

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.693 OF 2008

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Appeal, under clause 15 of Letters Patent, is preferred against the order dated 30.01.2008 passed by the learned Single Judge in Writ Petition No.34799 of 1998, whereby, the learned Single Judge directed the appellant-bank to reinstate respondent No.2-writ petitioner into service forthwith with continuity of service and 25% of the back wages only.

2. The parties hereinafter are referred to as arrayed in Writ Petition No.34799 of 1998.

3. The Writ Petition was filed under Article 226 of the Constitution of India challenging the dismissal order dated 25.04.1998 passed by respondent No.1-the Industrial Tribunal-I, Hyderabad, in I.D. No.140 of 1996, filed by the writ petitioner.

4. The writ petitioner is a workman under respondent No.2-bank. When the services of the writ petitioner were terminated, he raised a dispute and on failure of conciliation, the Government of India, Ministry of Labour, by Order No.L-12012/211/95 IR (B-II) dated 26.11.1996, referred the matter to respondent No.1-Tribunal, under Sections 10(1)(d) and 2-A of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act'), for adjudication of the following issue:

"Whether the management of Union Bank of India, Hyderabad, is justified in terminating the services of Shri A. Vijaya Rao, Ex.Attender/Sweeper w.e.f. 06.01.1993? If not, to what relief the workman is entitled?"

5. The case of the writ petitioner is that he had put in more than 240 days of continuous service during the period from 18.06.1991 to 06.01.1993 in various branches of the Union Bank of India at Hyderabad and, therefore, termination of his services, without any notice or compensation in lieu thereof, is arbitrary, illegal and in violation of the provisions of Section 25-F of the I.D. Act. Hence, he prayed for reinstatement with all consequential benefits.

6. Respondent No.2-bank filed counter denying the allegations made by the writ petitioner and stated that the writ petitioner had not put in 240 days of continuous service in a year preceding the date of termination and the Sundays and public holidays claimed to have been worked by him cannot be taken into consideration for the purpose of computation of 240 days of continuous service.

7. After considering the evidence of W.W.1 and M.Ws.1 to 3 and the documents in Exs.W.1 to W.13 and Exs.M.1 to M.9, respondent No.1-Tribunal came to the conclusion that the writ petitioner worked for 231 days only and 13 Sundays claimed to have been worked by him cannot be taken into consideration for the purpose of computing 240 days of continuous service, as they were not covered by any settlement or agreement or any statute, and thus, the writ petitioner failed to establish that he worked for 240 days in a year preceding the date of termination of his services and, ultimately, rejected the relief sought for by the writ petitioner, vide the order dated 25.04.1998. Challenging the said order, the writ petition was filed.

8. The learned Single Judge, vide the order dated 30.01.2008, directed respondent No.2-bank to reinstate the writ petitioner into service forthwith with continuity of service and 25% of the back wages only, holding

that the expression 'actually worked under the employer' cannot be said to be the days on which he physically worked, and the public holidays and paid holidays during that period shall also be treated as working days and thus, 13 Sundays claimed to have been worked by the writ petitioner are to be treated as working days and are to be taken into account for reckoning 240 days of continuous service and, consequently, the writ petitioner had put in more than 240 days of continuous service in a year, as per the provisions of Section 25-B of the I.D. Act and therefore, the termination of the services of the writ petitioner is in gross violation of mandatory provisions of Section 25-F of the I.D. Act. Questioning the said order, respondent No.2-bank preferred the present appeal.

9. Heard Sri C.R. Sridharan, learned senior counsel, representing the learned counsel appearing on behalf for respondent No.2-bank (appellant herein), learned Government Pleader for Labour appearing for respondent No.1-Tribunal and Smt. K. Udaya Sri, learned counsel for writ petitioner (respondent No.2 herein).

10. Learned senior counsel, appearing on behalf of respondent No.2-bank, would submit that the learned Single Judge re-appreciated the evidence, which is not permissible under Article 226 of the Constitution of India; the learned Single Judge erred in placing reliance on the decision of the Hon'ble Supreme Court in **Haryana Urban Development Authority v. Om Pal**¹; the writ petitioner worked in various branches of the Union Bank of India at Hyderabad, and he has not completed the required 240 days of continuous service during the period in question; when a workman claims to have worked as a daily wager/casual employee in different establishments even under the

¹ (2007)5 SCC 742

same employer or controlling authority, it would not amount to his being in continuous service for the purpose of Sections 25-B and 25-F of the I.D. Act; there is clear evidence of M.Ws.1 to 3 that the writ petitioner worked in various branches of respondent No.2-bank within the knowledge of its authorities; when the casual employees are employed in different establishments, may be even under the very same employer, and if their services were terminated, for the purposes of reckoning 240 days, as contemplated under Section 25-F read with Section 25-B of the I.D. Act, the period of engagement in different establishments cannot be taken as if it is a continuous employment in one establishment; the learned Single Judge could not have embarked upon an independent re-appreciation of the evidence for the purposes of finding out compliance of Section 25-F of the I.D. Act, in the light of the judgment of the Hon'ble Supreme Court in **Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation**², inasmuch as the Labour Court, in its award, has extensively considered and dealt with such a question in arriving at its finding, which could not have been interfered with by the learned Single Judge; the learned Single Judge wrongly held that the Sundays, which the workman claimed to have worked, could not be taken into consideration for the purpose of reckoning 240 days of continuous service, which is diametrically opposed to the judgment of the Hon'ble Supreme Court in **American Express International Banking Corporation's** case (supra 2); respondent No.2-bank is a Government of India undertaking and the vacancies are required to be filled up as per the recruitment rules, affording equal opportunities to eligible candidates and no back door entry into public employment is permitted under the law; a person desiring to secure regular

² (1985)4 SCC 71

employment in a public sector undertaking/establishment has to submit himself to the prescribed recruitment procedure and there is nothing on record to show that there exists a permanent vacancy/sanctioned post at the branches of respondent No.2-bank; in the absence of such vacancy or post, the directions given by the learned Single Judge to reinstate the writ petitioner with continuity of service and 25% back wages is totally unsustainable as it offends the rights of the writ petitioner under Articles 14, 16, 21 and 309 of the Constitution of India; and the learned Single Judge erred in placing reliance on the decisions, on which reliance is placed by respondent No.2-bank. He, ultimately, prayed to set aside the order under appeal.

11. On the other hand, learned counsel appearing on behalf of the writ petitioner, would submit that the learned Single Judge elaborately dealt with all the issues in question and dealt with the decisions relied on by the learned counsel for respondent No.2-bank, and concluded that the writ petitioner has put up 240 days of continuous service as required, and directed respondent No.2-bank to reinstate the writ petitioner with 25% of back wages; there is no infirmity in the order under appeal and the findings of the learned Single Judge are based on record; the contentions raised on behalf of respondent No.2-bank are not tenable; respondent No.1-Tribunal had appreciated the facts and circumstances of the case on hand; and the learned Single Judge has examined the decision of the Hon'ble Supreme Court in **American Express International Banking Corporation's** case (supra 2), and has recorded a correct finding; and there is nothing to interfere with the order under appeal.

12. In view of the contentions put forth by both sides, the point that arises for determination is whether the order, passed in W.P. No.34799 of 1998 dated 30.01.2008, is liable to be set aside?

13. The specific case of the writ petitioner is that he put up 240 days of continuous service during the period between 18.06.1991 and 06.01.1993 in various branches of the Union Bank of India at Hyderabad, his termination from service without notice or compensation in lieu thereof is arbitrary, illegal and in violation of the provisions of Section 25-F of the I.D. Act. The stand taken by respondent No.2-bank is that the writ petitioner had not put up in 240 days of continuous service in the year preceding the date of his termination, and Sundays and public holidays, which he claimed to have worked, cannot be taken into consideration for the purpose of computation of 240 days of service. While dealing with the issue, the learned Single Judge held that the conclusion of respondent No.1-Tribunal, i.e., that the writ petitioner had worked for 231 days only, and the 13 Sundays which he claimed to have worked, cannot be taken into consideration for the purpose of computing 240 days of continuous service, is erroneous. Consequently, the award passed by respondent No.1-Tribunal was set-aside granting relief to the writ petitioner. The learned Single Judge has elaborately examined the decision of the Hon'ble Supreme Court in **American Express International Banking Corporation's** case (supra 2) wherein, while dealing with the question 'whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which the employee 'actually worked under the employer' for the purposes of Section 25-F read with Section 25-B of the I.D. Act', the Hon'ble Supreme Court held that the expression 'actually worked under the employer' cannot mean those days

only when the workmen worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. The Tribunal, while relying on another decision of the Hon'ble Supreme Court in **C.V.Raman v. Management of Bank of India**³, held that the State Bank of India and other nationalized banks are establishments under the Central Government and are, therefore, exempted from the operation of the A.P. Shops and Establishments Act, under Section 64(1)(b) of the said Act. The learned Single Judge has observed that unfortunately, the Tribunal had relied on the decision of the Hon'ble Supreme Court in **C.V.Raman's** case (supra 3), which has no relevance to the facts of the instant case. In **C.V.Raman's** case (supra 3), the question, 'whether Sundays and other paid holidays could have been taken into consideration for the purpose of computing 240 days of continuous service', had not arisen for consideration and, in the circumstances of the case, the proposition laid down in the said decision ought not have been applied by the Tribunal to the instant case.

14. In view of the circumstances of the case, it is appropriate to state that the principle of adding up Sundays and public holidays, was first considered by the Hon'ble Supreme Court in **H.D.Singh v. Reserve Bank of India and others**⁴. In the said case, the appellant therein worked for 202 days from July, 1975 to July 1976 and 52 Sundays and 17 holidays were to be added to those days. If they were added, the workman had worked for 271 days. The management could not produce the attendance register, and stated

³ AIR 1988 Sc 1369

⁴ (1985)4 SCC 201

payment registers were available. The Hon'ble Supreme Court drew an adverse inference against the bank and held that the workman therein worked for 271 days, and ordered reinstatement of the workman with back wages.

15. Learned counsel for respondent No.2-bank has relied on the decision of the Hon'ble Supreme Court in **Ganga Kisan Sahkari Chini Mills Limited v. Jaivir Singh**⁵ and **Krishna Bhagya Jal Nigam Limited v. Mohd. Rafi**⁶, wherein it is made clear that where there is no knowledge to one establishment, as to the working of the workman in another establishment, compliance of Section 25-F of the I.D. Act by the management would not be possible. In the case on hand, the writ petitioner had worked in various branches of Union Bank of India at Hyderabad during the period in question to the knowledge of the authorities concerned, and the same is not in dispute. The dispute raised by respondent No.2-bank is only that the writ petitioner did not put up 240 days of continuous service during the period in question. Therefore, the decision relied on by the learned counsel for respondent No.2-bank has no application to the case on hand.

16. In our considered opinion, the Tribunal wrongly held that the Sundays and other holidays, which the writ petitioner claimed to have worked, cannot be taken into consideration for the purpose of reckoning 240 days of continuous service. This view of the Tribunal is diametrically opposed to the decisions of the Hon'ble Supreme Court in **American Express International Banking Corporation's** case (supra 2) and **H.D.Singh's** case (supra 4).

⁵ 2007 LLR 1260

⁶ (2006)9 SCC 697

17. In **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**⁷, the Hon'ble Supreme Court held as under:

"The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is *ultra vires* the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer, would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

The facts and circumstances of the above case are similar to the case on hand. As per the records available, there is no legally acceptable material to

⁷ (2013)10 SCC 324

hold that the workman was gainfully employed during the period after the termination of his services.

18. The learned senior counsel appearing on behalf of the appellants contended that the learned Single Judge has re-appreciated the evidence, which is not permissible under Article 226 of the Constitution of India. Under these circumstances, it is appropriate to refer the decision rendered in **K.S. Bhoir v. State of Maharashtra**⁸, wherein the Hon'ble Supreme Court held that the power conferred on the High Court, by virtue of Article 226 of the Constitution of India, is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law. In the case on hand, there is non-compliance of Sections 25-B and 25-F of the I.D. Act. The Tribunal had not correctly reckoned the number of total working days put in by the writ petitioner, and has excluded Sundays and public holidays from the compensation of 240 days under Section 25-B of the I.D. Act. Calculating those days, relying on the legal aspects and the decisions of the Hon'ble Supreme Court, does not amount to re-appreciation of the evidence on record.

19. In view of the above discussion, it is clear that the expression 'actually worked under the employer' cannot be said to be the days on which the workman/employee had physically worked. Public holidays, Sundays, and paid holidays during that period, should also be treated as working days. Consequently, the 13 Sundays, which the writ petitioner-workman claimed to have worked, be treated as working days, and must be taken into account for reckoning 240 days of continuous service. Thus, the writ petitioner has established that he has put up the required 240 days of continuous service in

⁸ AIR 2002 SC 444

a year, as required under the provisions of Section 25-B of the I.D. Act. Termination of the services of the writ petitioner is, therefore, in gross violation of the mandatory provisions of Section 25-F of the I.D. Act. The learned Single Judge has elaborately dealt with all these issues, and has recorded a correct finding on the basis of the evidence on record. There is no infirmity in the impugned order directing respondent No.2-bank to reinstate the writ petitioner into service with continuity of service with 25% of back wages. As such, no different opinion can be substituted.

20. In the result, the impugned order dated 30.01.2008 passed in W.P. No.34799 of 1998 is confirmed and the writ appeal is dismissed.

21. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: 04-05-2017

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