

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27931 of 2006

S.Nagarajan

... Petitioner

Vs.

1.Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court
Shastri Bhavan
Chennai.

2.The Chief Manager (Personnel)
State Bank of India,
Zonal Office,
No.86, Rajaji Salai,
Chennai 600 001.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent Tribunal, to quash the award passed by the 1st respondent Industrial Tribunal in I.D.No.376 of 2004 and consequently direct the 2nd respondent to reinstate the petitioner in service with full backwages, continuity of service and all attendant benefits.

For Petitioner : Mr.Balan Haridas

For Respondents : R1 - Tribunal

Mr.Anand for R2

for M/s.T.S.Gopalan & Co.

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O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus calling for the concerned records from the first respondent Tribunal and to quash the award passed by the first respondent Industrial Tribunal in I.D.No.376 of 2004 and to consequently direct the second respondent to reinstate the petitioner in service with full backwages, continuity of service and all attendant benefits.

2.The case of the petitioner is that the petitioner was engaged as messenger by the second respondent during the year 1982 against the regular post of messenger which is a Class IV employment in the cadre of sub-staff, however with deliberate breaks. The second respondent decided to absorb all the temporary messengers who had completed 90 days of service as on 31.10.1984 and conducted interview during the year 1985 for all the eligible temporary employees, however the petitioner's service was not regularised. Hence, the petitioner requested the second respondent to regularise his services, but the second respondent terminated the petitioner's services from December, 1998. Hence, the petitioner raised Industrial Dispute before the first respondent. The Tribunal vide order dated 17.03.2006 dismissed the Industrial Dispute. Hence, the petitioner has come forward with this writ petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner rendered 240 days of continuous service within a period of 12 calendar months. He further submitted that the petitioner in order to substantiate his case has marked exhibits Ex.W4, Ex.W5 and Ex.W6 service certificates issued by the respondent and call letter from the respondent, however, without considering the above documents, the Tribunal dismissed the Industrial Dispute.

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

5.Perusal of records discloses that the petitioner has worked in the second respondent Bank from the year 1982 till 1998 in different branches. Therefore, he would have definitely completed 240 days of service.

6.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 wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wagger 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."

7. Considering the case of the petitioner, this Court is inclined to award some compensation to the petitioner instead of reinstating him in service.

8. 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."

9. In view of the above, I am inclined to award a sum of Rs.2 Lakhs (Rupees Two Lakhs Only) as compensation to the petitioner. The second respondent is directed to pay the said amount directly to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

10. The writ petition is accordingly disposed of. No costs.

Sd/-

Assistant Registrar (CS IV)

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Sub Assistant Registrar

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To

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

2. The Chief Manager (Personnel)
State Bank of India,
Zonal Office,
No.86, Rajaji Salai, Chennai 600 001.

+1cc to Mr. Balan Haridas, Advocate, S.R.No.44838.

W.P.No.27931 of 2006

SSV(CO)
BM 06/08/2018