

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.4534 of 2012

The Special Officer,
Chennai Central Cooperative Bank Ltd.,
Prakasam Road,
Broadway,
Chennai 108. Petitioner

-Vs-

1.The Presiding Officer,
I Additional Labour Court,
Chennai 104.

2.A.R.Murthy Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in I.D.No.52 of 2007, on the file of First Additional Labour Court, Chennai, the first respondent herein, quash the award dated 23.09.2011 passed therein.

For Petitioner : Mr.M.R.Raghavan
For Respondents : Mr.S.Senthilnathan for R2

O R D E R

Heard Mr.M.R.Raghavan, learned counsel for the petitioner and Mr.S.Senthilnathan, learned counsel appearing for the second respondent.

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

"To issue a Writ of Certiorari, to call for the records in I.D.No.52 of 2007, on the file of First Additional Labour Court, Chennai, the first respondent herein, quash the award dated 23.09.2011 passed therein."

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

The Management is the writ petitioner challenging the award of the first respondent dated 23.09.2011, in I.D.No.52 of 2007.

The facts of the case are that the second respondent was engaged as Attender by the Manager of Triplicane Branch of the petitioner Management and he was employed on daily wages post and he was paid through separate voucher. According to the petitioner Management, he was not in regular employment and was not recruited through employment exchange. He was not even appointed by a regular competent authority. He was engaged only for daily wage basis and therefore, he was discontinued from service on 10.05.2005.

4. The non-employment of the second respondent employee was the subject matter of issue before the Labour Court and the Labour Court substantially admitted the case of the Management and passed the award in the aforesaid I.D. The grievance of the petitioner is that while not granting relief of reinstatement to the employee, the first respondent Labour Court has directed the Management to give preference to the employee, in case of new future recruitment in the petitioner Management.

5. The learned counsel for the petitioner would submit that once the Labour Court found that the employee was not entitled to the relief of reinstatement, further direction by the Labour Court to consider the claim of the employee for future employment is beyond the scope of terms of reference. Therefore, the same is unsustainable. The learned counsel would also submit that the Labour Court failed to consider the Government Order passed in G.O.Ms.No.126, Cooperation, Food and Consumer Protection (CC1) Department, dated 07.07.2005, in and by which, the Government has outsourced all appointment of sub staff in Central Cooperative Banks Limited. Therefore, he would submit that in any event, the award is unimplementable, since the recruitment of sub staff has been outsourced and the Bank would not be in a position to implement the award. Therefore, he would pray for allowing the writ petition.

6. On the other hand, learned counsel appearing for the second respondent employee would submit that there was a clear finding by the Labour Court that the employee had worked for 240 days in a year and in which event, his right need to be protected for future employment. There was nothing wrong in the award passed by the Labour Court, giving preferential right to the employee, in case of future recruitment in the category of sub staff. In any event, the Bank would be in requirement of sub staff and therefore, the second respondent employee who had been admittedly employed for some time in the Bank, can always be considered for appointment. He would also rely on the order passed by this Court in batch of writ petitions in W.P.Nos.24833 to 24843 of 2001 etc., dated 02.03.2010. He would submit that

the insistence of being recruited by the employment exchange cannot held to be a valid submission when the workman had already been employed by the Management through a different source.

7. This Court is unable to appreciate the arguments advanced on behalf of the second respondent employee for the simple reason that the Labour Court failed to see that already the Government Order was passed on 07.07.2005 itself, outsourcing the recruitment of sub staff in the Central Cooperative Bank. Once the recruitment of the sub staff has been outsourced, the petitioner Management has lost its right to make any appointment. In the light of the said fact, the award passed by the Labour Court in directing the Management to consider the employee for future appointment becomes unimplementable and also the same cannot be countenanced both in law and on facts.

8. Further, as contended by the learned counsel for the Management, once the Labour Court found that the employee was not entitled to reinstatement, any further direction like the present ground, goes beyond the scope of terms of reference. Therefore, the Labour Court exceeded its jurisdiction by granting such relief. The reliance placed by the learned counsel for the second respondent employee on the judgment of the learned single Judge of this Court cannot be applied to the facts of the present case.

9. For the above said reasons, this Court is of the considered view that the petitioner Management has made out a case for grant of relief. In view of the same, the impugned award of the Labour Court, the first respondent herein, dated 23.09.2011, passed in I.D.No.52 of 2007, is hereby set aside in regard to the direction of the Labour Court to the Management to consider the claim of the petitioner for any future recruitment in the category of sub staff is concerned. However, the findings in respect of the factual aspect are not being adjudicated and the same shall remain intact as it is.

10. With the above observation, the writ petition stands allowed. No costs.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

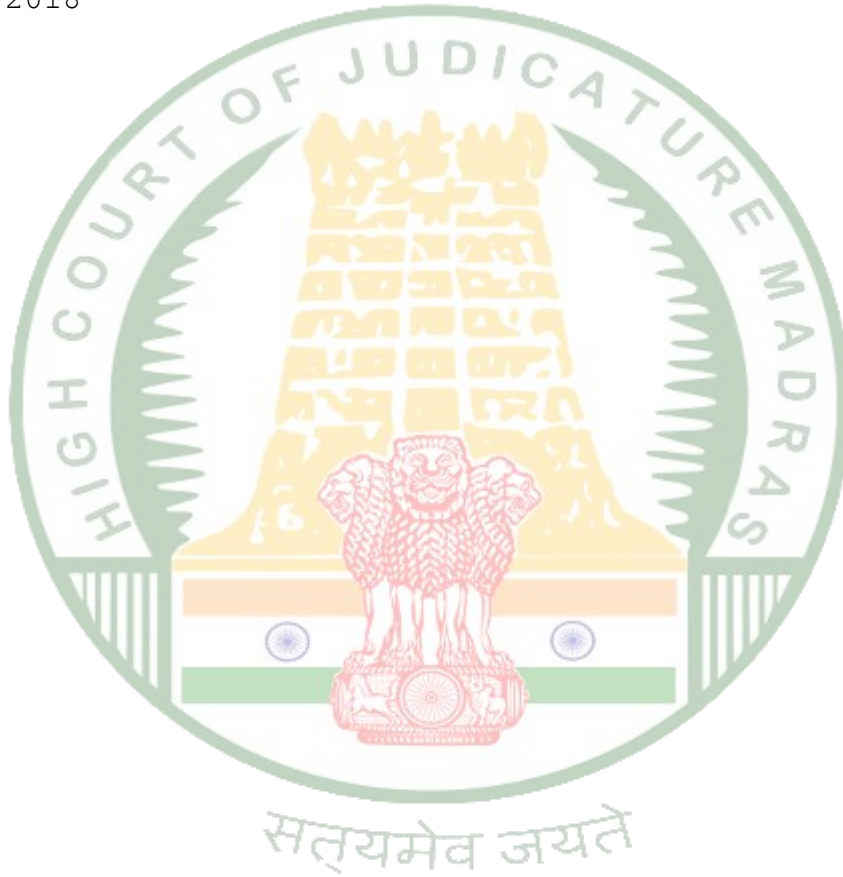
The Presiding Officer,
I Additional Labour Court,
Chennai 104.

+ 1 cc to Mr.S.Senthilnathan, Advocate Sr.No.29611

+ 1 cc to M.R.Raghavan, Advocate Sr.No.29448

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RJ(CO)
RRI 25/05/2018



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