



W.P.No.176 of 2014 &
W.P.No.17041 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.176 of 2014
and
W.P.No.17041 of 2013
and
M.P.No.2 of 2015 & M.P.No.1 of 2013

W.P.No.176 of 2014

1. The Chairman,
Indian Bank, Head Office,
No.66, Rajaji salai,
Chennai - 600 001
presently shifted to
II Floor, HRM Department,
254 - 260, Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.
2. The General Manager, HRD (HRM),
Indian Bank, Head Office,
No.66, Rajaji salai,
Chennai - 600 001
presently shifted to
II Floor, HRM Department,
254 - 260, Avvai Shanmugam Salai,
Royapettah,
Chennai - 600 014.



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3. The Regional Manager,
Indian Bank, Regional Office,
Tiruvannamalai.

.... Petitioners

vs

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

2. N.Vasudevan
S/o Late. Neelakandan

..Respondents

Writ Petition filed under Article 226 of the constitution of India to
issue a Writ of Certiorari to call for the records of the 1st respondent in
I.D.No.92 of 2011 and quash the award dated 7.3.2013.

For Petitioner : Mr.Anand Gopalan
for M/s. T.S.Gopalan and Co.,

For Respondents : R1-Court
Mrs.C.S.Monica
for D.Baskar for R2

W.P.No.17041 of 2013

N.Vasudevan

..Petitioner

vs

1. Indian Bank rep. by is Chairman,
254-260, Avvai Shanmugam salai,
Royapettah, Chennai - 600 014.

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2. The General Manager, HRD,
Indian Bank,
254-260 Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.

3. The Regional Manager,
Indian Bank,
Tiruvannamalai.

4. The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhavan,
Chennai - 600 006.

..Respondents.

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from CGIT relating to its Award dated 07.03.2013 in I.D.No.92 of 2011 and quash the same insofar as it declined reinstatement with backwages and consequently direct the respondent Bank to reinstate the petitioner from June 2001 with backwages, continuity of service and other attendant and consequential benefits.

For Petitioner : Mrs.C.S.Monica
for D.Baskar

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.,
for R1 to R3
R4-Court



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COMMON ORDER

W.P.No.17041 of 2013 has been filed by the workman challenging the award passed by the Labour Court in I.D.No., insofar as it declined reinstatement with backwages and consequently, direct the respondent Bank to reinstate the petitioner from June 2001 with backwages, continuity of service and other attendant and consequential benefits. W.P.No.176 of 2014 has been filed by the Bank, challenging the award passed by the Labour Court in I.D.No.92 of 2011 dated 7.3.2013 granting compensation to the workman, a sum of Rs.2.50 lakhs with interest at 9% per annum.

2. The brief facts of the case of the petitioner in W.P.No.17041 of 2013/workman is as follows:

The petitioner had completed 8th standard and hold a driving license. He had registered with employment exchange, Thiruvannamalai. He was employed as Driver from 18.06.1991 to June, 2001 by the respondent Bank to drive the vehicle used by Regional Manager, Indian Bank, Thiruvannamalai. It has been stated by the respondent bank in their proof affidavit before the Central Government Industrial Tribunal/4th respondent



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that their Regional office at Thiruvannamalai was wound up in the year 2001 and the petitioner was not engaged by the executives as personal Driver after June 2001. It was also stated by the respondent Bank officer during cross examination that the petitioner was engaged as Personal Driver till 2001. During the period 1992 to 2010, the drivers and group D staff were not recruited through Employment exchange or by way of newspaper advertisement. The substantial number of vacancies in Group D and Driver cadre were filled by persons who had earlier worked as contingent staff. There were posts which were vacant for quite a long period but unfortunately no recruitment was made from 1994 to 2008. During 2008, the drivers who had worked upto 1997 March were recruited. The second batch of drivers were also recruited in the year 2010. The respondent Bank did not recruit drivers who had worked continuously for atleast 5 years as per Memorandum of Settlement 18(1) dated 23.07.1994. The Tiruvannamalai Regional Office of the respondent Bank was merged with its Vellore Regional office, which resulted in closure of Tiruvannamalai Regional office. Due to which, the petitioner was thrown out of employment.



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Whenever, the petitioner represented in writing or approached in person to the Head Office of the respondent Bank, a standing reply was given as "wait for some time". The petitioner was assured by the respondent bank that he would be considered for the post of driver cum Peon having worked for 10 years continuously in the Indian Bank. In the year 1993, 1994 and 1997, the respondent Bank filled up the post of Driver-cum Peon out of the list of persons who had worked as Drivers. In 2008 and 2010, there was posting of Drivers but the petitioner was not considered for appointment. The petitioner had worked continuously for 10 years and had been waiting from 2001 on the hope that his service would be regularised in the respondent bank but on the contrary, the petitioner was not even given employment after the merger of Tiruvannamalai Regional office with Vellore Regional Office. The representation made by the petitioner on 16.04.2010 was rejected by the respondents vide reply dated 21.04.2010. The petitioner was discharging the work as driver only for the purpose of respondent bank and not for any officers of the bank in their individual capacity. The petitioner should have been regularized on 27.08.1998 itself as per Settlement 18(1) which was



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arrived at by the respondent Bank on 23.07.1994, but the Bank had failed to do so. The petitioner had served in his younger years continuously for 10 years with the respondent Bank and now it is too late for him to seek any other employment in any Government or private concern. Though the Labour Court had considered all the averments of the petitioner but failed to consider the aspect of reinstatement of the petitioner on the only ground of delay of ten years and laches on the part of the petitioner, for which, the petitioner cannot be blamed. The petitioner is without employment from June, 2001 and now, he is 44 years of age and it will be very difficult to get suitable alternate employment at this age. Hence, the petitioner seeks for reinstatement along with backwages, but the Labour Court had ordered compensation in lieu of reinstatement. Aggrieved by the same, the petitioner/workman has come before this Court.

3. Aggrieved by the award of compensation granted to the workman by the Labour Court, the respondent Bank has filed W.P.No.176 of 2014.

4. Learned counsel appearing for the workman would submit that the Tribunal had erred to take into consideration the fact that the provisions



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under Industrial Disputes Act (XIV of 1947), Section 2(a) and 10 - Limitation Act (XXXXIV of 1963), Article 137 of the Limitation Act are not applicable to the proceedings under the Industrial Disputes act and that the relief under that Act, cannot be denied to the workmen merely on the ground of laches. He would further submit that the respondent Bank had thrown the petitioner out of employment on the ground of merger of their Regional office in the year 2001 and the petitioner visited the respondent Bank quite often during 2001 to 2009 but the respondents Bank verbally replied that they were not recruiting anybody for the post of Driver, but the petitioner came to know the respondent Bank appointed drivers during 2008 and 2010. Therefore, the petitioner cannot be blamed for the delay. The respondent had not made any recruitment to the post of Driver for nearly 13 years i.e., from 1995 to 2008. He would further submit that the Tribunal should have ordered for reinstatement with backwages instead of monetary compensation of Rs.2.5 lakhs and the petitioner have been loitering on the streets without proper source of regular income or employment for the last 10 years in anticipation of recruitment call from the respondent bank.



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5. Per contra, the learned counsel appearing for the respondent Bank would submit that the 1st respondent Tribunal failed to appreciate that the 2nd respondent was engaged only by the executives of the bank in their personal capacity and the Bank cannot be held answerable for the non-engagement of the 2nd respondent. There is no employer and employee relationship between the bank and the personal driver. Therefore, the dispute under Section 2A of the I.D. Act is not maintainable. There is no vested interest created in favour of the 2nd respondent against the Bank for the reason of having been engaged as personal driver of the Executives of the Bank from 1991 to 2001. The Tribunal exceeded its jurisdiction in countenancing the claim for relief in favour of the 2nd respondent. If the compensation amount awarded by the Tribunal is paid to the 2nd respondent it is impossible to recover the same in the event, the Bank succeeding in the W.P.No.176/2014. Hence, he would pray to dismiss W.P.No.17041 of 2013 and to allow W.P.No.176 of 2014.

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



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7. It is seen that the petitioner/workman who was employed as Driver in Indian Bank, Tiruvannamalai, worked from 18.06.1991 to June 2001 and was thrown out of employment due to merger of Tiruvannamalai Regional office with Vellore Regional Office on closing down the Tiruvannamalai Regional office. It is also seen that the drivers were engaged continuously for long years without regular appointment which shows the unfair labour practice being played on the drivers. Though as on the date of settlement dated 23.07.1994, the petitioner had only 3 years of service instead of 5 years, he could have been absorbed after completion of 5 years from 18.06.1991 to June 2001 in the year 2008 or in 2009 or in 2010 recruitments for the post of drivers, since at that point of time, the petitioner could be found to have attained the eligibility criteria in terms of the settlement dated 23.07.1997. The cessation of employment of the petitioner/workman is due to the merger of two regional offices and the closure of Tiruvannamalai regional office. It is not known as to why personal drivers were engaged when other regular drivers are employed. The contentions of the respondent Bank in this regard cannot be countenanced.



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Further, the workman has approached the Tribunal with a delay of 10 years and the workman has also not offered proper explanation for the same. Therefore, this Court is of the opinion that the compensation awarded by the Tribunal will hold good and the same needs no interference. Hence, this Court is not inclined to interfere with the award passed by the Tribunal.

8. Accordingly, both the Writ Petitions are dismissed. The petitioner/workman is permitted to withdraw the compensation amount lying in deposit in I.D.No.92 of 2011 along with interest. Consequently, the connected miscellaneous petitions are disposed of. No costs.

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

To

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

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J.NISHA BANU,J.

vsi

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