

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.27033 of 2014

and

W.P.No.35084 of 2016

The Tamil Nadu Industrial Co-operative Bank (TAICO Bank)
rep. By its Managing Director,
CMDA Office Complex,
Thalamuthu Natarajan Building,
Ground Floor No.I,
Gandhi Irwin Road,
Egmore, Chennai 600 008.

Old Address:
The Special Officer,
TAICO Bank,
No.36, South Canal Bank Road,
Mandavelipakkam, Chennai - 28.

... Petitioner in both W.P.s

vs.

1. R.Alex Sues

2. The Presiding Officer,
I Additional Labour Court,
Chennai.

... Respondents in both W.Ps.

W.P.No.27033 of 2014: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records in Award in I.D.No.130 of 2012 dated 15.04.2012 on the file of the 2nd Respondent and quash the same as illegal and contrary to law.

W.P.No.35084 of 2016: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, calling for the records pertaining to C.P.No.618 of 2014 dated 11.05.2016 on the file of the 2nd Respondent/Labour Court and quash the same.

For Petitioner in both W.Ps. : Mr.V.R.Kamalanathan
For 1st Respondent in both W.Ps: Mr.T.K.S.Gandhi

C O M M O N O R D E R

Petitioner-Bank has come up with W.P.No.27033 of 2014, challenging the Award dated 15.04.2012, passed by the Labour Court in I.D.No.130 of 2012, and W.P.No.35084 of 2016, challenging the order dated 11.05.2016, passed by the Labour Court in C.P.No.618 of 2014.

2. As the issue involved in both the Writ Petitions is one and the same, they are taken up for disposal by a common order.

3. It is seen that the 1st Respondent herein joined the Petitioner-Bank as a Driver on 20.04.2006 and was paid a sum of Rs.3,500/- as monthly salary, which was periodically revised from time to time. Thereafter, without assigning any reason, he was denied employment from 01.07.2011. Hence, the 1st Respondent raised an Industrial Dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') in I.D.No.130 of 2012, against the Petitioner-Bank, seeking to reinstate him in service, with backwages and other attendant benefits. The I Additional Labour Court, Chennai, by an Award dated 15.04.2012, allowed the 1st Respondent's claim. Challenging the Award of the Labour Court, the Petitioner-Bank preferred the above Writ Petition in W.P.No.27033 of 2014.

4. In the meanwhile, the 1st Respondent/workman preferred a Claim Petition in C.P.No.618 of 2014 under Section 33(c)(2) of the Act, before the I Additional Labour Court, Chennai, claiming computation of wages, conveyance allowance, bonus and recharge allowance. By an order dated 11.05.2016, the Labour Court passed an order, computing wages and other benefits for a sum of Rs.3,06,400/-. Challenging the same, the Petitioner-Bank has come up with the above Writ Petition in W.P.No.35084 of 2016.

5. Learned counsel for the Petitioner-Bank submitted that the 1st Respondent/workman was appointed as a Driver in the Petitioner-Bank on 20.04.2006 on a daily-rated basis, and he unauthorizedly absented himself from 01.07.2011, without assigning any reason. However, he sent a letter to the Petitioner-Bank on 14.10.2011, seeking employment, after a lapse of 3 ½ months. According to the learned counsel for the Petitioner-Bank, no termination order was issued by the Petitioner-Bank and hence, the question of termination does not arise. Hence, according to him, the 1st Respondent is not entitled for an order of reinstatement with backwages, as he was engaged only on temporary basis.

6. It is the contention of the learned counsel for the Petitioner-Bank that, the Labour Court failed to consider the fact that no dispute under Section 2-A of the Act would arise, as the 1st Respondent had abandoned the services of the

Petitioner-Bank voluntarily, and hence, he was disqualified for regularization in accordance with Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, 1988 (in short 'the Rules'). According to him, it is a well settled law that a workman engaged on daily-rated basis could be terminated from service without following Section 25-F of the Act. Hence, according to the learned counsel, Section 25-F of the Act may not be applicable to the facts of this case, when the workman has abandoned the service.

7. In support of his case, learned counsel for the Petitioner - Bank has relied on a decision of the Madurai Bench of this Court in the case of Registrar of Co-operative Societies, Chennai vs. M.Panneer Losini, reported in 2016 (2) L.W. 730, wherein, it is held that appointments not as per Rule 149 or through Employment Exchange, are contrary to Rules.

8. In reply, learned counsel appearing for the 1st Respondent/workman submitted that, even if a person is engaged on daily-rated basis and has rendered 'continuous service', as defined under Section 25-B of the Act, his services cannot be terminated, without following the mandatory provisions of Section 25-F of the Act, irrespective of the fact that, he was appointed against a regular post or not. Hence, according to the learned counsel, though the 1st Respondent herein received salary on daily wage basis, he is also a workman under Section 2(s) of the Act.

9. Heard the learned counsel on either side and perused the entire material documents available on record.

10. The Labour Court has taken note of as many as 32 exhibits filed by the 1st Respondent/workman, including copies of his Driving Licence, I.D. Card and Payment Voucher, apart from seven documents marked on behalf of the Petitioner-Bank, and has examined the 1st Respondent/workman as W.W.1, and one E.Arunachalam as M.W.1.

11. Before the Labour Court, the Petitioner-Bank has not disputed the fact that, the 1st Respondent/workman was employed as a Driver in their Bank, with effect from 20.04.2006. But, it is their contention that the 1st Respondent/workman was paid wages on daily basis, and not on monthly basis, and that he had left the services of the Bank, on his own accord. Since the 1st Respondent did not report for work, a new person was appointed in his place and there is every justification on the part of the Petitioner-Bank in appointing a new hand.

12. The Labour Court, while considering the case of the Petitioner-Bank, has taken note of the fact that Rule 149(2), cannot, at any stretch of imagination, take away the rights conferred to the workman under Section 25-F of the Act. When the fact of employment has been admitted by the Petitioner-

Bank, and when it is not in dispute that the 1st Respondent/workman had rendered not less than 240 days of service prior to the date of termination, and had, in fact, rendered more than five years of service, the question of non-compliance of Section 25-F of the Act, would vitiate the termination. And, on account of violation of conditions laid down under Section 25-F of the Act, the 1st Respondent/workman would be entitled to all the benefits. Thus, it is clear that Rule 149(2) of the Rules, cannot supersede or water down Section 25-F of the Act.

13. From the records, it appears that the 1st Respondent/workman has not abandoned the services of the Petitioner-Bank. Even, in case of abandonment, it is the duty of the employer to issue notice to the employee, asking him to report for work, and in case, he fails to report for work, the employer can, thereafter proceed with the enquiry and pass an order of termination.

14. The main contention of the Petitioner-Bank is that, the 1st Respondent/workman has not satisfied Rule 149(2), and hence, he is not entitled to any relief. When there has been periodical revision of wages from Rs.3,500/- to Rs.7000/- to the 1st Respondent/workman, and the same has not been disputed by the Petitioner-Bank, and that the 1st Respondent/workman has rendered more than 480 days of service in two years, as could be seen from the records, he is certainly entitled to permanent status as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

15. As the Petitioner-Bank is an industrial establishment in terms of Section 2(3)(e) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and in view of the legislative incorporation as per Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947, the said 1981 Act is applicable to Banks. In any event, the Petitioner-Bank is a private Bank, registered under the Tamil Nadu Co-operative Societies Act. Even for nationalized Banks, conferment of permanent status to the workmen is applicable, in view of the decision rendered by the Apex Court in the case of C.V.Raman vs. The Management of Bank of India, reported in AIR 1988 SC 1369. In view of the exemption provided in the Shops Act, the Apex Court held that Nationalized Banks will not come under the Shops Act. But for the exemption, the Shops Act is applicable to Banks.

16. Further, it is seen that the 1st Respondent/workman has gone into the witness box and stated that, he is not gainfully employed, even though the burden of establishing the gainful employment of the employee is on the employer. It is suffice, if the employee states that, he has not been gainfully employed. In case, gainful employment is established, there may be deprivation of backwages.

17. The Apex Court, in Rajinder Kumar Kindra vs Delhi Administration, reported in AIR 1984 SC 1805, has dealt with a similar issue, that when there is no evidence on the record to show that the employee was gainfully employed during the period of his absence from service, he would be entitled to full back-wages and all consequential benefits.

18. In the present case on hand, the Labour Court, after analyzing the evidence, came to the conclusion that the employee has rendered more than 240 days of service in a year, preceding the date of termination and set aside the order of termination on the ground that, when the 1st Respondent herein is a workman under Section 2(s) of the Act, non-compliance of Section 25-F of the Act, would vitiate the termination. Accordingly, the Labour Court, ordered reinstatement of the 1st Respondent/workman into service, with full backwages and other attendant benefits.

19. In such view of the matter, the Division Bench decision of this Court, relied on by the learned counsel for the Petitioner-Bank in the case of the Registrar of Co-operative Societies, Chennai vs. M.Paneer Losini reported in 2016 (2) L.W. 730, may not be applicable to the facts of this case, as the Court has held therein as to whether appointment can be made contrary to Rule 149. The Court has also held that there is no proof of employment and continuous employment. Further, the Division Bench of this Court, referred to the decision of the Apex Court rendered in State of Karnataka vs. Umadevi reported in (2006) 4 SCC 1, wherein, it is held that services of persons appointed in violation of Articles 14 and 16 de hors the statutory rule, cannot be regularized. In the said case, the aggrieved workmen approached the High Court of Karnataka directly, without approaching the Labour forum. Whereas, in the case on hand, the 1st Respondent/workman had initially raised an Industrial Dispute and the Labour Court adjudicated the issue and came to a conclusion.

20. At this juncture, this Court is inclined to refer to two judgments of this Court, one in the case of Hindustan Petroleum Corporation Ltd. Vs. Presiding Officer, Central Government Labour Court cum Industrial Tribunal, 2008 (4) CTC 819, and the other in the case of Oil and Natural Gas Corporation Ltd. vs. Petroleum Coal Labour Union, 2011 (III) LLJ 497 (Mad.), wherein, this Court has considered the case of State of Karnataka vs. Umadevi (AIR 2006 SC 1806), and held that once there is a valid State enactment providing for relief of deemed permanency for those who have completed 480 days in a period of two calendar years, such workmen getting permanent status cannot be questioned by anyone and it cannot be labelled as violation of Articles 14 and 16 of the Constitution. The Court held that the effect of a local

enactment conferring permanent status to workmen was never considered by any Court so far.

21. As stated supra, Umadevi's case (cited supra), is one filed before the High Court directly and the Apex Court has not considered about the violation of Section 25-F of the Industrial Disputes Act, 1947 or any other violations, apart from the enactment, viz. Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen), 1981. Hence, Umadevi's (cited supra) case will not be applicable to the facts of this case.

22. As regards placing reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed, the Apex Court in the case of Padma Sundara Rao Vs. State of Tamil Nadu, reported in 2002 (3) SCC 533, has held as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

23. As there is no error in the order passed by the Labour Court in the Claim Petition and that no flaw has been pointed out for the amount granted by the Labour Court in the Claim Petition, the 1st Respondent/workman is entitled to all the benefits. Hence, this Court is of the view that the Award of the Labour Court need not be interfered with, and accordingly, W.P.No.27033 of 2014 is dismissed.

24. With regard to the other Writ Petition in W.P.No.35084 of 2016, it is consequential in nature, and the same is liable to be dismissed. As the 1st Respondent/workman had not been paid backwages, he had approached the Labour Court for computation of wages.

25. Before parting with, this Court is of the view that the Award passed by the Labour Court will be in force, till it is substituted by another Award or Settlement, as has been held by the Apex Court in the case of Life Insurance Corporation of India vs. D.J. Bahadur (1981 (1) LLJ 1)

26. It is needless to mention that it is open to the 1st Respondent/workman to invoke Section 29 of the Act for prosecution, as, cause of action is continuous, and in case, he approaches the Government for prosecution against the Officials falling under Section 32 of the Act, the Government will have to sanction prosecution, as, as on date, the Award of the Labour Court has not been implemented. The authorities shall also take into account, the decision rendered by the Apex Court in the case of Raj Kumar Gupta vs. Lieutenant Governor, Delhi reported in 1997 (1) LLJ 994, for sanctioning prosecution, so that the issue is brought to a logical end. Once this case lands up in the Criminal Court, the Criminal Court shall proceed with the matter without adjourning the same beyond 15 working days at any point of time, and bring the issue to a logical end.

27. In fine, both Writ Petitions are dismissed with the above observations. No costs. Consequently, connected M.P.No.1 of 2014, M.P.Nos.1 and 2 of 2015 in W.P.No.27033 of 2014 and W.M.P.No.30238 of 2016 in W.P.No.35084 of 2016, are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

(aeb)

To:
The Presiding Officer,
I Additional Labour Court,
Chennai.

+1cc to Mr.T.K.S.Gandhi , Advocate SR.No. 63230
+1cc to Mr.V.Balamurugan , Advocate SR.No. 63174
+1cc to Mr.V.R.Kamalanathan,Advocate SR.No. 36173
(11/12/2019)

W.P.No.27033 of 2014
and
W.P.No.35084 of 2016

A.SK(06/11/2019)