

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4328 OF 2021
(The President, Bank of Maharashtra Employees Union Vs. Bank
of Maharashtra, through its Chairman and others)
WITH
WRIT PETITION NO.4302 OF 2021
(The General Secretary, Bank of Maharashtra Employees
Association Vs. Bank of Maharashtra through its Chairman &
Others)
WITH
WRIT PETITION NO. 4304 OF 2021
(The General Secretary, Bank of Maharashtra Employees Union'
Vs. Bank of Maharashtra through its Chairman & Others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. V. Ghare, Advocate for Petitioner
Mrs. Renuka Puranik Nalamwar, Advocate for Respondents

CORAM : MANISH PITALE, J.

DATE : 21st APRIL, 2022

By these writ petitions, the employees' union of the Bank of Maharashtra has challenged identical orders passed by the Central Government Industrial Tribunal, Nagpur (hereinafter referred to as the CGIT), whereby an application seeking dismissal of the complaints filed by the petitioner - union under Section 33-A of the Industrial

Disputes Act, 1947 (hereinafter referred to as 'the Act'), was allowed and the complaints, stood dismissed.

2. Brief facts leading up to filing of the present writ petitions are that the petitioner – union contends that its members have been working as temporary part time sub staff with the respondent – bank in its various branches and zones. The said members have claimed the right of being permanently absorbed as employees of the respondent – bank and the said cause is being espoused by the petitioner - union. In the process of agitating the said claim, by an order dated 24/06/2021, the appropriate authority invoked Section 10 of the aforesaid Act to refer the dispute for adjudication to the CGIT cum Labour Court at Nagpur. The dispute referred to the CGIT reads as follows :

“Whether the action of the management of Bank of Maharashtra, Nagpur through its Zonal Manager, Bank of Maharashtra, Akola through its Zonal Manager & Bank of Maharashtra, Amravati through its Zonal Manager, Nagpur in not absorbing/confirming services of 45 Temporary Part Time Sub Staff (as per list attached) as permanent employees from Nagpur Zone (Shr. Salman Farooqi & ors.) Akola Zone (Sh. Vilas Suresh Sonone & ors.) & Amravati Zone (Sh. Namdeo Chandan Shanware & Ors.) after completion of more than prescribed period required for permanent absorption is legal &

justified? If yes, than whether these workmen are entitled to receive any consequential benefits and from which date? If not, what relief to the concerned Association is entitled to?”

3. In pursuance of reference of the aforesaid dispute, a statement of claim has been filed by the petitioner - union before the CGIT. The respondent – bank has repudiated the claim that the members of the petitioner – union are temporary part time sub-staff. It is the case of the respondent - bank that they are merely daily wagers, intermittently employed at some branches of the respondent – bank.

4. It is the case of the petitioner – union that during pendency of the aforesaid reference before the CGIT, the respondent – bank issued circular dated 06/04/2021, concerning outsourcing of housekeeping services in various zones of the respondent – bank and that issuance of such a circular amounts to change in condition of service of the members of the petitioner – union, who are agitating their claims in the pending reference. It is claimed that issuance of such a circular amounts to violation of Section 33(1)(a) of the said Act, giving cause of action to the petitioner – union to file complaint under Section 33-A of the said Act before the

CGIT. It is contended that in terms of Section 33-A of the said Act, when an employer contravenes provisions of Section 33 of the Act during pendency of the proceedings before the CGIT, the aggrieved employee is entitled to file a complaint before the CGIT, which is to be adjudicated as if it were a dispute referred to the CGIT.

5. Upon the said complaint being filed under Section 33-A of the said Act before the CGIT, the respondent – bank filed an application for dismissal of the complaint, contending that issuance of circular dated 06/04/2021, could not be said to be a change in service condition of the members of the petitioner – union, on whose behalf the petitioner - union is pursuing the proceedings in the pending reference before the CGIT. This application was taken up for consideration and the CGIT heard arguments of the rival parties. By identical impugned orders dated 27/09/2021, the CGIT dismissed the complaints filed by the petitioner – union under Section 33-A of the aforesaid Act.

6. These writ petitions have been filed challenging the said identical impugned orders. Mr. P.V. Ghare, learned counsel appearing for the petitioner – union vehemently contended that the complaints filed

under Section 33-A of the aforesaid Act, could not have been thrown out at the threshold and since such complaints under the said provisions are to be treated as disputes referred to the CGIT, the cryptic impugned orders are wholly unsustainable. It is contended that a perusal of the circular dated 06/04/2021, would show that the very issuance of the circular amounts to change in condition of service of said employees, as their reference is admittedly pending before the CGIT. It is contended that clause 2(vii) of the said circular clearly demonstrates that the condition of service of said employees is effectively changed and since the respondent – bank did not seek permission of the CGIT before issuance of the said circular, the complaint under Section 33-A of the said Act was not only maintainable, but, it deserved to be allowed. Instead, the CGIT passed cryptic impugned orders dismissing the complaints at the threshold.

7. The learned counsel for the petitioner - union also relied upon a subsequent circular dated 25/11/2021, issued by the respondent – bank, after the impugned orders were passed. It was contended that the contents of the said circular would show that submissions made on behalf of the petitioner – union were fortified and the error committed by the CGIT was obvious. Reference was

made to Sastry Award, which is binding on the respondent - bank, to contend that classification of the employees, includes part time employees under which category the employees in the present cases are covered and any change in their status would amount to change in their condition of service. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **The Bhavnagar Municipality Vs. Alibhai Karimbhai and others**, reported in **AIR 1977 SC 1229**, to support the contentions raised on behalf of the petitioner – union.

8. On the other hand, Ms. Renuka Puranik Nalamwar, learned counsel appearing for the respondent – bank submitted that mere issuance of the circular dated 06/04/2021, could never be said to be a change in the condition of service of the said employees, who are represented by the petitioner - union. It was submitted that the complaints under Section 33-A of the said Act were filed merely on apprehension. It was reiterated that according to the respondent – bank, the said employees are merely daily wagers and they do not even enjoy the status of temporary part time employees, as claimed by them. It was submitted that even if the subsequent circular dated 25/11/2021, was read with circular dated 06/4/2021, there was no question of any change in the

condition of service of the said employees and that, therefore, the CGIT was justified in passing the impugned orders, allowing the applications filed by the respondent – bank and dismissing the complaints filed by the petitioner – union under Section 33-A of the said Act, at the threshold. The learned counsel further submitted that the judgment on which the petitioner – union has placed reliance is clearly distinguishable on facts.

9. This Court has perused the material on record and heard the learned counsel for the rival parties. The dispute referred to the CGIT in the present cases is quoted above. It concerns the claim of the employees represented by the petitioner – union that they deserve to be permanently absorbed with the respondent – bank. The reference is admittedly pending consideration before the CGIT cum Labour Court.

10. During the pendency of the said proceedings, on 06/04/2021, the respondent – bank issued the circular for outsourcing of housekeeping services in zones of the respondent – bank. The petitioner – union has taken strong objection to clause 2(vii) of the said circular, which provides procedure for housekeeping service and it reads as follows :

“The Zonal Head shall ensure that, the outsourced persons should be posted in branches / offices where there is no Part time Substaff and total expenses incurred should be in accordance with number of PTS vacancies and eligible wages to be paid to temporary PTS.”

11. According to the petitioner - union, issuance of the said circular, particularly the above quoted clause, changes the condition of service of the said employees. It is then emphasized that the subsequent circular dated 25/11/2021, further fortifies the contentions raised on behalf of the petitioner - union because it pertains to conversion of all part time sub-staff in the respondent – bank as full time sub-staff. By reading of the subsequent circular dated 25/11/2021, with the above quoted clause of the circular dated 06/04/2021, it is sought to be contended on behalf of the petitioner - union that the condition of service of the said employees represented by the petitioner - union is changed in as much as the persons now sought to be brought in through the channel of outsourcing would be employed in the branches where the said employees represented by the petitioner - union have been working.

12. Before dealing with the said contentions, it would be relevant to refer to Section 33(1) and 33-A of the said Act, which read as follows :

“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 ²[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 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.

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.

Where an employer contravenes the provisions of section 33 during the pendency of proceedings ⁶[before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention

may, make a complaint in writing ¹[in the prescribed manner,--

(a) to such Conciliation Officer or Board, and the

Conciliation Officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.]”

13. A perusal of the above quoted provisions of the aforesaid Act would show that for a complaint to be maintained under Section 33-A of the said Act, it would have to be demonstrated that the employer has contravened the provisions of Section 33 during the pendency of the proceedings before the CGIT. Section 33(1)(a) provides that during the pendency of the proceedings before the CGIT in respect of an industrial dispute, unless the employer obtains express permission in writing of the authority before whom such proceeding is pending, the employer cannot alter the condition of

service of the employees. Therefore, it becomes clear that if the employer intends to change a condition of service of the concerned employee, in respect of whom the dispute is pending before the CGIT, prior permission in writing would have to be obtained from the CGIT. It has been strenuously contended on behalf of the petitioner - union that in the facts of the present case, by application of Section 33(1) of the said Act, it was incumbent upon the respondent – bank to have obtained permission in writing before issuing circular dated 06/04/2021.

14. As noted above, the aforesaid circular dated 06/04/2021, pertains only to the aspect of outsourcing of housekeeping service in various zones of the respondent - bank. The above quoted clause 2(vii) of the said circular, in respect of which the petitioner - union has raised strong objection, merely states about the place where outsourced persons will be posted. This Court is unable to agree with the petitioner - union that the said circular dated 06/04/2021, particularly clause 2(vii) thereof, amounts to change in condition of service of the employees, who the petitioner - union represents and in respect of whom the industrial dispute is pending before the CGIT. Mere issuance of the aforesaid circular cannot be said to be amounting to a change in condition of service of the

aforesaid employees. The subsequent circular dated 25/11/2021, read with the circular dated 06/04/2021, also does not take the case of the said employees any further.

15. The judgment in the case of **The Bhavnagar Municipality Vs. Alibhai Karimbhai and others** (supra), on which the petitioner - union has placed reliance, is distinguishable on facts because even though in the said case also a contractor was sought to be engaged for certain work, the same had indeed resulted in a consequence on the concerned employees / workmen, which was found to be amounting to change in condition of service of such employees / workmen. In the present case, issuance of circular dated 06/04/2021, cannot by any stretch of imagination said to be change in condition of service of the employees represented by the petitioner – union.

16. Once this conclusion is reached, it is found that the *sine qua non* for invoking Section 33-A of the said Act is absent in the facts and circumstances of the present case. It is for this reason that by the impugned orders, the CGIT allowed the applications for dismissal of the complaints filed by the respondent – bank and consequently, the complaints have been dismissed.

Although the impugned orders dated 27/09/2021, appear to be brief in nature, the CGIT has indeed come to the correct conclusion that the condition precedent for invoking Section 33-A of the aforesaid Act is not made out by the petitioner - union and, therefore, there would be no reason for the said complaints to be kept pending before the CGIT. In fact, the CGIT has been careful enough to observe that the petitioner - union could raise all necessary points in the statement of claim or rejoinder in the main reference proceedings that are pending before the CGIT.

17. It is an admitted position that the said reference proceedings are pending before the CGIT since the year 2020. The petitioner - union could very well approach the CGIT to express its apprehensions on behalf of the employees. But, in the present petitions, this Court is not convinced that any error is demonstrated in the impugned orders warranting interference.

18. In view of the above, the writ petitions are found to be without any substance. Accordingly, the writ petitions are dismissed.

19. Needless to say, if the petitioner - union has any apprehension in the backdrop of the contentions raised before this Court, nothing would come in its way to approach the CGIT in the pending reference.

JUDGE