



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2324 of 2018

and

C.M.P.Nos.18517 of 2018 & 11649 of 2021

The Deputy General Secretary,
Vijaya Bank Worker's Organisation,
No.60/2, Big Street, Triplicane,
Chennai - 600 005.

...Appellant/1st Respondent

vs

1. Bank of Baroda
Rep. By its Zonal Manager,
Chennai Zone,
Old No.101, New No.41,
Luz Church Road,
Mylapore, Chennai - 600 004.

(Cause title amended vide Court Order
dated 04.08.2021 made in CMP.No.11649 of 2021
in W.A.No.2324 of 2018)

2. The Central Government Industrial
Tribunal-cum-Labour Court,
I Floor, B Wing,
26, Haddows Road,
Sastri Bhavan, Chennai - 600 006.

...Respondents/Petitioner & 1st Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent, to
set aside the Order of the learned Judge made in W.P.No.34276 of
2006 dated 20.07.2018.

Prayer in W.P. No. 34276/2006:

This Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari calling for
the records of the second respondent in its Award dated
19.01.2006 passed in I.D. No.40 of 2005 and received by the



petitioner under cover of the second respondent's letter dated 15.06.2006 and quash the same.

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For Appellant : Mr.K.M.Ramesh
For Respondents : Mr.Goutam S. Ramesh
for Mr.C.Seethapathy for R1
Tribunal - R2

O R D E R

[Order of this Court was delivered by T.RAJA, J.]

Challenging the correctness of the impugned Order dated 20.07.2018, directing the first respondent/management to pay a sum of Rs.3,50,000/- to the claimant within a period of six weeks from the date of receipt of a copy of the order, the present appeal has been filed.

2. Mr.S.Sundarapandian was serving as subordinate staff in the Tiruppur Branch of the Respondent Bank. He suffered a disciplinary proceedings and the domestic enquiry held against him found him guilty of the charges. Thereafter, he was removed from service by an Order dated 13.05.2003. Raising an industrial dispute, the workman approached the Labour Court under Section 2 (k) of the Industrial Disputes Act. The Labour Court, after hearing the parties on both sides and applying its mind, passed the award dated 19.01.2006 ordering reinstatement with half of the backwages. Challenging the same, the first respondent/Bank filed the Writ Petition on the ground that the said subordinate staff has admitted the allegation of misappropriation before the Domestic Enquiry, therefore, he was not afforded personal hearing before the disciplinary Authority while passing the Order of removal from service.

3. Mr.K.M.Ramesh, learned Counsel appearing for the appellant submitted that as per the settlement reached between the appellant and the first respondent/Management, the respondent/Management should afford personal hearing to the delinquent employee before the final order is passed by the Disciplinary Authority even if he is found guilty of the charges by the Enquiry Officer, which has not been complied with.

3.1. Yet another flaw committed by the Respondent Bank is that when the aggrieved workman viz., S.Sundarapandian had filed an internal appeal, as per the Rules, the first respondent should have given reasonable opportunity of personal hearing that was also not given, as a result of which, the said



subordinate staff was not able to redress his grievance and he was not able to place his case properly. This was properly found by the Labour Court and on the score that the respondent/Management has repeatedly committed mistakes by not granting personal hearing, setting aside the Order of removal, rightly ordered for reinstatement with half of backwages. Aggrieved by the same, the first respondent/ Management had preferred the Writ Petition No.34276 of 2006, in which, the learned Single Judge has directed the Respondent/Management to make payment of Rs.3,50,000/- towards full and final settlement to the workman instead of reinstatement with 50% backwages. When the Labour Court has pinpointed the infirmity committed by the disciplinary authority in not providing personal hearing, both by the disciplinary authority and also by the appellate authority, the learned Single Judge ought not to have reversed the award passed by the Labour Court.

3.2. Learned counsel for the appellant further submitted that the subordinate staff had reached the age of superannuation on 28.01.2019. If this Court directs the first respondent to treat the order of removal as one of compulsory retirement on the date of reaching the age of superannuation i.e., 28.01.2019, the subordinate staff could not claim his backwages, eventhough the award was passed by the Labour Court. But the amount of Rs.3,50,000/- paid by the respondent/bank shall not be taken into account by the respondent/ bank. More over, the subordinate staff would not be able to make any claim on the 17-B wages. If the order of compulsory retirement is made on reaching the date of superannuation, the workman would be able get only the benefit of counting the entire services for the purpose of calculating pension and gratuity. He further submitted that the last drawn salary on the date of reaching the age of superannuation will be taken for the purpose of calculating the pension notionally.

4. Considering the fact that the workman is not claiming 17-B wages and also not claiming backwages ordered by the Labour Court, keeping in mind that he was not provided with personal hearing both by the disciplinary authority and appellate authority before imposing the penalty of removal from service and also when he moved an appeal, the appellate authority also failed to provide personal hearing as a result of which the subordinate staff was unable to redress his grievances, this Court, altering the punishment of removal from service as one of compulsory retirement on the date of reaching the age of superannuation i.e., 28.01.2019, makes it clear that the claim amount ie., Rs.3,50,000/- paid to the workman shall



not be reclaimed by the respondent/Bank. The claimant will not be entitled to any backwages for the period he was not employed in service. Further, it is made clear that the claimant is entitled to count the entire services only for calculating the pension and gratuity. The respondent/Bank shall fix the last drawn salary on the date of reaching the age of superannuation for the purpose of calculating pension and gratuity, notionally.

With the above direction, this Writ Appeal is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Central Government Industrial
Tribunal-cum-Labour Court,
I Floor, B Wing,
26, Haddows Road,
Sastri Bhavan, Chennai - 600 006.

+1 CC to Mr.C.Seethapathy , Advocate sr 14521
+1 CC to Mr.K.M.Ramesh, Advocate sr 14000.

W.A.No.2324 of 2018
and
C.M.P.Nos.18517 of 2018 & 11649 of 2021

RSI (CO)
SP(24/03/2022)