

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9647 OF 2004

State Bank of India

...Petitioner

Vs.

Smt.Meena Nhalve

...Respondent

Mr.Ajay Nair with Irfan A. Shaikh I/b. Theba & Associates for Petitioner.
Mr.R.R. Soni for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 12 JULY 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an award passed by the Industrial Tribunal at Pune in a reference made to it under Section 10 of the Industrial Disputes Act.

3 The controversy concerns termination of the Respondent workman, who claimed to be working on a permanent post for a period of over 240 days of service within twelve preceding months and entitled to the benefit of permanency. Her case was accepted by the Industrial Tribunal and she was directed to be reinstated as permanent Class IV employee with backwages and continuity of service. According to the Respondent employee, she worked with the Petitioner bank between August 1995 and October 1996 when her services were terminated. On the other hand, the only defence which was pressed by the bank before the Industrial Tribunal, was that she worked only between November 1995 and

July 1996 and thereafter, for some time in October 1996 and that she did not, accordingly, complete 240 days of service within 12 preceding months. This contention was rejected by the Industrial Tribunal on the ground that, firstly, there was evidence in the form of a certificate issued by the Branch Manager of the Petitioner bank which showed her service with effect from August 1995. The certificate showed that she worked for 110 days between August 1995 and December 1995 and 185 days between January 1996 and October 1996. If one excludes the number of days worked in October 1996, the number of days worked between August 1995 and July 1996 aggregate to 265 days. Accordingly, the certificate shows that in twelve preceding months, she worked for more than 240 days. The Industrial Tribunal also observed an admission by the Petitioner's witness that the Respondent worked during August 1995 and July 1996 and she was doing work in the sanctioned post of a messenger during this period. This evidence was accepted by the court and on that basis, her case of not less than 240 days of continuous work in twelve months was accepted by the court. This being a matter of assessment of evidence and the award in this behalf having been supported by evidence on record, no interference is called for within the writ jurisdiction of this court.

4 Learned Counsel for the Petitioner relies on a settlement entered into by the bank with the representative union of its employees on 9 January 1991. Learned Counsel submits that under this settlement, none of the bank's temporary employees, the categories of whom were set out in the settlement, were entitled to any payment of backwages or other attendant benefits except increments, for the period of temporary service put in, though they had one chance of being considered for permanent appointment in the bank's service and in such cases, their appointments

could be effective from the date they took up their permanent appointments. It is submitted that the Respondent employee cannot claim permanency except in accordance with this settlement. Though this ground does not appear to have been specifically dealt with by the Industrial Tribunal in its impugned order, it is clear from the settlement annexed to the petition that this settlement applied to temporary employees of the bank, who had worked with the bank between 1987 to 1991, and not generally to employees, who may have been subsequently employed with the bank. In fact, the settlement requires that with effect from the date of the settlement, i.e. 9 January 1991, there would be no temporary appointments in the sub-ordinate cadre, except for the cases of sweepers or watch and ward staff. It is borne out on record that the Respondent was not employed as a sweeper but as a messenger for various services of the bank. She was appointed in 1995 (whether in August 1995 as claimed by the Respondent or in November 1995 as claimed by the Petitioner). The settlement of 9 January 1991, accordingly, cannot be made applicable to her.

5 Learned Counsel for the Petitioner, lastly, submits that the appointment cannot be regularised and permanency cannot be granted merely on the basis that the employee has completed 240 days of continuous service within twelve preceding months. Learned Counsel submits that in this case, the appointment was not made by following due procedure. This is a plea of fact and, if at all it is to be urged, it must find place in the pleadings of the party, who advances such plea. There is no such plea in any of the pleadings of the Petitioner bank. No such argument appears to have been advanced before the Industrial Tribunal and no contention can, accordingly, be raised before this court in its writ

jurisdiction.

6 Accordingly, there is no merit in the petition. The petition is dismissed.

(S.C. GUPTE, J.)