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W.P.Nos.11438 & 25089 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 09.03.2023

Orders delivered on 25.04.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.11438 & 25089 of 2013

and

M.P.No.1 of 2013

W.P.No.11438 of 2013

The India Bank
rep. by Chief Manager,
Vairam Complex, 2nd Floor,
No.112, Sir Thiagaraya Road,
T.Nagar, Chennai – 17
now at Anna Theatre Building,
Anna Salai, Chennai – 600 002

(Petitioner cause title amended
vide order dt.08.07.2022 made in'
WMP.No.7903/2002 in W.P.No.11438/2013
by JSNPJ)

..Petitioner

Vs

1. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Chennai – 6.



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2. A.Sarada

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records of the 1st respondent in I.D.No.42/2011 and quash its award dated 3.1.2013.

For Petitioner	: Mr.T.Raghunathan for M/s. T.S.Gopalan & Co.,
For Respondents	: R1-Court Mr.D.Muthukumar for R2

W.P.No.25089 of 2013

A.Sarada

..Petitioner

Vs

1. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Chennai – 6.
2. The Allahabad Bank,
rep. By its Regional Manager (Regional Office)
Anna Theatre Building,
Anna Salai, Chennai – 600 002

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a



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Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent relating to the Award passed in I.D.No.42 of 2011 dated 03.01.2013 and quash the same pertaining to the denial of backwages alone and consequently direct the 2nd respondent to pay full wages.

For Petitioner	: Mr.D.Muthukumar
For Respondents	: R1-Court Mr.T.Ragunathan for M/s. T.S.Gopalan & Co., for R2

COMMON ORDER

W.P.No.11438 of 2013 has been filed by the Bank challenging the award dated 03.01.2013 passed by the Industrial Tribunal, reinstating the petitioner with continuity of service and all attendant benefits with backwages limited to 40%. W.P.No.25089 of 2013 has been filed by the employee challenging the award dated 03.01.2013 passed by the Industrial Tribunal, only in respect of denial of backwages and consequently direct the 2nd respondent to pay full wages.



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2. For the sake of convenience, the 2nd respondent/employee in W.P.No.11438/2013 is arrayed as petitioner and the petitioner in W.P.No.11438/2013 is arrayed as respondent Bank.

3. The brief facts of the case of the petitioner in W.P.No.25089/2013 and 2nd respondent in W.P.No.11438/2013 is as follows:

i) The petitioner was appointed as a sweeper under the respondent Bank as per order dated 02.04.1981 confirmed w.e.f. 03.10.1981 as per order dated 06.10.1981, and thereafter she promoted as Sweeper-cum-Peon on 14.08.1991. She underwent kidney surgery in 1990. She was having only one kidney, her health condition became bad and immunity level was low. The respondent Bank, being aware of her health condition allowed her leave whenever needed.

ii) In 2003, due to worsening of health condition, she was forced to be on leave from 17.11.2003 for treatment with due information to the Branch Manager of the bank. On her improvement, when she approached the branch Manager, Mr.Gopalakrishnan in December, 2004, medical



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certificate was insisted. On 26.01.2005 she approached with medical certificate but she was refused to be permitted to join duty insisting for order from higher authority, for which, she requested in writing and was awaiting reply. The Branch Manager also received all the medical certificates from the petitioner.

iii) The petitioner repeatedly requested for permission to join duty which the Branch Manager declined for want of reply. Thereafter, the petitioner was again admitted in hospital with due information to the respondent under setter dated 05.07.2006. Again, on 05.08.2006, she approached for duty with proper medical certificate which again was disallowed. She then wrote a letter to the General Manager on 31.12.2007. The same was replied that due to her long absence, she was treated to have voluntarily retired and her name was struck off from the muster roll and the same as also communicated to her last recorded address, which was unserved followed by publication in newspaper on 17.02.2007.

iv) The petitioner was deliberately now allowed to rejoin duty even after advice of Personnel Manager in his letter dated 17.03.2005 which she



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came to know only belatedly. The Branch Manager did not ask her address for communication. But the letter was sent to the old address which shows malafides on his part resulting in her dismissal. There was no prior notice issued to her before paper publication.

v) The petitioner was approaching the Branch Manager since 2004 onwards, hence, the question of want of whereabouts does not arise. The petitioner took leave only for disastrous health condition which was after due information. She also informed her willingness to join duty. She was not permitted to join duty and was kept away from work without any basis. Getting order from higher authority had nothing to do with the petitioner's joining duty. Before striking off her name no notice was given. Service of notice to the old address is a cooked up story. Punishment is disproportionate.

4. Heard the learned counsel for the petitioner/workman and the learned counsel appearing for the respondent Bank.



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5. i) Learned counsel for the petitioner would submit that the respondent Bank had appointed the petitioner as sweeper vide order dated 02.04.1981 and thereafter, her service was confirmed with effect from 03.10.1981 and subsequently, the petitioner was promoted as peon on 14.08.1991. During the year 1990, the petitioner underwent major surgery wherein one of her kidney was removed and this has affected her health adversely and caused periodical illness and this fact was also known to the Bank. In December 2003, she faced serious health set back and prevented her from attending work with effect from 07.11.2003. After she underwent prolonged treatment, she approached the petitioner Bank in December 2004 to rejoin duty. But the Manager advised the petitioner to produce medical certificate. She produced medical certificates from 07.11.2003 to 18.01.2005. Though she produced the same, she was not permitted to join duty informing her that after getting permission from the Head office, she will be allowed to rejoin duty. Though the petitioner was ready to join duty as on 27.01.2005, she was not allowed to join. Whenever the petitioner approached the Bank she was told that they were awaiting for permission



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from the head office. In the meanwhile, she received a letter dated 17.06.2006 from the Bank asking to report for duty immediately with medical certificate by government Doctor. The petitioner submitted medical certificate on 31.07.2006 at the branch office and the said medical certificate covers the period from 27.01.2005 to 31.07.2006. On the one hand, the respondent bank was sending letters to the old address and asked her to report for duty. On the other hand, when the petitioner was ready to join duty, she was informed that only after receiving instructions from the head office, she will be allowed to join duty.

ii) Learned counsel would further submit that subsequently, the bank invoked clause 33 of the 8th Bi-Partite settlement dated 02.05.2005 in order to strike of the name of the petitioner on the roles of the respondent bank that she was absent and not reporting duty. Based on the same, the respondent bank issued notice dated 15.02.2007 to the old address. The same was returned as left. Subsequently, the name of the petitioner was removed from the bank's record with effect from 20.03.2007 and the letter in that regard was also sent to her old address and the same was also returned.



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The act of the respondent Bank was known to the petitioner only in December 2007. Thereafter, she approached the General Manager and requested him to allow her to join duty vide letter dated 31.12.2007. In response to the above, the Chief Manager from the Zonal office vide letter dated 08.01.2008, informed her that her name was struck off from the banks record. The petitioner through petition dated 12.08.2008 approached the Assistant Commissioner of Labour and conciliation was conducted and the same ended in failure and therefore, the authority sent failure report to the Government. Subsequently, the Government referred the dispute to the Industrial Tribunal and the Tribunal passed an award in favour of the petitioner vide order dated 03.01.2013.

iii) Learned counsel for the petitioner would submit that the respondent bank has not followed the mandatory conditions of clause 33 of the 8th Bipartite in the present case. The said clause envisages three notices, before striking off the name of the employee but only one notice which was on 15.02.2007 was given. Therefore, the bank has not complied with mandatory conditions enumerated in clause 33.



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iv) Learned counsel would further submit that though the Bank has the present address of the petitioner i.e., No.9, Lohambal Street Chetpet, Chennai -31 and a communication has been sent to that address on 17.06.2006 which was also service on the petitioner, still the Bank chose to send notices to the old address of the petitioner for the reason best known to them. The clause 33 of the 8th bipartite mandates that notices should be sent to the last known address, has not been complied with

v) Learned counsel for the petitioner would submit that it has been proved that the petitioner had approached the Branch, now and then, to join duty as she met the Manager on 27.01.2005 and produced the medical certificate and again, on 01.08.2006, she met the Manager and produced the medical certificate. The Branch Manager obtained her present address for communication. Thus, Clause 33 cannot be invoked against an employee who is approaching the bank periodically and willing to join duty, but not allowed to join on the pretext that the Branch have to get permission from the Head office. Therefore, invoking clause 33 is arbitrary and thereby, the striking of the name of the petitioner, without an enquiry, is punitive in



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nature and impermissible in law.

vi) Learned counsel for the petitioner would further submit that petitioner has reached the age of superannuation in April 2022 and she managed her life through subsistence allowance. Since the Bank has stopped the subsistence allowance after she had attained the age of superannuation, she is under severe financial crunch and finding very difficult even for her daily bread.

6. i) Per contra, the learned counsel appearing for the respondent Bank would submit that the petitioner was in the habit of intentionally absenting herself from work without leave right from the year 1992. She absented herself from work without leave from 07.11.2003. On 10.03.2005, the bank addressed a letter to her K.K.koil street address, requesting her to submit a medical certificate from Government Hospital. The said letter addressed to her K.K.Koil Street address was returned undelivered with postal endorsement left. On 16.08.2005. the Bank's Zonal office sent her letter to report for duty within 7 days and submit her explanation for her



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unauthorised absence. The petitioner admits having received the same but she did not report for duty. On 17.6.2006, the bank address one more letter under RPAD to her K.K.Koil Street address and another to Lohambal Street address asking her to report for duty within 7 days along with certificate from Government Hospital explaining her absence from 7.11.2003. She did not report for duty or submit explanation therefore, it would be presumed that she was no longer interested in employment. Both the said letters were returned undelivered with a postal endorsement 'left'.

ii) Learned counsel would further submit that the petitioner sent a certificate dated 31.07.2006 issued by Professor Dr.M.Chandrasekaran, Senior civil Surgeon. It coves her illness from 27.01.2005 and certifies that she was fit to join duty from 01.08.2006. It is the bank's case that this certificate was not received. It is relevant that even this certificate bears K.K.Koil street address. On 20.09.2006, the respondent bank addressed another letter to the petitioner under RPAD calling upon her to report for duty within 7 days and submit explanation for unathorized absence. This letter sent to her K.K.Koil street address was returend undelivered with



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endorsement 'left'. Further, separate letters in Tamil and English dated 15.02.2007 sent by RPAD to her K.K.Koil street address calling her to join duty within 30 days were also returned with an endorsement left. Thus, it was published in one newspaper Dinamalar dated 17.02.2007. Another letter sent on 29.03.2007 through RPAD to her K.K.koil street address recording her voluntary cessation from employment on and from 20.03.009 was also returned left.

iii) Learned counsel would further submit that the bank management and millions of workmen of the bank have entered into bipartite settlement covering the terms and conditions of service. Long and continued absence was haunting the Institution of banks and banks cannot survive if unauthorized absence was continuous. It is to prevent this, the bank unions representing millions of bank workmen accepted a clause providing for automatic cessation of employment in clause 33 of 8th bipartite settlement. The respondent bank invoked the said clause and recorded cessation of employment on 29.03.2007 and thus the same is valid and just.

iv) Learned counsel would further submit that the petitioner admitted



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in her cross examination that she was living in K.K.Koil Street, Chetpet till 31.07.2006 and thereafter she shifted to Arumbakkam and this was the last known address of the petitioner. The presumption contemplated in clause 33 of the Bipartite Settlement was rightly drawn after successive notices to her last known address were returned and publication in newspaper having wide circulation was effected. The above facts will not attract section 2A of the Industrial Disputes Act because voluntary cessation brought about by the workmen in accordance with clause 33 of the Bipartite Settlement is neither discharge, dismissal nor retrenchment capable of being an Industrial Dispute under Section 2A of the I.D.Act.

7. This Court, considered the submissions made on either side and perused the materials available on record.

8. There is no dispute for the Management that the petitioner had health problems as the reason for her absence. The petitioner had undergone kidney surgery and one kidney was removed. She had also produced medical



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certificates to that effect. From the evidence of MW3, it is seen that the petitioner proceeded on leave on medical grounds. Further, the mandatory requirements of conditions in Clause - 33 of the 8th Bipartite Settlement is to give three notices and the notice should be in the language known to the workman. The first two notices are in English. There is also no sufficient service of two notices which culminating in the final notice on the petitioner. The addresses in which notices were sent have not been proved to be the last known address. There is no requirement for any publication as the petitioner was contacting the respondent Bank and requesting to permit her to rejoin duty. Thus, the presumption of proper service of notice cannot be drawn so as to allow the above Clause to work itself out to attain the object of automatic cessation of employment of the petitioner.

9. Further, the petitioner was not even served with the order of strike off her name and she got information through her representation dated 03.01.2008. It is seen that the petitioner was thrown out from the respondent organisation in an arbitrary manner and in violation of principle



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of natural justice. Only for the reasonable cause, the petitioner was not able to attend duty. Thereafter, she was prevented from joining duty stating that an order from the higher authorities was awaited. Therefore, this Court is of the opinion that the punishment imposed on the petitioner by the respondent management is not in terms of Section 25-F of the Industrial Disputes Act and that the punishment is also disproportionate to the alleged misconduct of the petitioner. This Court finds no illegality or infirmity in the award passed by the Labour Court.

10. In the result, both the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25 .04.2023

Index :Yes/No
Speaking/Non-speaking order
vsi



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To
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The Presiding Officer,
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J.NISHA BANU, J.

vsi

Pre-delivery order made in
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25.04.2023