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W.P.No.25291 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.25291 of 2016

The Management,
George Town Co-operative Bank Ltd.,
Rep. by its General Manager,
No.62, Krishnappa Agraharam Street,
Chennai – 600 079.

... Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.P. Thenmozhi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in I.D.No.532 of 2010 dated 09.03.2016 and quash the same.

For Petitioner : Mr.M. Ravi Bharathi

For Respondents : R1 – Court
Mr.G. Chamkiraj [R2]



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ORDER

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The second respondent herein was originally appointed in the year 1998 on temporary basis for a period of 3 months. After a break of few days, the second respondent was once more inducted on temporary basis for the period of 3 more months, with similar breaks later also. In the year 2001, the second respondent's services were retrenched by the petitioner. When the same was challenged before this Court, an order came to be passed by the Hon'ble Division Bench in WA.No.1641 of 2001 dated 27.11.2001 by holding that in view of Section 25-H of the Industrial Disputes Act, the second respondent should be given preference for reinstatement after retrenchment, even for services on daily wages. While holding so, the Hon'ble Division Bench had also made an observation that the second respondent herein would be entitled to raise an Industrial Dispute, in connection with the retrenchment. In spite of such observations, there was no action on the part of the petitioner in reinstating the second respondent and therefore, a Writ Petition came to be filed in WP.No.24259 of 2006, seeking for a direction for reinstatement. The Writ Petition came to be disposed of on 17.10.2006, with a direction to the petitioner to



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consider the second respondent's representation in this regard. Ultimately, on 02.01.2007, the request came to be rejected by the petitioner by holding that the second respondent was not fully qualified for the post of Assistant and that the cadre strength had not been fixed for the bank and therefore, the request for reinstatement cannot be considered. In this background, the second respondent had raised an Industrial Dispute in I.D.No.532 of 2010 and by an award dated 09.03.2016, the petitioner was directed to reinstate the second respondent in service, together with continuity of service, back wages and all other attendant benefits. Challenging the same, the Management had preferred the present Writ Petition.

2. The learned counsel appearing for the petitioner predominantly raised two grounds attacking the award of the Labour Court. Firstly, he would submit that the services of the second respondent was through an outside 'Manpower Agency' and she was not directly under the services of the Bank and therefore, she cannot claim for reinstatement. Secondly, the learned counsel submitted that though the retrenchment was in the year 2001, there is a considerable delay of 9 years in raising the dispute.



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3. Per contra, the learned counsel appearing for the second respondent had denied that the second respondent was appointed through an outside agency in the petitioner's bank. He also submitted that after the services of the second respondent was retrenched, she had approached this Court on two occasions and as per the liberty granted by the Hon'ble Division Bench, she had raised a dispute and therefore, laches should not be put against her.

4. I have given careful consideration to the submissions made by the respective counsels.

5. Insofar as the first ground raised by the petitioner is concerned, the award of the Labour Court does not refer to any evidence let in by the Management to establish that the second respondent herein was appointed through an outside agency. The only documents filed before the Labour Court from the Management's side were the appointment orders and the joining report. Even otherwise, the second respondent does not claim for regularization of her services or permanent employment. The dispute raised before the Labour Court was that she was illegally retrenched by the



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petitioner. While that being so, even assuming that the second respondent is appointed through an outside agency, the stand taken by the petitioner that she would not be entitled for regularization or reinstatement in their letter dated 02.01.2007, has no significance.

6. The Hon'ble Division Bench while dealing with the retrenchment of the second respondent herein, in its order passed in WA.No.1641 of 2001, had taken note of the protection given to the second respondent herein under Section 25-H of the Industrial Disputes Act, 1947 and had also granted liberty to the second respondent to raise an Industrial Dispute. The relevant portion of the order reads as follows:-

“This writ appeal is preferred against the order of the learned single Judge. The appellants had been engaged on temporary basis for doing several works under the 3rd respondent-management. There was a dispute as to whether the appellants were employed on contract basis. Presently the complaint of Ms.Vaigai, learned counsel for the appellants is that in the vacancies which are existing, the 3rd respondent-management had been engaging daily wage workers, and even assuming that the appellants had no right for



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regularisation, they cannot be denied the chance of re-employment on the basis of statutory provision contained in Section 25-H of the Industrial Disputes Act. The contention is well founded. So long as the vacancies are not filled up on the permanent basis and work is available, the preference should be given to the writ appellants over the freshers, even for engaging the services on daily wage basis. The above consideration for re-employment under Section 25-H of the Industrial Disputes Act, shall however be, without any prejudice to the contentions of the appellants, should they raise any legal dispute, including that of industrial dispute. The writ appeal is disposed of....”

7. The aforesaid extract is self-explanatory. In accordance with the observations made by the Hon'ble Division Bench, the second respondent had also raised an Industrial Dispute and an award came to be passed by the Labour Court on 09.03.2016. As such, the first ground raised by the petitioner does not deserve consideration.

8. The learned counsel for the petitioner/Management raised a ground that there is a considerable delay of 9 years on the part of the second



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respondent in raising the Industrial Dispute. Such a plea does not seem to have been raised and pressed before the Labour Court. The Labour Court in its award has also not framed an issue touching upon delay and laches and therefore, a doubt arises, as to whether such a ground was effectively canvassed before the Labour Court.

9. In the case of *'The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras & others'* reported in *'(1978) 2 SCC 42'*, *Justice V.R. Krishna Iyer* speaking for the Bench, had observed that *"In industrial law, the benefit of reasonable doubt and facts, if there be such doubt, go to a weaker section labour"*. Likewise, in the case of *'Ajaib Singh Vs. Sirhind Cooperative Marketing-Cum-Processing Service Society Limited & another'* reported in *'(1999) 6 SCC 82'*, the plea of delay and laches that was not canvassed before the Labour Court, was put against the Management which raised it before the High Court in the following words:-

..... *"11. In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defense was that the Labour Court had*



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no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed justice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that “it is true that a fight between the workman and the management is not a just fight between equals”, the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding



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delay, he could not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court, which was not permissible in proceedings under Articles 226/227 of the Constitution.....”

10. Above all, the Management had miserably failed to substantiate their case before the Labour Court and had not produced any satisfactory evidences, both oral and documentary in support of their claim, except for two documents relating to the second respondent's appointment and joining report. When the retrenchment itself was illegal, the attempt to wriggle out of such irregularity, on a technical plea of delay and laches, is not appealing to this Court.

11. The learned counsel for the petitioner further submitted that when the Labour Court had passed an award for reinstatement, the award of backwages would not be automatic and therefore, sought for interference to that portion of the award which orders for backwages. I am not in agreement with such a submission made.



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12. In the case of ***Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others*** reported in ***2013 (10) SCC 324***, the Hon'ble Supreme Court had held that in cases of wrongful termination, award of full backwages, is the normal rule. The relevant portion of the order reads thus:-

“38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.”



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13. In the light of the above findings, I do not find any infirmity in the award of the Labour Court dated 09.03.2016 passed in I.D.No.532 of 2010. Accordingly, the Writ Petition stands dismissed. No costs.

31.01.2023

Speaking/Non-speaking Order
Neutral Citation: Yes/No
Index: Yes/No
Internet: Yes/No

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To

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II Additional Labour Court,
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M.S.RAMESH,J.

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