



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26358 of 2014

and

M.P.No.1 of 2014

The Dhanalaxmi Bank Ltd
(Formerly known as Dhanalakshmi Bank Ltd
Zonal office
Om Shakthi Towers
163 Anna Salai
Chennai 600 002
Rep.by its Asst.General Manager
and Regional Head

..Petitioner

Vs.

1.The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai - 600 006

2.Smt R Ramaprabha

3.Teamlease Services(P)Ltd
81 Vukan Towers
Thirumalai Pillai Road
T Nagar, Chennai 600 017
Rep.by its Sr.Vice President (Regulatory)

..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 first respondent in ID.No.42 of 2012 and quash its award dated 09.07.2014 directing the reinstatement of the 2nd respondent in the service of the Petitioner and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.



WEB COPY

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

For Respondent : Mr.J.Madanagopal Rao
[For R1]

Mr.K.M.Ramesh
[For R2]

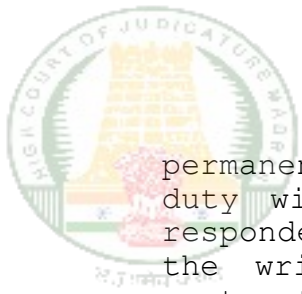
No appearance
[For R3]

O R D E R

The Award dated 09.07.2014 passed in I.D.No.42 of 2012 is under challenge in the present writ petition.

2. The petitioner is the Dhanalaxmi Bank Limited. The petitioner is a Banking Company, having its Registered office at Thrissur in the State of Kerala. The petitioner is governed by the provisions of Banking Regulations Act, 1949. The 2nd respondent employee was appointed by the writ petitioner on 13.07.2007 as a Marketing Executive on contract basis for a period of one year on consolidated pay of Rs.8,000/- per month. The employment of the 2nd respondent continued after the expiry of one year. As per the terms of the appointment, Marketing Executive on contract was required to mobilize atleast 10 savings bank accounts and 5 current accounts. The Marketing Executive will have to take the initiative of collecting the identity of the person, identity of the place of resident and the initial payment for opening the account, preferably by means of a cheque of some other bank by the customer or else by payment of cash with a declaration that the customer is not able to make the payment by cheque. The contract appointment issued on 13.07.2007 was marked as Ex.W1 before the Labour Court. On 04.04.2009(Ex.W2) is Email sent by the Bank regarding the performance of the 2nd respondent and sending her on a foreign tour.

3. At that point of time, the 2nd respondent took up employment with the 3rd respondent company, which is also a largest company. On 01.02.2010, the said document was marked as Ex.W3. The order of appointment was issued by the 3rd respondent and the said fact is admitted by the 2nd respondent before the Industrial Tribunal. On 10.07.2010, the 2nd respondent has written a letter to the petitioner Bank, requesting inclusion of her name in the forthcoming examination for outsourced candidates. On 09.07.2011, the 2nd respondent sent a communication to the writ petitioner Bank, stating that she was being forced to resign. She further alleged that she had been informed that she could secure a



permanent employment with the Petitioner Bank only by joining duty with the 3rd respondent. She had hence joined the 3rd respondent. On 13.07.2011, the 2nd respondent sent an Email to the writ petitioner Bank, in which, she acknowledges her contract employment from 2007 to January 2010. She took up employment with the 3rd Respondent from February 2010, hoping that she would be made permanent employee of the Petitioner Bank. On 19.07.2011, the 3rd respondent issued a letter, terminating the services of the 2nd respondent. It is to be noted that Ex.W9 termination order was issued by the 3rd respondent company with reference to the appointment order issued by the 3rd respondent company and therefore, the termination order issued by the 3rd respondent is no way connected with the writ petitioner Bank. Thereafter, on 23.08.2011, the 2nd respondent sent a letter to the 3rd respondent, requesting them to rescind the order of termination. The 3rd respondent sent an Email to the 2nd respondent regarding her termination. Thereafter, the 2nd respondent raised an industrial dispute, challenging the termination order dated 19.07.2011 issued by the 3rd respondent. The relief sought for in the industrial dispute is for reinstatement with all other benefits. On 09.07.2014, the Labour Court passed an Award, granting reinstatement of the 2nd respondent into service in the petitioner Bank.

4. The learned counsel for the writ petitioner made a submission that on the date of alleged termination on 19.07.2011, the 2nd respondent was an employee of the 3rd respondent. There was no relationship of "master and servant" between the petitioner and the 2nd respondent as on 19.07.2011. In the absence of relationship of master and servant, a Section 2A dispute cannot be maintained against the petitioner Bank. In a dispute under Section 2A, it is not open to the Industrial Tribunal to consider whether the 2nd respondent can be declared as an employee of the petitioner Bank. The scope of Section 2A dispute is restricted to cessation of employment by way of termination, dismissal, retrenchment etc., In the light of the above settled legal position, it is contended that the award of the Labour Court, directing reinstatement of the 2nd respondent into the service of the petitioner Bank is perverse and accordingly, liable to be scrapped. An order of reinstatement can be passed by the Industrial Tribunal, only if employer-employee relationship was in existence and not otherwise.

5. In support of the said submissions raised by the writ petitioner Bank, the learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court in the case of Bharat Heavy Electricals Limited Vs. Anil and others, reported in (2007) 1 SCC 610, wherein the Hon'ble Supreme Court of India observed as follows:

"18. There is one more reason for coming to



WEB COPY

the above conclusion. There is a difference between an individual dispute which is deemed to be an industrial dispute under Section 2-A of the said 1947 Act on the one hand and an industrial dispute espoused by the union in terms of Section 2(1) of the said 1947 Act. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(1) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In *Radhey Shyam v. State of Haryana* [(1998) 2 LLJ 1217 (P&H)] it has been held after considering various judgments of the Supreme Court that Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(1) of the said 1947 Act]. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc."

6. The Hon'ble Supreme Court of India considered the scope of Section 2A of the Industrial Disputes Act. The Hon'ble Supreme Court of India made an observation that "An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2 (1) covers a wider field. It includes even the question of status."

7. In the case of *Rajasthan State Road Transport Corporation and another Vs. Krishna Kant and others*, reported in (1995) 5 SCC 75, the Hon'ble Supreme Court of India observed as follows:

"29. Now let us examine the facts of the appeals before us in the light of the principles adumbrated in *Premier Automobiles* [(1976) 1 SCC 496 : 1976 SCC (L&S) 70]. The first thing to be noticed is the basis upon which the plaintiffs-respondents have claimed the several reliefs in the suit. The



WEB COPY

basis is the violation of the certified Standing Orders in force in the appellant-establishment. The basis is not the violation of any terms of contract of service entered into between the parties governed by the law of contract. At the same time, it must be said, no right or obligation created by the Industrial Disputes Act is sought to be enforced in the suit. Yet another circumstance is that the Standing Orders Act does not itself provide any forum for the enforcement of rights and liabilities created by the Standing Orders. The question that arises is whether such a suit falls under Principle No. 3 of Premier Automobiles [(1976) 1 SCC 496 : 1976 SCC (L&S) 70] or under Principle No. 2? We are of the opinion that it falls under Principle No. 3. The words "under the Act" in Principle No. 3 must, in our considered opinion, be understood as referring not only to Industrial Disputes Act but also to all sister enactments – [like Industrial Employment (Standing Orders) Act] which do not provide a special forum of their own for enforcement of the rights and liabilities created by them. Thus a dispute involving the enforcement of the rights and liabilities created by the certified Standing Orders has necessarily got to be adjudicated only in the forums created by the Industrial Disputes Act provided, of course, that such a dispute amounts to an industrial dispute within the meaning of Sections 2(k) and 2-A of Industrial Disputes Act or such enactment says that such dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes Act. The civil courts have no jurisdiction to entertain such suits. In other words, a dispute arising between the employer and the workman/workmen under, or for the enforcement of the Industrial Employment Standing Orders is an industrial dispute, if it satisfies the requirements of Section 2(k) and/or Section 2-A of the Industrial Disputes Act and must be adjudicated in the forums created by the Industrial Disputes Act alone. This would be so, even if the dispute raised or relief claimed is based partly upon certified Standing Orders and partly on general law of contract.

35. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not



WEB COPY

maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 – which can be called "sister enactments" to Industrial Disputes Act – and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly – i.e., without the requirement of a reference by the Government – in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed



WEB COPY

conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

8. The Hon'ble Supreme Court of India settled the legal principles regarding Section 2A and Section 2K of the Industrial Disputes Act.

9. This Court also passed an order in the case of the Management of Ford India Private Ltd., Vs. The Presiding Officer, Second Additional Labour Court, Chennai in W.P.No.12673 of 2004 dated 18.09.2019, wherein it has been held as follows:

"8. In another judgment dated 05.06.2012 passed in W.P.Nos.35842 and 35843 of 2007, this Court held as follows:

"12. He also referred to the judgment of the Supreme Court in Bharat Heavy Electricals Ltd., vs. Anil and others reported in 2007 (1) LLJ 619 for contending that the Labour Court cannot direct reinstatement of the workmen as against the principal employer that too in a dispute under Section 2-A of the Industrial Disputes Act. In paragraphs 13 and 15, it was held as follows:

"13. An individual dispute which is deemed to be an industrial dispute under Section 2-A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(1) covers a wider field. It includes even the question of status. This aspect is very relevant for the purposes of deciding this case. In Radhey Shyam v. State of Haryana⁴ it has been held after considering various judgments of the Supreme Court that



WEB COPY

Section 2-A contemplates nothing more than to declare an individual dispute to be an industrial dispute. It does not amend the definition of industrial dispute set out in Section 2(k) of the Industrial Disputes Act, 1947 [which is similar to Section 2(1) of the said 1947 Act]. Section 2-A does not cover every type of dispute between an individual workman and his employer. Section 2-A enables the individual worker to raise an industrial dispute, notwithstanding, that no other workman or union is a party to the dispute. Section 2-A applies only to disputes relating to discharge, dismissal, retrenchment or termination of service of an individual workman. It does not cover other kinds of disputes such as bonus, wages, leave facilities, etc.

15.We set aside the impugned judgment of the High Court by directing BHEL to re-employ Respondents 1 to 14 directly or through its contractor. This order will, however, not preclude the workmen from raising an industrial dispute claiming status of direct workmen of the Company after joining the recognised union/union concerned in the said reference. This order will not prevent the respondents herein from seeking abolition of contract labour in accordance with law. Accordingly, the civil appeal is disposed of. No order as to costs."

14. But, in the present case, the workmen himself were not very clear about the real employer and at the time of raising a dispute, they have impleaded both of them as party respondents and during the trial, the Labour Court had accepted the evidence of M.W.1, namely Contractor and found that the claim against the 2nd respondent was not justified. In doing so, the Court also referred to the oral evidence in which the categorical admission was made by the workmen about their relationship with the Contractor. Such a finding of fact cannot be interfered with by this Court, that too in a dispute raised under Section 2-A of the Industrial Disputes Act."

10. The learned counsel appearing on behalf of the 2nd respondent workmen disputed the contentions raised on behalf of the writ petitioner by stating that the 2nd respondent employee was initially appointed as Marketing Executive by the petitioner Bank in order dated 13.07.2007 on a consolidated monthly salary of Rs.8,000/-. The order of appointment reveals that the 2nd respondent was appointed on contract basis for one year. The services of the 2nd respondent was discharged by the



writ petitioner on 31.01.2010. The Branch Manager on 31.01.2010, informed the 2nd respondent that she was terminated from services on the ground that the Marketing work was to be outsourced; and she would be given employment in the same category by M/s.Team Lease Services Private Limited, Bangalore. The 2nd respondent was informed that she had to do the same work for the Bank and she would be absorbed in a suitable position in the Bank's service whenever the process of recruitment is made. Believing the words of the Branch Manager, the First Party accepted the employment under M/s.Team Lease Services Private Limited. She was selected for a foreign trip by Met Life India Limited, having business contact with the writ petitioner Bank.

11. At the outset, it is contended that after termination by the writ petitioner on 31.01.2010, the Branch Manager informed the 2nd respondent employee that the Marketing works are to be outsourced and accordingly, she will be appointed by M/s.Team lease Services Private Limited, Bangalore and she will be performing the works for the writ petitioner Bank. In this context, the learned counsel for the writ petitioner states that the writ petitioner Bank though outsourced the marketing related works, the 2nd respondent was made to work under the 3rd respondent to perform the job of Marketing Executive for the writ petitioner Bank. Therefore, the writ petitioner is the Principal employer for all purposes and under these circumstances, there is no infirmity in respect of the Award passed by the Industrial Tribunal. This apart, the Branch Manager of the writ petitioner Bank provided an information that the 2nd respondent employee would be absorbed in the 1st respondent Bank, whenever the process of recruitment is undertaken. When the 3rd respondent issued the order of termination, thereafter the 2nd respondent raised an Industrial Disputes under Section 2A of the Act. The contention of the 2nd respondent is that though she was appointed by the 3rd respondent all along, she was working for the writ petitioner Bank and was performing the Marketing works. She was provided with an information that she would be recruited, whenever the process of selection is undertaken.

12. Under these circumstances, the learned counsel for the 2nd respondent reiterated that the 2nd respondent employee was compelled to join with the 3rd respondent and however, she was performing the Marketing related works for the writ petitioner Bank and therefore, for all purposes, the writ petitioner Bank is to be construed as an employer and thus, there is no perversity or infirmity in respect of the relief granted by the Industrial Tribunal in its award, which is impugned in the present writ petition.

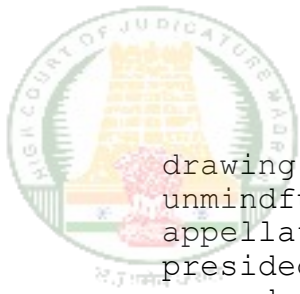


13. Learned counsel appearing on behalf of the 2nd respondent workmen in support of his contentions, cited the judgment of the Hon'ble Supreme Court of India in the case of Hussainbhai, Calicut and Alath Factory Thozhilali Union, Kozhikode and others reported in (1978) 4 SCC 257. In the said judgment, the Apex Court made an observation which are extracted hereunder:

"3. Who is an employee, in Labour Law? That is the short, die-hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent Union's intermediate workmen and so no direct employer-employee vinculum juris existed between the petitioner and the workmen.

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."

14. In the case of Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and another reported in (2000) 4 SCC 245, the Hon'ble Apex Court made an observation in para 17 that "The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and



drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."

15. Relying on the said observation, the learned counsel for the workmen reiterated that the writ Court cannot go beyond the finding of the Labour Court regarding the facts and circumstances established. The Labour Court passed an award relying on the facts placed and there is no infirmity as such. Thus the award is to be confirmed.

16. In the case of General Manager, Bharat Heavy Electricals Ltd., Ranipet Vs. Canteen Workers of BHEL, rep. By the BHEL Canteen Workers Union, Chennai and others reported in 2015 (2) LLJ 12 (Mad. DB) also, similar view has been reiterated and relying on the judgments, the learned counsel for the workmen is of an opinion that the Writ Petition is liable to be dismissed.

17. With reference to the facts, the learned counsel for the writ petitioner, the Dhanalaxmi Bank Ltd., reemphasized that the employee herself admitted the fact that she was appointed through a separate appointment order issued by the 3rd respondent Company. The 3rd respondent Company is not a smaller one. The 3rd respondent Company has employed more than 1,50,000 employees and under these circumstances, the 2nd respondent employee very much aware of the order of appointment issued by the 3rd respondent, accepted the said order of appointment dated 19.07.2011 and working with the Company for considerable length of time and thereafter, now cannot plead that she was under the impression that the employment was under the control of petitioner bank. To substantiate the said contention, the learned counsel for the writ petitioner management referred to appointment order issued by the 3rd respondent and the letter of the 2nd respondent employee dated 10.07.2010 which was addressed to Mr. Jayasimha, Manager-HRD of the 3rd respondent. All subsequent letters regarding discharge from service were also addressed to the 3rd respondent Teamless Services (P) Ltd., Company by 2nd respondent employee and therefore, there is no reason for the 2nd respondent to plead that she was not aware of the fact that she was continuing the services of the 3rd



respondent Company.

18. Considering the arguments, this Court is of an opinion that the admitted facts by both the writ petitioner as well as the 2nd respondent employee are that the 2nd respondent was employed on a contract basis for a period of one year by petitioner Bank as the Marketing executive on 13.07.2007. After expiry of one year, the 2nd respondent was allowed to continue as a Marketing Executive. However, on 31.01.2010, the petitioner Bank discharged the services of the 2nd respondent from the Bank's services and thereafter, she was issued with a fresh order of appointment by the 3rd respondent. The order of appointment issued by the 3rd respondent reveals that the 2nd respondent was appointed in the 3rd respondent organization as Marketing Executive subject to certain terms and conditions. The conditions are elaborated in the appointment order dated 01.02.2010, which was marked as Ex.W3. It is an admitted fact that the 2nd respondent employee was terminated by the 3rd respondent company in letter dated 19.07.2011. The order of termination was also issued by the 3rd respondent / M/s.Team Lease Services Private Limited and accordingly, she was discharged from service.

19. When the order of appointment was issued by the 3rd respondent, after the discharge of the services of the 2nd respondent by the writ petitioner, then for all purposes, it is to be construed that the "Master-Servant" relationship between the writ petitioner and the 2nd respondent, ceased to exist and the 2nd respondent also accepted the appointment order from the 3rd respondent and was serving under the control of the 3rd respondent, who in turn, issued the order of termination on 19th July 2011. Based on these admitted facts, which all are established before the Industrial Tribunal by way of documents, this Court is of an undoubted opinion that the "Master-Servant" relationship did not exist between the writ petitioner Bank and the 2nd respondent, after the termination of services of the 2nd respondent by the writ petitioner Bank. Once, the 2nd respondent accepted the discharge order issued by the writ petitioner Bank and accepted the fresh appointment order issued by the 3rd respondent dated 01.02.2007 and the order of termination was also issued by the 3rd respondent, there is no reason to arrive at a conclusion that the writ petitioner Bank is the employer for the 2nd respondent. In fact, the employer-employee relationship ceased to exist soon after the discharge of the services of the 2nd respondent by the writ petitioner.

20. Even in the claim petitions, filed by the 2nd respondent employee in I.D.No.42/2012, the relief sought for is that the action of the 1st respondent Bank (the writ petitioner herein) in terminating her services with effect from 31.01.2010 and from 19.07.2011 by the 2nd respondent (3rd



WEB COPY

respondent / M/s.Team Lease Private Limited) contractor is illegal and not justified and to pass an award, directing the 1st respondent Bank to reinstate the 1st party in service with continuity of service with back wages with all other attendant and consequential benefits.

21. The relief sought for in the claim petition before the Labour Court reveals that the writ petitioner Bank terminated the services of the 2nd respondent with effect from 31.01.2010 and the 2nd termination order was passed by the 3rd respondent company on 19.07.2011. Both the orders are sought to be quashed in the industrial dispute. In between, it is established that the 2nd respondent was appointed by the 3rd respondent company on 01.02.2010. Thereafter, soon after the acceptance of the offer of appointment made by the 3rd respondent in their company by the 2nd respondent, the "Master-Servant" relationship between the writ petitioner Bank and the 2nd respondent employee ceased to exist and therefore, the very relief coined in the claim petition before the Industrial Tribunal reveals that the order of termination was issued by the 3rd respondent company and the order of appointment was also issued by the 3rd respondent company, which was accepted by the 2nd respondent. This being the admitted facts even before the Industrial Tribunal, there is no reason to arrive at a contrary conclusion by the Industrial Tribunal.

22. It is relevant to consider the cross examination of the 2nd respondent employee, wherein, the 2nd respondent had categorically deposed that Ex.W3 does not state that the 2nd respondent was appointed in the Dhanalaxmi Bank. The work of the 2nd respondent was of Marketing Executive. Ex.W12, a letter addressed to the 3rd respondent company is for seeking reinstatement. The 2nd respondent admitted that there are allegations of forged cheques and creating accounts under fictitious name against the 2nd respondent. It is further deposed that the 2nd respondent had not taken any efforts to take the disputes to Arbitration as provided in the appointment order issued by the 3rd respondent company. The 2nd respondent admitted in the deposition that her salary was paid by the 3rd respondent company.

23. When these all are the admitted facts and circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioner is not an employer and there is no "Master-Servant" relationship existed between the writ petitioner and the 2nd respondent. The "Master-Servant" relationship was in existence between the 2nd respondent and the 3rd respondent company and therefore, the 2nd respondent is entitled to claim relief only against the 3rd respondent and certainly not against the writ petitioner.



24. Under these circumstances, the 2nd respondent employee is at liberty to redress her grievances against the 3rd respondent and the 3rd respondent appointed the 2nd respondent and issued the order of termination, which was under challenge. Soon after the discharge of the services of the writ petitioner on 31.01.2010, the 2nd respondent accepted the appointment order issued by the 3rd respondent company on 01.02.2010. The very next day, she was appointed by the 3rd respondent by way of an independent appointment order. Therefore, the question of challenging the discharge order issued by the writ petitioner does not arise and further, there cannot be any two termination orders by two different employers. The first discharge order was accepted by the 2nd respondent and she had accepted the fresh appointment order issued by the 3rd respondent company on 01.02.2010 and she served with the 3rd respondent and on account of certain serious allegations, the 3rd respondent terminated the services of the 2nd respondent on 19.07.2011.

25. This being the admitted factual position by the parties, this Court is of the considered opinion that the Award passed by the Labour Court is perverse and not in consonance with the settled principles of law and consequently, the Award dated 09.07.2014 passed in I.D.No.42 of 2012 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kak

To

1.The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai - 600 006.

+1cc to Mr.K.M.Ramesh, Advocate SR.97453
+1cc to M/s.T.S.Gopalan & Co, Advocate SR.97710

W.P.No.26358 of 2014

SKV(CO)
CB(20/01/2020)