

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2019

Pronounced on : 16.07.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.A.No.1026 of 2013

and

M.P.No.1 of 2013

The Central Bank of India
Regional Office,
14-15, Variety Hall Road,
Coimbatore - 641 001

... Appellant

Vs

1.The Presiding Officer
Central Govt. Industrial Tribunal,
Chennai.

2.J.Samuel Jeyaraj

... Respondents

This Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 18.11.2011 passed by the learned Single Judge in W.P.No.33520 of 2004 on the file of this Court.

Prayer in W.P.No.33520 of 2001:

This Writ Petition filed Under Article 226 of the Constitution of India, praying for a Writ of Certiorari, Praying for a Writ of Certiorari, Calling for the Records of the first Respondent in I.O.No.634/2001, and quash its Award dated 26/03/2004.

For Appellant : Mr.Anand Gopalan
for M/s. T.S.Gopalan & Co.

For R2 : Mr.V.Ajoy Khose.

R1 : Court

JUDGMENT

C.V.KARTHIKEYAN, J.

The appellant, Central Bank of India, has filed the present Writ Appeal against the order of the learned Single Judge of this Court dated 18.11.2011 dismissing W.P.No.33520 of 2004.

2. The writ petition had been filed by Central Bank of India in the nature of a Writ of Certiorari, calling for the records in I.D.No.634 of 2001 and quash the award dated 26.03.2004.

3. By the said award dated 26.03.2004, the Central Government Industrial Tribunal -cum- Labour Court Chennai, had in answer to the reference namely;

"Whether the action of the management of Central Bank of India in refusing to give employment to Mr.Samuel Jeyaraj w.e.f. 28.05.1993 is justified or not. If not, to what relief the same workman is entitled?",

passed an award directing reinstatement of the workman J.Samuel Jeyaraj with continuity of service and other attendant benefits but without any backwages.

4. The respondent / workman J.Samuel Jeyaraj had claimed that he had been engaged as casual labourer at the Coonoor Branch and also at the Kattabettu Branch of the appellant / Management, Central Bank of India against leave vacancy of permanent staff and also whenever part-time sub-staff / part-time Safai Karmachari took leave. He claimed he had been thus engaged for 156 days between 27.05.1987 and 06.06.1990 at the Coonoor Branch and for 18 + 62 days in Kattabettu Branch between 26.02.1990 and 30.01.1991. He further claimed that he again worked as casual labourer in Coonoor Branch from the year 1991 to 1995 for 307 days. He claimed he was last engaged at the Coonoor Branch on 09.09.1995. He claimed he was last engaged at the Kattabettu Branch for 6 days in the year 1996. He further claimed that when vacancies arose owing to the retirement of a part-time Safai Karmachari namely, Lakshmi Ammal, one Loganathan was selected, who was then transferred to Kattabettu Branch and consequently, another vacancy arose owing to such transfer. He had further claimed that on 12.03.1991, the appellant had issued a circular stipulating that (i) temporary employees who have put in 240 days of temporary service in any continuous period of 12 months between 01.01.1982 and 31.12.1990 will be considered for absorption in the immediate available vacancies without any test

and interview; (ii) temporary employees who have worked for 180 days during the period from 01.01.1987 to 24.02.1990 and are registered with the Employment Exchange, but have not been sponsored will be called to appear in the immediate sub-staff recruitment test as and when held; and (iii) temporary employees whose names have been sponsored / forwarded by Employment Exchange and have worked for 60 days on temporary basis in any one year during the period from 01.01.1987 to 24.12.1990 will also be called for the immediate sub staff recruitment test. The Circular also clarified that temporary employees covered under paras (ii) and (iii) above do not include categories such as PTSKs, water boys, watchmen and drivers and they should not be called for the test. However, the respondent / workman in the present case did not satisfy the requirement of having worked for the requisite number of days and had registered himself with the Employment Exchange only in the year 1989. He was therefore not called for the test.

5. It had been further claimed that on 06.04.1993, the appellant had entered into a settlement with the recognized Union which provided that (i) temporary employees whose names were registered with Employment Exchange, but not forwarded or sponsored and have worked for 90 days or more after the cut off date, i.e., 01.01.1982 to 24.12.1990 and (ii) temporary employees whose names have been registered / forwarded by Employment Exchange and have worked for 90 days or more on temporary basis in any one year from 01.01.1982 to 31.12.1986 and 60 days from 01.01.1987 to 24.12.1990 may be called for the next written test as and when held, provided that such employee should have worked as full time sub staff and not as PTSK and such candidates will be empanelled in the order of merit and will have preference to other candidates in recruitment. Even as per this circular, the respondent / workman in the present case was not qualified.

6. It is an admitted fact that the respondent / workman was last engaged on 09.09.1995. It is a fact asserted by the appellant / Management that he had then taken up employment in Kattabettu Industrial Co-operative Tea Factory. It is further asserted that he had stopped reporting for work with the appellant. However, the workman had raised an Industrial Dispute on 11.12.1996 claiming refusal of employment. The Government had referred the following issue before the Central Government Industrial Tribunal Chennai for adjudication:

"Whether the action of the management of Central Bank of India in refusing to give employment to Mr.Samuel Jeyaraj w.e.f. 28.05.1993 is justified or not. If not, to what relief the same workman is entitled?"

7. Before the Labour Court, both the parties were invited to adduce evidence to substantiate their rival claims. The issue which the Labour Court had to decide was whether the workman had been in continuous employment for 240 days in two successive calendar years and whether the workman can take advantage of the terms of the settlement entered into by the appellant with the recognized Union on 06.04.1993 which stipulated that temporary employees whose names have registered with the Employment Exchange, but not forwarded or sponsored and have worked for more than 90 days after the cut off date, namely 01.01.1982 to 24.12.1990. The labour Court also had to decide whether the settlement itself was applicable to the workman. The further disputed issues, whether he abandoned employment in favour of opportunity afforded at Kattabettu Industrial Co-operative Tea Factory and whether the Management had actually terminated him would also have to be adjudicated.

8. The Labour Court, as a fact, found that the workman had actually mentioned in a notice addressed to the Regional Manager that he had worked under imaginary names as B. Sivaraj, K.M.Raman, Prabhakar, Mani etc. The Labour Court however held that the appellant had wantonly given artificial names to the workman and had paid wages in those names only to avoid continuity of service. It was therefore held that the workman had worked for more than 450 days. It was also observed that the appellant had not produced the attendance registers for Kattabettu Branch and therefore, holding, that an adverse inference can be drawn, drew the inference that the workman had worked for more than 240 days in Kattabettu Branch.

9. On the basis of the above findings, the Tribunal had granted reinstatement with continuity of service, but without backwages.

10. The learned Single Judge who took up the issue for consideration in W.P.No.33520 of 2004, by order dated 18.11.2011 had observed as follows while confirming the award of the Labour Court:

"18. The learned counsel appearing for the petitioner Bank while reiterating the averments made in the affidavit would contend that the Award of the Tribunal ordering reinstatement is not borne by records and it is perverse. Further, the first respondent failed to take note of the fact that the second respondent had worked at Kattabettu Industrial Tea Factory for 29 days in May 1996 as per Ex.W12 and therefore, there was no question of the second respondent offering himself for engagement on 28.05.1996 and consequently

there was no question of refusal of the engagement by the Bank. In fact, the second respondent was last engaged in September 1995 and there was no scope for the second respondent to complain that there was refusal of employment on 28.05.1996. The first respondent further failed to see that even after Ex.W7, the letter written by the second respondent, he has worked in Kattabettu Branch for 185 days as Sweeper and for 51 days as sub-staff during the period 30.01.1991 to 03.10.1991. If the days worked as sub-staff could be taken into account, the second respondent did not work for the requisite number of days as temporary sub-staff. Further, the first respondent failed to take note of the admission of the second respondent in his cross-examination that he was not willing to work in the same position before he raised the dispute. Therefore, the first respondent ought not to have countenanced the claim for reinstatement. The first respondent failed to see that even according to the second respondent, he was casually engaged only as a temporary sub-staff and therefore, by reinstatement, he should be restored only to that position. Further, it is submitted that the findings of the first respondent that the bank had wantonly given artificial names to the second respondent and paid him wages only to avoid continuity of service are without basis and not supported by any evidence at all. Therefore, according to the petitioner, the award suffers from infirmity and it is liable to be set aside.

19. Per contra, the learned counsel appearing for the second respondent would contend that the Labour Court while considering the case of the claimant namely the second respondent herein has analysed evidence both oral and documentary adduced before it and found that the claim of the petitioner that he had worked at the Kattabettu Branch for the requisite number of days could not be disproved by the petitioner bank. It was also found by the first respondent that the documents pertaining to the Kattabettu Branch of the Bank was not produced before the Court to prove their case that he had not worked for the requisite days. When the petitioner bank could produce the documents before the Labour court with regard to the Coonoor Branch to establish their case that the second respondent did not work for the

requisite period, there was no jurisdiction on the part of the petitioner bank for the non-production of the documents relating to Kattabettu Branch. The learned counsel for the petitioner management would also fairly admit that the petitioner bank is not in possession of the documents/records relating to Kattabettu Branch. Therefore, in the absence of the documents produced on the side of the bank to disprove the claim of the second respondent and to prove the case of the management, adverse inference has to be drawn and the claim of the workman has to be accepted and upheld. Thus, the finding of the Labour Court which is purely based on facts adduced before it by analysing the evidence let in on either side, cannot be interfered with. I do not find any perversity nor illegality in the same. No perversity has been pointed out by the petitioner Bank also so as to interfere with well reasoned award. Hence the award impugned in the writ petition has to be upheld and accordingly upheld."

11. Challenging the said order, the appellant / Management had filed the present Writ Appeal.

12. Mr. Anand Gopalan learned counsel for the appellant was emphatic in his submission that the appellant had never been issued with any order of termination and had in fact voluntarily abandoned employment and had preferred to join Kattabettu Industrial Co-operative Tea Factory Limited. The learned counsel pointed out that the Labour Court had held that the respondent / workman was entitled for reinstatement only on the basis that he had worked for more than the requisite period of days, even though there was no evidence adduced to establish the same. The learned counsel stated that when the workman himself had abandoned his work and had taken alternate employment and when such alternate employment had also not been denied, granting reinstatement was not justified. The learned counsel therefore stated that the order under appeal should be interfered with.

13. Mr. Ajoy Khose learned counsel for the respondent / workman, on the other hand, supported the order of the learned Single Judge. The learned counsel pointed out that the appellant had deliberately not produced the attendance registers for the Kattabettu Branch and it was therefore only justifiable on the part of the Labour Court and also by the learned Single Judge to draw an adverse inference and infer that the workman had worked for more than 240 days at Kattabettu Branch. The learned counsel stated that the order of the learned Single Judge did not require any interference.

14. We have carefully considered the arguments advance and the material records.

15. It is the case of the respondent / workman that he had joined the service under the appellant / management on 07.07.1987 in Coonoor Branch and worked continuously till 28.05.1996. In the year 1991, he was transferred to Kattabettu Branch. He claimed that he had worked for more than 240 days in two successive calendar years. He also claimed that his service was permanent.

16. The management on the other hand, stated that the workman had worked in Coonoor Branch only for the following number of days:

Year	No. of days
1991	7 days
1992	118 days
1993	94 days
1994	54 days
1995	34 days

17. The Management had not produced any record with respect to the number of days he worked in Kattabettu Branch. Since the records were not produced the Labour Court as well as the learned Single Judge drew an adverse inference holding that the records were not produced only because, if produced, they would have been adverse to the interest of the appellant and therefore held that it can be presumed that the workman had worked for more than 240 days in Kattabettu Branch. The drawing of such inference was vehemently supported by the learned counsel for the respondent / workman.

18. With due respects, we disagree with such inference.

19. It is a fact that the appellant had not produced the attendance registers with respect to Kattabettu Branch. The only and limited inference that could be drawn was that they had not produced the records since it would have shown that the workman was employed in Kattabettu Branch. That is the only inference that any Court can draw.

20. The further inference that he had worked for 240 days cannot and should not have been drawn. That was a fact to be established by admissible evidence. Strict proof of the same was required. Grant of relief on the assumption that the workman

should be presumed to have worked for 240 days is misconceived. The Labour Court had a duty to establish as a fact with cogent admissible evidence that the workman had actually worked for a minimum period of 240 days in two successive calendar years either in Coonoor Branch or in Kattabettu Branch or in both put together.

21. The further disputed fact whether the workman was actually terminated from service or had abandoned work had not been answered by the Labour Court. This issue has also to be decided, since the appellant has strongly claimed that they have never terminated him. On the other hand, It is their specific case that he had abandoned work and had joined Kattabettu Industrial Co-operative Tea Factory. Documents have also been produced to that effect. However, unfortunately, there is little or no discussion regarding this aspect.

22. In the award, the Labour Court should also have given a specific finding whether he had, as a fact, with strict proof, established that he had worked for at least 240 days in two successive calendar years. These are all issues which go into the root of the matter and both parties to the lis are duty bound to establish these facts before any relief can be granted by any Court.

23. Unfortunately, the Labour Court had not given a specific finding on all the above aspects. It has also emanated from a perusal of records that the workman had worked under various other imaginary names and the presumption drawn by the Labour Court that the appellant had wantonly engaged him under different names also has to be interfered with. This is also an issue which has to be decided on the basis of evidence.

24. In (2002) 3 SCC 213, Range Forest Officer V. S.T.Hadimani, the Hon'ble Supreme Court held as follows:

"3.In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal

to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(Emphasis

Supplied)

25. In (2004) 8 SCC 161, Rajasthan State Ganganagar S. Mills Ltd. V. State of Rajasthan, after stating out the stand of the workman the Hon'ble Supreme Court held as follows:

"6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year.

7. In our view the Labour Court and the High Court have failed to consider the statutory requirements in their proper perspective. One of the stands taken by the employer was that the engagement was made keeping in view the temporary needs and it was seasonal in character. No definite finding was recorded by the Labour Court or the High Court in that regard.

8. We, therefore, remit the matter to the Labour Court to consider the evidence and come to a definite conclusion as to whether the workman had worked for 240 days during the period claimed. While considering the matter afresh, the aspect of need of engagement shall also be examined. If the engagement is found to be not for 240 days during the relevant period, then this aspect may not be considered. In case the Labour Court comes to a finding in the affirmative, its original order shall be maintained subject to consideration of the seasonal need

aspect. If its answer is in the negative the Labour Court shall pass appropriate orders.”
(Emphasis Supplied)

26. In (2004) 8 SCC 246, M.P. Electricity Board V. Hariram, the Hon'ble Supreme Court held as follows:

“10.The appellant, therefore, cannot claim either permanency or regularisation since there is no such permanent post to which he could stake his claim nor could he claim the benefit of completion of 240 days of continuous work in a given year, because as stated above the figures do not show that the respondents whose particulars are referred to hereinabove or the other respondents for that matter have worked for 240 days. In such a factual background, in our opinion, the Industrial Court or the High Court could not have drawn an adverse inference for the non-production of the muster rolls for the years 1990 to 1992 in the absence of specific pleading by the respondent applicants that at least during that period they had worked for 240 days continuously in a given year. Considering these facts in our view drawing of an adverse inference for the non-production of the muster rolls for the years 1991-92, is wholly erroneous on the part of the Industrial Court and the High Court. We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the respondent applicants.”
(Emphasis Supplied)

27. In (2006) 1 SCC 106, R.M. Yellatti V. Asst. Executive Engineer, it was held that,

“17.the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This

burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.....mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management." (Emphasis Supplied)

28. It is thus seen that the Hon'ble Supreme Court had consistently, and very categorically stated that the onus to prove continuous service of 240 days lies on the workman who has to adduce cogent evidence, both oral and documentary. It has also been held that mere evidence or self serving statements will not suffice. It has been further held that where nominal muster roll and other documents are not produced, drawing of adverse inference would depend on facts of each case.

29. In the instant case, even though, the appellant had not produced the attendance registers for Kattabettu Branch, the only inference that can be drawn is that the workman was employed in Kattabettu Branch, but the further inference that he worked for 240 days is a fact to be decided and established by evidence. The Labour Court has failed in that regard.

30. As repeatedly pointed out, the inference and subsequent conclusion arrived by the Labour Court and also affirmed by the learned Single Judge, that the workman had worked for more than 240 days in two successive calendar years was not based on cogent oral and documentary evidence. The fact whether the workman had abandoned his employment or whether he was terminated from service again had not been established. The fact that the workman had subsequently worked in Kattabettu Industrial Co-operative Tea Factory Limited had also not been addressed by the Labour Court in its proper perspective. To establish these facts, it would only be appropriate that the entire matter is remanded back to the Central Government

Industrial Tribunal -cum- Labour Court Chennai for re-adjudication of the dispute referred before it. The order of the learned Single Judge has to be necessarily set aside and the matter is accordingly remanded back to the Central Government Industrial Tribunal -cum- Labour Court, Chennai.

31. The Tribunal, on receipt of the records must issue notice to both the workman and the management and offer them opportunity to file additional pleadings if any, and to produce additional documents if any, and thereafter record evidence if required and then render a finding on the order of reference and must base such finding on cogent, admissible evidence and not on presumptions. Since the parties have been at lis for a considerable period of time, we request the Tribunal to bestow attention and ensure that the matter is disposed of at the most, within a period of 1 (one) year from the date of receipt of a copy of this order.

32. With the above observations, the order of the learned Single Judge is set aside and the matter is remanded back to the Central Government Industrial Tribunal -cum- Labour Court Chennai to hold fresh trial and pass fresh orders in accordance with law. The Writ Appeal is disposed of, accordingly. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To,

The Presiding Officer
Central Govt. Industrial Tribunal,
Chennai.

+1cc to Mr.T.S.Gopalan & Co., Advocate Sr.60102
+1cc to M/s.V.Ajoy Khoose, Advocate Sr.59913

W.A.No.1026 of 2013

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