



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.04 .2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.5782 of 2010
and
M.P.Nos.1 and 2 of 2015

Bank of Baroda,
82, Bank Road, 3rd Floor,
Coimbatore 641 018,
Represented by its
Deputy Regional Manager.

... Petitioner

Vs.

1. The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
I Floor, " B' Wing
26, Haddows Road,
Shastri Bhavan, Chennai -6

2. T. Radhakrishnan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent in I.D. No. 10 of 2009 and quash its award dated 18.11.2009 and pass orders.

For Petitioner : Mr.Anand Gopalan for
M/s. T.S.Gopalan and Co

For Respondent -1 : Tribunal

For Respondent - 2 : Mr.K.M.Ramesh

ORDER

This writ petition is filed challenging the order of the Tribunal in I.D.No.10 of 2009 dated 18.11.2009 insofar as it holds that the 2nd respondent could be retrenched only in terms of Section 25-F of the Industrial Disputes Act. The petitioner not having complied with Section 25-F of the Industrial Disputes Act, 1947, was directed to re-instate the 2nd respondent with



full back wages, continuity of service and other attendant benefits.

2. The petitioner is a nationalized bank, recruitments and appointments are to be made in conformity with procedures and guidelines issued by the Government from time to time. Any appointments can take place only against the sanctioned post. The manpower requirements for each establishments in terms of the number of posts for each category is fixed by the bank and only persons appointed against such posts can be borne on the rolls of the establishment.

3. It is submitted by the learned counsel for the petitioner that the 2nd respondent was a temporary sub staff who was engaged by Namakkal Branch for contingencies like leave absenteeism of regular sub staff and exigency of work and was paid daily rate of wages, such engagement is very common in banking sector and it is not resorted to as a cost saving device or with a view to avoid statutory obligation. It is the submission of the learned counsel for the petitioner that the 2nd respondent did not offer himself for temporary engagement for a number of days and therefore an alternate arrangement was made in place of the 2nd respondent. When the 2nd respondent turned up, after his absence, the petitioner informed that in view of continuous absence an alternate arrangement was being made.

4. Aggrieved, the 2nd respondent initially filed a representation for regularization to the President of India, which was forwarded to the conciliation machinery. On being informed that the dispute raised for regularization may not be maintainable the 2nd respondent withdrew his dispute for regularization and in May 2008 raised a dispute challenging his cessation of engagement alleging that his services was terminated on 17.05.2004. The Government of India referred the dispute to the first respondent/Labour Court for adjudication. It is the further submission of the learned counsel for the 2nd respondent that he had completed 240 days of continuous service in a period of 12 calendar months and 480 days of continuous service in a period of 24 calendar months and hence, he is deemed to obtain a permanent status and the action of the petitioner is void ab initio for non-compliance with Section 25-F of the Industrial Disputes Act, 1947. It was submitted that the 2nd respondent was employed in a permanent sanctioned post under the nomenclature casual labour and non-compliance of the provisions of the Industrial Disputes Act, 1947 and Permanency Act, 1981, makes the termination void ab initio.

5. The Tribunal held that the 2nd respondent had proven that he had worked for more than 240 days in a calendar year



preceding his retrenchment, only in terms of Section 25 F of the Industrial Disputes Act, 1947, if at all he must be terminated. Having regard to the fact that it was not so done, the action is liable to be set aside and the 2nd respondent is entitled to be reinstated into service forthwith with full back wages, continuity of service and all other attendant benefits.

6. The order of the Tribunal finding that the 2nd respondent had proved that he had worked for more than 240 days between June 2003 and May 2004 and thus his termination ought to be in compliance with Section 25-F is a finding of fact which cannot be termed as perverse.

7. It is informed that the 2nd respondent has retired/superannuated and it is more than 18 years, since the 2nd respondent was last engaged. Considering the fact that the 2nd respondent had attained superannuation question of re-instatement may not arise.

8. Admittedly, the 2nd respondent was paid Section 17-B wages at Rs.3,200/- per month from March 2010 till his date of retirement. During the pendency of the present writ petition by an order dated 15.07.2010, this Court was pleased to direct the petitioner herein to pay the accrued interest on a sum of Rs.2,50,920/- representing back wages from 2004 to 2009.

9. In the circumstances, taking into account all aspects that may be relevant, suggestion was made by this Court that lump sum compensation of Rs.2,50,000/- may be paid to the 2nd respondent. While both the counsels consented to the above suggestion, they were under the impression that a sum of Rs.2,50,000/- had been deposited already and thus the 2nd respondent only needed leave to withdraw the said sum. However, what was directed vide order dated 15.07.2010 in M.P.No.3/2010 was only payment of interest on Rs.2,50,920, which had been deposited however the sum of Rs.2,50,920/- had not been deposited so far.

10. In the circumstances, it is directed that an amount of Rs.2,50,000/- shall be paid by the petitioner to the 2nd respondent as full and final settlement of all claims, the respondent may have against the petitioner and it is made clear that the 2nd respondent shall have no further claims against the petitioner.

11. The 2nd respondent shall not be entitled to any other relief other than what had been paid already and Rs.2,50,000/- ordered to be paid. The above sum of Rs.2,50,000/- if it has not been paid already, the same shall be deposited to the account of the 2nd respondent within a period of eight weeks from the date



of receipt of a copy of this order.

12. The writ petition is disposed of on the above terms. No Costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

smn

To:

The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
I Floor, " B' Wing
26, Haddows Road,
Shastri Bhavan, Chennai -6

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.30349

W.P. No.5782 of 2010
and
M.P.Nos.1 and 2 of 2015

GPL (CO)
UMA (21/06/2022)