

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.11.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.1620 of 2012

The Zonal Manager,
Bank of India,
Zonal Office, Broadway
Chennai - 600 108

..Petitioner

Vs.

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

2.R.Mohan (Deceased)

3.T.P.Rathi

4.T.P.Usha

5.T.P.Vasanthakumar

R3 to R6 are residing at 10/15,
Gandhi Nagar, 6th street, Kodungaiyur,
Chennai - 600 118.

(R3 to R6 are substituted as LR's of deceased
2nd respondent as per order dated 13.11.2019
made in WMP.No.20361/2017 in
W.P.No.1620/2012)

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the 1st respondent in I.D.No.17/2010
and quash its award dated 24.08.2011.

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

For Respondent : R1 - Labour Court

O R D E R

The Award dated 24.08.2011 passed by the 1st respondent in I.D.No.17/2010 is under challenge in the present writ petition.

2. The writ petitioner is a Bank of India.

3. The learned counsel appearing on behalf of the writ petitioner Management made a submission that the 2nd respondent was working as a Sweeper in B.Odaiyur Branch near Chidambaram. The 2nd respondent employee was unauthorizedly absent for many number of days without any permission or prior approval of the competent authorities. Thus, the disciplinary proceedings were initiated against the 2nd respondent employee and after conducting the Domestic enquiry, he was terminated from service. The 2nd respondent raised an industrial dispute, challenging the order of termination.

4. The learned counsel for the writ petitioner states that even on 21.09.2004, the 2nd respondent was charged for the unauthorized absence for a period of 117 days from October 2002 till August 2004 and was imposed with the minor punishment of 'Censure'. The attendance particulars of the petitioner during the period from 1989 to 2004 are stated as under:

Year	No. of working days	No. of days worked by him
1989	300	160
1990	300	172
1991	300	194
1995	300	192
1997	300	194
1998	300	142
2002	300	149
2003	300	163
2004	300	99
2005	220	18

5. Citing the irregularity committed by the 2nd respondent in attending the duty, the learned counsel for the writ petitioner Management reiterated that the Labour Court passed an Award of reinstatement with 25% back wages. However, the Management has reinstated the 2nd respondent in service and he

was working from the year 2011 onwards. Unfortunately, the 2nd respondent passed away, while he was in service on 21.02.2017. Under these circumstances, the question would arise, whether the 2nd respondent is entitled for back wages. As far as the reinstatement is concerned, the Award of the Labour Court was implemented by the Management in the year 2011 itself.

6. This Court is of the considered opinion that the allegations of misconduct are grave in nature. Perusal of the statement of absence produced by the Management as stated above, this Court is of an opinion that the 2nd respondent was a habitual absentee and the disciplinary proceedings were initiated for the grave misconduct as per the Standing orders and the procedures were followed. He was terminated from service. However, the Management has reinstated the 2nd respondent into service and allowed to work till his date of death. The Award was passed on 24.08.2011 and immediately, after the Award, the 2nd respondent was reinstated in service. Therefore, the 2nd respondent enjoyed the benefit of reinstatement as granted by the Labour Court in its Award and under these circumstances, considering the facts and circumstances, this Court is of an opinion that no work, no pay principle is to be applied. Factually, the 2nd respondent was a habitual absentee and this apart, he was terminated from service.

7. Under these circumstances, the principles of no work, no pay is to be applied and consequently, the 2nd respondent is not entitled for back wages of 25% as granted by the Labour Court. In view of the fact that the Award with reference to the reinstatement is implemented, the Award dated 24.08.2011 passed in I.D.No.17/2010 is quashed only in respect of the grant of 25% of back wages.

8. Consequently, the writ petition stands allowed. However, there shall be no order as to costs.

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-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court,
Chennai.

2.The Zonal Manager
Bank of India
Zonal Office Broadway
Chennai-108

+1 cc to M/s.T.S.Gopalan & Company Advocate sr96769

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