

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2018

Coram

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Writ Appeal Nos.2084 & 2085 of 2010
and
M.P.No.1 of 2010

The Maagement of the Lakshmi Vilas Bank Limited,
Rep.by its Chairman,
Karur 639 006.

... Appellant
in both WAs

..Vs..

1.The workmen of Lakshmi Vilas Bank Ltd.,
Rep.by the General Secretary,
The Lakshmi Vilas Bank Employees' Union.
28, HR Kovil Street,
Karur 639 011.

2.The Presiding Officer,
The Industrial Tribunal,
Chennai-600 014.

... Respondents
in W.A.No.2084/2010

1.The Lakshmi Vilas Bank Employees' Union,
Rep.by its Deputy General Secretary,
Flat No.9, Anand Square,
146, Choolaimedu High Road,
Chennai 600 094.

2.The Presiding Officer,
The Industrial Tribunal,
Chennai-600 014.

... Respondents
in W.A.No.2085/2010

Writ Appeals filed under Clause 15 of the Letters Patent Appeal against the order dated 15.12.2009 made in W.P.Nos.17822/1997 & 15134/1998.

WP.NO.17822/97:

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Calling for the records of the 2nd respondent in ID.NO.73 of 1987 and quash its award dated 12.11.96.

WP.NO.15134/98:

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ in the nature of CERTIORARIFIED MANDAMUS, after calling for records relating to the Award dated 12.11.96 passed by the 2nd respondent in I.D.NO.73/87, quash that portion of the Award rejecting the claim of 26 workmen and direct the first respondent to reinstate those 26 workmen with backwages continuity of service and other attendant benefits Award costs.

For Appellant : Mr.Anand Gopalan
(both WAs) for M/s.T.S.Gopalan & Co.,

For Respondents : Mr.V.Ajay Khose for R-1
(both WAs)

R2 : Court

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH., J.)

These Writ Appeals have been filed by the Management aggrieved by the common order passed by the learned Single Judge in W.P.Nos.17822/1997, 15134/1998 dated 15.12.2009, wherein the learned Single Judge has set aside the award and has remitted the matter back to the Industrial Tribunal for fresh consideration.

2. Brief facts necessary for the purpose of deciding these appeals:

The appellant is a Banking Company. In the meeting held on 04.06.1980, between the Management and the Union, the Union made a representation that the daily wages of temporary sub-staff

should be increased and the qualification should be made as Tenth Standard instead of pass in SSLC Examination. During January, 1984, the appellant decided to select persons for appointment to the permanent post from the temporary sub-staff keeping them in a zone-wise panel and make future appointments from that panel and also by way of direct recruitment in the ratio of 9:1 and the term of the panel was fixed as one year. Accordingly, 809 temporary sub-staff were called for interview and out of which 398 appeared for test and interview. Out of the test and interview, a panel of 166 candidates was prepared. The panel was approved by the Board on 30.06.1984. In the year 1985, 49 candidates from the panel of 166 temporary sub-staff were appointed against permanent vacancies and the remaining persons in the panel could not be appointed since the term of the panel elapsed.

3. While so, the appellant took a decision to amend the qualification for the appointment as temporary sub-staff as Eighth Standard fail and the age was fixed between 18-25 years. Consequently, employees who had crossed the age limit or who possessed higher qualifications, were not engaged as temporary sub-staff.

4. The Union raised a dispute and the dispute was referred to the Industrial Tribunal for adjudication. The Industrial Tribunal on appreciation of facts, gave a finding that 6 workmen have completed 240 days of work in a given year and as such their termination was illegal and accordingly directed those six workmen to be re-instated into service. However, the claim made by the remaining 26 workers was rejected on the ground that they have not satisfied the 240 days of work in a given year.

5. Aggrieved by the same, the appellant Management filed W.P.No.17822/1997 as against the award made in favour of the 6 workmen and the respondent Union filed W.P.No.15134/1998 challenging that portion of the award rejecting the claim of 26 workmen. The common order was passed in both the writ petitions by the learned Single Judge, setting aside the award and remitting the matter back to the Industrial Tribunal. Aggrieved by the same, the present appeals have been filed by the appellant Management.

6. SUBMISSIONS:-

- ♦ Mr. Anand Gopalan for M/s. T.S. Gopalan & Co., learned counsel appearing for the appellant would submit that creation of panel for consideration of the temporary attenders as permanent attenders was not an issue before the Tribunal and only issue before the Tribunal as per the reference was the discontinuance of the engagement of 32 temporary attenders and the same is clear even from the order of reference dated 25.06.1987.

- ◆ The learned counsel further contended that even assuming that the temporary attenders were entitled to be considered by the panel, the term of the panel came to an end after one year, and therefore, there was no occasion for considering the names of the 32 temporary sub-staff towards permanent posts.
- ◆ It is the further contention of the learned counsel that Ex.M-9 which was the letter from the Union to the Management, the Union furnished details of 32 workmen in which the number of days that the sub-staff had worked was mentioned therein. The relief was granted by the Tribunal only based on this letter Ex.M-9.
- ◆ The learned counsel further contended that the learned Single Judge went beyond the scope of reference and there was no need to remand the matter back to the Tribunal after the passage of such a long time.
- ◆ Mr.V.Ajay Khose, learned counsel appearing for the first respondent would submit that while considering the issue under reference, the Tribunal is always entitled to go into the incidental issues and therefore there is no error in the order of the learned Single Judge referring to the creation of the panel and the subsequent reduction in the educational qualification.
- ◆ The learned counsel further contended that the learned Single Judge factually found that the panel that was prepared by the appellant Bank was not even produced before the Industrial Tribunal in order to verify whether 32 persons were included in the panel and the Industrial Tribunal proceeded to decide the dispute merely based on Ex.M-9 document. The learned Single Judge also took note of fact that certain factual disputes were not properly answered by the Industrial Tribunal, and therefore, the learned Single Judge was right in remanding the matter back to the Tribunal. Therefore, the learned counsel would contend that there is no reason to interfere with the order of the learned Single Judge.

DISCUSSION:

7. We have carefully considered the submissions made on either side and also the materials available on record. A careful reading of the claim statement filed by the respondent Union would clearly point out to the fact that the temporary sub-staff were aggrieved by the selection of only 50 peons towards permanent post when actually there was a specific agreement by the appellant Bank to take 125 persons from the panel of temporary peons. Therefore, the respondent Union had questioned the Arbitrary Selection of only 50 peons. It is also clear that the respondent Union was aggrieved by the subsequent circular dated 18.04.1985, wherein, the minimum qualification was reduced to Eighth Standard fail, as a result of which persons with higher qualification were not considered and this subsequent circular went contrary to the previous agreement.

The non engagement of the temporary sub-staff became a dispute only when the Union questioned the appellant Bank about the subsequent circular and not considered the sub-staff in the panel towards permanent posting. Therefore, all these matters are inter-related and it cannot be said that the Court cannot go into the issue of preparation of panel and non consideration of the temporary sub-staff who were left out and were ultimately terminated from service.

8.The learned Single Judge after analysing the entire facts of the case has formulated the core question as to whether the Bank was entitle to remove the employees from the panel and dispense with their service on the basis of the circular dated 18.04.1985, wherein the qualification was reduced. On analysis of the fact and law, the learned Single Judge found that the certain factual aspects like whether the name of 32 persons were included in the panel, the effect of the revised qualification during the currency of the panel and the subsequent termination of employees, were never considered by the Tribunal. The learned Single Judge also took note of the fact that the appellant Bank has not produced any material to show what was stated in Ex.M-9 was incorrect.

9.We do not find any ground to interfere with the order of the learned Single Judge. In fact, if these writ appeals had not been filed, by now the matter would have come to an end one way or the other. There are absolutely no merits in these writ appeals and the same is liable to be dismissed.

10.In fine, these writ appeals shall stand dismissed and the Industrial Tribunal is directed to decide the matter as expeditiously as possible and in any case, within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KP

1.The Presiding Officer,
The Industrial Tribunal,
Chennai-600 014.

+1cc to M/s.T.S.Gopalan & Co, Advocate sr.no.48588
+1cc to Mr.V.Ajoy Khose, Advocate sr.no.47423

W.A.Nos.2084 & 2085 of 2010

nr 27/07/2018



WEB COPY