

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2017

Coram

The Hon'ble Mr. Justice S.M. Subramaniam

Writ Petition No. 10968 of 2003

The General Secretary,
Dena Bank Employees' Union,
27, V.V. Koil Street, Vellalla Teynampet,
Chennai - 600 086.

...Petitioner

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal,
Cum Labour Court, Chennai.

2. The Regional Manager,
Dena Bank, Regional Office,
32, Venkatesan Street, III Floor,
Geethanjali Convention Centre,
T. Nagar, Chennai - 600 017.

....Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari and Mandamus, to call for records in I.D.No.633 of 2001, on the file of the Central Government Industrial Tribunal Cum Labour Court, Chennai, the first respondent, and to quash the order passed therein, dated 11.09.2002, and consequently, to direct the Regional Manager, Dena Bank, Chennai - 600 034, the second respondent to reinstate Mr. Sesha Mani, into its service with backwages from 01.11.1991, and with all other attendant benefits.

For Petitioner : Mr. K. Vasuvenkat

For Respondent-1 : Tribunal

For Respondent-2 : No appearance

O R D E R

The challenge in this Writ Petition is to the award passed by the first respondent/Tribunal, in I.D.No.633 of 2001, dated 11.09.2002.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

3. The facts of the case in a nutshell are as follows:-

i) The petitioner is a Trade Union, registered under the Trade Unions Act, bearing Registration No.263, dated 10.01.1959. This Writ Petition has been filed on behalf of a workman, by name R.Sesha Mani. The said employee joined the service of the second respondent/Bank as Sub Staff in the year, 1987 and continued his service till 01.11.1991. The employee concerned was deemed to have rendered continuous service as per Section 25 B of the Industrial Disputes Act, 1947. As such, the petitioner-Union sought for regularisation of the service of the said workman, whereas, the Management of the Bank terminated the workman from service. Challenging the said order of termination and also seeking for regularisation of the service of the said workman, the petitioner-Union raised an industrial dispute before the first respondent-Tribunal. The said claim was resisted by the second respondent herein, by filing a Counter statement, inter alia contending that the workman was appointed only on temporary basis to do work of causal nature, therefore, he is not entitled to seek for regularisation. The first respondent/Tribunal by the impugned award, dismissed the Industrial Dispute. Aggrieved by the same, the petitioner-Union has filed this Writ Petition.

4. The claim made by the petitioner-Union was rejected by the first respondent/Tribunal, mainly on the ground that, there were no sufficient evidence to prove that the workman concerned has put in for 249 days of continuous service. Though it is stated in the affidavit filed in support of this Writ Petition, that the employee was appointed as Sub Staff in the year, 1987 in the service of the second respondent/Bank and has put in continuous service till 01.11.1991, the correct date of appointment is not mentioned anywhere in the affidavit, and the learned counsel for the petitioner-Union is also unable to confirm the exact date, on which, the employee was appointed in the respondent/Bank. Even in the claim statement made before the first respondent/Tribunal, except stating that, the workman worked for a period of 249 days, the same was not supported by proper service records. The documents, which were marked as Exs.W.1 to W.5 were all xerox copies, showing the number of days worked by the workman in the respondent/Bank, and the same were not signed by any Authorized person, and therefore, such documents cannot be relied upon as valid evidence.

5. Further, the stand taken by the second respondent/Management, in the counter statement that the workman was engaged by them only on temporary basis to do the work of causal nature and that too, not in accordance with recruitment

procedures, was not disputed by the petitioner-Union, anywhere, in the claim statement filed before the Tribunal. Thus, in the absence of any proof to show that the workman has continuously worked for 249 days, and when it is an undisputed fact that the workman has been engaged by the second respondent/Management on temporary basis, not in accordance with recruitment rules, the question of the second respondent/Management, complying with the provisions under Section 25 F of the Act does not arise, and all these aspects were rightly appreciated by the first respondent/Tribunal and by placing reliance upon the decision of the Hon'ble Calcutta High Court, in the case of (Calcutta Tramways Company and others Vs. Ramesh and 17 others) reported in 1999 II LLJ 1173, wherein, it is held that, "the respondent employees working on 'No Work No Pay basis', and, who were not appointed in terms of recruitment rules and not against the sanctioned posts, absorption in permanent service cannot be demanded", rightly arrived at the conclusion that the workman is not entitled to the relief sought for, and I do not find any infirmity in the award passed by the first respondent/Tribunal.

6. In the result, the Writ Petition fails and it is dismissed accordingly. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Presiding Officer,
Central Government Industrial Tribunal,
Cum Labour Court, Chennai.

2. The Regional Manager,
Dena Bank, Regional Office,
32, Venkatesan Street, III Floor,
Geethanjali Convention Centre,
T. Nagar, Chennai - 600 017.

+1cc to mr.K.Vasuvankat, Advocate sr.18863

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mn(co)
ss(22/8/2017)