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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.07.2021	16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15600 of 2005

The General Manager,
Indian Bank, Zonal Office,
Chennai.

... Petitioner

-vs-

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai- 600 034.

2. The General Secretary,
Indian Bank Employees' Association,
9, Amirjan Street, Choolaimedu,
Chennai-600 094.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to I.D.No.577 of 2001 on the file of the 1st respondent dated 20.08.2004 (received by the petitioner on 20.01.2005) and quash the same.

For Petitioner : Mr.V.Kalyanaraman
For M/s.Aiyar & Dolia

For R1 : Tribunal
For R2 : Ms.Porkodi

O R D E R

This Writ Petition has been filed, challenging the Award of the 1st Respondent dated 20.08.2004 passed in I.D.No.577 of 2001, in by which, the 1st Respondent directed the Bank to regularize the services of one Tmt.Sukanya, a Part Time Worker, whose case



was represented through Union / 2nd Respondent herein, from the date of Award.

2. For the sake of brevity, the parties are, in short, referred to as Bank, Employee and Union respectively (for Indian Bank, Tmt.Sukanya and Indian Bank Employees' Association).

Brief Facts:

3. It was the case of the Bank that one Sukanya was appointed as a Temporary Part-Time Sweeper engaged by the Bank in terms of Chapter 10 Clause 20.8 of Bipartite Settlement dated 19.10.1966 (in short 'Settlement of the year 1966') only for a period of three months only as stipulated therein. The Employee has no right to claim permanency as per Clause 20.8 or 20.12 of the Settlement of the year 1966 and she is not entitled to any benefits, except for considering her case in preference as and when vacancy arises.

3.1. It was further case of the Bank that the Employee's mother, namely, Rajammal was employed as permanent Part Time Sweeper in half scale wage basis prior to 1992 and in her mother's absence, she would have worked on casual basis and at no point of time, she was employed continuously, as the employment was sporadic in nature. When the Bank decided to call for a list of candidates from the Employment Exchange for appointment of Part Time Sweeper, the Union moved the conciliation machinery under the I.D.Act, 1947, by virtue of which, the selected candidates were not appointed;

3.2. It was also case of the Bank that Union obtained an order of interim injunction, interfering with her engagement as Casual Sweeper and since the Government of India refused to refer the dispute raised by the Employee, Union filed W.P.No.14743 of 1999 and this Court, by an order dated 30.01.2001, directed the Government to refer the dispute for adjudication, pursuant to which, the Tribunal took up the matter in I.D.No.577 of 2001, to decide the following issue:

"Whether it is fact that the disputant Smt.Sukanya has been engaged as a temporary part time sweeper by the Management of Indian Bank from the year 1992 and from 1st July, 1996 continuously without any break?

Whether the claim of the Union for regularisation of Smt.Sukanya in Bank's service is justified and reasonable? If so, what relief is the disputant concerned entitled to?

3.3. It was averred by the Bank that Sukanya was continued



to be engaged as a Part Time Sweeper and the Bank was prevented from acting in accordance with the terms of settlement dated 28.07.1993 and directions of Government of India's Banking Division dated 30.09.1978 and its Circular dated 26.03.1983. The Tribunal, without proper application of law to the facts on hand, passed the Award as stated supra and according the Bank, the Employee's entry was not through proper channel and it was a stop gap arrangement only. Therefore, aggrieved by the Award, the Bank is before this Court.

4. The learned counsel appearing for the Union / 2nd Respondent herein submitted that the Bank, having allowed the employee to continue in service for years together, cannot now refuse to grant permanency, ignoring the fact that she had continuously worked for more than 240 days in a period of 12 Calendar months. She further stated that the decision of the Two Judges' Bench of Supreme Court, cited by the Bank in the case of Range Forest Officer Versus S.T.Hadimani reported in (2002) 3 SCC 25, holding that initial burden of proof is with the Workman to establish that he / she had completed required period of service, was rendered at that relevant point of time and subsequently, the Three Judges' Bench of Apex Court in the case of R.M.Yellatti vs Assistant Executive Engineer reported in (2006) 1 SCC 106 shifted burden on the employer to prove that the Workman had not worked for 240 days continuously. The relevant portion of the said judgment is extracted hereunder:

"13.... In the present case, the defence of the management was that although Ex.W1 refers to the period 22.11.1988 to 20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.W1). In the circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact."

Thus, it was contended by the Union that the conclusion arrived at by the Tribunal was purely on the basis of finding of fact and therefore, the Award warrants no interference by this Court, as the Writ Petition is liable to be dismissed.



5. Assailing the Award passed by the 1st Respondent dated 20.08.2004, learned counsel for the Bank submitted that the Bank acted only in terms of the Clauses 1 and 2 of Settlement dated 20.07.1993 (Ex.M7) in the Government of India's Policy Directive (Ex.M2) dated 30.09.1978 and the finding of the Tribunal that the Bank had not given any valid reason for not approaching the Employment Exchange before six months of retirement of Rajammal, mother of the Employee, will not hold good. Learned counsel for the Bank further submitted that the fact that the Employee was engaged only under fortuitous circumstances on casual basis was not properly analyzed by the Tribunal and therefore, there is no substance in this case, claiming regularization.

6. Heard both sides. Perused the records.

7. It is seen that the Employee was employed as a Casual Worker in the place of her mother called Rajammal, who retired from service on attaining the age of Superannuation. The dispute in this case is only with regard to the regularisation of the service of the Employee, who had been working as a Casual Labourer from 1992. The main contention of the Bank that the Employee worked only as a Casual Worker and not a permanent worker and therefore, she is not entitled to the relief of regularisation. The next plea canvassed by the Bank was that as per the Settlement, Employment Exchange needs to be consulted and a list has to be drawn from them to fill up the permanent post. The argument advanced that a person, who entered the service through back door, cannot claim either permanency or regularization in the post, as a matter of right, cannot be accepted.

8. In this case, the Employee seeks regularization in the post of Sweeper, which falls under Class-IV category of employment and is described as "unskilled office work" in The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (in short 'the Act, 1959'). A reading of the provisions of Section 3 (1) of the Act, 1959 makes it clear that this Act shall not apply in relation to vacancies in any employment to do unskilled office work. Therefore, the plea raised by the Bank to that extent is not sustainable, as the consultation with the Employment Exchange in respect of any post much less that of Sweeper, is only discretionary in nature and not mandatory. The Bank in this case has no other option, but to comply with mandatory provisions of the Settlement and the I.D.Act, 1947. The Bank cannot give a go-by to the Settlement, as it has got a legal sanctity.



9. The next contention of the Bank was that even if it is taken that the Employee worked as a Casual Worker, no document has been produced by the Employee to prove that she had completed 240 days in a period of 12 Calendar month. When the documents are with the Bank, it is the duty on the part of the Bank to produce the same before the Court, as, admittedly, no employee would be provided with the Attendance Register every month so as to enable them to maintain records.

10. In the present case on hand, the Employee discharged the entire burden by filing a petition, calling for documents and number of days worked with the Bank. When an order to produce those documents had been ordered, the Bank cannot keep all the documents close to their chest and contend that still the burden is on the workmen. The Karnataka High Court in the case of Siruguppa Sugars and Chemicals Limited, Gauribidanur vs. The Commissioner of Labour, Government of Karnataka and Others, reported in 2002 (3) LLN 465, held that even though the burden of proof is on the workmen, it is the management, who has the muster roll of the Workmen to produce the same that the Workmen are casual workers. To add further, Hon'ble Punjab and Haryana High Court in Madhusudan's case, reported in 2003 (102) FJR 310 held that Bank is bound to produce the records, failing which the reference should be answered in favour of the Workman, by observing as follows:

"A party seeking equitable relief from the courts, has a bounden duty to disclose all material facts and documents which may have a bearing on the decision of the case. The party, be it the petitioner or the respondent, is not allowed to omit certain documents, which if disclosed, would perhaps lead to an unfavourable order being passed against that party. If by not disclosing such a document any favourable order is taken from the court, the same is liable to be rescinded / vacated on the correct facts being brought to the notice of the court."

11. This Court, in The Madras Race Club vs. M.Victor, reported in (2013) 8 MLJ 609, was pleased to hold as under:

"42...There is no difficulty in accepting the fact that a party to a dispute is entitled to raise all kinds of defence available under law. But they cannot be allowed to keep all cards close to their chest and non suit the workers from the civil court, only with a view eventually to non suit them even from the Labour Court."

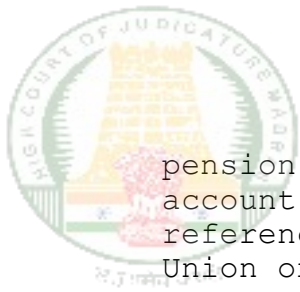


12. Admittedly, the Bank did not produce any document in support of their contention and withheld the evidence in their possession, which forced the Authority to rightly draw adverse inference against the Bank and granted relief to the Workman. The Industrial Tribunal categorically held that even after filing the petition to produce the documents, the Bank burked certain documents, stating that they are not available with them. In the absence of any documents to be produced by them, the contention of the Employee has to be accepted. Taking note of the long period of services, the Tribunal has held that it would not be proper to disturb the services of the Employee, thereby depriving her legitimate status.

13. In the present case on hand, it cannot be contended that it is a back door entry. There was a settlement between the Union and the Bank, and giving go bye to the Settlement, she was allowed to work for three years continuously against the sanctioned post, and having extracted work from her for more than five years, the Bank is now trying to deprive the employee's livelihood and rights, which amounts to deprivation of right to life.

14. Employee is now 63 years old. It has been stated across the bar by Mr.Kalyanasundaram, appearing for the Bank that the employee was provided employment for two days a week pursuant to the interim order, after filing of the Writ Petition. Though she was not given regular work, it is a fault on the part of the Bank and not on the part of the Employee. In a case of this nature, normally, this Court would have confirmed the Award of the Tribunal and regularized the services of the Employee, by giving a suitable direction for extension of benefits, by taking note of the fact that employee admittedly worked for two days in a week and drawn certain wages, and unemployment during the rest of the week was not due to the fault of the Employee.

15. For the foregoing discussions, finding no substance in the case of the Bank, this Writ Petition is dismissed. A direction is issued to the Bank to regularize the services of the Employee, namely, Tmt.Sukanya, from the date of Award, by taking into account the past services of the Employee actually worked. Since the Employee has completed 240 days in a period of 12 Calendar months, in the absence of records produced by the Bank, despite direction by the Tribunal, she has to be considered as a permanent employee of the Bank from the date of award till the date of Superannuation and the Bank shall grant retiral and other benefits, including pension, if eligible. The pensionary benefits, if any have to be notionally fixed, and the



pension amount has got to be arrived at and paid, by taking into account the past services, as the Tribunal has answered the reference in favour of the Employee in the Dispute raised by the Union on behalf of the Employee. No costs.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To:

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Shastri Bhavan, Nungambakkam,
Chennai- 600 034.
2. The General Secretary,
Indian Bank Employees' Association,
9, Amirjan Street, Choolaimedu,
Chennai-600 094.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.47385

order made in
W.P.No.15600 of 2005

PA(CO)
SU(01/11/2021)