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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.2134 of 2012

The General Secretary,
Central Bank of India Staff Union,
New No.89, Azis Mulk 3rd street,
Thousand Lights,
Chennai - 600 0063

.. Appellant/2nd Respondent

Vs

1.The Regional Manager,
Central Bank of India,
Regional Office,
Raheja Complex, Anna Salai,
Chennai - 2.

.. 1st Respondent/Petitioner

2.The Presiding Officer,
Central Govt. Industrial Tribunal-cum-
Labour Court,
First Floor, Block No.6,
Shastri Bhavan, 26 Haddows Road,
Chennai - 6.

.. 2nd Respondent/1st Respondent

Prayer : Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 05.06.2012 passed in W.P.No.37814 of 2007 by the learned Single Judge of this Court.

Prayer in WP 37814: Petition Under Article 226 of the constitution of India praying for a writ of Certiorari calling for the records of the first respondent in I.D.No.422 of 2004 and quash its award dated 25.04.2007.

For Appellant : Mr.K.M.Ramesh

For R1 : G.Anand
for M/s.T.S.Gopalan & Co.



JUDGMENT

This appeal is directed against the impugned order dated 05.06.2012 passed by the learned Single Judge in W.P.No.37814 of 2007, whereby the award passed by the second respondent/Central Government Industrial Tribunal-cum-Labour Court (in short "CGIT") was reversed, holding that 14 part-time Safai Karmacharies were not eligible for the benefit of Settlement reached under Section 18(1) of the Industrial Disputes Act, 1947, on 28.11.1997.

2. Short facts leading to the filing of this writ appeal are stated below:-

The first respondent bank entered into a settlement under Section 18(1) of the Industrial Disputes Act, 1947, on 28.11.1997, with the appellant union for enhancement of wages to part-time employees. Subsequent to the settlement, the Central Office as well as Regional Office of the first respondent issued their Circular Nos.CO:PRS:97-98-194, dated 10.12.1997, and RO:PRS:98-99-1273, dated 18.09.1998, respectively, incorporating the terms of settlement dated 28.11.1997. By the said settlement dated 28.11.1997, wages per week for part-time employees were fixed as stated below:-

- (a) From 01.11.1992 to 31.10.1994:-
 - Upto 3 hours --> Rs.130/- p.m.
 - More than 3 hours but less than 6 hours --> Rs.375/- p.m.
- (b) From 01.11.1994
 - Upto 3 hours --> Rs.150/- p.m.
 - More than 3 hours but less than 6 hours --> Rs.440/- p.m.

Subsequent to the above settlement dated 28.11.1997, another bipartite settlement dated 27.03.2000 was entered into between the appellant union and the first respondent Bank for enhancement of wages payable to the part-time employees, by which, the wages per week for part-time employees were fixed with effect from 01.11.1997 as stated below:-

- a) Upto 3 hours --> Minimum of Rs.450/- p.m.
- b) More than 3 hours but less than 6 hours --> Rs.740/- p.m.



However, the first respondent bank did not pay the aforesaid enhanced wages to the said 14 part-time Safai Karmachari employees as per the above said settlements and circulars.

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3. Mr.K.M.Ramesh, learned counsel for the appellant union, would submit that although 14 part-time Safai Karmacharis have worked for long number of years, they have not been paid with arrears and on the request made by them, the first respondent bank has not given valid reason for rejecting their claim. When the appellant Union claimed on behalf of 14 part-time Safai Karmacharies that in the case one Mrs.Chinnamma/part-time employee, the respondent bank has paid enhanced wages till the date of her absorption as per the settlements and circulars and she has been paid arrears for the period from 01.11.1992 to 30.06.1998. Therefore, the respondent bank cannot adopt any hostile discrimination in respect of 14 part-time Safai Karmacharies, as it is nothing but a clear unfair labour practice and victimization. To this stand, the respondent bank replied that with regard to regular part-time Safai Karmacharies, they were given arrears of wages in terms of settlement dated 28.11.1997 and circulars issued therein by the bank, but, in respect of casual labourers, who were working in cleaning of the branches in the absence of regular Safai Karmacharies, they were given arrears of wages from the date they were regularized as they were not entitled to claim arrears for the period before their regularization as per the settlement dated 28.11.1997. Therefore, in view of the said reply, the appellant union raised an industrial dispute on 21.07.2000 for non-payment of enhanced wages to 14 part-time Safai Karmachari employees as per the settlements and thereupon, the Ministry of Labour, Government of India, referred the industrial dispute for adjudication to the second respondent/CGIT; and the issue that was referred for adjudication is:

"Whether the claim of Central Bank of India Employees Union for payment of arrears with all attendant benefits to 14 Safai Karmacharies as per the IBA settlement by the management of Central Bank of India is legal and justified? If not, what relief the workmen are entitled to? "

Therefore, the CGIT took up the industrial dispute as I.D.No.422 of 2004 on its file and after considering the oral and documentary evidence adduced by both parties, the CGIT passed the award holding that the claim of the appellant union for payment of arrears with attendant benefits for the 14 Safai Karmachari employees is legal and justified. Aggrieved by the said award, the respondent bank filed W.P.No.37814 of 2007,



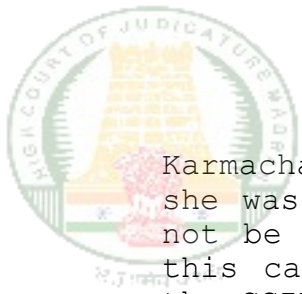
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6. Explaining further, learned counsel for the first



respondent argued that the respondent bank allots number of workmen for each branch as the appointment can be made only against the sanctioned posts, which is being followed as per the law, and only the candidates sponsored by the employment exchange are being appointed as Safai Karmacharies. Each branch will have a Safai Karmachari and if there is no regular Safai Karmachari working in any branch, then the Branch Manager concerned might can engage a local woman menial to attend the cleaning work and such casual labourers are paid fixed daily rate of wages. So far as regular Safai Karmacharies are concerned, they are governed by Awards and Settlements made under the provisions of the Industrial Disputes Act from time to time and the wages of regular Safai Karmacharies of a Branch are fixed based on the number of working hours in a week or floor area. So far as regular Safai Karmacharies were concerned, they were given arrears of wages in terms of settlement dated 28.11.1997, however, in respect of casual labourers who were attending the cleaning of the branches in the absence of a regular Safai Karmachari, they were given arrears of wages from the date they were regularized. Therefore, it is not open to the appellant union to say that any of the regular Safai Karmacharies who were entitled to the revised arrears of wages in terms of settlement dated 28.11.1997, were not paid the arrears. Insofar as the casual labourers, who were attending the cleaning of the branch, were concerned, they were not paid the wages of regular Safai Karmachaires and therefore, they cannot make a claim as applicable to the regular Safai Karmacharies.

7. It is further submitted that out of 14 part-time Safai Karmacharies, Mrs.N.P.Prabavathy, who was made as regular Safai Karmachari from 27.07.1996, was was given scale of wages from 27.01.1998 and thereby she was paid arrears of wages as per the settlement dated 28.11.1997 with effect from 27.07.1996, however, she is not entitled to claim any arrears prior to 27.07.1996. Similarly, Mrs.Kanchana was absorbed as regular part-time Safai Karmachari from 27.07.1996 and thereby she was also paid arrears from the said date. With regard to Mrs.Regina Rani, she was elevated to scale of wages from 11.02.2000 and thereby from 05.11.1999, she was paid wages as applicable to regular part-time Safai Karmachari and in fact, she has given a letter dated 05.11.1999 stating that she will not make any claim for arrears of wages in terms of settlement dated 28.11.1997. In regard to other persons, since they have not worked as regular part-time Safai Karmachari during the period from 01.11.1992, they are not entitled for the enhanced wages as per the settlement dated 28.11.1997. Hence, comparing these 14 part-time Safai Karmacharies with that of Mrs.Chinnamma is wholly unfair and unjustified, as in the case of said person, as could be seen from Ex.W8, she was working as part-time Safai



Karmachari from 01.11.1992 onwards. Even if it is assumed that she was paid arrears of wages prior to her absorption, it would not be a ground to grant relief to the 14 persons concerned in this case, because, a wrong cannot be continued as a right and the CGIT ought to have decided the case on merits with regard to the demand of union instead of mainly relying on arrears of wages paid to Mrs.Chinnamma. Therefore, the question is whether the case of the appellant union is covered by the settlement dated 28.11.1997. In fact, they have paid wages from the date they became regular part-time Safai Karmacharies. Prior to that date, since they have worked only as casual part-time Safai Karmacharies, they are not covered under the settlement dated 28.11.1997. This aspect has been rightly appreciated by the learned Single Judge, therefore, no interference is called for, he pleaded.

8. Heard the learned counsel appearing on either side and perused the materials available before this Court.

9. It is an admitted fact that those 14 part-time Safai Karmachari employees were regularized from 1996 to 1998 and they were all paid wages as per the settlement in the scale of pay depending upon the work. It is admitted by the first respondent bank that the candidates sponsored by the employment exchange are appointed as Safai Karmachari and if there is no regular Safai Karmachari working in any branch, then the concerned Branch Manager is entitled to engage a local woman menial to attend the cleaning work and such casual labourers are being paid fixed daily rate of wages. However, they cannot compete with the regular Safai Karmacharies, because they are governed by the Awards and Settlements made under the provisions of the Industrial Disputes Act from time to time. With regard to regular Safai Karmacharies, the wages are being fixed based on the number of working hours in a week or floor area. Whiles, on 28.11.1997, a settlement was reached between the first respondent bank and the appellant union, by which, the wages for regular Safai Karmacharies having less than 6 hours per week were fixed as stated below:-

(a) From 01.11.1992 to 31.10.1994:-

Upto 3 hours	--> Rs.130/- p.m.
More than 3 hours but less than 6 hours	--> Rs.375/- p.m.

(b) From 01.11.1994

Upto 3 hours	--> Rs.150/- p.m.
More than 3 hours but less than 6 hours	--> Rs.440/- p.m.



"5. The settlement provides for improvement/modifications in the existing provisions relating to;
-- Part time employees drawing consolidated wages.
....."

11. It is also seen from the counter affidavit filed by the respondent bank before the CGIT that Mrs.N.P.Prabavathy, who was made as a regular part-time Safai Karmachari from 27.07.1996, was given scale of wages from 27.01.1998 and thereby she was paid arrears of wages as per the settlement dated 28.11.1997 with effect from 27.07.1996 and therefore, she is not entitled to claim arrears prior 27.07.1996. Likewise, Mrs.Kanchana was absorbed as regular part-time Safai Karmachari from 27.07.1996 and therefore, she was paid arrears from the said date. Similarly. Mrs.Regina Rani, who was appointed as regular part-time Safai Karmachari on 05.11.1999, was elevated to scale of wages from 11.02.2000 and therefore, from 05.11.1999 onwards, she was paid wages as applicable to regular part-time Safai Karmachari, and in fact, she has given a letter dated 05.11.1999 stating that she will not make any claim for arrears of wages in terms of settlement dated 28.11.1997. Thus, when a specific plea was taken by the first respondent bank in their counter affidavit that those 14 casual part-time Safai Karmacharies were paid wages as applicable to regular part-time Safai Karmacharies only after their absorption in the regular service, it was not even denied by the appellant union. Therefore, the reasonings given by the learned Single Judge to reverse the award that (a) settlement dated 28.11.1997 has excluded casual workers; and that (b) extending the arrears to those 14 workmen will amount to second benefit, are absolutely in order.

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similarly placed part-time Safai Karmacharies. The said submission cannot be sustained for the simple reason that the settlement dated 28.11.1997 does not cover the casual part-time Safai Karmacharies. Thus, for the reasons stated above, the writ appeal stands dismissed. No Costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rkm

To

The Presiding Officer,
Central Govt. Industrial Tribunal-cum-
Labour Court,
First Floor, Block No.6,
Shastri Bhavan, 26 Haddows Road,
Chennai - 6.

+1cc to Mr.T.S.Gopalan, Advocate, S.R.No.28386/2021
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.28303/2021

W.A.No.2134 of 2012

RLD(CO)
SB(22/07/2021)