

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.4143 of 2016

N.Amala

... Petitioner

...vs...

1. The Presiding Officer,
Central Government Industrial Tribunal,
Shasthri Bhavan, Chennai
2. The Branch Manager,
Corporation Bank, Ground Floor,
Midland Insurance Buildings,
No.556 Anna Salai (Opp. to AG's Office),
Teynampet, Chennai 600 018
3. The Deputy General Manager,
Corporation Bank, Zona Office- Chennai,
Nos.38 & 39 Whites Road,
P.B.No.2227, Chennai 600 014
4. The General Manager, Corporation Bank,
Head office: Pandeshwar,
Mangalore 575 001

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to I.D.No.6 of 2011 on the file of the first respondent dated 28.11.2013 and to quash the part of the award, so far as the denial of back-wages and other benefits and consequently, to direct the second respondent to absorb her for the post of regular Sweeper with continuity of service with full back-wages and all other attendant benefits from 28.02.2006.

For Petitioner : Mr. R.Jaikumar

For Respondents : Mr. S.Sethuraman,
for R-2 to R-4.

O R D E R

Whether over-qualification is a qualification is the issue canvassed in this writ petition.

2. This writ petition has been filed by the petitioner / workman challenging the order passed in I.D.No.6 of 2011 by the first respondent, dated 28.11.2013 by which the termination of the petitioner has been set-aside and there was a direction to the Management to reinstate the petitioner within a month, but without backwages and other benefits.

2.1. This award is under challenge by the petitioner in so far as the award declined the relief of backwages and other benefits. In addition to that, the writ petitioner seeks the relief of absorption as a regular sweeper with continuity of service, full back-wages and all other attendant benefits from 28.02.2006.

3. The brief facts leading to the filing of the petition by the workman are as follows:-

The petitioner was engaged as a Casual Sweeper cum Office Assistant, in the newly opened branch of the Bank (Management) at Teynampet on 15.12.2004. She had been working continuously without any termination or retrenchment.

3.1. The case of the petitioner is that she has completed the services of 480 days in the Bank and therefore, she has attained the permanent status and therefore, her services should not have been dispensed with.

4. It is the admitted case of the Bank (Management) that the petitioner had been serving as a Casual employee from 15.12.2004 on which date the Teynampet Branch was opened and had worked upto 12.03.2006. On behalf of the workman, an application has been filed in I.A.No.41 of 2013 before this Court seeking direction to them to produce documents like salary vouchers, delivery register book, attendance register, etc., for the period from 15.12.2004 to 12.03.2006. The said documents did not appear to have been produced. Therefore, a contention was raised by the Management that she was only working for a temporary period and therefore, she was not empaneled for the consideration of the regularization or permanency. According to the Management, there was a practice to maintain the panel of temporary sweepers and at the time when the new Branch was opened, the panel got exhausted and accordingly, the petitioner was engaged for the work. Subsequently, her name has been sponsored by the Employment exchange and out of 10 candidates,

one Pushpalatha was selected and appointed with effect from 12.03.2006.

5. The workman relied upon the Circular issued by the Bank Ex.W2 under which the part-time sweepers, who are working on consolidated wage basis in branches, extension counters and other offices as on 28.02.2006 would be converted into regular part-time sweeper (as one time measure) on 1/3rd graded scale wages, subject to certain conditions. Relying upon the said circular, the learned counsel appearing for the workman would contend that on the cut off date, as per Ex.W2 circular, she has been employed and that as she was over-qualified, she was not considered for absorption.

5.1. Over-qualification can never be a disqualification, though under-qualification is always so.

6. Under the circumstances, the contention that the petitioner would be entitled to the benefit of the circular issued by the Bank and that on the basis of the circular, she could have been regularized is justified. But, regularization is not the issue raised before the Industrial Tribunal. The only issue was with reference to reinstatement with back-wages.

6.1. However, the issue relating to reinstatement is not at all challenged by the Management and therefore, the order of reinstatement as ordered by the Labour Court has to be confirmed.

7. Now, the only issue to be decided by this Court is with reference to the back-wages.

8. Admittedly, challenging the order of reinstatement, no appeal has been filed by the Management.

9. Admittedly, the dispute has been raised in the year 2011, the award has been passed in the year 2013. This writ petition, challenging the said award, was filed only in the year 2016. When that be so, when questioned about the delay involved, the learned counsel appearing for the workman submitted that, in the interregnum period, there was an offer for employment to the workman and that she had been employed and she has been getting salary also.

10. In the above circumstances, the question of granting back-wages does not arise for consideration. However, there will be continuity of service for calculation of terminal benefits alone.

11. This writ petition is disposed of, in the above terms.
No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Presiding Officer,
Central Government Industrial Tribunal,
Shasthri Bhavan, Chennai
2. The Branch Manager,
Corporation Bank, Ground Floor,
Midland Insurance Buildings,
No.556 Anna Salai (Opp. to AG's Office),
Teynampet, Chennai 600 018
3. The Deputy General Manager,
Corporation Bank, Zona Office- Chennai,
Nos.38 & 39 Whites Road,
P.B.No.2227, Chennai 600 014
4. The General Manager, Corporation Bank,
Head office: Pandeshwar,
Mangalore 575 001

+1cc to Mr. T.Fenwalter Associates, Advocate, S.R.No. 74037
+1cc to Mr. S.Sethuraman, Advocate, S.R.No. 74565

W.P.No.4143 of 2016

VSNI (CO)
GN (27/11/2018)

WEB COPY