

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.02.2020
ORDERS RESERVED ON 28.01.2020
ORDERS DELIVERED ON 14.02.2020
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.7556 and 26647 OF 2013

W.P.No.7556 of 2013

1.The Management

ICICI Bank Limited,
ICICI Bank Towers,
Bandra-Kurla Complex,
Mumbai 400 051.

2.ICICI Bank Limited

ICICI Bank Towers,
Plot No.24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Chennai 600 058.

...Petitioners

Vs.

1.The Presiding Officer,

Central Government Industrial Tribunal
cum Labour Court,
Sastri Bhavan,
No.26, Haddows Road,
Chennai 16.09.2019

2.S.Ramanathan

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records connected with I.D.No.18 of 2011 on the file of the first respondent and to quash the award dated 30.11.2012 insofar as modifying the order of discharge as to compulsory retirement passed by the first respondent.

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For Petitioner : Mr.Sanjay Mohan
for M/s..Ramasubramaniam Assoc.

For Respondents: R1-Labour Court
Mr.V.Prakash for R2
Senior Counsel
for Mr.K.Krishnamoorthy

W.P.No.26647 of 2013

S.Ramanathan

...Petitioner

vs

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Sastri Bhavan,
No.26, Haddows Road,
Chennai 600 006.

2.The Managing Director,
ICICI Bank Limited,
ICICI Bank Towers,
Bandra-Kurla Complex,
Mumbai 400 051.

3.The Chief Manager,
ICICI Bank Limited,
ICICI Bank Towers,
Plot No.24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Chennai 600 058.

...Respondents

For Petitioner : Mr.V.Prakash for R2
Senior Counsel
for Mr.K.Krishnamoorthy

For Respondents: R1-Labour Court
Mr.Sanjay Mohan for R2 and R3
for M/s..Ramasubramaniam Assoc.

COMMON ORDER

W.P.No.7556 of 2013:-

The Management is the writ petitioner. Challenge made in this writ petition is against the award of the Labour Court dated 30.11.2012, modifying the order of discharge as to compulsory retirement of the second respondent.

2. The case of the Management is as follows:

The Bank of Madura Limited was merged with ICICI Bank on March 10, 2001. All the employees and officers, who were on the rolls of Bank of Madura Ltd., were taken on the rolls of ICICI Bank on the terms and conditions applicable to them, while they were working in Bank of Madura Ltd. From the date of amalgamation, ICICI Bank became the employer of the second respondent. The second respondent was a Clerk on the rolls of the erstwhile Bank of Madura. He suffered from numerous ailments which affected his ability to perform his duties. Citing those infirmities, the second respondent was continuously absent from duty between 04.09.2006 till the date of his termination viz., 25.06.2009, which was for nearly three years. The Management, taking into consideration of his predicament and record of service, have been most considerate. In addition to sanctioning leave till 25.06.2009, on his request each and every time, the petitioner paid the medical expenses incurred by the second respondent as well, unmindful of the difficulties caused by his absence. On 17.06.2009, the second respondent applied for further leave. However, in the light of his continuous ill health, as established by his own medical certificates showing that he was suffering from Cardiac disease and hypertension, and seeing no sign of his condition improving for returning to work, the Management was compelled to discharge him from service on the grounds of continued ill health, vide letter dated 25.06.2009. The Management paid a sum of Rs.87,690/-, being his salary in lieu of notice period. The second respondent challenged the order of discharge by alleging that it amounted to retrenchment and thus, is in violation of Sections 25F, 25G and 25H of the Industrial Disputes Act. The petitioner Management resisted the claim by contending that discharge of an employee will not constitute retrenchment, if done on the ground of continued ill health. It was also contended that since the discharge itself cannot be brought under the definition of retrenchment, Sections 25F, 25G and 25H of the Act do not apply to the present case. The second respondent's medical certificates produced for the period between 04.09.2006 and 25.06.2009 establish the fact that he was suffering from continued unabated ill health and that his continued absence had

already caused inconvenience to the bank. The Labour Court, however passed the award, even though it has found that it is a fit case for discharge on the ground of continued ill health.

3. No counter affidavit is filed by the second respondent/employee. However, the matter is contested by him through his counsel.

W.P.No.26646 of 2013:

4. This writ petition is filed by the employee, who is the second respondent in W.P.7556 of 2013. Challenge made in this writ petition is against the very same award of the Labour Court insofar as not granting the relief of reinstatement with full backwages, continuity of service and all other attendant benefits with a consequential direction to the respondent bank to reinstate the employee with full backwages, continuity of service and all other attendant benefits.

5. The case of the employee is as follows:

He joined the service of the petitioner Bank of Madura on 04.02.1980 as a Clerk. He had been working without any blemish. The Bank of Madura got merged with the second respondent bank during the year 2000. On merger, he was working with the second respondent Bank. He was having cardiac problem coupled with high blood pressure and diabetic. He suffered serious heart attack. The second respondent bank paid the hospital charges. Owing to his ill health, he has to avail leave from 04.09.2006. He submitted leave applications enclosing Medical Certificates clearly indicating that the ill health was due to cardiac ailment, hypertension and diabetic problem. The second respondent had been permitting him to continue on leave. The last leave application was submitted on 17.06.2009. However, the second respondent Bank, after receiving the said application, passed the order of discharge on 25.06.2009 on the ground of continued ill health. The second respondent Bank cannot terminate his service in the guise of discharge on the ground of continued ill health. After taking treatment, he had been trying to get normal. He was all set to recover and continue his employment. Therefore, discharging his service without notice and without enquiry, is illegal. On receiving the order of discharge, he sent a letter to the second respondent Bank stating that he was willing to resign from services and requested the Bank to pay pension under the Pension Regulations. However, the second respondent Bank, after receiving the said letter, informed through its communication dated 29.09.2009 that its decision cannot be reconsidered. The discharge would amount to retrenchment. Thus, it is in violation of Sections 25F, 25G and 25H of the I.D. Act. The second respondent Bank did not

refer the employee to any Medical Board before discharging him. The allegation of the continuous absent is not correct. On the other hand, he was on leave and the said leave was also sanctioned. The Medical reimbursement extended to him was part of service condition. He was not put on notice that his service is going to be discharged on the ground of continued ill health. If such an opportunity had been given, he on his own would have submitted himself to the medical fitness and obtained necessary certificates showing his fitness. Even this opportunity was not given to him. Thus, the action was in violation of principles of natural justice as well. Burden of proof to discharge an employee on the ground of continuous ill health always lies with the Management. The said onus is not discharged in this case. The Labour Court modified the termination by way of discharge as one of the compulsory retirement. The award of the Labour Court insofar as not granting relief of reinstatement with full backwages, continuity of service and all other attendant benefits is illegal, arbitrary and contrary to law.

6. No counter affidavit is filed by the Management. However the matter is contested through their counsel.

7. Mr. Sanjay Mohan, learned counsel for the Management in both the writ petitions made his submissions on behalf of the Management. A written submission is also filed on its behalf. The sum and substance of the submissions made on behalf of the Management is as follows:

a) The employee was absent for the period of about 3 years continuously and the reason for absence was admittedly on account of coronary heart disease, hypertension and diabetes complaints. Even in the claim statement, the employee accepted that he was trying to get normal and willing to resign. No allegations of victimisation or malafides against the Bank was ever made. It is not the case of the employee that he recovered fully. Even on the last application for leave dated 17.06.2009, he sought for extension of leave on the same ground. The Bank of Madura Employees Provident Fund and Gratuity Fund Rules applies to this employee and all other employees. Likewise, the Bank of Madura Employees' Pension Regulation applies to this employee. The funds of pension scheme are made up by the employer's contribution to the Provident Fund and diverted to the pension scheme. He has been sanctioned leave on loss of pay for the period of absence spread over nearly three years. The Labour Court found that reason for termination of service of continued ill health was correct and justified. The Labour Court also found that it was not a case for holding an enquiry because it was termination simplicitor. However, the Labour Court treated it as a case of punishment and invoked Section 11A

and consequently, converted the termination simplicitor into the penalty of compulsory retirement in order to enable the grant of pension. After finding that the termination was justified and it was only a termination simplicitor, the Labour Court ought not to have invoked Section 11A to convert the discharge into the penalty of compulsory retirement, especially when no penalty existed. When the very medical certificates filed by the employee established that he was suffering from continued ill health and when the Tribunal found that it was not the case of the employee that he was fit and ready and willing to work, no purpose would have been served by seeking medical opinion. Therefore, it would be an empty formality to have an expert medical opinion, especially when it was not the case of the employee that he was fit to work on the date of termination.

b) Continued ill health has been exempted from the definition of 'retrenchment' under Section 2(oo) of the I.D. Act, 1947. Right to terminate emanates from the contract of employment or anyway, under the provisions of Section 41 of the Tamilnadu Shops and Establishments Act, which applies to the Bank and to the employee enabling termination of services for reasonable cause. Reasonable cause in this case would be the reasonable reason of the employee suffering from continued ill health for a period of three years. Therefore, termination on the ground of continued ill health, would not be a retrenchment. The Labour Court could not convert the discharge of simplicitor to any other form of discharge because it has no power to do so.

c) Power to interfere with the penalty is available under Section 11A of the said Act and therefore, there must be a punishment for interference under Section 11A. Here, the Labour Court found that it is only termination on the ground of continued ill health. Continued ill health cannot be construed as a misconduct. Therefore, the consequential termination, not amounting to retrenchment, is not a punishment warranting interference under Section 11A. Compulsory retirement is not a punishment listed in the code of conduct as per ICICI service conditions. Therefore, a new punishment could not be invented to be imposed.

d) Compulsory retirement is a form of penalty in the Bank of Madura officers. But upon merger, there is no dispute between the parties that the Bank of Madura Officers Regulation was replaced by the Code of Conduct. The ICICI Bank Code of Conduct does not have a penalty called compulsory retirement. The compulsory retirement, even according to the Pension Scheme contemplates such action as penalty. The Management could not possibly have chosen compulsory retirement for the simple reason

that no penalty and misconduct were involved. It would not be open to the Tribunal to substitute a different kind of termination order in case of discharge simplicitor. The Tribunal would get jurisdiction to interfere with the Pension Scheme only if separate Industrial Dispute is raised collectively by all the employees of the bank for modification of the Scheme. In the case of issue relating to non-employment of one individual, the Tribunal cannot create a new contract or differ from an existing contract regarding pension for the benefit of just one employee. If a new contract is created, then it will have universal application in regard to all employees. Giving pension specially to one person will really amount to alter the entire Pension Scheme. The Pension Scheme is not a surprise that was suddenly brought upon the employee. No trade union or group of employees have ever chosen to challenge the Pension Scheme till this date. Even in case of resignation, he is disqualified to receive pension. The parties proceeded on the basis of various admitted facts and produced the Pension Rules, etc., not as documents before the Tribunal, etc., during the course of arguments and that is how the Tribunal proceeded to deal with the case to issue a direction to treat the termination as 'Compulsory Retirement' that is found in the Pension Rules.

e) In support of his contention, the learned counsel for the Management relied on the following decisions:

- i) AIR 1973 SC 1227, The Workmen of Firestone and Rubber Co. of India (Pvt) Ltd. vs The Management,
- ii) 2006 (13) SCC 619, Kerala Solvent Extractions Ltd., vs. A.Unnikrishnan,

8. Per contra, Mr. V.Prakash, learned Senior Counsel for the employee in both the writ petitions made his submissions on behalf of the employee. A written submission is also filed on behalf of the employee. The sum and substance of the above submissions are as follows:

a) The employee has rendered 26 years of service without any blemish. The Labour Court modified the award of termination into one of compulsory retirement on the reason that the employee may have the benefit of pension under Bank of Madura Employees Pension Regulations. For the optees for the pension, the employers contribution of Provident Fund is remitted into pension fund and optees can only get pension in lieu of the employers contribution for the provident fund. The Tribunal ostensibly exercised the power under Section 11A and modified the order of termination into compulsory retirement. It was the case of the employee that he is improving his health and he will be recovered soon to discharge his duties. He was not given any

opportunity to prove his medical fitness. The Management did not adduce any evidence before the Tribunal and did not discharge its burden of proof by referring the employee to the Medical Board. A termination on the ground of the continued ill health can only by objective assessment by a Medical Board. Therefore in the absence of medical assessment for evaluation of the employee's capacity to serve in the future, the discharge on the ground of continued ill health is bad in law. The past medical certificates do not ipso facto imply incapacity to work in the future. In the last leave letter, the employee had claimed that he was recovering and that he was able to serve. Therefore, the discharge is retrenchment within the meaning of Section 2(oo) of the Act and thus, it is in violation of Section 25(f) of the said Act. If Section 41(1) of the Tamilnadu Shops and Establishments Act, 1947 is taken as shelter by the Management, then automatically Section 2(oo) of the I.D. Act viz., retrenchment would apply to the present case. Exercise of power by the Labour Court is independent to Section 11A. Therefore, the modification of the punishment is within its power. In any event, since the employee has improved his health, he is entitled for reinstatement with other consequential benefits.

b) In support of his contention, the learned Senior Counsel for the employee relied on the following decisions:

- (i) 2002) 104 BOMMLR 61, Union of India vs. Subhash P.Dunagu;
- (ii) (1991) 1 SCC 731, Anand Bihari vs Rajasthan State Road Transport Corporation;
- (iii) 1992 (1) LLJ 519, P.Muthukrishnan vs Central Cinema

9. Heard the learned counsels appearing on both sides and perused the materials placed before this Court.

10. While W.P.No.7556 of 2013 is filed by the Management challenging the award of the Labour Court in modifying the order of discharge as Compulsory Retirement, W.P.No.26647 of 2013 is filed by the employee challenging the very same award insofar as in not granting the relief of reinstatement with backwages and continuity of services. Thus, the subject matter challenge in both the writ petitions, being one and the same award. For the sake of convenience, I address the parties in both the writ petitions with their respective status viz., "Management" and "employee".

11. Following are the admitted facts:

The employee joined the service of Bank of Madura as a Clerk on 04.02.1980. The Bank of Madura got merged with ICICI Bank Limited in the year 2000 and service of the employees of Bank of Madura was absorbed by ICICI Bank. All the employees and officers who were on the rolls of Bank of Madura Ltd were taken on rolls of ICICI Bank on the terms and conditions applicable to them, while they were working in Bank of Madura Ltd. The employee was working with the Management Bank till an order of discharge issued on him on 25.06.2009. The order of discharge was issued on the ground of continued ill health. The employee was on medical leave continuously from 23.01.2006 till 25.06.2009, being the date of order of discharge. However, leave applications filed by the employee, commencing from 23.01.2006 onward were supported by Medical Certificates and that the Management has granted leave on each occasion. The medical expenses were also met out by the Management.

12. The order of discharge dated 25.06.2009 reads as follows:

"June 25, 2009
Mr.S.Ramanathan,
No.37, Church II Street,
"Tirumalla Illam",
T.T.Nagar,
Karaikudi 630 001.

Dear Sir,

1. The Bank has noted with deep concern that on grounds of continued ill health you have remained continuously absent from duty from 4th September 2005, Even at the time of issuance of this letter, your continued ill-health persists and you are absent from duty for that reason.

2. At the end of each month from September 2006 onwards, you have submitted Leave Applications enclosing your Medical Certificates. These Medical Certificates indicate that you are suffering from ill-health involving cardiac disease, hypertension and the like. The fact remains that you have remained continuously absent from 4th September 2006 onwards on grounds of continued ill health.

3. The Bank while it has not sanctioned you salary for this period, has waited long enough for your health to improve but it has noticed from all your Leave Applications and the last leave Application

submitted by you on June 17, 2009 that your continued ill-health persists.

4. Your own Certificates submitted each month over the past years establish beyond all doubt that you are suffering from continued unabated ill-health. Your continued absence has already caused inconvenience to the Bank.

5. In the circumstances and in the light of the continues and continued ill-health that you are suffering from cardiac disease and hypertension, as established by your own Certificates (Medical Certificates) the Bank is compelled to discharge you from services by issuance of salary in lieu of notice. The reason for discharging of your services is "continued ill-health". Enclosed please find herewith a Banker's cheque No.140185 dated June 25, 2009 for Rs.87,690/- towards Salary, in lieu of notice period as applicable to you.

6. Your discharge from services takes effect from the date of this letter and consequently on and from date of this letter, you are no longer in the services of the Bank. The Bank regrets that it has to take this action, but it is left with no other option because of the predicament in which you are remaining from continued and persistent ill-health. Your accounts will be examined for the purpose of settlement of your dues, if any.
Yours faithfully,

P.S.Roy Chaudhuri
Asst.General Manager-HRMG"

13. Perusal of the above said order would show that the employee was discharged from service on the reason of his continued ill health. It is contended on behalf of the employee that it is not a discharge but a termination and thus, it would fall under the definition "retrenchment" as contemplated under Section 2(oo) of the Industrial Disputes Act, 1947, which reads as follows:

"2.(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between

the employer and the workman concerned contains a stipulation in that behalf; or
[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
(c) termination of the service of a workman on the ground of continued ill-health;"

14. No doubt, termination by the employer of the service of the workman for any reason whatsoever otherwise than the punishment inflicted by way of disciplinary action means 'retrenchment'. However, termination of service of a workman on the ground of continued ill health, as contemplated under sub clause (c) of Section 2(oo), will not be a retrenchment, as it is specifically excluded under the abovesaid provision itself. I have already referred to the order of discharge and the reasons stated therein for the same. It is evident that the discharge was on the reason of the employee's continued ill health. Therefore, it would not fall under the definition of 'retrenchment' as claimed by the employee.

15. It cannot be disputed that the Management is entitled to terminate the service of the employee on the ground of continued ill health. However, such termination cannot be construed as a punishment inflicted on the employee. The employee has challenged the said order of discharge before the Labour Court, which in turn, after considering the case on merits, modified the discharge as compulsory retirement. It is contended on behalf of the Management that the Labour Court is not empowered to interfere with the order of discharge under Section 11A, since it was not imposed as a punishment. I do not think that the above said contention is legally sustainable going by Section 11A of the I.D.Act, 1947, which empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workman.

16. The next question arises for consideration is as to whether the award of the Labour Court needs to be interfered with.

17. The learned Senior Counsel for the employee contended that discharge of the employee on the reason of continued ill health is not legally sustainable, since he was not subjected for examination before the Medical Board. In other words, it is his contention that the Management has to find out as to whether he is medically fit for discharging future duties or

not, without going into his past ill health.

18. In order to appreciate the above contention of the employee, it is better to look into certain facts and circumstances of the present case. From the first leave application dated 23.01.2006 to the last leave application dated 08.04.2009, he has stated the reason for leave as his ill health viz., coronary heart disease, hypertension, etc., The Medical Certificate attached with each application advised the employee rest and treatment for a specific period. However, the fact remains that every such specific period was continued without any break for nearly three years commencing from 23.01.2006 onwards. Immediately after the issuance of order of discharge dated 25.06.2009, the employee seems to have sent a letter dated nil to the Management, wherein he has specifically stated that he was suffering from Coronary heart disease, B.P. and high diabetic and requested the Management to accept his resignation and give the pension benefits to save his life. It is also stated therein that the pension amount will meet out his medical expenses in his lifetime. This letter is made available in the typedset of papers filed by the employee. Therefore, even according to the employee, as per the said letter, he was not well at the time of issuing the order of discharge or even thereafter and on the other hand, he continued to suffer ill health and thus, wanted to resign from the post. In the claim petition filed before the Labour Court also, the employee has not claimed that he became alright to discharge his duties. On the other hand, he has specifically stated therein that after taking treatment, the employee had been trying to get normal and that he was all set to recover and continue his employment. Thus, it is not the categorical assertion of the employee that he had come out of his ailment fully and became alright to continue his employment. Under such circumstances, his continued ill health is found to have been established not only before the date of discharge and also after the said order. Therefore, I find that the Management cannot be faulted in keeping the employee out of service. Thus, I find that the claim of the employee for reinstatement cannot be sustained based on the above facts and circumstances.

19. The Labour Court found that the discharge in this case is a discharge simplicitor on the ground of continued ill health and therefore, there was no need to hold enquiry or issue any notice to the employee. I find that the above finding of the Labour Court is just and proper, based on the facts and circumstances of the present case. As I have already pointed out that it is not the case of the employee that he was fully alright to join duty at the time of issuance of order of

discharge. On the other hand, his continuous leave application supported by medical certificates would show that he was continuously ill. Even his own letter stated to have been sent after discharge, as discussed supra, does not dispute the claim of the Management that he was discharged on the reason of continued ill health. Therefore, the question of subjecting the employee to the Medical Board before ordering discharge or conducting any enquiry to prove such continued ill health do not arise in this case. When the reason "continued ill health" is supported by admitted documents viz., leave applications, medical certificates followed by his own letter sent after discharge, I do not think that the order of discharge would be vitiated for want of examination of the employee by Medical Board. The employee never claimed before the Management for sending him to Medical Board, even after the order of discharge.

20. The Labour Court by exercising its power under Section 11A modified the order of discharge to compulsory retirement for the purpose of granting superannuation benefits to the employee. The award of the Labour Court is challenged by the Management by contending that discharge is not a punishment imposed on the employee warranting the modification. It is further contended that even otherwise, service regulations do not contemplate compulsory retirement otherwise than by way of punishment. It is true that Regulation 22 of Bank of Madura Employees Regulations contemplates that resignation or dismissal or termination of an employee from the service of the Bank shall entail forfeiture of entire past service and consequently, shall not qualify for pensionary benefits. Likewise, an employee compulsorily retired from service as a penalty in terms of Discipline and Appeal Regulations alone is entitled to get pension at the rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement as contemplated under Regulation 33. In this case, since the employee is not kept out of employment as a penalty, I find that the employee will not get compulsory retirement pension, even though the Labour Court has modified the discharge as compulsory retirement.

21. Following decisions are relied on by the employee in support of his contention that he should have been referred for medical examination before the concerned Medical Board before ordering discharge:

- (i) (2002) 104 BOMMLR 61, Union of India vs. Subhash P.Dunagu;
- (ii) (1991) 1 SCC 731, Anand Bihari vs Rajasthan State Road Transport Corporation;

(iii) 1992 (1) LLJ 519, P.Muthukrishnan vs Central Cinema

The above case laws are relied on also in support of his contention that mere continued ill health itself cannot be stated as a reason to discharge, unless such ill health incapacitated or disabled the employee from functioning in future. Needless to state that the above case laws would help the employee only when the facts and circumstances of the present case are similar to the facts and circumstances of those cases. In this case, even according to the employee, by his own letter said to have been sent on receipt of the discharge order, he informed the Management that he was daily suffering from the medical problem and requested the Management to accept his resignation and give the pension benefits. Therefore, when such being his claim and that his pleadings before the Labour Court or before this Court nowhere indicate his good health to continue the employment, the above contentions raised by the employee placing reliance on above those decisions are liable to be rejected.

22. Learned counsel for the Management relied on the decision of the Apex Court reported in AIR 1973 SC 1227, The Workmen of Firestone and Rubber Co. of India (Pvt) Ltd. vs The Management, to contend that the Tribunal can interfere with the order of discharge only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the Management.

23. Likewise, another decision of the Apex Court reported in 2006 (13) SCC 619, Kerala Solvent Extractions Ltd., vs. A.Unnikrishnan, is also relied on by the Management to contend that the relief granted by the Court must be seen to be logical and tenable within the framework of law.

24. I have already pointed out that the order of discharge issued on the employee is not a punishment and therefore, the Labour Court was not justified in modifying the same as compulsory retirement. However, this Court is of the considered view that the employee must be granted a just and reasonable relief in view of the fact that the discharge was due to his continued ill health, an unfortunate situation faced by the employee and his family. Therefore, this Court by exercising the jurisdiction under Article 226 of the Constitution of India is entitled to mold the relief and grant appropriate benefit to the employee, if the said relief is logical and tenable within the framework of law, as observed by the Apex Court in Kerala Solvent Extractions Ltd. case.

25. It is true that the Management cannot be found fault with in disengaging the employee. Admittedly, the reason for doing so, was not due to any misconduct of the employee, but his unfortunate health condition. He has put in 26 years of unblemished service. After extracting such long period of service, is it fair on the part of the Management in sending the employee out of employment without giving him any relief? In my considered view, such action of the Management certainly will not meet the ends of justice. If it is not done, this Court can step into such exercise and see that substantial justice is done to the needy party. If substantial justice and technicalities are pitted against each other, as observed by the Hon'ble Apex Court in 2013(4) SCC 97 (Laxmibai vs. Bhagwantbuva), the substantial justice should be preferred as against technicalities in law. At paragraph No.49 of the above decision, the Hon'ble Apex Court has observed as follows:

"When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best."

This Court, while exercising extraordinary jurisdiction under Article 226 of the Constitution of India is not only acting as a Court of law and also as Court of justice. When this Court finds that substantial justice is not done to a party in a particular case, it can extend its arms and do slight tinkering of law, of course, without damaging its scope and object, for the purpose of molding the relief and to meet the ends of justice.

26. Therefore, in my considered view, the employee herein, who is discharged from service admittedly due to his continued ill health, is to be granted a just and reasonable relief. However, the compulsory retirement, being a penalty, it cannot be inflicted on the employee. On the other hand, he can be allowed to retire on voluntary retirement under Voluntary Retirement Scheme as contemplated under Regulation 2(wd) read with Regulation 35 of the Bank of Madura Employees Pension Scheme Regulation, so that the employee would get the benefit of pension from the date of his attaining the age of superannuation i.e., the date on which he would have retired, had he continued in the employment. Since this court has found that the Bank was right in not continuing his employment due to his continued ill

health, the employee is not entitled to the relief of reinstatement with backwages, as claimed in his writ petition.

27. The employee joined the service of the respondent Bank in 1980 and continued to work without any room for any complaint till, unfortunately, he suffered heart attack in the month of September 2006. Therefore, it is evident that from February 1980 to September 2006, for more than 26 years, he rendered his service to the Bank with unblemished record. His unfortunate ill health made him to suffer continuously and resulted in not attending the work for nearly 3 years. This continued service of 26 years of the employee cannot be ignored without adequately giving some relief to him, simply by sending him out with an order of discharge. His absence was due to ill health and his leave applications were sanctioned. It is not the fault of the employee in absenting himself continuously either deliberately or intentionally owing to some other reasons. On the other hand, his unfortunate ill health prevented him from attending the duty. The nature of ill health, without having an iota of doubt, is directly concerned with his life. In other words, it is a life threat ailment. He suffered heart attack and advised rest for continuous period. No doubt, the Management has met out the medical expenses. It shows their fairness, though such extension of benefit is stated to be a condition of service. Let the Management's heart further melt and provide some relief to the employee, who worked for more than 26 years with unblemished record. In fact, in my considered view, the Management, instead of passing the order of discharge, could have invited the employee and asked him to submit application for voluntary retirement. The Management has accepted in their affidavit filed before this Court that all the employees and officers who were on the rolls of Bank of Madura Ltd., were taken on the rolls of ICICI Bank on the terms and conditions applicable to them, while they were working in the Bank of Madura Ltd. Therefore, the Management is bound by the Bank of Madura Employees Pension Regulations, which is provided before this Court for its perusal. Under the said Regulations, Regulation 2(w) deals with definition of "retrenchment" which includes cessation from Bank's service on voluntary retirement in accordance with the provisions contained in Regulation 20 and Voluntary Retirement Scheme in terms of subject to provisions contained in Regulation 2(ze) and Regulation 35. Under Regulation 2(ze), the employee, who has completed 20 years of service in the Bank and who has retired subsequent to the expiry of the Scheme mentioned in Circular dated 20.05.1993, shall be deemed and considered to have retired under Voluntary Retirement Scheme. Likewise, Regulation 35 deals with pension to employees retiring Voluntary Retirement Scheme, wherein it is contemplated

that such persons shall be eligible for pension from the date of attaining the age of superannuation. Therefore, I find that the employee must be treated as a person as voluntarily retired under the relevant scheme.

28. Accordingly, the writ petition filed by the employee in W.P.No. 26647 of 2013 is rejected to the extent indicated above. Consequently, the writ petition filed by the Management in W.P.No.7556 of 2013 is allowed in part and the order of the Labour Court is modified only to the extent indicated as hereunder:

The Management Bank will treat the date of the last leave application of the employee viz., 08.04.2009 as an application seeking voluntary retirement and consequently, allow the employee to retire voluntarily and grant all the service/monetary benefits flowing out of such voluntary retirement accordingly within a period of four weeks from the date of receipt of copy of this order.

No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

vri
To
The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Sastri Bhavan,
No.26, Haddows Road,
Chennai.

+2 cc to Mr.S.Ramasubramaniam Associates sr12345,12346

+1 cc to Mr.K.Krishnamoorthy Advocate sr12124

PRE DELIVERY COMMON ORDER
IN W.P.Nos.7556 and 26647 of 2013

pvs (co)
aa10/03/2020