



W.P.No.22712 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.22712 of 2016

Zonal Manager,
Indian Bank,
HRM Department, Zonal Office,
359, Dr.Nanjappa Road,
Coimbatore – 641 018.

... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Sastri Bhavan, Chennai.

2.I.Maghee

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the award made in I.D.No.55 of 2014 dated 09.10.2015 on the file of the 1st respondent and quash the same.

For Petitioner : Mrs.Rita Chandrasekar
for M/s.Aiyar and Dolia

For Respondents : CGIT [R1]
Mr.V.Ajoy Khose [R2]



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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records pertaining to the award made in I.D.No.55 of 2014 dated 09.10.2015 on the file of the first respondent and quash the same.

2. The case of the petitioner is that, the second respondent claims that she is employed as daily wager from 02.07.2007. Whiles, on 24.01.2011, she was refused employment and on 01.03.2011, she had sent a representation to the management. Since the same was not considered, she raised an industrial dispute in I.D.No.55 of 2014 before the Labour Court after a period of two years. However, the Labour Court, without any material and without considering the fact that the petitioner has not continuously employed for 240 days, had passed an award in favour of the second respondent. Challenging the same, the petitioner filed the above writ petition before this Court.

3. The learned counsel for the petitioner submits that, the second respondent is not an employee of the petitioner bank and she was



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employed based on the need basis and there is no material available before the Labour Court for her continuous employment of 240 days in a calendar year. However, the Labour Court passed an award in favour of the second respondent for reinstatement with 50% backwages by holding that she is in continuous employment, which is not sustainable.

4. He further submits that, the second respondent did not averred anything in her claim petition that she was not gainfully employed during the non-employment period. In the absence of any pleadings, the Labour Court awarded 50% backwages in favour of the second respondent, which is not sustainable. The petitioner bank have a recruitment procedure for recruiting the last grade servants, however, the second respondent was not appointed through the recruitment and she claimed that she was continuously employed for 240 days, which is not sustainable. Accordingly, he prays for allowing the writ petition.

5. Per contra, the learned counsel appearing for the second respondent submitted that, the second respondent worked as a sub-staff in the petitioner bank from 02.07.2007 and she had been discharging her



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duties efficiently and obediently. She had been receiving her daily wages through her Saving Bank Account in the same branch. The Branch Manager had directed her to go on leave for 20 days due to inspection work in the bank and she was assured that she can join duty after expiry of leave. However, when she reported for duty after expiry of 20 days, on 24.01.2011, the petitioner bank refused to provide employment to her stating that her services were orally terminated with effect from that date. Therefore, she made several representations before the petitioner bank for employment and the same was not considered, thereby, the second respondent filed an industrial dispute before the Central Government and the Central Government referred the dispute to the first respondent. The schedule mentioned by the Central Government is that whether the action of the petitioner bank, M.Palada Village & Post and Zonal Office, Coimbatore in terminating the services of the second respondent without following the principles of natural justice and provisions of Section 25(F) of the Industrial Disputes Act, 1947 is justified, pursuant to which, the second respondent examined herself as P.W.1 and marked Ex.W1 to Ex.W18 and on the side of the petitioner bank, no witness was examined and no document was marked. Based on the account statement of the



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second respondent, the Labour Court awarded 50% backwages, which is cannot be interfered with.

6. He further submits that, though there is no specific averments in the claim petition with regard to backwages, the Labour Court, by considering the materials available at the relevant point of time, had awarded 50% backwages, which is sustainable. He fairly submitted that, if the petitioner bank is ready to reinstate the second respondent, the second respondent is ready to forego the backwages and she is entitled for continuity of service, since she had only two years for her retirement.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The second respondent claims that she was employed as sub-staff in the petitioner bank from 02.07.2007, whereas, the petitioner bank claims that the second respondent was engaged on need basis whenever there is no regular employee is available in the petitioner bank. It is also



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claimed by the petitioner bank that the second respondent was not in continuous employment for 240 days in a calendar year, for which, she is not entitled for reinstatement. Admittedly, the petitioner bank not marked any documents or examined any witness before the Labour Court, whereas, the second respondent examined herself as P.W.1 and marked Ex.W.1 to Ex.W.18. A perusal of the documents marked by the second respondent viz., Ex.W.1 to Ex.W.3, which are the bank statements of the account maintained by the second respondent with the petitioner bank, in which, whatever the amount received from the petitioner bank, the second respondent deposited the same in the said bank account and the same was established from 28.05.2008 to 14.12.2009. Further, there was a communication between the petitioner bank and the second respondent, which itself is sufficient to show that the second respondent is continuously employed for 240 days in a calendar year, for which, she is entitled for reinstatement in the petitioner bank.

9. In view of the fair stand taken by the learned counsel appearing for the second respondent that, if the petitioner bank agrees to reinstate the second respondent, she is ready to forego the backwages, which



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submission is just and reasonable, the petitioner bank is directed to reinstate the second respondent with continuity of service within a period of two (2) weeks from the date of receipt of a copy of this order. However, the second respondent is not entitled for any backwages during the non-employment period and the amount paid by the petitioner bank to the second respondent by way of the 17B application cannot be recoverable by the petitioner bank.

10. Accordingly, this writ petition is disposed of with the above terms. No costs.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Sastri Bhavan, Chennai.



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M.DHANDAPANI, J.

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