

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4461 OF 2016

Vilas s/o Madhukar Chiwande

vs.

The Branch Manager, Bank of India and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. R. N. Sen, counsel for petitioner.

Shri. A. T. Purohit, counsel for respondents No.1 & 2.

CORAM : MANISH PITALE J

DATED : 26/11/2019

By this writ petition the petitioner has challenged award dated 25th November 2014 passed by the Central Government Industrial Tribunal-cum- Labour Court, Nagpur on a Reference of industrial dispute between the petitioner and the respondent bank represented by the respondent No.1 and 2 herein.

2. The grievance raised on behalf of the petitioner was that his services were illegally terminated on 16/07/2002, in complete violation of the provisions of the Industrial Disputes Act, 1947. It was pointed out that he had joined services as Sweeper-cum-Peon with the respondent bank on 01/10/1993 and having put in service of about 09 years, he was unceremoniously removed from his services and another person was promptly employed by the respondent bank. Before the

Tribunal, beyond filing the written statement, the respondent bank did not appear and contest claims of the petitioner. On the basis of the evidence led by the petitioner and the material on record, the Tribunal found that the petitioner was employed between 01/10/1993 till 16/07/2002, but on daily wage basis. It was also found that the appointment of the petitioner could not be said to be as a regular or permanent employee. The Tribunal also found that mandatory provisions of the aforesaid Act were violated in the manner in which the respondent bank had discontinued the service of the petitioner.

3. But, on the issue of grant of relief, the Tribunal found that since the petitioner was working only as a daily wager and that too intermittently about 12 years back, payment of monetary compensation instead of reinstatement as a daily wager would meet the ends of justice. On this basis, the Tribunal directed the respondent bank to pay monetary compensation at Rs.1,00,000/- with 9.00% p.a. interest from the date of publication of the award to the petitioner. The respondent bank has not challenged the said Award.

4. The learned counsel appearing for the petitioner submitted that the Tribunal had committed a grave error in granting only compensation to the petitioner, despite rendering findings in his favour with regard to the illegal manner in which the respondent bank discontinued the services of the petitioner. It was

submitted that the relief of reinstatement with back-wages and continuity of service could have been granted on the basis of findings given by the Tribunal on the merits of the claim raised by the petitioner. Alternatively, it was submitted that the quantum of compensation of only Rs.1,00,000/- was meagre, considering the fact that the petitioner had served with the respondent bank for about 09 years.

5. On the other hand, the learned counsel appearing for the respondent bank submitted that the services of the petitioner were never engaged by the bank and it was instead the Branch Manager who had engaged services of the petitioner on daily wages basis. It was further submitted that when the Tribunal itself gave finding that the petitioner was not of regular or permanent employee, there was no question of grant of reinstatement and back-wages with continuity of service. On the question of enhancement of compensation it was specifically submitted that, no such prayer was made in the writ petition and therefore, there was no question of enhancing the compensation beyond what was granted by the Tribunal.

6. Heard learned counsel for the rival parties and perused the impugned award, as also the material placed on record. A perusal of the findings rendered by the Tribunal would show that the material and evidence placed on record on behalf of the petitioner was considered. The Tribunal also taken into consideration

the written statement filed on behalf of the respondent bank, although beyond filing written statement, the respondent bank did not contest the claims made by the petitioner before the Tribunal.

7. A perusal of the findings rendered by the Tribunal shows that the matter was properly analyzed and appreciated to come to the conclusion that the petitioner could not be said to be a regular or permanent employee and that he had worked as a daily wager with the respondent bank. The contention of the respondent bank that the services of the petitioner were engaged by the Branch Manager and not the bank, cannot be accepted at all, on the short ground that no such material in the form of evidence was placed on record by the respondent bank before the Tribunal. Findings rendered by the Tribunal that the petitioner was not a regular or permanent employee, but he was engaged by the Branch Manager on daily wage basis cannot be read to mean that he was engaged by the Branch Manager in his personal capacity and not on behalf of the respondent bank. Therefore, to that extent there is no substance in the contentions raised on behalf of the respondent bank.

8. At the same time, considering the findings rendered by the Tribunal, the ultimate relief granted, in the facts and circumstances of the present case, appears to be proper in the sense that grant of compensation was preferred over grant of direction of reinstatement as daily wager and that too after 12 years of services of the

petitioner being discontinued.

9. Yet, the quantum of compensation granted by the Tribunal appears to be on the lower side. In the Award, the Tribunal has taken note of the fact that the petitioner was being paid Rs.30/- per day as sweeper. Although the daily wages as on today are much higher, but even if the said figure is taken into consideration, in the face of the findings rendered by the Tribunal in favour of the petitioner regarding the illegal nature of discontinuation of services of the petitioner, the quantum of compensation granted is clearly on the lower side. Even if the daily wages of Rs.30/- per day were to be taken into consideration, the annual amount that the petitioner would have earned as a Sweeper, would show that the quantum of compensation at Rs.1,00,000/- was clearly on the lower side.

10. Considering the above facts and circumstances, this Court is of the opinion that enhancement of compensation payable to the petitioner would be just and proper. This Court is of the opinion that the quantum of compensation payable to the petitioner ought to be increased to Rs.3,00,000/- with 9.00%p.a. interest as directed by the Tribunal.

11. Accordingly, the writ petition is partly allowed. The findings rendered by the Tribunal in the impugned award are confirmed except for the operative order, which is modified and it is held that the petitioner

is entitled for monetary compensation of Rs.3,00,000/- with 9.00%p.a. as directed by the Tribunal. The writ petition is disposed of in above terms.

JUDGE

KOLHE/P.A.