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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.41427 of 2016

and

W.P.No.6834 of 2021

W.P.No.41427 of 2016:

1. K.Ezhilarasi
2. V.Vijayalakshmi
3. R.Dhanalakshmi
4. M.Pappathi
5. R.Ayyam Perumal
6. P.Indrani
7. K.M.Suguvana Kumar
8. V.Dinesh Kumar
9. V.Thiruvengada Raja
10. K.Gopi
11. M.Vijayalakshmi
12. M.Rajendran
13. V.Shanthamma
14. S.Sivagami

... Petitioners

vs.

1. Government of India,
rep. By its Secretary,
Ministry of Labour and Employment Department,
Rafi Marg,

New Delhi.
2. The Assistant Labour Commissioner (Central),
O/o. The Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road,
Shastri Bhavan,
Chennai 600 006.
3. State Bank of Mysore,
rep. by its Managing Director,
Head Office, K.G.Road,
Bengaluru 560 009.



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4. The Deputy General Manager,
State Bank of Mysore,
Zonal Office,
Central Zone,
NSC Bose Road,
Chennai 600 001.

5. State Bank of India,
rep. by its Chairman,
Dalmal Building,
Jamnalal Bajaj Road,
Nariman Point,
Mumbai 400 021.

... Respondents

(R5 impleaded vide order dated 23.06.2017 in W.M.P.No.8120 of 2017
in W.P.No.41427 of 2016)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, forbearing the Respondents 3 and 4 from altering the service conditions of the Petitioners in any manner including discontinuance of their service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act, 1947 in the Dispute dated 21.10.2016 raised by the State Bank of Mysore Employees' Union on behalf of the Petitioners regarding absorption of their services, which is pending conciliation before the 2nd Respondent as Dispute No.M7/21/2016-B3, dated 03.11.2016 and further direct the 2nd Respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under Section 12(4) of the Industrial Disputes Act and in turn, direct the 1st Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

For Petitioners :Mr.Balan Haridas

For Respondents 1 & 2 :Mr.D.Ramesh Kumar,
Central Govt. Standing Counsel

For Respondents 3, 4 & 5: Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed

W.P.No.6834 of 2021:

1. K.Ezhilarasi
2. V.Vijayalakshmi
3. R.Dhanalakshmi



4. M.Pappathi
5. R.Ayyam Perumal
6. P.Indrani
7. K.M.Suguvana Kumar
8. V.Dinesh Kumar
9. V.Thiruvengada Raja
10. K.Gopi
11. M.Vijayalakshmi
12. M.Rajendran
13. V.Shanthamma
14. S.Sivagami

... Petitioners

vs.

1. Government of India,
rep. by its Under Secretary,
Ministry of Labour,
Rafi Marg,
New Delhi 110 001.
2. The Assistant Labour Commissioner (Central),
O/o. The Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road,
Shastri Bhavan,
Chennai 600 006.
3. State Bank of India,
rep. by its General Manager - HR,
Local Head Office,
Circle Top House,
No.16, College Road,
Chennai 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, after calling for the concerned records from the 1st and 2nd Respondents, quash the failure report of the 2nd Respondent, dated 16.12.2019 bearing No.M.7/21/2016/B3 insofar as terming the dispute raised to be regarding termination of Petitioners (14 employees) and the order of the 1st Respondent dated 30.12.2019 bearing No.L-12011/71/2019-IR(B-1) insofar as referring the dispute raised as one to be relating to the termination of services of the Petitioners (14 employees) as illegal, arbitrary and contrary to law and consequently direct the 1st Respondent to refer the dispute raised regarding absorption of Petitioners (14 employees) in the services of the 3rd Respondent Bank, whose details are given in the Annexure to the dispute dated 21.10.2016, raised under Section 2(k) of the I.D. Act, 1947 for adjudication before the Central Government Industrial Tribunal cum Labour Court, Chennai and also spell the



name of the 14th employee in the reference, correctly as "V.Shanthamma" instead of "V.Sabtganna".

For Petitioners : Mr.Balan Haridas

For Respondents 1 & 2: Mr.J.Madanagopal Rao,
Senior Panel Counsel for Central
Govt.

For 3rd Respondent : Mr.S.Ravindran, Senior Counsel
for Mr.S.Bazeer Ahamed

C O M M O N O R D E R

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

2. Writ Petition No.41427 of 2016 is filed seeking to forbear Respondents 3 and 4 from altering the service conditions of the Petitioners in any manner including discontinuance of their service or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act, 1947 in the Dispute dated 21.10.2016 raised by the State Bank of Mysore Employees' Union on behalf of the Petitioners regarding absorption of their services, which is pending conciliation before the 2nd Respondent as Dispute No.M7/21/2016-B3, dated 03.11.2016 and for a further direction to the 2nd Respondent to conciliate and effect settlement, and if no settlement is forthcoming, to submit failure report under Section 12(4) of the Industrial Disputes Act and in turn, direct the 1st Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

2(a) Writ Petition No.6834 of 2021 is filed challenging the failure Report dated 16.12.2019 of the 2nd Respondent vide No.M.7/21/2016/B3, insofar as terming the dispute raised regarding termination of Petitioners (14 employees) and the order of the 1st Respondent dated 30.12.2019 bearing No.L-12011/71/2019-IR(B-1) insofar as referring the dispute raised as one to be relating to the termination of services of the Petitioners (14 employees) as illegal, arbitrary and contrary to law and for a consequential direction to the 1st Respondent to refer the dispute raised regarding absorption of Petitioners (14 employees) in the services of the State Bank of India, whose details are given in the Annexure to the dispute dated 21.10.2016, raised under Section 2(k) of the I.D. Act, 1947 for adjudication before the Central Government Industrial Tribunal cum Labour Court, Chennai and also spell the name of the 14th employee in the reference, correctly as "V.Shanthamma" instead of "V.Sabtganna".



3. According to the Petitioners herein, they were employees of the erstwhile State Bank of Mysore, employed on casual basis drawing regular pay scale on par with the other employees. They have been termed as temporary employees and in terms of the Bipartite Settlement dated 19.10.1966, modified from time to time, benefits of the wage scale have been extended to them.

4. A dispute was raised by the Employees' Union with regard to the regularization/absorption of the Petitioners herein, on permanent basis. But, unfortunately, the Government has referred the dispute as one of non-employment. Though there was no non-employment of the Petitioners and that, the issue with regard to non-employment has been referred, fearing disengagement, Petitioners herein filed W.P.No.41427 of 2016 for the aforesaid prayer and this Court passed an interim order not to divest the Petitioners from the present status. In the meantime, W.P.No.6834 of 2021 has been filed with regard to the erroneous Reference made by the Government to the Tribunal, for adjudication.

5. Mr.Balan Haridas, learned counsel for the Petitioners submitted that, while modifying the Reference, the status of the Petitioners as on date will have to be protected and the same should be reflected in the Reference, so that, time limit can be fixed, in order to enable the Tribunal decide the matter within a period of three months and a final Award could be passed in the Industrial Dispute.

6. In support of his case, learned counsel for the Petitioners has relied on the following decisions of the Apex Court:

(i) Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma, (2002) 2 SCC 244

"14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section



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33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above,



enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

(ii) The Bhavnagar Municipality vs. Alibhai Karimbhai, (1977) 2 SCC 350

"10. In order to attract Section 33(1)

(a), the following features must be present:

(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.

(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceedings are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen.

13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject-matter being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary



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workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this case has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute."

(iii) Municipal Corporation of Greater Mumbai vs. K.V.Shramik Sangh, (2002) 4 SCC 609

"25. The Corporation has disputed as to the number of workers under the contract labour system and their authenticity and the period of their work etc. Merely because the records are not maintained by the contractors, it may not be appropriate to accept the list of workers given by the Union. Even from the reliefs granted by the High Court already extracted above, it is clear that 782 contract labourers were identified as working through contracts; a direction was given to constitute a committee to verify the claims of all workmen other than already verified and to make a report to the Corporation indicating their presence who were working actually as contract labourers in the Solid Waste Management Department on the date on which the writ petition was filed. Further, immediately on receipt of such report, the Corporation shall absorb such workmen as permanent workmen. These directions themselves indicate as to the disputed questions that arose for consideration.

29. In the result, for the reasons stated and discussion made above, the impugned judgment and order are set aside leaving it open to the Union to seek remedies available in terms of para 125 of the judgment of the Constitution Bench in SAIL [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] aforementioned before the State



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Government or the industrial adjudicator, as the case may be. In case, the Union moves the appropriate government or the industrial adjudicator within four weeks from today, they shall consider the same and pass appropriate orders within a period of six months. The order to maintain status quo regarding the employment of the contract labourers to the extent indicated, was passed in the writ petition on 20-4-1998 and even after disposal of the writ petition, the High Court stayed the order for a limited period and further, this Court passed order to maintain the status quo on 26-10-1999 which is continuing. In these circumstances, the order of status quo shall continue for a period of six months. We also make it clear that this order does not prevent the State Government to proceed in accordance with law in the matter of abolition of the contract labour system. The appeal is allowed accordingly in the above terms. ..."

(iv) Oil and Natural Gas Corporation Limited vs. Petroleum Coal Labour Union, (2015) 6 SCC 494

"25. It is further contended by the learned Senior Counsel that in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753], this Court had the occasion to deal with the issue of "litigious employment". Admittedly, the workmen concerned were voluntarily appointed by the Corporation initially on term basis. It is by virtue of Section 33 of the Industrial Disputes Act that the Corporation is prevented from terminating the employment of the workmen concerned during the pendency of the industrial dispute. The decision of the Tribunal was rendered on 26-5-1999 and during the period 1990-1999, the workmen concerned did not enjoy any litigious employment but were beneficiaries of a statutorily mandated protection and the Corporation has the right under Section 33(1) (a) of the Act to seek permission from the conciliation officer/Tribunal to remove them from their services but that has not been done by it. Therefore, it would be an improper and misleading contention of the Corporation to describe this scenario as



litigious employment, which contention of it does not stand for judicial scrutiny of this Court."

6(a) Learned counsel for the Petitioners has also relied on the following decisions rendered by this Court:

(i) Anaimalai National Estate Workers Union, Valparai vs. Planters' Association of Tamil Nadu, Coimbatore, 2002 (4) LLN 530

"38. Alternate remedy and monstrosity of the issue:

In the issue of alternate remedy is interrelated with the monstrosity of the issue and would also be relevant for the issue of maintainability which has been considered above. Both Sri. A.L. Somayaji and Sri Vijay Narayan had emphasized at length that the forums constituted under the Act were effective remedies and as such writ petitions cannot be entertained. It is further stated that S. 33-A of the Act entitles the aggrieved party to complain against violation of S. 33(1)(a) of the Act and as such the petitioners were not entitled to invoke the writ jurisdiction. It is true that S. 33-A of the Act deals with the situation of an employer contravening the provisions of S. 33 of the Act during the pendency of the proceedings before the authorities under the Act. An employee aggrieved by the contravention may make a complaint in writing to the concerned authority and such authority shall adjudicate upon it as if it were a dispute pending before it. To appreciate this objection, it is necessary to extract S. 33(1) of the Act.

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.— (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the



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conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending;"

(ii) a Division Bench judgment dated 20.11.2015 rendered by this Court in W.A.Nos.299, 1289 & 1473 of 2010 in the case of M.Rajan vs. ONGC, Chennai

"37. In the preceding paragraphs, we have noted the submissions of the learned counsel appearing for the appellants contending that their appointments are not illegal, but may amount to be an irregular appointment and merely because their names were not sponsored by the employment exchange cannot be a reason to term their employment as illegal. Based on such contention, it is submitted that the main part of the judgment in the case of Uma Devi (supra) is not applicable to their cases. We are unable to accept the said contention, since the proper method to understand and interpret any judgment is 43 to read the judgment as a whole. Whether an appointment was irregular or illegal could be decided based on the facts of each case. A distinction is sought to be drawn by the respondent regarding the nature of appointment of the appellants. It is their contention that the appellants are not workmen covered by the Standing Order of the respondent. The appellants do not dispute that their orders of appointment as term based employees specifically states that Standing Orders are not applicable to them. This is sought to be got over by contending that the respondent inserted such a condition in the offer of appointment only with a view to deny the benefit of permanence. Another contention raised by the respondent is that the appellants never worked in an industrial establishment for being entitled to the



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benefit of the statutes, as they were employed in the Offices and other places in and around Chennai. In the background of these facts, it has to be seen as to whether this Court exercising powers under Article 226 could adjudicate such disputes as done by the Industrial Tribunal in the case of PCLU (supra), where oral and documentary evidence were placed before the Tribunal. The definite and only answer shall be in the negative, as these aspects require examination of facts coupled with oral and documentary evidence. Therefore, we cannot give a finding as to whether the appointments of the appellants were 44 irregular and not illegal solely based on the decision in the case of PCLU (supra), which was rendered after the Tribunal recorded a finding of fact on such issue. "

(iii) an order dated 20.04.2004 in W.P.Nos.3987 of 2001 and 19263 of 2002 in the case of Chennai Airport Contract Workers' Union vs. International Division of the Airports Authority of India

"13. ... Therefore, if the present status of the members of the Petitioner Union are to be disturbed pending adjudication of their present industrial dispute, which is pending conciliation, it would only result in allowing a further set of employees as contract labourers to be inducted afresh and thereby, the scope of controversy would only get further widened, which will not be in the interest of either the members of the Petitioner or the principal employer or the contractor, whoever it may be. Therefore, I am of the view that, it would be in the interest of justice and fair-play that, while directing the concerned conciliation authority to expedite the proceedings and send the report to the appropriate Government for making a reference of the dispute to the appropriate industrial forum and in the meantime, the status of the members of the Petitioner Union should be allowed to continue till such adjudication is decided one way or the other. I find support for such a course being adopted as has been directed by the Hon'ble Supreme Court in



the judgment reported in (2002) 4 SCC 609 (Municipal Corporation of Greater Mumbai vs. K.V.Shramik Shang)."

7. Learned Senior Counsel appearing for the Bank (Sate Bank of Mysore/State Bank of India) submitted that, though the dispute has been referred erroneously, and that, this Court is empowered to issue a direction for issuance of corrigendum, interim protection cannot be made in the Reference and those words cannot be coined for the purpose of adjudication by the Tribunal. According to the learned Senior Counsel, whether the Petitioners herein have really worked for several years and they are entitled to the benefits of permanent status/absorption needs to be adjudicated only by the Tribunal.

8. It is further stated by the learned Senior Counsel that, as State Bank of Mysore got amalgamated with State Bank of India, and records need to be produced before the Tribunal for necessary adjudication, even without ascertaining the genuineness of the names of the employees, even though, the dispute has been referred to one of non-employment, unilateral protection cannot be granted. It is his stand that, if the Petitioners have any grievance, they are entitled to remedy in terms of Section 33 of the Industrial Disputes Act, 1947 and under the presumption that, there is violation and that, there will be violation, coining of words in the Reference so as to protect the interest of the employees, is not correct.

8(a) To substantiate his stand, learned Senior Counsel appearing for the Bank has relied on the following:

(i) a decision of the Apex Court in the case of Rashtriya Chemical and Fertilizers Ltd. vs. General Employees Association, (2007) 5 SCC 273

"11. ... In view of what has been stated in second SAIL case (supra), the High Court has to consider whether the stand taken in the writ petition was inconsistent. In the instant case, the writ petitioner itself accepted that, certain issues could not be decided in the writ petition. That being so, High Court giving directions in the nature done, do not appear to be appropriate. We are of the view that, the High Court ought not to have given the directions in the manner done and should have left the Respondent No.1-Association to avail remedy available in the I.D. Act."

(ii) a decision of this Court in the case of Project Director, Zirconium Project, Zirconium Complex, Department of Atomic Energy, Palayakayal, Tuticorin vs. District General



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Workers' Union (CITU) reported in 2010 (4) LLN 397

"16. The writ-petitioner Union can prosecute its claim for regularization and if the Industrial Tribunal holds in their favour regarding employer-employee relationship, then the writ petitioner can also claim the relief that will follow viz. wages during the period of conciliation when right under S.33(1)(a) of the Industrial Disputes Act is protected. All these will follow only if they succeed in establishing the proof that the employer-employee relationship exists. Until this basic question of facts is settled, we cannot grant the relief prayed for."

(iii) yet another judgment of this Court rendered in the case of Puthiya Jananayaga Vagana Ottunargal and Techniciankal Sangam vs. Government of Tamil Nadu, reported in 2019 (2) LLN 236

"12. A conjoint reading of both the above said provisions makes it clear that, it is independent of each other, which clearly stipulates that, in case, the employer violates the mandatory provisions, then the employee can seek the relief. The employees cannot presume that, the employer is going to violate the provisions and seek for an injunction restraining the Management from proceeding further or a direction not to alter the service conditions or to direct the Management to comply with the provisions of the Act. If there is no compliance by the employer, the rights are protected not only in terms of the I.D. Act, but also in view of the Constitution Bench decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (cited supra)."

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

10. It is not in dispute that, the Petitioners herein are covered under the industrial dispute referred for adjudication. Petitioners before this Court were employees of the erstwhile State Bank of Mysore and that, State Bank of Mysore got merged with State Bank of India. It is also not in dispute that, the issue raised by the erstwhile Union to which the Petitioners belong, raised only the issue of regularization, as they were in service and were not denied employment.



11. The Government, by referring the dispute pertaining to the Petitioners herein, as to one of non-employment, instead of regularization/absorption, has made a perfunctory approach to the issue on hand. The dispute with regard to regularization/absorption can be raised only by the Union under Section 2(k) of the Industrial Disputes Act, 1947, and whether the Union is competent to raise the dispute or not, is for the Industrial Tribunal to decide. As the Reference made by the Government vide order dated 30.12.2019 is liable to be interfered with, the Government will have to issue a corrigendum with regard to regularization/absorption of the Petitioners herein under the State Bank of India.

12. In view of the erroneous Reference, the matter is pending for years and that, the dispute has been raised as early as in 2016. When there is a wrong Reference, this Court is empowered to direct the Government to issue a correct Reference by issuing a corrigendum. In order to avoid further litigation, this Court frames the following issue to be referred for adjudication.

"Whether the demand of the Union in seeking regularization of 14 employees, viz. (1) K.Ezhilarasi (2) V.Vijayalakshmi (3) R.Dhanalakshmi (4) M.Pappathi (5) R.Ayyam Perumal (6) P.Indrani (7) K.M.Suguvana Kumar (8) V.Dinesh Kumar (9) V.Thiruvengada Raja (10) K.Gopi (11) M.Vijayalakshmi (12) M.Rajendran (13) V.Shanthamma (14) S.Sivagami and who are the erstwhile employees of State Bank of Mysore, which was amalgamated with State Bank of India, is justified or not; if not, to what relief the workmen are entitled to ?"

13. If the Conciliation Report is submitted and received by the Government, the Government will have to take a decision to refer the dispute within a time frame. But, the Industrial Disputes Act says that, the conciliation is deemed to be concluded on receipt of the Failure Report. There will be a time lag for reference. During that time, the employer may take action against activist employees, who may be protected or may not be protected workmen. Unless otherwise, the Industrial Dispute is pending, there is no need for the employer either to seek permission under Section 33(1) or Section 33(3) of the Industrial Disputes Act, 1947 or Approval under Section 33(2)(b) of the Act, as the case may be.



14. In the present case on hand, admittedly there is a Reference, but an erroneous one. As long as the Industrial Dispute is pending, rights of the employees under Section 33(1), 33(2)(b) and 33(3) of the Industrial Disputes Act, are protected. A reading of Section 33 of the Act would make it very clear that, the employer is entitled to take action against the employee, if he is not connected with the dispute. But, in the case on hand, the issue is with regard to absorption/regularization of employees.

15. Even though, learned counsel for the Petitioners and the Respondent/Bank, respectively, have referred to number of judgments, this Court, in the decision rendered in the case of Puthiya Jananayaga Vagana Ottunargal and Techniciankal Sangam vs. Government of Tamil Nadu, reported in 2019 (2) LLN 236, has made it very clear that, at the threshold, if the employer is going to violate the provisions of the Act, an interim direction has to be given. Though the Reference made by the Government pertains to the decision taken by the Apex Court, wherein, the issue arose under the Bombay Laws referred, powers of the Industrial Tribunal and the Labour Court to grant interim relief including stay of the termination/transfer of the employees, are wide, which is absent in the Central Legislation. The present Labour Code, which is yet to come into force is also silent about this.

16. In any event, in the present case on hand, already there is a Reference and that, this Court has directed issuance of corrigendum and the rights of the employees are protected in terms of the Industrial Disputes Act, 1947. This Court is of the view that, there is no need to incorporate words in the Reference that, "till such time the issue is resolved, there cannot be any alteration of any service condition", as contended by the learned counsel for the Petitioners. If such words are incorporated, it would mean that, the Management has decided to take action contrary to the provisions of the Act and it will set a bad precedent. Hence, this Court is not inclined to direct incorporation of such words in the Reference pertaining to the case on hand.

17. It is no doubt true that, Courts have given direction during the pendency of the Writ Petition that, the matter needs to be referred for adjudication. Now in the light of the present situation, the Apex Court in the case of Jaipur Zilla case (supra) and Bhavnagar Municipality case (supra), has clearly held that, the interest of the workmen has to be completely protected.



18. In view of the corrigendum to be issued by the Government, which the Government shall do within a period of four weeks from the date of receipt of a copy of this order, the Industrial Tribunal is expected to take up the Industrial Dispute and proceed with the same without adjourning the matter beyond seven working days at any point of time in terms of Rule 10B(8) of the Industrial Disputes (Central) Rules, 1957 and bring the issue to a logical end. For better appreciation, the said Rule is extracted hereunder:

"[10B. Proceeding before the Labour Court, Tribunal or National Tribunal.-

(8) The Labour Court, Tribunal or National Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding a week at a time but in any case not more than three adjournments in all at the instance of the parties to the dispute:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be, for reasons to be recorded in writing, grant an adjournment exceeding a week at a time but in any case not more than three adjournments at the instance of any one of the parties to the dispute."

19. The Government is expected to act swiftly as regards issuance of Corrigendum within the time stipulated supra. Officials who are concerned with regard to the dealing of Labour matters, are expected to deal with it cautiously, as many of the issues deal with the lives of the employees and in some cases, on account of wrong issue being referred, employers have to pay for no fault of theirs.

20. Disputes take quarter Century to be concluded from Tribunal to the High Court level and in case of demise of the employees, it becomes difficult for the employer and the Court to find out their legal heirs, to serve notice. I had an occasion to deal with a Writ Petition of the year 2002, involving an industrial dispute which was pending for more than 28 years. The whereabouts of the employee in that case was not able to be ascertained and the Lawyers representing the employee as also the Management died due to Covid-19. That is the reason for the aforesaid observation.



21. Even though the Labour enactment says that, it is meant for speedy disposal, it moves in a snail's pace only and time has come where the legal heirs of the deceased employee's legal heirs are going to continue the dispute, i.e., the employees are going to leave the legacy of litigation to their grand children/future generations.

22. The employees must furnish their date of birth and Aadhar Card before the Tribunal, and mobile numbers, which shall be retained till the issues are brought to a logical end, even though they are permitted to change the provider. In all pending matters, the Authority concerned, Labour Court and Tribunals must seek the above particulars, as dispute does not end in Lower forums.

23. In fine, W.P.No.6384 of 2021 is ordered on the above terms. It is made clear that, the name of the 13th employee shall be correctly spelt in the Reference as 'V.Shanthamma'. Since this Court has ordered W.P.No.6384 of 2021, no further orders are required in W.P.No.41427 of 2016. No costs. Consequently, connected W.M.P.No.35401 of 2016 in W.P.No.41427 of 2016 and W.M.P.Nos.7385, 7389 and 7390 of 2021 in W.P.No.6834 of 2021 are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
Government of India,
Ministry of Labour and Employment Department,
Rafi Marg, New Delhi.
2. The Assistant Labour Commissioner (Central),
O/o. The Deputy Chief Labour Commissioner (Central),
No.4, Haddows Road, Shastri Bhavan, Chennai 600 006.
3. The Managing Director,
State Bank of Mysore, Head Office,
K.G.Road, Bengaluru 560 009.



WEB COPY

4. The Deputy General Manager,
State Bank of Mysore,
Zonal Office, Central Zone,
NSC Bose Road, Chennai 600 001.
5. The Chairman,
State Bank of India,
Dalmal Building, Jamnalal Bajaj Road,
Nariman Point, Mumbai 400 021.
6. The Under Secretary,
Government of India,
Ministry of Labour, Rafi Marg,
New Delhi 110 001.
7. The General Manager - HR,
State Bank of India,
Local Head Office, Circle Top House,
No.16, College Road, Chennai 600 006.

+1cc to the Government Pleader Sr.28450

W.P.No.41427 of 2016
and
W.P.No.6834 of 2021

sj[co]
srg 23/08/2021