



WP No. 16852 / 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE K. KUMARESH BABU

Writ Petition No. 16852 of 2011
and
W.M.P. No. 34509 of 2017

The Chairman and Managing director,
Indian Overseas Bank,
763, Anna Salai,
Chennai – 600 002.

...Petitioner

Versus

1.The Central Government Industrial
Tribunal cum Labour Court,
rep.,by its Presiding Officer,
Shastri Bhavan, Haddows Road,
Chennai – 600 006.

2.A. Velayudham

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to I.D. No. 19 of 2009 on the file of the first respondent dated 03.03.2011 filed and marked as Ex-'A' and quash the same.

For Petitioner : Mr. K. Srinivasamurthy.

For Respondents : R1 – Labour Court.

Mr. K.M. Ramesh, Senior Counsel
for M/s. K. Bharathi for R2.



WP No. 16852 / 2011

ORDER

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The writ petition challenges the award passed by the first respondent directing reinstatement of the second respondent with back wages, continuity of service and all attendant benefits followed by regularization.

2. Heard Mr. K. Srinivasamurthy, learned counsel for the petitioner and Mr. K.M. Ramesh, learned Senior Counsel for the second respondent.

3. Mr. K. Srinivasamurthy, learned counsel for the petitioner would submit that the erstwhile Bank of Tamil Nadu was merged with this petitioner Bank and the obligation on the petitioner / Management was to absorb all the employees working in the erstwhile Bank of Tamil Nadu. He would submit that the second respondent's name was not found in the rolls of the Bank of Tamil Nadu, but, however he had been continued to be engaged as Casual Messenger in the petitioner Bank and further the nature of work had arisen during the leave vacancies of the employees of the Bank. Since his services were not required, he was not employed after 1995.



WP No. 16852 / 2011

4. He would further submit that the Tribunal, on erroneous consideration of material facts had given a finding that the services of the petitioner were perennial in nature as he had been continuously engaged for many number of years and in sending out the petitioner, the petitioner Bank had not followed the provisions of the Industrial Disputes Act, 1947 more particularly, Section 25F. Further, the Tribunal had not considered the fact that the petitioner was not able to substantiate the point that he was already in the roll of Bank of Tamil Nadu to entitle him to be absorbed in the petitioner Bank. He would further submit that the second respondent has been over aged and therefore he has not been sponsored through employment exchange in the appointment of the petitioner bank for him to seek a year of regularization. These factors were not considered by the Tribunal and without considering the same, an order of reinstatement with back wages, continuity of service with all attendant benefits followed by regularization was ordered. Hence, he would seek interference in the award made by the first respondent.

5. Countering his arguments, Mr. K.M. Ramesh, learned Senior Counsel for the second respondent would submit that the petitioner was appointed as Casual Messenger in the South Indian Bank, Thirunelveli at



WP No. 16852 / 2011

Panpozhi Branch in the year 1982. The Bank was thereafter renamed as

Bank of Tamil Nadu and the said Bank of Tamil Nadu got amalgamated

with the petitioner Bank in the year 1980. As per the Scheme of

amalgamation, all the employees of the erstwhile Bank of Tamil Nadu

were deemed to be appointed in the Indian Overseas Bank, the petitioner

herein. After amalgamation, the petitioner has been continuously

working as Casual Messenger on Shenkottai Branch. Considering his

services, the then Branch Manager had recommended the name of the

second respondent for permanency on 13.03.1995. By orders of the

Regional office, the second respondent's services were sought to be

dispersed with as his services are having utilized unauthorizedly. He

would submit that such an instruction is wholly without any authority as

the second respondent was originally appointed in the erstwhile Bank of

Tamil Nadu under the Scheme of amalgamation where all have to be

absorbed to the Indian Overseas Bank as their own employees. In spite of

such scheme of amalgamation, the petitioner was not absorbed into the

service of the petitioner Bank and when a representation was made and

favourably considered by the Branch Manager, the Regional Office,

without considering the relevant factors had issued such a direction upon

which the services had been utilized by the petitioner. He would submit



WP No. 16852 / 2011

that the said action of the petitioner violates the provisions of Section 25F of the Industrial Disputes Act, 1947. Therefore, the second respondent would be entitled to reinstatement apart from regularization and other benefits as ordered by the Tribunal.

6.I have considered the rival submissions made by the respective Counsels.

7.From the facts narrated by the respective Counsels and also from the claim petition and counter statement filed by the respective parties before the Industrial Tribunal, it is an admitted fact that the second respondent's services were availed off by the erstwhile Bank of Tamil Nadu as a Casual Messenger and after amalgamation with the petitioner Bank in the year 1990, the services of the second respondent had been continued to be utilized even by the petitioner Bank. In such event, the petitioner cannot contend that the services of the second respondent had been unauthorizedly utilized by the Bank. It is also an admitted case that the petitioner was not engaged only from April 1995. That would mean that the petitioner had been in continuous employment at least for the period from 1990 to 1995. The provisions of Section 25F of the



WP No. 16852 / 2011

Industrial Disputes Act contemplates that no workman employed in any industry who has been in continuous service for not less than one year under an employer be retrenched without issuance of notice of retrenchment. In the present case, the second respondent had been continuously in service of the petitioner Bank for more than a period of one year and therefore, I am of the considered view that the provisions of Section 25F of the Industrial Disputes Act, 1947 had been clearly violated. Further, as rightly pointed out by the Tribunal, the petitioner is also entitled for regularization as it is not disputed by the petitioner that the second respondent's services were continued in view of the amalgamation.

8. For the aforesaid reasonings, I do not propose to interfere with the reasonings and findings of the first respondent as I do not find it perverse. Pursuant to the orders passed by this Court, the petitioner had been paid the 17-B wages (last drawn wages) and he had also been benefited with the payment of Rs.1,00,000/- by way of an interim order in respect of benefits which were directed to be paid to. A specific finding had been given by the Tribunal that the second respondent was born in the year 1966 which would mean that he would have further more



WP No. 16852 / 2011

three years of service as on today. He had also been out of employment from the year 1995. In such view of the circumstances, I am of the opinion that in lieu of reinstatement, the second respondent could be duly compensated. Considering that the service of the second respondent was availed off as a Casual Messenger on a temporary basis even with the erstwhile Bank of Tamil Nadu apart from whatever benefits that had been received by the second respondent pursuant to the interim order passed by this Court, I direct the petitioner to pay a sum of Rs.2,00,000/- (Rupees two lakhs only) to the second respondent in lieu of his reinstatement and other benefits as ordered by the first respondent.

9. In fine, this Writ Petition is disposed of with the aforesaid directions. No order as to costs. Consequently, the connected Miscellaneous Petition is closed.

29.11.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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WP No. 16852 / 2011

K. KUMARESH BABU, J

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To

The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
Shastri Bhavan, Haddows Road,
Chennai – 600 006.

W.P. No. 16852 of 2011
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