-aside the order of dismissal and directed her reinstatement with back-wages. The Management filed a writ petition challenging the Award of the Labour Court in the Madras High Court. During the pendency of the writ petition, a monthly payment equivalent to last drawn pay was made to the dismissed workman. While disposing of the writ petition, the learned Judge held that the Labour Court cannot order reinstatement mainly because there was no enquiry, that the Court should have given an opportunity to the employer to lead evidence on the merits of the charges, that therefore the matter was required to be remanded for fresh disposal at the hands of the Labour Court, that during the period of interregnum, the concerned workman was receiving a monthly payment equivalent to last drawn pay. The learned Judge felt that he should continue to enjoy the said benefit till the Labour Court decides the case on merits, on remand. In that context, the awarding of interim payment was upheld by the Division Bench. It was not a case where the Labour Court awarded an interim payment. Further, the present case did not invoke Section 17B of the Industrial Disputes Act. Thirdly, in the present case the Domestic Enquiry was held even though it might have been given up during the proceedings before the first respondent. Therefore, the decision of the Division Bench in W.A.No.611 of 2001 would have no application to the facts of the instant case. The first respondent has now passed an order dated 19th March 2015 in I.A.No.274 of 2014 in I.D.No.4 of 2014.

5. The petitioner further submits that in Para-11 of the order, a reference is made to the decision of the Division Bench in Writ Appeal No.611 of 2011. The first respondent has referred to AIR 1959 Supreme Court 1342 and a decision of the Madras High Court in 1994 @ LLN Page 617 both the cases related to the power of the Labour Court to grant Interim Relief, but once a prima-facie case was made out, on that basis now the first respondent held that "in the present case the petitioner was paid subsistence allowance while she was under suspension. Since the respondents have given up the enquiry, the petitioner had to defend the case for against before this Court. She is now without any employment. She having been terminated from service based on the defective enquiry, she is certainly entitled to some amount by way of interim relief.". In that view the first respondent directed the petitioner to pay the second respondent Interim Relief at Rs.7,500/- per month from 23.02.2013. Hence, the petitioner has filed the above writ petition.

6. The second respondent has filed an affidavit and resisted the above writ petition. The second respondent submits that the writ petition filed by the Management is frivolous and it is intended to tire her out for no fault of mine. The second respondent submits that the power of the Tribunal to pass interim orders is now well settled. When the State Bank of India is given liberty to prove the charges, then, she is entitled to some payment by way of interim arrangement to effectively participate in the enquiry. In fact, the second respondent should be really aggrieved by the order of the Tribunal as the Tribunal as directed only a sum of Rs.7,500/- instead of Rs.20,000/-. The second respondent further submits that as a result of the order passed by this Court, she is prejudiced a lot. The total amount payable to her from February 2013 to June 2015 at the rate of Rs.7,500/- per month comes to about Rs.2,10,000/-. Hence, the second respondent entreats the Court to dismiss the above writ petition since the order is only against an interlocutory order directing payment of subsistence allowance.

Rns

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

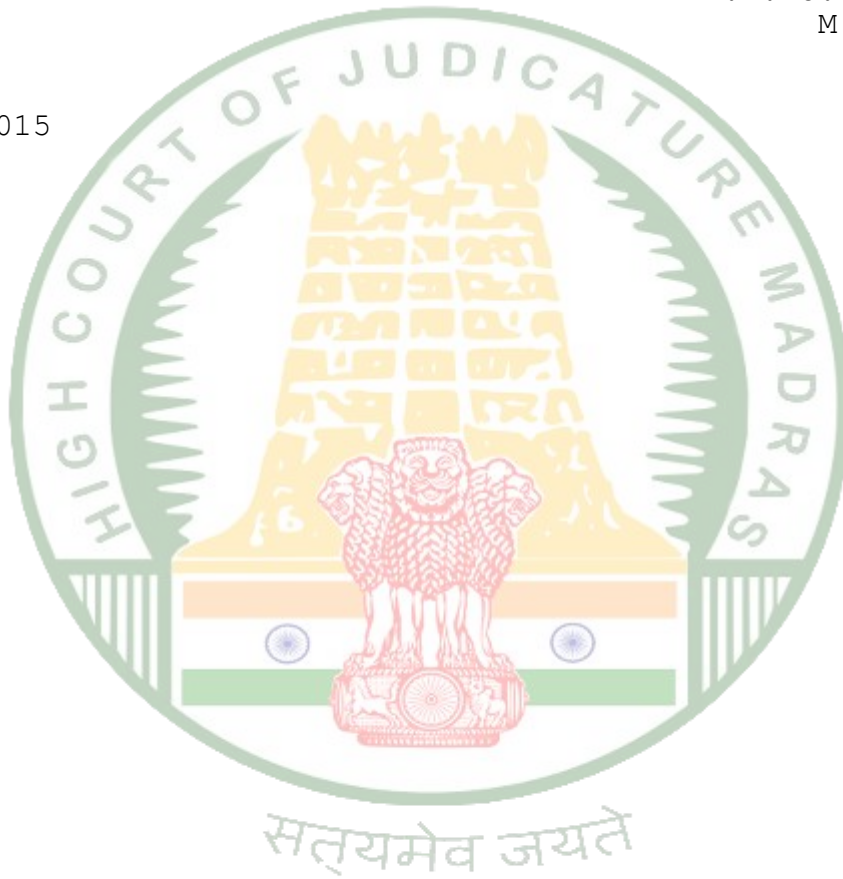
To

The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Chennai.

+1 C.C. To MR.T.S.Gopalan & Co Advocate in SR.NO.43120

W.P.No.14028 of 2015 &
M.P.No.1 of 2015

LRS (CO)
sd : 16/10/2015



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