

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM

THE HON'BLE Mrs.JUSTICE HULUVADI G.RAMESH
And
THE HON'BLE MR JUSTICE V.PARTHIBAN

W.A.No.1564 of 2015
and
M.P.No.1 of 2015

Indian Bank
rep.by its General Manager(HR),
Corporate Office,
254-260, Avvai Shanmugam Salai,
Royapettah,
Chennai-600 014

... Appellant

Vs.

1.Indian Bank Jewel Appraisers Association,
rep.by its General Secretary,
Mr.S.Bakthavathsalam,
No.12/1, Lakshmanan Street,
M.G.R.Nagar,
Chennai-600 078

2.Government of India,
rep.by its Secretary,
Ministry of Labour and Employment,
Shram Sakthi Bhavan,
New Delhi-110 001

3.The Assistant Commissioner of Labour,
(Central),
Sastri Bhavan,
No.26, Haddows Road,
Nungambakkam,
Chennai-600 034

4.The Desk Officer,
Government of India.Bharat Sarkar,
Ministry of Labour/Shram Mantralaya,
New Delhi

... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent against the order dated 25.08.2015 made in W.P.No.33464 of 2014.

WP.No.33464 of 2014:Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 4th respondent made in No. L.12011/68/ 2014-IR (BII) dated 31.10.2014 to quash the same and consequently direct the 2nd respondent to regularize the service of the Members of Jewel Appraisers of the petitioners Association and extend of all benefits

For Appellant :Mrs.Rita Chandrasekaran for
M/s.Aiyar and Dolia

For Respondents :Mr.V.Raghavachari for
Mr.M.A.R.Pragash for R1
Mr.K.Gunasekar,
Sr.Panel Counsel for
Central Government for R2 to R4

JUDGMENT

(Judgment of the Court was delivered by HULUVADI G.RAMESH,J)

This writ appeal, by the Indian Bank, is directed against the order dated 25.08.2015, made in W.P.No.33464 of 2014, wherein a direction was issued to the appellant herein/Indian Bank to conduct a detailed enquiry regarding the claim made by the Indian Bank Jewel Appraisers Association/the first respondent herein.

2. The Joint General Secretary of Indian Bank Jewel Appraiser's Association, raised an industrial dispute against the management of the Indian Bank, regarding demand for appointment of Jewel Appraisers as full time regular employees of the bank and the same was referred to Conciliation, with the consent of the parties. The Conciliation ended in failure and a failure report, dated 23.06.2014, was sent by the Assistant Labour Commissioner (Central), Chennai. In this regard, the next course of action would be to take up the matter before the Industrial Tribunal, as per the order of the Assistant Labour Commissioner (Central), Chennai.

3. The stand of the first respondent/writ petitioner is that the jewel appraisers are permanent workers of the bank, as their duty is almost the same as that of the permanent employees, but they were denied the benefits given to permanent workers. Hence, the first respondent/Indian Bank Jewel Appraisers Association, filed a writ petition in this regard.

4. Without going into the prayer of the writ petitioner association seeking to quash the Conciliation failure report and for a further direction to the Indian Bank to regularize the service of the members of Jewel Appraisers of the writ petitioner association, the learned single Judge, in the impugned order, directed the appellant/Indian Bank to conduct a comprehensive enquiry, in the presence of the third respondent and the writ petitioner/first respondent, which appears to be totally uncalled for.

5. The learned counsel for the appellant relied upon the judgment of the Supreme Court in the case of Indian Overseas Bank vs. Workmen [(2006) 3 Supreme Court Cases 729] to canvass the point that the members of the first respondent/writ petitioner association are not employees of the bank.

6. On the other hand, the learned counsel for the first respondent/writ petitioner cited the judgment of Supreme Court in Karur Vysya Bank Limited vs. Karur Vysya Bank Employees' Union and Others [(2012) 13 Supreme Court Cases 725] and submitted that in the said judgment, the Supreme Court has negatived the request for second reference. The learned has also cited two more judgments of this Court in (1) Karur Vysya Bank Ltd., (rep.by Assistant General Manager (Personnel), Karur and Karur Vysya Bank Employees' Union (rep.by its General Secretary), Chennai, and another- [2007 (3) L.L.N.440] (2) General Manager, Indian Overseas Bank and Presiding Officer, Industrial Tribunal -[2005(3) L.L.N.690].

7. The learned counsel for the first respondent/writ petitioner also cited a similar order passed by this Court, in W.P.No.19471 of 1980, a copy of which has been annexed to the typed set of papers.

8. A perusal of the said order shows that the learned single Judge, of course, while disposing of the writ petition, in W.P.No.19471 of 1980, has observed that it is a case of part time workers in the fact situation of the said case. In the said writ petition, the matter under reference, under Section 10(2)(d) of the Industrial Disputes Act, was adjudicated before the Industrial Tribunal and thereafter, the matter was taken up to this Court, by way of writ petition.

9. In the instant case, even prior to the matter being adjudicated, the first respondent association/writ petitioner sought to obtain an order before the learned single Judge, which is unheard of. When the matter referred to Conciliation had ended in failure, before the Assistant Commissioner of Labour, necessarily the matter has to be taken up before the Industrial Tribunal. Whether the persons working under the first respondent association are purely permanent workers or be

treated as employees/workmen of the bank and whether they are working on part time basis or full time basis and whether they have been paid salary by the bank as is paid to the others; whether they have been paid the commission and whether the commission is paid by the bank or by the parties (borrowers) etc., are all questions to be considered when the matter is adjudicated before the Industrial Tribunal. In that view of the matter, the order passed by the learned single Judge, warrants interference.

10. Accordingly, the writ appeal is disposed of by observing that the matter shall be taken up by the first respondent/writ petitioner association before the Industrial Tribunal, which shall adjudicate the matter, after affording an opportunity to the bank and the concerned parties. It is made clear that all the contentions raised by the learned counsel on either side and also the citations relied upon by them can very well be produced before the Industrial Tribunal, at the time of enquiry, to adjudicate the issues. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msk

To

1.The General Secretary,
Mr.S.Bakthavathsalam,
Indian Bank Jewel Appraisers Association,
No.12/1, Lakshmanan Street,
M.G.R.Nagar,
Chennai-600 078

2.The Secretary,
Government of India,
Ministry of Labour and Employment,
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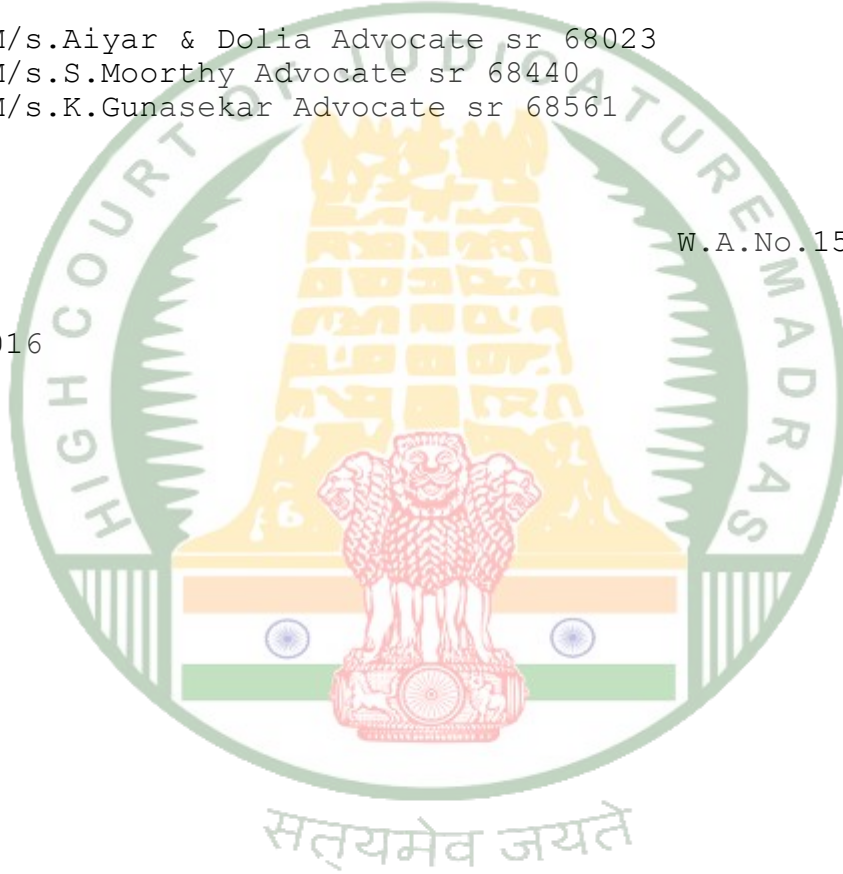
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New Delhi

+1 cc to M/s.Aiyar & Dolia Advocate sr 68023
+2 cc to M/s.S.Moorthy Advocate sr 68440
+2 cc to M/s.K.Gunasekar Advocate sr 68561

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