

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.3964 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, by the petitioner is filed requesting to quash the Award, dated 31.05.2003, of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (for short 'the Tribunal') passed in L.C.I.D.No.85 of 2002 and grant all consequential benefits to the petitioner.

2. I have heard the submissions of *Sri A.K. Jayaprakash Rao*, learned counsel for the writ petitioner. 1st respondent is the Tribunal. Respondents 2 and 3 are the Regional Manager and the Branch Manager of Vysya Bank. It is submitted that during pendency of the writ petition, Kotak Mahindra Bank Limited has taken over ING Vysya Bank Limited, and, hence, respondents 4 and 5, were impleaded as per orders, dated 09.06.2016, in WPMP.No.7112 of 2016. Though the said impleaded respondents are served with notices, they did not enter appearance.

3. I have perused the material record.

4. The case of the petitioner and the submissions made on his behalf, in brief, are as follows: 'The petitioner was appointed as an Attender on daily wage basis in the respondents-Bank, on 10.12.2000. His appointment was made by oral orders. On 21.12.2000, he sustained an injury to his left index finger due to the negligent act of the Assistant Manager while locking the strong room door. He was rushed to the hospital by the authorities of the Bank for treatment. After he underwent an operation, he was declared fit. He was taken to duty with effect from 06.08.2001. Later, on 29.08.2001, by oral order, his services were terminated. Neither one month's notice was

issued nor was salary in lieu of notice paid. The petitioner completed 240 days of service with effect from 10.12.2000 to 29.08.2001; as the period of sickness also counts as duty, he served in all for 265 days during the said period. He was drawing a wage of Rs.75/- per day at the time of his oral termination. He served a legal notice by RPAD on the management on 21.09.2001 to reconsider its decision of his termination from service and requested to reinstate him. The management issued a reply stating that it is not possible to reconsider its decision. Therefore, the petitioner raised an industrial dispute and filed a claim petition.'

5. The respondents-bank resisted the claim petition, *inter alia*, stating as follows: - 'The petitioner was appointed as an Attender on daily wage basis on 10.12.2000 is false. He was temporarily appointed as an Attender, on 20.11.2000, for a period of 30 days and he was directed to report to duty at S.V.N.Road Branch, Warangal. Accordingly, he reported to duty. At the closing of office hours, on 19.12.2000, the petitioner was informed that he would be relieved and accordingly he was relieved. He sustained injury while on duty due to the negligence of the Assistant Manager and while the Assistant Manager was locking the strong room door on 21.12.2000 is false. He was relieved from his duties on 19.12.2000 itself. On 21.12.2000, the bank employees all over India were on a general strike and the business of the bank remained closed and the strong room door was not opened on that day. The petitioner was again appointed on 06.08.2001 as a temporary Sweeper and was relieved on 29.08.2001 and was not terminated. He was paid a wage of Rs.75/- per day. Contrary allegations in the claim petition are false and invented to get the benefit of continuity of service. Provisions of law under the Industrial Disputes Act are not applicable. Hence, the claim petition may be dismissed.'

6. During the course of enquiry before the Tribunal, the petitioner who was examined as WW1 reiterated his case. He specifically stated that first filing of his index finger was cut off when the Assistant Manager negligently locked the strong room door and that he was called by the Manager, on 06.08.2001, and worked from 06.08.2001 to 29.08.2001 and that he was informed on 29.08.2001 not to come on the next day and that he was neither paid any salary in lieu of notice nor was given any notice before he was terminated. He denied the suggestion that he did not work on 21.12.2000; but, admitted that on 21.12.2000 the Bank did not function due to general strike; and, further stated that the shutters of the Bank were opened and officers of the Bank were present in the Bank. On behalf of the bank, a witness MW1 was examined. He was the then Branch Manager concerned. Besides other documents, the petitioner exhibited W3, copy of medical certificate from Vithal Orthopedic clinic, and exhibit W4, copy of injury certificate from Satya Hospital. On the side of the respondents-bank, exhibit M1, copy of medical certificate of the petitioner; exhibit M2, copy of request, dated 20.11.2000, of the petitioner for temporary appointment; exhibit M3, appointment order, dated 20.11.2000; exhibit M4, copy of attendance sheet from 20.11.2000 to 19.12.2000; exhibit M5, copy of receipt of pay of Rs.3,489.20 ps; exhibit M6, copy of circular No.120/ 123/ 2001, dated 30.01.2001; and, exhibit M7, copy of attendance register extract from 18.12.2000 to 31.12.2000 were exhibited.

7. After analysing the facts and evidence, particularly the documentary evidence, the Tribunal held that there is a shadow of doubt on the case pleaded and sought to be proved by the petitioner and, therefore, the petitioner was not able to prove that he is entitled to the relief of reinstatement. However, the Tribunal gave a direction to the 2nd respondent, Branch Manager, Vysya Bank, that the petitioner's initial date of appointment be taken as 20.11.2000 and that he shall be given preference over other

juniors, if any casual/temporary Peon is appointed, in future. Aggrieved thereby the petitioner filed this writ petition.

8. Learned counsel for the petitioner while stating the case of the petitioner as pleaded in the claim petition and while stating chronology of events, which are stated supra, would contend as follows: 'The learned Chairman of the Tribunal ought to have accepted the case of the petitioner in entirety. In fact the Chairman of the Tribunal while appreciating and accepting the statement of the petitioner, erroneously and curiously rejected the statement on the ground that there is a shadow of doubt. Further, no valid reasons are assigned in the Award for not ordering reinstatement of the petitioner. Without considering the case of the petitioner for appointment as a casual or temporary Peon by giving preference over other juniors as per the directions in the Award and by ignoring the findings in the Award of the Tribunal, the respondents 2 and 3, that is, the officers of the Bank employed a regular employee to work as an Attender.'

9. No counter is filed by the respondents 2 and 3 representing the Bank. As already noted, the impleaded respondents 4 and 5 though served with notices, did not enter appearance and filed counters. Be that as it may.

10. A careful perusal of the Award of the Tribunal and the material record would show that after necessary examination of the facts and relevant evidence, the learned Chairman of the Tribunal arrived at a conclusion that there is a shadow of doubt in regard to the case of the petitioner and that the petitioner has not been able to prove that he is entitled to the relief of reinstatement and, therefore, directed the Officer concerned of the Bank to give preference to the petitioner over his juniors by taking his initial date of appointment as 20.11.2000, if any, casual or temporary Peon is appointed in the bank, in future. It is not the case of the petitioner that the bank has appointed any other person as a casual or temporary peon.

11. On a careful examination of the matter, this Court does not find any perversity, illegality, irregularity or impropriety in the factual findings recorded by the Tribunal. This Court, in the facts and circumstances, does not find any grounds much less valid grounds calling for interference with the said finding of fact recorded by the learned Chairman of the Tribunal. When once conclusions arrived at by the learned Chairman of the Tribunal are found to be sustainable on facts and evidence, this Court will not normally substitute its subjective opinion in the place of the one arrived at by the Chairman of the Tribunal when such a view is possible and plausible. As already noted, it is not the case of the petitioner that the Bank appointed any casual or temporary Peon without giving preference to him from among his juniors.

12. Before parting, it is necessary to refer to the decision in *Union of India v. P. Gunasekaran*¹ wherein the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

“In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.”

¹ (2015) 2 SCC 610

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

In view of the legal position succinctly stated in the above decision, this Court shall not (i) re-appreciate the evidence; (ii) interfere with the conclusions in the enquiry, in case, the enquiry has been conducted in accordance with law, (iii) go into the adequacy and reliability of the evidence; (iv) correct the error of fact, however grave it may appear to be; and, (v) interfere, if there be some legal evidence on which the finding can be based.

13. On the above analysis, this Court finds that the Award of the Tribunal does not suffer from any flaw and does not, therefore, call for interference by this Court and that the writ petition, which is devoid of merit, is liable to be dismissed.

14. In the result, the Writ Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

20.04.2017
Vjl