

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.43890 of 2006

The Chief Manager (Personnel)
State Bank of India,
Zonal Office, Chennai,
No.21, Rajaji Salai,
Chennai 600 001.

... Petitioner

Vs.

1.The Central Government
Industrial Tribunal Cum
Labour Court, Chennai
No.6, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

2.Sri.S.Sundararajan

.... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records from the 1st Respondent relating to the I.D.No.377/2004 and the Award dated 17.03.2006 on the file of Central Government Industrial Tribunal cum Labour Court the 1st Respondent and quash the Award dated 17.03.2006 made in I.D.No.377 of 2004.

For Petitioner : Mr.Anand
for M/s.T.S.Gopalan & Co.
For Respondents : R1 - Tribunal
Mr.Balan Haridas for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorari to call for the records from the first respondent relating to the I.D.No.377 of 2004 and the Award dated 17.03.2006 on the file of the Central Government Industrial Tribunal cum Labour Court, the first respondent and to quash the Award dated 17.03.2006 made in I.D.No.377 of 2004.

2.The case of the petitioner is that the petitioner is a Statutory Banking Corporation constituted under State Bank of India Act 53 of 1955 and it is carrying on the business of Banking in the interest of public. The petitioner engaged the services of the second respondent against the leave vacancies for doing casual work during the years 1982 and 1985 and during the year 1996, the second respondent was engaged for 213 days. Hence, the second respondent cannot make a claim that he should be given permanent appointment. The second respondent's service was terminated during the year 1997. Aggrieved by the same, the second respondent approached the first respondent Tribunal and the first respondent passed an award directing the petitioner to reinstate the second respondent into service as messenger and also directed the petitioner to pay half of the backwages with continuity of service and all other attendant benefits. Challenging the said award, the petitioner has come forward with this petition.

3.The learned counsel appearing for the petitioner would submit that the second respondent has not rendered 240 days of continuous service within a period of 12 calendar months.

4.The learned counsel appearing for the second respondent would submit that the second respondent has rendered 240 days of continuous service within a period of 12 calendar months. He further submitted that the second respondent in order to substantiate his case has marked exhibits Ex.W15, Ex.W16 and Ex.W17 service certificates issued by the petitioner and the Tribunal after considering the exhibits marked by the second respondent, passed the award in favour of the second respondent.

5.Heard the arguments advanced on either side and perused the materials available on record.

6.Perusal of records discloses that the second respondent has worked in the petitioner Bank during the years 1982 and 1985 and during the year 1996. During the year 1996, the service of the second respondent was engaged for 213 days. Therefore, he would have definitely completed 240 days of service.

7.The Hon'ble Division Bench of this Court has elaborately discussed similar issue in the case of the Chief General Manager, State Bank Of India, Local Head Office, No.6, College Road, Chennai Vs. The Central Government Industrial Tribunal cum Labour Court, No.6, Haddows Road Shastri Bhavan, Chennai - 6 and another in W.A.No.1749 of 2015 on 25.01.2016 and has held as follows:

"6.The question as to whether violation of Section 25-F of the I.D.Act would entail automatic reinstatement with backwages came into consideration

in catena of decisions. Lately, in Vice-Chancellor, Lucknow University, Lucknow, U.P. Vs. Akhilesh Kumar Khare and another [(2015) SCC Online SC 797], the Supreme Court has examined the issue afresh in the light of the various decisions rendered earlier and held as under:

"16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126 and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short the ID Act)? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479, Uttaranchal Forest Development Corpn. v. M.C. Joshi, (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma (2007) 1 SCC 575, M.P. Admn. v. Tribhuban (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority v. Ramsahai (2006) 11 SCC 684, GDA v. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently

taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

4. Jagbir Singh (2009) 15 SCC 327 has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

8. Hence, to meet the ends of justice, this Court is inclined to award some compensation to the second respondent instead of reinstating him in service.

9. This Court's view is also supported by the decision of the Supreme Court reported in (2012) 1 Supreme Court Cases 558 (Bharat Sanchar Nigam Limited Vs. Man Singh), the relevant portion of which reads as follows:

"5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240

days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6. Accordingly, the impugned judgment passed by the High Court as also the award dated 27-5-2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchar Nigam Limited to pay Rs.2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum."

10. In view of the above, I am inclined to award a sum of Rs.3 Lakhs (Rupees Three Lakhs Only) as compensation to the second respondent.

11. At this juncture, the learned counsel appearing for the second respondent draws the attention of this Court that the second respondent is receiving 17 (b) wages and some amount has been deposited before the Tribunal. Hence, the second respondent may be permitted to withdraw the amount lying in deposit before the Tribunal.

12. Accordingly, liberty is granted to the second respondent to withdraw the amount, if any, lying in deposit before the Tribunal. The petitioner is directed to pay a sum of Rs.3 Lakhs (Rupees Three Lakhs Only) directly to the second respondent within a period of four weeks from the date of receipt of a copy of this order.

13. The Award dated 17.03.2006 passed by the Central Government Industrial Tribunal cum Labour Court/ the first respondent made in I.D.No.377 of 2004 is modified accordingly.

14. The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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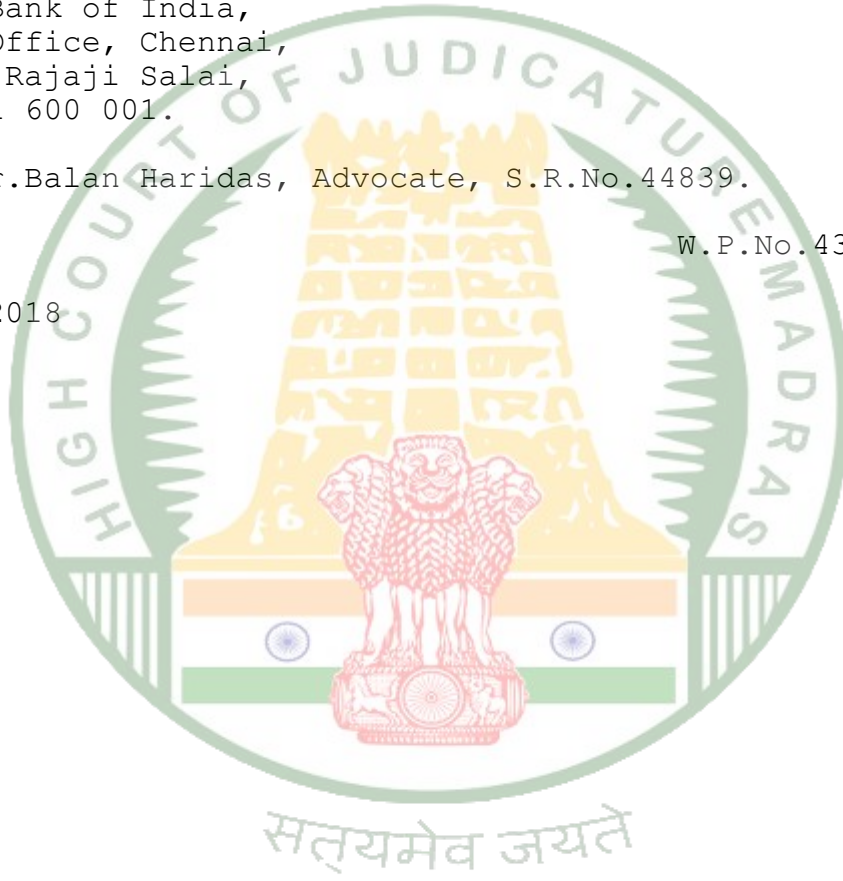
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+1cc to Mr.Balan Haridas, Advocate, S.R.No.44839.

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SSV(CO)
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