

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2015

DELIVERED ON : 11.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.NOS.1090/2012 & 1292 OF 2015

Indian bank,
No.66, Rajaji Salai,
Chennai-600 001 rep by
Assistant General Manager

... Appellant in both the appeals

Vs.

1.S.Maheswari

2.The Presiding Officer,
Industrial Tribunal,
Madras.

... Respondents in both the appeals

Common Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the common order dated 11.01.2011 and made in W.P.Nos.16490/1997 & 17493/1998 respectively by the learned Judge of this Court.

Prayer in W.P.Nos.16490/97: For issuance of a writ of certiorari calling for the records connected with I.D.No.105/92 on the file of the presiding officer, Industrial Tribunal, Madras and quash the award dated 24.4.97 made therein and communicated to the petitioner Bank by order of the Government India, Ministry of Labour, dated 718/99 of received by the petitioner Bank on 18/09/97.

Prayer in W.P.No.17493/98: For issuance of a writ of certiorari calling for the records connected with I.D.No.105/92 on the file of the presiding officer Industrial Tribunal, Madras of quash the award dated 24.4.97 made therein and communicated to the petitioner by order of the Government of India, Ministry of Labour, dated 7/8/97 and received by the petitioner in end of August ,1997, holding.

For Appellant : Mr.T.Sundar Rajan
in both the appeals.

For Respondent-1: Mr.V.Ajoy Khose for M/s R.Krishnasamy
in both the appeals

C O M M O N J U D G M E N T

(Judgment of the court was made by
M.VENUGOPAL.J,)

M.VENUGOPAL, J.

The Appellant/Bank has preferred the instant Writ Appeals before this Court as against the common order dated 11.01.2011 passed by the Learned Single Judge in dismissing and allowing the Writ Petitions in W.P.Nos.16490 of 1997 & 17493 of 1998 respectively.

The Contentions of Appellant/Bank:-

2.The Learned counsel for the Appellant/Bank (in both the Writ Appeals) submits that the Learned Single Judge should have allowed the W.P.No.16490 of 1997 filed by the Appellant/Bank and dismissed the W.P.No.17493 of 1998 filed by the First Respondent/Petitioner.

3.According to the Learned counsel for the Appellant/Bank, the Learned Single Judge had committed an error in reversing the award of the Second Respondent/Industrial Tribunal in I.D.No.105 of 1992 from 'Reinstatement without Continuity of Service' and it is also represented on behalf of the Appellant/Bank that the Learned Single Judge ought to have held that the Second Respondent/Industrial Tribunal having justified the action of the Appellant/Bank should not have ordered reinstatement without continuity of service and backwages on humanitarian ground and instead should have allowed the Writ Petition filed by the Appellant/Bank.

4.The Learned counsel for the Appellant proceeds to take a plea that the Learned Single Judge had rendered a wrong finding that the impugned notices dated 19.03.1990 and 02.05.1990 declaring that the First Respondent was deemed to have voluntarily retired from service does not satisfy the requirements of 'Bipartite Settlement'.

5.The Learned counsel for the Appellant/Bank takes a stand that the Learned Single Judge had erred in coming into the question whether the impugned notices satisfied the requirements of 'Bipartite Settlement' when no such plea was taken before the Industrial Tribunal or in W.P.No.17493 of 1998 filed by the First Respondent/Petitioner.

6.The prime contentions advanced on behalf of the Appellant is that the Learned Single Judge had failed to appreciate that the

impugned notices issued by the Appellant/Bank clearly specify that the First Respondent/Petitioner was continuously absent from 15.12.1989 for which the Appellant/Bank had already issued a registered letter dated 30.12.1989 calling upon the employee to report for duty and only on 30.01.1990, an undated letter requesting leave on medical grounds without enclosing a medical certificate was given and that the Appellant had advised the First Respondent/employee on 03.01.1990 to submit a medical certificate for which the First Respondent/Employee failed to reply. Furthermore, on 02.02.1990, another letter was sent asking the First Respondent/Employee to report for duty for which there was no reply and that the absence from 15.12.1989 has to be treated as an unauthorised absence. As such, the impugned notice fulfills the grounds mentioned in Clause 17(a) of the 'Bipartite Settlement'.

7.The Learned counsel for the Appellant/Bank submits that numerous opportunities were provided to the First Respondent/Employee to report for duty and later, the impugned notice was issued to her granting 30 days time as per 'Bipartite Settlement'. When the First Respondent/Employee had failed to response to the notice, only then the impugned order was passed by the Appellant/Bank, after satisfying the requirements of 'Bipartite Settlement'.

8.The Learned counsel for the Appellant/Bank contends that in reality, the Bipartite Settlement provides that if the employee had replied to the notice under Clause 17 (a), then he/she shall be permitted to report for duty, without prejudice to the rights of the Appellant/Bank in taking action in terms of Service Rules.

Submissions on the side of First Respondent/Employee:-

9.The Learned counsel for the First Respondent/Employee brings it to the notice of the Court about the order passed by the Learned Single Judge in dismissing the W.P.No.16490 of 1997 and further, contended that the Learned Single Judge after taking into account, the entire conspectus of the attendant facts and circumstances of the present case in an encircling fashion had rightly allowed the W.P.No.17493 of 1998, whereby the order dated 24.04.1997 in I.D.No.105 of 1992 on the file of the Second Respondent/Industrial Tribunal confirming the final order of the Appellant/Bank dated 02.05.1990 effecting voluntarily retirement on the First Respondent/Employee was set aside and added further, the Appellant/Bank was directed to reinstate the First Respondent/Employee with continuity of service but without backwages.

Factual Matrix:-

10.The First Respondent/Employee was employed as Clerk cum Shroff-Typist by the Appellant/Bank on 24.02.1986 at its Kumarapalayam Branch. Later, she was transferred to the Zonal Office at Coimbatore and she joined duty on 08.12.1989 after utilising the joining time admissible under the Rules.

11.The stand of the First Respondent/Employee is that she fell ill immediately and the Appellant/Bank issued a memo dated 02.01.1990 for her absence and she sent a reply dated 03.01.1990 wherein she made a request to the Bank to grant her leave. Her illness arose out of vertebral pain. She also want to make a mention that she would send a medical certificate as soon as the same was furnished by the doctor.

12.According to the First Respondent/Employee, she shifted her residence and also addressed a letter to the Appellant/Bank dated 07.02.1990 mentioning that for further treatment she is proceeding to Bangalore and indeed in the said letter, she had given the Bangalore address and requested the Appellant/Bank to note the change of address in the records and send all the future communications to the Bangalore address. However, she had not received any communication from the Appellant/Bank.

13.The version of the First Respondent/Employee is that while she was undergoing treatment at Bangalore, she sent another letter dated 24.01.1991 to the Zonal Office, Coimbatore, requesting for a transfer in any one of the six branches in Bangalore city. But to her shock and surprise, she received a letter on 04.02.1991 from the Zonal Manager of the Appellant/Bank stating that her service were already terminated based on her unauthorised absence. In fact, the Appellant/Bank also enclosed copies of letters dated 19.03.1990 and 02.05.1990 which were purportedly sent to her at the old address at Coimbatore.

14.The grievance of the First Respondent/Employee is that for the first time she had been informed that the Appellant/Bank had sent several communications to the Coimbatore address and they did not receive any response, they terminated her from service in terms of Clause 17 of the V Bipartite Settlement pertaining to voluntary cessation of employment. Also, the plea taken by the First Respondent/Employee is that the Appellant/Bank had deliberately sent communications to her old address at Coimbatore. As such, her termination of service by the Appellant/Bank is an unjust one and she had filed I.D.105 of 1992 before the Second Respondent/Industrial Tribunal, Madras praying to pass an award holding that the action of the Appellant/Respondent Bank in dispensing with the service with effect from 17.04.1990 as illegal and also sought a consequential order in directing the Appellant/Bank to reinstate her with continuity of service, backwages, and all other attendant benefits.

The Gist of counter filed by the Appellant/Bank (Before the Second Respondent/Tribunal):-

15.The First Respondent/Employee had not reported for duty at Coimbatore on 15.12.1989 and that by means of communication dated 30.12.1989, she was called upon to report for duty and the said communication was sent to the address furnished by her, which also duly acknowledged. By virtue of ingredients of Clause 17(a) of the V

Bipartite Settlement, the First Respondent/Employee was deemed to have voluntarily retired from the services of the Appellant/Bank and the same was communicated by the Bank to her through letter dated 19.03.1990. The First Respondent/Employee stayed away from work from 09.12.1989 after informing orally the Chief Officer, Zonal Office that she would be availing joining time but she did not report for duty after availing joining time on 15.12.1989.

16.The Appellant/Bank after waiting for few days, addressed a letter dated 30.12.1989 through RPAD to her residential address (furnished by her) requiring her to report for duty. The Appellant/Bank received the postal acknowledgment from the First Respondent/Employee for receipt of their letter dated 06.01.1990. In the meanwhile, the Appellant/Bank received a letter on 03.01.1990 from the First Respondent/Employee stating that she was suffering from vertebral pain and prayed for leave without specifying the period for which the said leave was requested. The Appellant/Bank through their letter dated 03.01.1990 required the First Respondent/Employee to apply for leave in the prescribed format with the medical certificate and the same was sent to her to the address given in her undated letter which was received by the Bank on 03.01.1990. The address viz., No.162/A, Murugaya Thevar Colony, Arumuga Nagar, Ramanathapuram, Coimbatore-641 045 was the last known address of the First Respondent/Employee known to the Appellant/Bank.

17.The stand of the Appellant/Bank is that no employee can seek to avail leave as a matter of right, even the undated letter of the First Respondent/Employee which was received by the Appellant/Bank on 03.01.1990 was not in reply to any memo dated 02.01.1990 because there was no such memo ever issued to her by the Bank. Also, in the said letter, she had not mentioned that she would be sending medical certificate. Moreover, the Appellant/Bank had not received any letter dated 07.02.1990 alleged to have been sent by the First Respondent/Employee. The allegations that she sent a letter dated 07.02.1990 is a false one. After writing letter which was received by the Appellant/Bank on 03.01.1990, the First Respondent/Employee had not sent any leave application with medical certificate, certifying her illness.

18.Only for the first time, the First Respondent/Employee had written a letter dated 26.12.1990 furnishing her Bangalore address evidencing her illness. Subsequently, the Appellant/Bank received her letter dated 24.01.1991 stating that as per doctor's advice, she imposed to stay at Bangalore. That apart, even on 19.03.1990, the Appellant/Bank called upon the First Respondent/Employee to report for duty within 30 days from the date of receipt of the letter dated 19.03.1990 and the same was sent to her last known address. When she had not reported for duty even by May 1990, she was communicated by means of letter dated 02.05.1990 that she was deemed to have voluntarily retired from the services of the Appellant/Bank in terms of Clause 17(a) of the V Bipartite Settlement. As such, on receipt

of the First Respondent/Employee letter dated 24.01.1991 which contains her Bangalore address, the Appellant/Bank sent a letter dated 19.03.1990 and 02.05.1990 together with letter dated 04.02.1991. The crucial aspect of the matter is neither the letter dated 26.12.1990 nor the letter dated 24.09.1991, the First Respondent/Employee had made a reference to her purported letter dated 07.02.1990. Continuing further, nothing prevented the First Respondent/Employee from producing the medical certificate after 15.12.1989 and furnishing her address at Bangalore.

19.The Appellant/Bank had no alternative than to invoke 17(a) of the Memorandum of Settlement dated 10.04.1989 entered into between Indian Banks' Association of which the bank is a member on the one side and workmen was represented by AITEA and the NCBE under Section 2(p) 18(1) of the Industrial Dispute Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules (V Bipartite Settlement for short) and this settlement is binding on her.

20.The Appellant/Bank had followed all the procedures prescribed in a meticulous fashion as per section 17(a) of the V Bipartite Settlement and apart from that, as per service conditions of the award which binds the First Respondent/Employee, she is entitled for joining time of six calendar days only and therefore, she would have reported for duty on 15.12.1989 but she failed to do so. The case of one Gunasekaran is not identical and the same is entirely different.

The contents of Clause 17 of the Bipartite Settlement are as follows:

21.The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:-

"a)When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter-alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another

employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

b) When an employee goes abroad and absents himself for a period of 150 or more consecutive days without submitting any application for leave, or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating, inter-alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment."

Discussions and Findings:-

22. At the outset, this Court pertinently points out that 'Leave' is a condition of service and it is in the nature of grant. Further, it is not a right of an 'Employee'. Furthermore, the term 'Over stayal' means continuation of the position immediately before the end of leave.

23. In the instant case on hand, the Appellant/Bank had invoked its power in terms of 'Bipartite Settlement' and terminated the service of the First Respondent/Employee on 'Voluntary Retirement'. As a matter of fact, the Appellant/Bank had not initiated any disciplinary proceedings against the First Respondent/Employee. It cannot be gainsaid that the Appellant/Bank was to arrive at a subjective satisfaction as to whether the First Respondent/Employee had no desire/intention to join duty. This exercise had to be performed by the Appellant/Bank before acquiring necessary jurisdiction to proceed further in regard to the unauthorised absence of the First Respondent/Employee. To put it succinctly, if the Appellant/Bank after arriving at subjective satisfaction that the First Respondent/Employee had no intention of joining duty then, it could proceed further in terms of 'Bipartite Settlement'. Also, a closer scrutiny of the contents of 'Bipartite Settlement' would unerringly point out that it is not the mere absence of an employee from duty would confer jurisdiction to the Appellant/Bank to issue notice calling upon the First Respondent/Employee to turn up for duty within 30 days and also to declare that the said employee had deemed to retire from service on the lapse of notice period. In this connection, this Court has to necessarily go into the aspect as to whether the impugned notices stating that the First Respondent/Employee deemed to have voluntarily retired from service fulfills the ingredients of Bipartite Settlement. That apart, without reasonable, genuine absence of necessary materials, if the Appellant/Bank had issued the notice in terms of 'Bipartite Settlement' then the said notice in Law, may not have of any utility value. Moreover, the Bipartite Settlement also enjoins that the Appellant/Bank should collect evidences to lend support to its plea/belief that the First Respondent/Employee had no intention to join duty.

24. In this connection, it is to be relevantly pointed out that the reading of the notice dated 19.03.1990 sent by RPAD addressed to the First Respondent/Employee only indicates that even after the said notice, she had not reported for duty within the prescribed 30 dates nor submitted any explanation or reply for the unauthorised absence to the satisfaction of the Management (Appellant/Bank) and that she had no intention of joining duty. As such, it was construed that she had no interest in the Appellant/Bank job and she had left the job on her own volition and she deemed to have voluntarily retired from the Bank's service/voluntarily ceased off employment with effect from 17.04.1990 i.e., from the date of expiry of 30 days notice in terms

of Clause 17 of the V Bipartite Settlement dated 10.04.1989.

25. Suffice it for this Court to point out that nowhere the impugned notice dated 19.03.1990 refers to the subjective fulfillment of the ingredients/requirements of the Bipartite Settlement. To put it differently, the Appellant/Bank in the impugned notice dated 19.03.1990 should come to an unambiguous, unequivocal conclusion that it had arrived at a subjective satisfaction in regard to the voluntary cession of employment by the First Respondent/Employee, ofcourse, based on available materials on record. Also that, no 'Domestic Enquiry' was held to come to a conclusion that the First Respondent/Petitioner (Employee) had no interest in the bank job and that she had left the job on her own volition and therefore, the Bank service ceased off employment with effect from 17.04.1990 viz., from the date of expiry of 30 days, as per ingredients of Clause 17 of the V Bipartite Settlement dated 10.04.1989. Indeed, there were no supporting materials/requisite available on record for the Appellant/Bank to come to a conclusion that the First Respondent/Job and she had left the job on her own accord etc. In short, this Court unhesitatingly holds that the notice dated 19.03.1990 was not issued in conformity with the rudimentary requirements of the Bipartite settlement. Viewed in that perspective, it is a logical corollary that the final order passed in reference ZO:PRNL:CL:1216:90 dated 02.05.1990 issued in favour of the First Respondent/Employee is wholly unsustainable in the eye of Law and the same bristles with latent and patent infirmities in the considered opinion of this Court.

26. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in *Jai Shanker V. State of Rajasthan* reported in AIR 1966 Supreme Court at page 492 & 493 wherein it is observed and held as follows:

"The removal of a Government servant from service for overstaying his leave is illegal even though it is provided by the service Regulation that any individual who absents himself without permission after the end of his leave would be considered to have sacrificed his appointment and may be reinstated only with the sanction of the competent authority.

A discharge from service of an incumbent by way of punishment amounts to removal from service, and the constitutional protection of Art.311 cannot be taken away from him by contending that under the service Regulations the incumbent himself gives up the employment and all that the Government does not to allow the person to be reinstated. It is true that there is no compulsion on the part of the Government to retain a person in service if he is unfit and deserves dismissal or removal and one circumstance deserving removal may be overstaying one's leave. But a person is entitled to continue in

service if he wants until his service is terminated in accordance with law. It is true that the Regulation speaks of reinstatement but what it really amounts to is that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The Regulation involves a punishment for over-staying one's leave and the burden is thrown on the incumbent to secure reinstatement by showing cause. No doubt, the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but it cannot order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done, the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking re-saying that because the person will only be reinstated by an appropriate authority, that the removal is automatic and outside the protection of Art.311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it."

27. Also this Court worth recalls and recollects the decision of E.C. Joy V. The Principal Bharathmatha College and others reported in Vol 27 1981 (2) Service Law Reporter at page 777 and at Special page 790 whereby and where under in para 7 it is observed and held as follows:

"7. The manner in which Ext.P2 is worded also lends support to the petitioner's case. What is stated is that the overstayal from 18.02.1980 to 28.03.1980 is treated as half-pay leave. Overstayal means continuation of the position before 18.02.1980. There is not the remotest indication in Ext.P2 of the management having taken a stand that the intervening two holidays would be treated as days on which the petitioner is absent from duty. Rule 96 of the Kerala Service Rules is directly attracted to the case of the petitioner. Rule 96 reads as follows:

"96. In the case of an officer governed by these leave rules, who remains absent after the end of his leave, the period of such overstayal of leave is, unless the leave is extended by the competent authority treated as follows:

xxx xxx xxx xxx

xxx xxx xxx xxx

The Officer is entitled to leave salary during such overstayal of leave not covered by an extension of leave by competent authority."

This rule makes it clear that overstayal will be treated as leave if extended by the competent authority. Here the overstayal is covered by the extension of leave. I therefore, hold that the petitioner is entitled to half pay leave for the two days intervening namely, on 17.02.1980 and 18.02.1980.

In the result, I allow the petition and direct the disbursement of half-pay and other allowances to the petitioner along with arrears of pay within three months from the date of receipt of this judgment."

28. Moreover, in the decision of Punjab & Haryana High Court in The State of Haryana V. Phula Ram, Police Constable reported in Vol 8 1973 Service Law Reporter at page 237 whereby and where under it is observed as follows:

"Where a Police Constable proceeded on leave and thereafter submitted applications for extension of leave on the ground of illness of his wife and also of himself, cannot be said to have abandoned his employment. He also cannot be said to have absented himself from work because no work had been assigned to him as he had proceeded on leave and had not joined his duty. He could only be assigned any work after he had joined his duty since he did not join his duty and no work had been assigned to him, the question of his absenting himself from the work within the meaning of Section 5 of East Punjab Essential Services Maintenance Act, 1947 clause (b) of the Act did not arise. Held, the Constable may be guilty of neglect of duty, but this fact is different from abandoning employment or of absenting oneself from work without reasonable cause which is the particular offence contemplated in clause (b) of Section 5 of the Act."

29. Coming to the aspect of all the correspondences/letters/communications addressed by the Appellant/Bank to the last known address of the First

Respondent/Employee at Coimbatore (when lastly reported for duty), this Court in a crystalline fashion holds that the Appellant/Bank had satisfied with the requirements of the Bipartite Settlement because of the reason that the concerned notices were addressed to the Employee's Coimbatore address. As a matter of fact, the Industrial Tribunal, Madras had clearly held that the letter dated 07.02.1990 purportedly to be sent by the First Respondent/Employee to the Appellant/Bank (in regard to her change of address) was not a true one and in this regard, this Court concurs with the view taken by the Learned Single Judge as well as the Industrial Tribunal, Chennai.

30. In the instant case before hand, the Second Respondent/Industrial Tribunal passed an award on 24.04.1997 to the effect that the First Respondent/Employee was entitled for reinstatement from the date of the award in her old seniority as on 08.12.1989 without continuity of service, backwages and other benefits to meet the ends of justice. At this stage, one cannot brush aside a prime fact that the First Respondent/Employee was not terminated from the Appellant/Bank services by following the procedure in the manner known to Law and in accordance with law by commencing disciplinary proceedings followed by conducting of domestic enquiry, ofcourse, after adhering to the Principles of Natural Justice in true letter and spirit. Per contra, the Appellant/Bank had taken refuge in terms of the ingredients of Bipartite Settlement, which is clearly unsustainable in the eye of Law. Looking at that from angle, dated 02.05.1990 letter issued to the First Respondent/Employee mentioning that she was deemed to have voluntarily retired from service with effect from 17.04.1990 as per Clause 17(a) of the Bipartite Settlement is an invalid and an illegal one because of the simple reason that the Appellant/Bank had not adhered to the necessary requirements adumbrated in the V Bipartite Settlement.

31. As regards the payment of backwages, it is to be pointed out that the First Respondent/Employee had not sent the application form in a requisite format and she had not turned up for duty for quite a long period. The well settled Common Law principle is that 'No work No wages'. Admittedly, when the First Respondent/Employee had not turned out any work and she remained absent for several months and that too without sending any leave application in an appropriate format etc., then, this Court comes to an irresistible and inevitable conclusion that the First Respondent/Employee is not entitled to claim backwages from the Appellant/Bank and in regard to employment, view taken by the Learned Single Judge in setting aside the voluntarily retirement imposed on the First Respondent/Employee by confirming the final order of the Bank dated 02.05.1990 passed by the Tribunal is hereby confirmed and further, direction issued to the effect that the First Respondent/Employee was to be reinstated with continuity of service but without backwages do not suffer from any material irregularity or patent illegality in the eye of Law.

Consequently, the Writ Appeals are devoid of merits.

32.In the result, the Writ Appeals are dismissed leaving the parties to bear their own costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

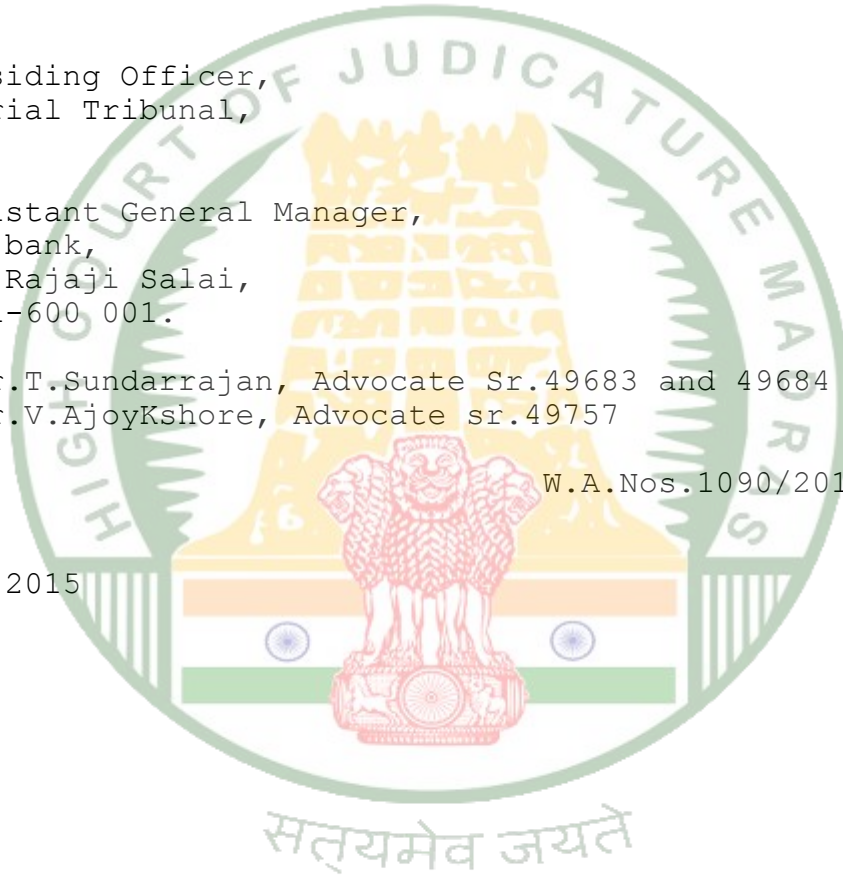
1.The Presiding Officer,
Industrial Tribunal,
Madras.

2.The Assistant General Manager,
Indian bank,
No.66, Rajaji Salai,
Chennai-600 001.

+2cc to Mr.T.Sundarrajan, Advocate Sr.49683 and 49684
+1cc to Mr.V.AjoyKshore, Advocate sr.49757

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