

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

**WRIT APPEAL Nos.1268, 1269, 1270, 1271, 1272, 1273,
1277, 1286, 1287, 1288, 1297, 1298, 1299, 1300, 1313, 1314,
1315, 1324, 1325, 1326, 1327, 1348, 1350, 1352, 1353,
1354, 1355, 1356, 1357, 1374, 1622, 1628 of 2014;
20, 21, 23, 30, 31, 32, 33, 34, 35, 67, 68, 76, 83, 84, 85, 86,
93, 191, 193, 194, 197, 198, 199, 200, 201, 202, 235, 236,
237, 239, 240 of 2015;
1481, 1482 and 1490 of 2016;
31,32, 37, 78, 320, 323, 332, 494, 495, 504, 1369, 1401,
1402, 1408, 1442, 1444, 1445, 1446, 1447, 1448, 1449,
1450, 1458 & 1466 of 2017**

AND

**WRIT PETITION Nos.15777 of 2007 and 29090, 29118, 32306,
32308, 32309, 32311, 32312, 33324 and 33362 of 2016**

COMMON JUDGMENT: (Per Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

**WRIT APPEAL Nos.1268, 1269, 1270, 1271, 1272, 1273, 1277,
1286, 1287, 1288, 1297, 1298, 1299, 1300, 1313, 1314, 1315, 1324,
1325, 1326, 1327, 1348, 1350, 1352, 1353, 1354, 1355, 1356, 1357,
1374, 1622, 1628 of 2014; 20, 21, 23, 30, 31, 32, 33, 34, 35, 67, 68,
76, 83, 84, 85, 86, 93, 191, 193, 194, 197, 198, 199, 200, 201, 202,
235, 236, 237, 239, 240 of 2015; 1481, 1482 and 1490 of 2016; 31,32,
37, 78, 320, 323, 332, 494, 495, 504, 1369, 1401, 1402, 1408, 1442,
1444, 1445, 1446, 1447, 1448, 1449, 1450, 1458 and 1466 of 2017**

These writ appeals arise by a common judgment issued by the learned single Judge adjudicating on the sustainability of a common award in different references made under Section 10 of the Industrial Disputes Act, 1947 (for short 'ID Act'). The references were by the Central Government in relation to certain issues raised as regards persons claiming to be workmen seeking re-employment, regularization and other reliefs in connection with their employment with the State Bank of India; hereinafter referred to as 'SBI'.

2. We have heard learned senior counsel appearing for the appellant - SBI, learned senior counsel appearing for the respondents - workmen in different matters and the learned counsel appearing for the respondent - workman in WA.No.1357 of 2014.

3. At the outset, we may record that the common order, which is impugned before us, is a result of an adjudication by the Labour Court which ended up against the interest of the workmen and therefore, issued as a common award. We say this here and now, because, after hearing the learned counsel for the parties, it appears to be clear that the respondent in W.A. No.1357 of 2014 has certain pleadings on facts, which are totally different from the other persons, who are among the respondents in these writ appeals before us. We will deal with that issue later on.

4. There were issues relating to the manner in which the employees, who are engaged on casual basis with the SBI, were to be dealt with during the course of changing of the banking managerial practises from time to time. It appears that there were certain settlements, which resulted in creation of a cut-off date i.e., 31.03.1997 and eligibility for regularization and other reliefs to persons, who were working in different modes. The issue arose as to whether the persons, at whose instance, the references were made were eligible for employment, continuation of employment or re-employment in SBI. This matter initially came up in the form of a

writ petition before this Court when certain temporary employees sought regularization. The learned single Judge has issued certain directions; that were vacated by the Division Bench of this Court through a common judgment in W.A. No.86 of 1998 and connections. It appears from the material papers on record that the issue relating to the eligibility of similar nature was raised before the Orissa High Court. It was concluded by that Court that it was not within the domain of the writ Court to adjudicate on such issues and, therefore, those issues will have to be carried before the competent jurisdiction. The Special Leave Petition by the respondents from that matter was dismissed by the Honourable Supreme Court.

5. It is, thereafter, that the references came to be made to the Industrial Tribunal. The claims of each of the persons, who claim to be workmen (respondents), were, apparently, different on material particulars and facts relating to their claims relatable to service. However, the learned Tribunal decided all the matters through a common award, probably, because the decision was that no interference was called for at the hands of the Tribunal. To arrive at such conclusion, the learned Tribunal called into aid the decision of the Orissa High Court by stating that the rights and liabilities of the workmen and the management can be only referable to ID Act and the engagements after 31.03.1997 may not by itself bring any relief to the respondents. The fact that decision of the Orissa High Court refusing to exercise writ jurisdiction has been affirmed by the

Supreme Court by the dismissal of the SLP, was treated by the Tribunal as decisive in that regard; including on the issue of cut-off date and other details. That common award of the Tribunal dated 17.05.2005 was challenged by various workmen before the learned single Judge.

6. All the writ petitions were taken together and decided in one go. The learned single Judge found that it is unjustifiable on the part of the Tribunal having proceeded with the matter solely relying on the decision of the Orissa High Court, which really does not have any bearing on the rights and liabilities as between the persons claiming as workmen and SBI as management. The learned single Judge held that the common award passed by the Tribunal repelling the claims does not stand. However, the learned single Judge further proceeded to consider different aspects referable to employment in public sector as well as public employment regime and fell back on principles, which relate to management of the service conditions in that sector. Accordingly, referring to various decisions, it was noted that the persons before the learned single Judge in the writ petitions cannot be treated as those who are backdoor recruits and those who are illegally appointed. The learned single Judge observed that they could have, at best, been persons, who have been irregularly appointed. The learned single Judge ultimately issued an order for re-employment of the workmen. This was, obviously, done without any consideration of eligibility on case to case basis including on the

length of service or the quality and period of employment of any such person with the management.

7. Hearing the learned senior counsel for the SBI and the learned senior counsel for the contesting unofficial respondents, we see that while the learned single Judge was justified in setting aside the award of the Tribunal, the proper course to be adopted was to remit all the cases to the Tribunal. This we say for reasons more than one. Firstly, in such matters, claims have to be decided on individual basis, as different persons have different claims as to the length of officiation or discharge of duties and functions; quality of engagement, drawings, accounting of the post for each one of them, who have worked etc. All these issues will not be the same in all the cases. Therefore, each case ought to have been directed to be decided by the Tribunal afresh on individual basis. The second and most important aspect is the learned single Judge has in one go ordered re-employment of all the workmen. This is not a relief that could have been granted without answering the individual issues; each issue relating to each case could not have been decided by the writ Court within the format of its adjudication procedures and scope. The adjudicating body, which has to do that activity, is the Industrial Tribunal. Therefore, we are of the view that while we would sustain the order of the learned single Judge insofar as it interfered and sets aside the award of the Tribunal, the further findings and directions, issued through the impugned order have to go and the individual cases

have to be sent back for consideration of the Tribunal. Such further procedure before the Tribunal will have to be carried forward with the materials already on record and also by affording an opportunity to the persons, who have claims as well as the management to place their rival contentions and further material before the Tribunal. The learned counsel appearing for the workmen are justified in pointing out that enormous delay has already happened and further action by the Tribunal in this line may be expedited.

8. Insofar as W.A. No.1357 of 2014 is concerned, the learned counsel for the respondent - writ petitioner points out that the consolidated consideration of the writ petitions and the proceedings in the Tribunal has resulted in manifest miscarriage of justice as far as his client is concerned. He says that his client, who is writ petitioner in W.P. No.6470 of 2006, was enlisted in the Employment Exchange and he was sponsored by the employment exchange and on such sponsorship, he got employment with the SBI some time in 1986. That being so, that is not a case, which has to be decided along with other matters, for, on certain fundamental issues relating to SBI as management, the matters may overlap. Therefore, following this judgment, I.D. No.8 of 2002, which is subject matter of W.P. No.6470 of 2006 from which W.A. No.1357 of 2014 arises, shall be decided by the Tribunal separately.

9. In the result, these writ appeals are ordered;

- (1) affirming the impugned common order of the learned single Judge to the extent it sets aside the common award dated 17.05.2005 of the Industrial Tribunal;
- (2) the further findings and directions issued through the impugned common order are vacated;
- (3) all the matters shall be remitted to the Industrial Tribunal with a direction to dispose of them within an outer limit of five (5) months from the date of receipt of a copy of this order; and,
- (4) the parties to make appearance before the Tribunal on the given date.

WP.Nos.15777 of 2007, 29090, 29118, 32306, 32308, 2309, 32311, 32312, 33324 and 33362 of 2016:

Heard learned counsel appearing for the petitioners - workmen in different matters and the learned senior counsel appearing for the SBI.

These writ petitions are ordered in terms of the judgment in the above writ appeals.

As a sequel, miscellaneous applications, if any pending, in these writ appeals and writ petitions stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

March 20, 2019

PV/DSK

