

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.13969 of 2011

Indian Bank Employees Association,
Rep by its General Secretary,
17/9, Ameer Jan Street,
Choolaimedu,
Chennai 600 094.

... Petitioner

Vs

1.The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan,
Haddows Road,
Chennai 600 006.

2.Indian Bank,
Rep by its General Manager,
No.66, Rajaji Salai,
Chennai 600 001.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the award of the 1st respondent dated 30.11.2006 in I.D.No.417/2004 in so far as depriving the petitioner backwages and not specifically granting the relief of continuity of service and other attendant benefits,quash the same and consequently direct the second respondent Bank to give the petitioner back wages, continuity of service and other attendant benefits and also to pay him revised terminal benefits for his entire service upto the date of superannuation including the period of non employment together with interest, award costs.

For Petitioner : Mr.V.Ajoy Khose
For Respondents : Mr.V.Kalyanaraman for
M/s.Aiyar & Dolia for R2
R1- Court

O R D E R

Heard Mr.V.Ajoy Khose, learned counsel for the petitioner and Mr.V.Kalyanaraman, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the award of the 1st respondent dated 30.11.2006 in I.D.No.417/2004 in so far as depriving the petitioner backwages and not specifically granting the relief of continuity of service and other attendant benefits, quash the same and consequently direct the second respondent Bank to give the petitioner back wages, continuity of service and other attendant benefits and also to pay him revised terminal benefits for his entire service upto the date of superannuation including the period of non employment together with interest, award costs."

3. The case of the petitioner is as follows:-

The petitioner joined the services of the erstwhile Bank of Thanjavur as a Clerk cum Shroff on 28.01.1980. The Bank of Thanjavur was taken over by the second respondent Bank by way of amalgamation during the year 1989-90, including the assets, liabilities and the staff. After the second respondent taking over the service of the petitioner, he was working in Kumbakonam and the petitioner had applied for housing loan to the second respondent in order to purchase a house, built and owned by another staff of the second respondent who was at that time working in Sowcarpet Branch, Chennai.

4. On receipt of the loan application, the second respondent sanctioned a sum of Rs.1,50,000/- on 11.11.1994 under Staff Housing Loan Scheme. Out of Rs.1,50,000/-, a sum of Rs.1,10,000/- was sanctioned with interest applicable for staff and the balance amount was sanctioned only with the normal rate of interest as applicable to other customers. At the time when the loan was sanctioned, according to the petitioner, he had signed all the documents which were required for sanctioning of the loan. Thereafter, from the petitioner's account, a monthly instalment was deducted from the salary starting from December, 1997.

5. On 10.04.1999, the second respondent directed the petitioner to renew the loan documents, acknowledging the debt and enclosed Form-D 11 dated 24.03.1999. As per the said letter, the debt payable by the petitioner was calculated to be at Rs.1,53,591/-. Since, the petitioner noticed some discrepancies in the said amount and the actual due payable by him to the

Bank, he requested the Bank to furnish proper statement of account. However, the statement of account which was subsequently furnished, containing the same details and demanded the petitioner to pay the remaining balance amount. At this, the petitioner once again sent a letter on 06.05.1999, pointing out various discrepancies in the statement of accounts and he was willing and ready to acknowledge the debt in Form D 11, if the amount due was correctly shown.

6. The second respondent Bank without furnishing the proper statement of account, instead, issued a charge memo on 02.06.1999, alleging that the petitioner was evading the execution of renewal of documents acknowledging the due of Rs.1,53,437/- as on 31.03.1999 and such attitude on the part of the petitioner was construed to be one as act of defiance and the same was a misconduct under Clause 19.5 (j) of the Bipartite settlement.

7. In response to the charge memo, an explanation was submitted by the petitioner on 01.05.1999 and in the explanation, the petitioner denied the charges. Thereafter, an enquiry was conducted and the enquiry was concluded and the Enquiry Officer submitted his report holding the charges proved against the petitioner. Although the findings of the Enquiry Officer was submitted on 20.10.2000, the disciplinary authority called for explanation of the petitioner only by a memo dated 02.05.2002. In any event, according to the petitioner, even before the memo was issued, the petitioner expressed his willingness to renew the documents required by the Bank unconditionally.

8. In the meanwhile, the petitioner submitted his explanation to the findings of the Enquiry Officer on 23.05.2002. However, not satisfied with the explanation, the second show cause notice was issued against the petitioner on 01.07.2002, proposing to impose the punishment of compulsory retirement from service and finally without accepting the petitioner's explanation, the penalty of compulsory retirement was imposed on the petitioner by order dated 10.08.2002.

9. As against the order passed by the disciplinary authority dated 10.08.2002, an appeal was preferred and the same was rejected by order dated 07.04.2003. Thereafter, the petitioner had raised an industrial dispute and the same was referred for adjudication before the first respondent Industrial Tribunal-cum-Labour Court in I.D.No.417/2004. The first respondent - Labour Court after adverting to various materials and pleadings and the submissions of the learned counsels, finally allowed the Industrial Dispute by ordering reinstatement of the petitioner without back wages. Thereafter, it appears that the petitioner

was reinstated in service in 2007 by order dated 08.04.2007 and on attaining the age of superannuation, the petitioner retired from service on 28.02.2010.

10. While the first respondent ordering reinstatement without back wages, the award was silent in respect of service for the period of non-employment of the petitioner and according to the petitioner, the period was excluded for the purpose of calculation of wages and pensionary benefits by the second respondent Bank. In the said circumstances, the petitioner is before this Court challenging the award of the first respondent dated 30.11.2006 in I.D.No.417/2004, in so far as it deprived the petitioner's back wages and also not specifically granting the relief of continuity of service and other attendant benefits.

11. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit.

12. The learned counsel for the petitioner would submit that the first respondent - Industrial Tribunal has clearly held in the final portion of the award that the allegation against the petitioner cannot be construed as misconduct at all and therefore, found the punishment of compulsory retirement imposed on the petitioner was not justified. While holding so, the first respondent has specifically ordered that the petitioner was not entitled to back wages, but, not specifically dealt with how the period of service should be taken during non-employment period of the petitioner.

13. However, the learned counsel would point out that the content of the award holding that there was no act of misconduct committed by the petitioner and on the basis of such clear finding, the action of the second respondent was interfered with and the order of compulsory retirement was set aside and ordered reinstatement. That being the case, the first respondent, not specifically mentioning about the treatment of the period of non-employment has to be construed that the petitioner is entitled for continuity of service, since the first respondent - Industrial Tribunal has specifically ordered that the petitioner was not entitled to back wages alone. Such specific order was not there in respect of the period of service during the non employment period.

14. The learned counsel for the petitioner would draw the attention of this Court as to the clear findings rendered by the first respondent Tribunal as found in paragraph Nos.9 and 10, are reproduced below:-

"9. Though I find some force in the contention of

the learned counsel for the respondent/Management, the respondent advocate has not answered to the question whether the alleged misconduct constitutes a misconduct within the meaning of Clause 19.5 (j) of the Bipartite Settlement. It is clearly established that the respondent/Bank has recovered the instalments as per the terms and conditions. Under such circumstances, I find merely debiting the amount mentioned in the renewal document will not constitute a misconduct. No doubt, the concerned employee has not given a valid reason for non-execution of equitable mortgage but in the charge sheet, no charge has been framed for non-execution of equitable mortgage. On the other hand, a charge was framed only against non-execution of renewal documents and not for non-execution of equitable mortgage. Further, it is admitted from the order of Disciplinary Authority that most of the staff have not executed the equitable mortgage as requested by the terms and conditions. Under such circumstances, when there is no specific misconduct mentioned in clause 19.5 (j) of Bipartite Settlement, I am not inclined to accept that the non-execution of renewal document amounts to misconduct that too a grave misconduct. Under such circumstances, I find the imposition of punishment of compulsory retirement for the non-execution of renewal of document is excessive and disproportionate to the charge framed against him. As such, I find this point that the action of the respondent/Management in imposing the punishment of compulsory retirement on the concerned employee is not legal and justified.

Point No.2:-

The next point to be decided in this case is to what relief the concerned employee is entitled?

10. In view of my foregoing findings that the non-execution of renewal document cannot be constituted as a grave misconduct and the action taken by the respondent/Management is not legal and justified, I find the concerned employee is to be reinstated in service. But, with regard to back wages, I find the concerned employee cannot be said that he has complied with all formalities for obtained the loan. Though his action neither constituted as a misconduct, I find he has not given any valid reason for non-execution of equitable mortgage and non-execution of renewal of document. Having regard to all the aspects of this case, I find the concerned employee is not entitled to back wages as claimed by him. Therefore, I direct the respondent/Bank to reinstate the concerned employee into service, but

without any back wages. No costs."

15. The learned counsel for the petitioner even otherwise would contend that the petitioner was atleast entitled to continuity of service, if not back wages and the pay of the petitioner had to be fixed on notional basis and his retirement and pensionary benefits may be calculated on such basis by including the service during the period of his non employment, otherwise denial of continuity of service would be a major penalty, since the petitioner was already deprived of his back wages for the non- employment period.

16. Per contra, learned counsel appearing for the second respondent Bank would submit that there was an inordinate delay on the part of the petitioner for having approached this Court in the writ proceedings, challenging the award which was passed as early as on 30.11.2006 and there was no explanation in the affidavit in regard to the laches and therefore, the writ petition has to be dismissed on that ground alone. According to the learned counsel appearing for the second respondent, even otherwise, the petitioner is only trying to enlarge the scope of the litigation by asking for certain pensionary benefits which was not the subject matter of proceedings before the first respondent Tribunal. In case, he requires any further benefit, he has to file a separate writ petition, not in this writ petition where he challenges only the award passed by the first respondent Tribunal. Therefore, he would impress upon this Court to reject the relief as claimed by the petitioner.

17. This Court has given its anxious consideration of the rival submissions of the learned counsels and perused various materials and pleadings placed on record. From the findings rendered by the Labour Court as extracted above, it is very clear that the Industrial Tribunal has held that the so called allegation against the petitioner cannot be construed as misconduct at all and on the basis of such finding, the punishment imposed on the petitioner was found to be unjustified by the Industrial Tribunal. That being the case, this Court does not see on what basis the first respondent has not passed any specific order in regard to the treatment of period of non-employment when the first respondent has particularly, chosen to order that the petitioner was not entitled to back wages.

18. As rightly contended by the learned counsel for the petitioner that the exclusion of the period of absence for all benefits would amount to imposition of very major penalty on the petitioner and which could not have been the intention of the first respondent Industrial Tribunal, when the Industrial Tribunal had chosen to interfere with the quantum of penalty

imposed on the petitioner and had chosen to order reinstatement forthwith. In any event, even assuming the Industrial Tribunal has not chosen to give any specific order in regard to the treatment of the period of the petitioner's non employment, from the facts and circumstances of the case, this Court is of the considered view that the period of non employment has to be treated as continuity of service for all practical purposes.

19. As regards the delay on the part of the petitioner in approaching this Court after a period of four years from the date of the award, the petitioner shall not be entitled to any arrears of pay due to treatment of the period of non- employment as continuity of service. However, the petitioner is entitled to notional benefits for the period of his non-employment and the entire period of non-employment has to be treated as one of continuity of service and the pay and pensionary benefits have to be calculated on that basis.

20. For the above said reason, the writ petition is allowed and the award of the Labour Court dated 30.11.2006 in I.D.No.417/2004, is modified to the extent that the period of non- employment of the petitioner has to be treated as one of continuity of service and other benefits has to be fixed and calculated on notional basis and the pensionary benefits shall be paid on such basis to the petitioner. In regard to the denial of back wages, the award passed by the Labour Court does not call for any interference. The second respondent is directed to implement the direction passed by this Court, within a period of four weeks from the date of receipt of a copy of this order and shall recalculate the wages and pensionary benefits on notional basis and shall make appropriate payments to the petitioner.

21. With the above direction, the writ petition stands allowed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar(Co)

//True Copy//

WEB COPY

Sub Assistant Registrar

gsk

To

1.The Presiding Officer,
Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan,
Haddows Road,
Chennai 600 006.

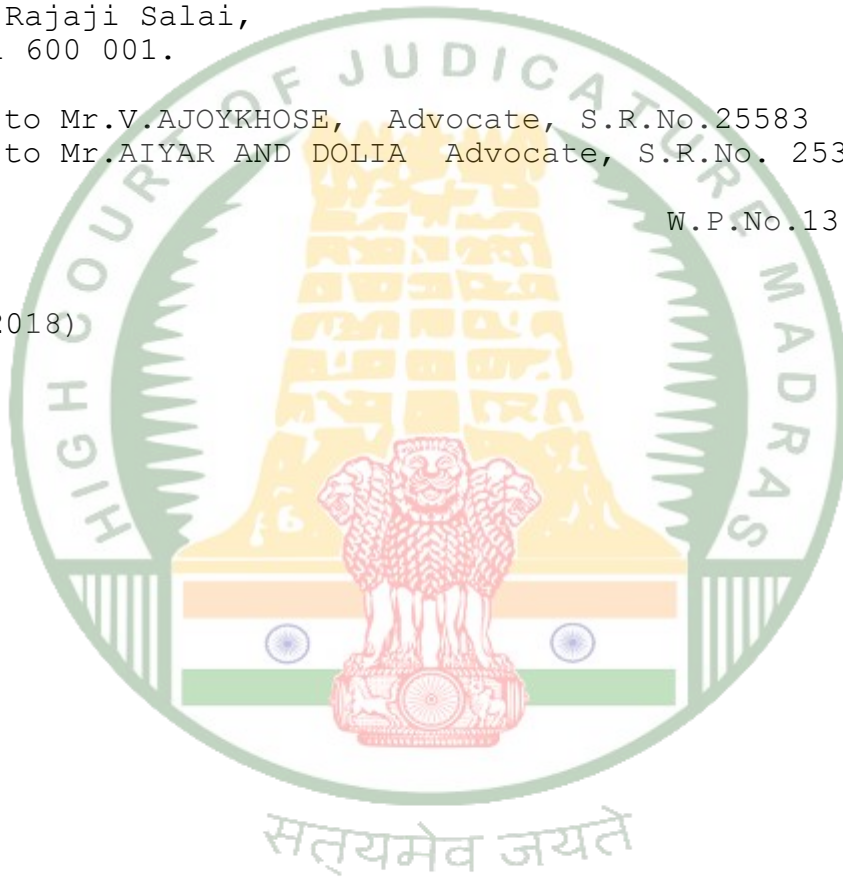
2.The General Manager
Indian Bank,
No.66, Rajaji Salai,
Chennai 600 001.

+1cc to Mr.V.AJOYKHOSE, Advocate, S.R.No.25583

+1cc to Mr.AIYAR AND DOLIA Advocate, S.R.No. 25323

W.P.No.13969 of 2011

SR(CO)
TR(02/05/2018)



WEB COPY