

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.7247 of 2004

Indian Bank,
rep. By its General Manager,
Ethiraj Salai,
Chennai.

.. Petitioner

Vs

1.The Presiding Officer,
The Central Government,
Industrial Tribunal,
Shastri Bhavan,
Haddows Road,
Nungambakkam,
Chennai-600 034.

2.Indian Bank Employees' Union,
rep.by its General Secretary,
25, Second Line Beach,
Chennai - 600 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to I.D.No.738 of 2001 on the files of the first respondent dated 25.08.2003 (received by the petitioner on 12.11.2003) and to quash the same.

For Petitioner : Mrs.Rita Chandrasekar

For Respondents : Mr.Rangarajulu for R2

ORDER

The prayer sought for in this Writ petition is to call for the records relating to I.D.No.738 of 2001 on the file of the first respondent dated 25.08.2003 (received by the petitioner on 12.11.2003) and to quash the same.

2. The short facts which are required to be noticed for the disposal of the Writ petition are as follows:-

The petitioner/Bank had established an extension counter at Pondicherry Central University Campus. In that extension counter office for the purpose of Sweeping, one Malliga had been

engaged on 04.06.1992 as part time Sweeper. The said Malliga had been continuously engaged up to October 1993. In October 1993, the said extension counter had been attached with Jawaharlal Nehru Road branch. In the meanwhile, yet another part time Sweeper was also engaged along with the said Malliga viz., Bagyalakshmi and both were engaged on 04.06.1992 as part time Sweepers on rotational basis. The said Bagyalakshmi had been permanently absorbed at Kottupakkam Branch of the petitioner/bank. However, the said Malliga, since had not been regularized or permanently absorbed as in the case of the said Bagyalakshmi, on her behalf, the second respondent i.e. Indian Bank Employees' Union had raised an Industrial dispute by referring the matter to the Conciliation Officer, which ended in failure.

3. Subsequently, when it was requested to the Union of India for reference by way of an industrial dispute to the Central Government Industrial Tribunal, the Government of India by order dated 19.06.1995, had passed an order refusing to refer the dispute for adjudication on the ground that, since the said Malliga, i.e., working woman rendered service on casual basis for certain period, it does not confer any right on her for regularization and therefore, on that ground, the dispute was refused to be referred for adjudication before the Industrial Tribunal.

4. Challenging the said order of Union of India, the second respondent/Indian Bank Employees' Union had filed a Writ petition before this Court in W.P.No.9499 of 1995 and the said Writ petition was disposed by this Court by order dated 24.08.2001, whereby, the learned Judge of this Court rejected the stand taken by the Union of India and directed the Union of India to refer the matter to the Industrial Tribunal for adjudication and by thus, the said Writ petition was allowed to that extent.

5. Pursuant to the said order passed by this Court as referred to above, the matter was referred to the first respondent Industrial Tribunal, where the said dispute had been taken on file as I.D.No.738 of 2001 by filing a claim statement by the Union on 02.01.2002 for which counter statement was filed by the bank in April 2002.

6. The Industrial Tribunal, after having considered the claim and counter claim made by the parties, had passed an award on 25.08.2003 whereby, the Tribunal had directed the bank to reinstate the said Malliga into service as a permanent part time

Sweeper at least from the date of award i.e., 25.08.2003. Aggrieved over the said impugned award of the first respondent dated 25.08.2003 in I.D.No.738 of 2001, the present Writ Petition has been filed by the petitioner/Bank.

7. I have heard, Mrs.Rita Chandrasekaran, learned Standing Counsel for the petitioner/Bank, who would submit that, the said Malliga had never been engaged by the bank through proper channel as no permanent part time Sweeper post was available in the extension counter at the Pondicherry Central University Campus. The Branch Manager concerned under whom the said extension counter was attached, had inadvertently, in violation of the norms, has engaged the said Malliga, that too, intermittently and she had never completed 240 days continuously to seek for absorption.

8. The learned Standing Counsel would further submit that, as per the Bipartite Settlement between the Bank and the employees' Union dated 28.07.1993, even the part time/permanent Sweeper in the petitioner/bank has to be appointed only on the names being sponsored by the concerned Employment Exchange and not by any other method. If any such engagement of part time Sweeper is made, within a period of six months, the same should be reported to the concerned head of the bank and thereafter, permanently appointed candidates through the Employment Exchange shall replace the temporarily engaged part time Sweeper as per the terms agreed between the petitioner/bank and the Employees' Association in the Bipartite Settlement dated 28.07.1993.

9. The learned Standing Counsel would also submit that, since the said bank never had any permanent post of part time Sweeper at the University Campus extension counter, the question of appointing or absorbing the said Malliga into the said post did not rise at any point of time. Moreover, generally when this kind of extension counters are opened in a place like a Central University Campus, the Sweeping job would be taken care of by the University itself or the institution by their staff. Therefore, if at all, the said Malliga had been engaged for some time as part time Sweeper in a casual manner, the same shall be only termed as a stop gap arrangement and therefore, it cannot be considered as permanent engagement to seek absorption as permanent part time Sweeper.

10. The learned Standing Counsel would also submit on instructions that, the extension counter itself at the University campus had been upgraded as a full time branch from 11.09.1998, where a full time sweeper by name Anjalatchi was working as permanent part time sweeper till 2015 and thereafter,

she was also transferred to Uppuvelur branch and thereafter, the bank decided to entrust the job to outsourcing and therefore, at no point of time, the post of permanent part time sweeper was in existence either at the extension counter or after it became the full-fledged branch of the Pondicherry University Campus.

11. Therefore, the learned Standing Counsel appearing for the petitioner/bank would submit that, looking from any angle, the claim made on behalf of the said Malliga by the second respondent/Employees' Union is notwithstanding and bereft of any merits. Even if these aspects had been put forth before the first respondent Industrial Tribunal, the Tribunal has not considered all these aspects in right perspective and the Tribunal had passed a mechanical order accepting the plea raised by the Employees' Union on behalf of the said Malliga and accordingly, the impugned award was passed directing the bank to reinstate the said Malliga and absorb her in permanent part time Sweeper post in the respondent bank and therefore, the said order requires interference of this Court.

12. Per contra, the learned counsel appearing for the second respondent would submit that, it is an admitted fact that the petitioner/bank had established an extension counter at the Pondicherry Central University Campus. The premises of the said extension counter had to be necessarily cleaned everyday. Therefore, in order to clean the said extension counter premises, two persons including one Malliga had been engaged along with one Bagyalakshmi by the petitioner/bank on 04.06.1992. The bank claimed at that time that the engagement of two persons as sweepers, of course, as part time Sweepers is on rotational basis. It means that each Sweeper would take care of the cleaning work for three days in a week on rotational basis. This kind of working arrangement was continuously maintained till October 1993. At that point of time, one of the two persons viz., Bagyalakshmi had been permanently absorbed at Kottupakkam branch where originally, the extension counter was attached and subsequently, the same had been withdrawn from Kottupakkam branch and attached at Jawaharlal Nehru Road Branch. Therefore, two out of one had been permanently absorbed as permanent part time sweeper by the Bank.

13. The learned counsel for the second respondent would further submit that, insofar as the case of Malliga is concerned, she had been continuously engaged by the bank in the extension counter only as a casual sweeper and she was neither made permanent nor absorbed. Therefore, claiming the very same status as has been conferred on Bagyalakshmi, Malliga also wanted absorption as a permanent part time sweeper. Since the

same was not considered or accepted by the bank, issue was raised by referring the matter to the conciliation proceedings which ended in failure. Thereafter, subsequently, eventhough the matter was first refused by the Union of India to refer the dispute to the Industrial Tribunal for adjudication, this Court has referred the matter to the Industrial Tribunal. Subsequently, the Industrial Tribunal also having considered the claim of the said individual through the Employees' Union had come to the right conclusion that, since the post of Sweeper, of course the part time Sweeper, had been required permanently in the extension counter, the service cannot be dispensed with and therefore, at least from the date of award, she can be re-engaged or absorbed. The learned counsel appearing for the second respondent would further submit that, insofar as the bipartite agreement is concerned, since the post of part time Sweeper is coming under the category of manual servant and sweeper category, for the said purpose, under the provisions of the act viz., Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 especially under Section 2(2)(i)(3), there is no requirement that it should be sponsored through the Employment Exchange in case of appointment of sweeper and manual servant. Therefore, the said ground raised by the bank, as per the Bipartite Agreement that appointment shall be made, for the post of sweeper also, only through Employment Exchange, cannot be accepted.

14. The learned counsel appearing for the second respondent would further submit that, it is an admitted case on the side of the bank that the said individual i.e., Malliga had been engaged for 227 days. The said statement has not been accepted by either the individual or by the Employees' Union as the said individual worked for more than 240 days and on that ground also she would be entitled to get absorption as permanent part time sweeper. Therefore, the learned Counsel appearing for the second respondent would further submit that, the permanent employment provided to the co-employee, has been denied to the said Malliga, and the benefit has not been conferred on her by the petitioner/bank for the reasons best known to them. Hence, the said individual is entitled to get absorption at least from the date of award as has been awarded by the first respondent Tribunal. Therefore, the impugned award does not require any interference from this Court.

15. I have considered the said rival submissions put forth by both the parties and have heard, Mrs.Rita chandrasekar, the learned Counsel for the petitioner/bank and Mr.Rangarajalu, the learned Counsel for the second respondent and have carefully perused the materials placed before this Court.

16. Throughout the arguments, it was vehemently contended by the learned counsel appearing for the bank that, the initial engagement of the said individual itself was unlawful as the branch manager was not supposed to engage part time sweepers without the concurrence and approval of the Competent Authority. Moreover, from the terms of the Bipartite agreement, it is very clear that such kind of arrangements, hence forthwith has to be made only by sponsoring candidates from the employment exchange. Merely, because she had been unlawfully engaged, that too, intermittently, for less than 240 days the said engagement cannot be treated as an eligible engagement for the purpose of absorption.

17. The learned Standing Counsel for the petitioner, in fact argued that, the extension counter at the University campus did not require part time sweeper as it is a corridor area, less than 1000 Sq.ft., and it does not require a permanent sweeper and the same can be managed by the sweeper to be supplied by the institution where such kind of extension counters are located. Eventhough, such an argument was advanced by the learned counsel for the petitioner/bank, the fact remains that, it was not only the said Malliga, but also one more sweeper viz., Bagyalakshmi along with Malliga was appointed by the branch manager under whose control the extension counter was running from 04.06.1992. Since two sweepers were engaged for extension counter, they looked after the sweeping job on rotational basis on any three days per week. When that being the position, the said Bagyalakshmi, even though similarly placed like Malliga had been subsequently absorbed in Kottupakkam branch on permanent basis and even though, a special reason was given by the bank for the said absorption saying that her mother was permanently working in the Kottupakkam branch, since she resigned from her service, in that place her daughter had been absorbed, I am afraid because, once the mother resigned the job, the daughter cannot be automatically absorbed in the job on legal heir basis or compassionate basis.

18. Assuming that, in the place of her mother, the said Bagyalakshmi was absorbed, at least for the purpose of eligibility to be absorbed, the mere casual engagement of a part time sweeper that too, on rotational basis, in an extension counter premises by way of so called unlawful engagement made by the branch manager since has been accepted by the bank, the same yardstick accepted can very well be followed or adopted in respect of other absorptions also.

19. The said comparison is very well relevant for the present case, in view of the fact that, both Bagyalakshmi and Malliga have been engaged by the very same branch manager as part time Sweeper for some period and that being so, one cannot be given absorption, and another cannot be refused in treating the equals unequally and therefore, it is a clear discrimination on the part of the petitioner/bank.

20. That apart, it is the case of the petitioner/bank that, the extension counter at one point of time had been withdrawn from the Kottupakkam branch and has been merged with Jawaharlal Nehru Road branch and once it got merged with Jawaharlal Nehru Road branch, there is no permanent vacancy of part time Sweeper in that Branch and therefore, on that ground the said Malliga could not be absorbed. This reason also does not impress this Court for the obvious reason that, the sweeping job to be undertaken at the premises of the extension counter in the University campus is entirely different from the post of sweeper to be engaged in the main branch of Jawaharlal Nehru Road. Therefore, both need not be confused and even after the extension counter was merged with Jawaharlal Nehru Road Branch, the Branch Manager of the extension counter was functioning in the University campus i.e., in the very same premises, therefore, the job of sweeper is always there in that extension counter also. Therefore that argument advanced by the petitioner bank is liable to be rejected.

21. Yet another stand has also been taken by the petitioner/bank that, the said extension counter itself has been upgraded as full time branch called Pondicherry University branch from 09.11.1998 and in this regard the following statement has been given in the affidavit filed in this regard by the Bank, which reads as follows:

"It is further submitted that Jawaharlal Nehru Street Branch (which had administrative control of the extension counter) subsequently shifted its premises to Kamaraj Salai and became Kamaraj Salai Branch. Accordingly, the Puducherry Extension counter was made independent and upgraded as a full-fledged Puducherry University Branch from 09.11.1998. The said Branch is also functioning in the Pondicherry University Premises. It is submitted that one Ms.Anjalatchi was working as permanent part-time sweeper there till 2015 and she was transferred to Uppuvelur Branch subsequently."

22. From the above said averments, it also becomes clear that, the extension counter has become a full-fledged branch. After, it had become a full-fledged branch, a permanent part time sweeper, one Ms.Anjalatchi was working and this continued up to 2015 and therefore, this makes it abundantly clear that, continuously, at every point of time, the Pondicherry Central University Indian Bank Extension counter or Pondicherry Central University Indian Bank Branch had been in need of a sweeper, because the premises is one and the same and only the bank transaction business has been upgraded from extension counter to branch.

23. Merely because, up to 1998, it was only an extension counter, it cannot be said that, the extension counter premises did not require a sweeper. Once, it became a branch as it has been averred in the affidavit as extracted above, a permanent part time sweeper had been engaged till 2015 where one Anjalatchi was working in the very same premises. Since it had been cleaned by Malliga, of course, along with one Bagyalakshmi initially between 04.06.1992 and 01.10.1993 and for sometime, the very said Malliga alone, therefore, the job undertaken by a sweeper in the Pondicherry Central University extension counter or branch of the petitioner/bank, as sweeper is one and the same, therefore, job of permanent part time sweeper had always been available or required in the said extension counter of the bank. With these factual matrix, if we look into the impugned award passed, it can be found that the Industrial Tribunal has taken this aspect in proper perspective.

24. The Industrial Tribunal, after considering the claim and counter claim made before it, has given its finding and conclusion which reads thus:-

"9.On behalf of the petitioner Union, it is argued that the Government circulars mentioned by the Respondent as guidelines have no relevance for this dispute and they deal about the vacancies of sub-staff and not covered with Sweepers/Scavengers posts. Further, item 10 of Schedule V of the Industrial Disputes Act, 1947 categorically states that to employ workmen as casuals for years with the object of depriving them of the status of permanent workmen is an unfair labour practice. In this case, Smt.Malliga was employed as a temporary part-time sweeper from 1992 onwards and even though, the Zonal Office had recommended for her regularization, the Respondent/Bank has not done the same on the ground that it is against the Government circulars and instructions given to them. On the other hand, under

section 2(2)(i)(3) of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, vacancy of menial job like sweeper need not be notified and no management is obligation to approach the Employment Exchange for sponsoring the candidates for engagement of sweeper employees. Further, it is argued that the Honourable Supreme Court in 1987 (I) LLJ 545 in the case of U.O.I & Others Vs. N.Harigopal and others and also in 1997 I LLJ 567 in the case of Excise Superintendent Malkapatnam, AP Vs. K.B.N. Visweshwara Rao and Ors., has held that "for jobs of menial nature, the provisions of the Act should not be insisted upon" and in 1992 I LLJ 651 D.Venkata Rao & Others Vs. Principal, D.A.Government Polytechnic, Ongole & Another, the High Court of Andhra Pradesh has held that "from section 3 of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, it is quite manifest that the authority cannot insist upon the candidates being sponsored by the Employment Exchange and in that case, it is not disputed that the Government by virtue of G.O. Insisted for even appointment of unskilled workers, the candidates will have to be sponsored by Employment Exchange that it will be running count to the act itself" and it was held that such insistence is not in consonance with the provisions of the Act and also struck down the same and therefore, in this case, the Respondent/Management wantonly has not regularize the services of Smt.Malliga and it is quit unfair labour practice on the part of the respondent.

10. I find some force in the contention of the Petitioner Union, because the Respondent/Bank from 1992 onwards having engaged the services of Smt.Malliga for the post of part-time sweeper and it is also clear that the post of part time sweeper in the Pondicherry University Extension Counter is a permanent post and against the rules and regulations and also the provisions of Bipartite Settlement, the Respondent/Bank has not employed any person for the post of Sweeper on permanent basis in that branch, cannot now contend that the engagement of the said Smt.Malliga is not proper and she was not appointed by the competent authority and therefore, she cannot claim for any regularization. By keeping the permanent post vacant for such a long period and now they wanted to take advantage that Smt.Malliga has been appointed temporarily as a casual/daily wager

and contend that her appointment is unauthorized and I find much force in the contention of the petitioner. Therefore, I come to the conclusion that the services of Smt.Malliga are to be regularized as permanent part-time sweeper from the date of passing of this Award in the Respondent Indian Bank. As such, I find this point in affirmative."

25. Having gone through the aforesaid material including the impugned award, I am of the view that, absolutely, there is no justification on the part of the petitioner/bank, to deny absorption to the said Malliga as permanent part time sweeper. When such a gesture has been shown to the co-worker, when she was also engaged along with the said Malliga as a casual part time sweeper, the bank cannot deny the same to the said Malliga. All the reasons stated by the petitioner/bank like terms of Bipartite settlement, there had been no part time sweeper post available, the extension counter kept merged with Jawaharlal Nehru Road branch, the extension counter itself had been upgraded in 1998 and also it was in general working condition and that whenever such extension counters are established the institution or premises where such extension counter is established would supply the sweeper, are all having no substantial back up to accept, in view of the factual matrix of the case as well as legal position in this regard. Therefore, this Court feels that, absolutely, there is no infirmity or perversity attached to the impugned award passed by the Industrial Tribunal and hence, the same is to be sustained.

26. During the hearing, the learned Counsel appearing for the second respondent, has taken a stand that, if the petitioner/bank re-instated and absorbed the said individual viz., Malliga at least now, the said individual will be ready and willing to forego the backwages. However, even the said concession voluntarily extended by the said individual on behalf of the second respondent has also not been accepted by the bank as the learned Standing Counsel, on instructions, submitted that, the bank was not ready and willing to accept the said settlement also.

27. To be noted, the Industrial Tribunal, through the impugned award had directed re-instatement and absorption of the individual atleast from the date of award and not from the date of original dis-engagement., as against which this Writ petition was filed by the bank, where bank sought for an interim order of stay. The same was rejected by the order of the learned Single Judge by order dated 23.03.2004 in W.M.P.No.8570 of 2004 as against which the bank preferred Intra-Court Appeal in

W.A.No.1695 of 2004 where the Hon'ble Division Bench of this Court has passed the following orders:-

"The Indian Bank has filed the above appeal questioning the dismissal of stay petition while admitting the writ petition, by the learned single Judge. In the award passed by the first respondent, the appellant was directed to regularize the services of one Tmt.Mallika, in the post of Sweeper. The learned counsel appearing for the appellant has submitted that when the learned Judge has admitted the Writ petition, the learned Judge should have granted interim order. Such a submission cannot be accepted. The workmen has got the award in her favour for regularization. If the appellant regularities her services pending the Writ petition and also subject to the result of the Writ petition, no prejudice would be caused to the appellant. Hence we do not find any reason to interfere with the order passed by the learned Judge except saying the regularization pending Writ petition will be subject to the result of the main Writ petition. The Writ appeal is dismissed. Consequently, W.A.M.P.No.3184 of 2004 for stay is dismissed."

28. The division bench had made it clear that, if the appellant regularizes her services pending the Writ petition and also subject to the result of the Writ petition, no prejudice would be caused to the appellant. It means that, eventhough the Writ petition was admitted, it becomes clear that, as per the order passed by the Division Bench, the petitioner/bank should have re-instated or regularized the services of the individual. However, inspite of the said dismissal of the Intra-Court Appeal by the said Division Bench of this Court as referred to above, no re-instatement or regularization had been made till date. Merely, because, the second respondent has not filed any Contempt Petition, the petitioner/bank cannot take advantage of the said situation to exploit the poor litigant who is after all a part time sweeper. If she had been reinstated pursuant to the order passed by the Division Bench of this Court, at least the individual would have worked for 14 years till date. Even the said services had been denied to the said individual. Therefore, this Court feels that, eventhough for all these years, the individual has not worked and she may not be entitled for the full salary, however, she shall be entitled to atleast 50% of the salary, to which, the bank shall not refuse. For all the

reasons and the discussions made above, this Court is inclined to dispose of the Writ Petition by passing the following order:-

(i) The impugned award is sustained and therefore, the Writ petition fails.

(ii) Since, the individual Malliga was entitled to get reinstatement and regularization at least from the date of the award i.e. on 25.08.2003 and since she has not been reinstated and regularized, inspite of the stay petition filed by the bank was dismissed and the same was confirmed by the Division Bench by passing detailed Order dated 26.04.2004 in W.A.No.1675/2004, the said Malliga (individual) shall be entitled to get 50% of back wages for all these period.

(iii) The said individual Malliga shall be reinstated with regularization with effect from the date of award impugned herein and she shall continue to work as a permanent part time sweeper till she reaches the age of superannuation. The aforesaid exercise shall be undertaken by the petitioner/bank within a period of one month from the date of receipt of a copy of this order.

29. With these directions, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
The Central Government,
Industrial Tribunal,
Shastri Bhavan,
Haddows Road,
Nungambakkam, Chennai-600 034.

+1 cc to M/s.Aiyar & Dolia, Advocate Sr.No. 66161
+1 cc to M/s.M.Rangarajulu, Advocate SR.No.66022

AKM/30.10.19/12P-4C /

W.P.No.7247 of 2004