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WP.No.524 of 2017

In the High Court of Judicature at Madras

Dated : 16.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.524 of 2017

The Chairman & Managing
Director, Indian Bank,
Corporate Office, 254-260,
Shanmugam Salai,
Royapettah, Chennai-14.

...Petitioner

Vs

1.The Presiding Officer, Central
Government Industrial Tribunal-
cum-Labour Court, I Floor,
B Wing, 26, Haddows Road,
Shastri Bhavan, Chennai-6.

2.The General Secretary,
Indian Bank Employees'
Association, No.17,
Ameerjan Street, Choolaimedu,
Chennai-94.

...Respondents

Prayer: This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the award dated 29.8.2016 passed in I.D.No.71 of 2015 on the file of the first respondent herein and quash the same.

For Petitioner : Mrs.Rita Chandrasekaran for
M/s.Aiyer & Dolia
For Respondent-2: Mr.Balan Haridas



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ORDER

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This is a petition filed by the petitioner seeking to quash the award dated 29.8.2016 in I.D.No.71 of 2015 on the file of the first respondent.

2. The case of the petitioner is that the petitioner bank availed the services of one Mrs.Daivanithi occasionally as a daily wagger for toilet cleaning and sundry works. She was rendering services for limited days and for limited periods and she was paid the wages for the work done. Subsequently, she ceased herself from being engaged. Therefore, no question of dismissal arose. However, the second respondent raised the industrial dispute seeking to absorb the said Mrs.Daivanithi in the services of the petitioner bank. In the said industrial dispute, the petitioner filed a counter. Further, a rejoinder was filed by the second respondent. But, after contest, the first respondent, by the impugned award, directed the petitioner to reinstate the said Mrs.Daivanithi into the services as part time sweeper and regularize her. It was further directed that she would be deemed to have been regularized with effect from 18.7.2014 and would be entitled to have all the benefits of a regular employee from 18.7.2014 with 25% back wages



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payable with interest at the rate of 7.5% per annum. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that said Daivanidhi was engaged only as a part time sweeper in the petitioner management. Though she has not continuously served the petitioner management for 480 days in a two calendar year, the Labour Court ordered to reinstate and regularise the said Daivanidhi in service as part-time sweeper which is *per se* unsustainable.

4. The learned counsel for the petitioner management further submits that since the petitioner management appointed regular part time employee by way of recruitment as per the Standing order, regularisation of temporary workman does not arise. However, without appreciating the said facts the Labour Court passed the impugned award which is unsustainable. Accordingly, he prayed to allow this writ petition.

5. The learned counsel for the second respondent submits that though



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the said Daivanithi has been working as a part time sweeper in Kellys Branch of the petitioner management for 15 years, her services were not regularised even after completion of 15 years. Hence, the second respondent union raised an Industrial Dispute before the Labour Court on behalf of the said Daivanidhi and the Labour Court has rightly considered the said facts and passed the Award in favour of said Daivanidhi which cannot be interfered with.

6. The learned counsel for the second respondent further submits that in order to prove the employment of said Daivanidhi for a period of 10 years, the Labour Court has marked Ex.W4, which is the extract of SB Account maintained with the Kelly's Branch of the petitioner management of said Daivanidhi. Upon appreciating the oral and documentary evidences, the Labour Court has passed the award in favour of the second respondent which cannot be interfered with. Hence, he prayed to dismiss the writ petition.

7. Heard the learned counsel appearing on behalf of the petitioner and



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the learned counsel appearing for the second respondent.

8. Admittedly, the petitioner management availed the services of said Daivanidhi as daily wager for toilet cleaning and sundry works in Kelley's Branch for more than 10 years and in order to prove her continuous employment with the petitioner management, exhibits W.1 to W.5 were marked before the Labour Court on behalf of the workman and especially Ex.W4 is the bank account maintained by the said Daivanidhi with the kelley's branch of the petitioner management. Upon appreciating the oral and documentary evidences, the Labour Court has passed the Award in favour of the second respondent which cannot be interfered with.

9. The main contention of the petitioner management is that, though the second respondent union has not averred anything with regard to the fact that the said Daivanidhi was not gainfully employed during the non employment period in the claim petition, in the absence of any such averment or pleadings, the first respondent awarded 25% back wages in favour of the said Daivanidhi respondent, which is unsustainable and only



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to that extent, this Court is inclined to modify the impugned award.

10. Accordingly, this Writ petition stands disposed of with the following modification to the impugned award dated 29.08.2016 made in I.D.No.71 of 2015 :-

(i) The petitioner management is directed to reinstate the said Daivanidhi and regularize her service as per the award passed by the labour court within a period of two weeks from the date of receipt of a copy of this order.

(ii) The said Daivanidhi is entitled for all the benefits of a regular employee, however, it is made clear that, she is not entitled for backwages as awarded by the labour court.

(iii) There shall be no order as to costs.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



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