IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.5347 of 2017

P.Sivakumar ...Petitioner

Vs.

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

2. The Managing Director,
Indian Overseas Bank,
Central Office,
762, Anna Salai, Chennai – 600 002. ...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with the award pronounced in I.D.No.37 of 2015 dated 13.05.2016 and quash the same and direct the 2nd respondent management to reinstate the petitioner in service with full back wages, continuity of service with all other attendant benefits.

For Petitioner : Mr.S.Ravi

For Respondents : Mr.K.K.Sivashanmugam, for R2

ORDER

This Writ petition has been filed seeking to quash the award of the 1st respondent dated 13.5.2016 in I.D.No.37 of 2015 and to consequently direct the 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

2. The case of the petitioner is that he petitioner joined in the 2nd respondent bank in February 2007 on daily wage basis and was temporarily appointed as messenger and was assigned same duties as that of permanent workmen. Whileso, pursuant to the settlement dated 17.02.2011 for absorption of temporary messengers/full time/part time sweepers in the bank's services, the petitioner was appointed to the post of messenger on 11.06.2012 and thereafter, his services were regularized with effect from 11.12.2012. However, to his shock and surprise, the 2nd respondent issued the termination order dated 31.05.2014 to the petitioner on the ground that he produced a false experience certificate while submitting his application. Aggrieved by the same, the petitioner initiated conciliation proceedings and failure of which resulted in filing of an industrial dispute before the 1st

respondent in I.D.No.37 of 2015. After contest, by the impugned award, the 1st respondent dismissed the industrial dispute filed by the petitioner on the ground that the 2nd respondent bank had established that the petitioner got absorption only because of the false certificate obtained by him and that the petitioner was not entitled to any relief. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, the petitioner was engaged by the 2nd respondent on daily wages basis and from the date of joining, the petitioner had been employed continuously by the respondent bank without any break and he was assigned same duties as that of permanent workmen. Whileso, considering the past services rendered by the petitioner and other similarly situated persons, the 2nd respondent entered into settlement dated 17.02.2011 with the recognised union under 12(3) of the Industrial Disputes Act, 1947 for absorption of temporary messengers/ sweepers as one-time absorption, subject to satisfaction of certain educational qualification and prior service conditions and as per the said settlement, the temporary messengers/sweepers must have worked for 240

or more days in a calendar year as on 15.11.2010 and should have been continued to be working to be eligible for absorption. Considering the past services rendered by the petitioner, the then Branch Manager issued a certificate of experience in favour of the petitioner and based on which, he was appointed as Messenger in the respondent bank by order dated 11.06.2012 and was placed on probation for a period of six months and was subsequently his service was confirmed with effect from 11.12.2012. While such being the case, the 2nd respondent, by order dated 31.05.2014 terminated the services of the petitioner on the alleged ground that, the certificate of experience submitted by him to obtain appointment in the 2nd respondent was found to be false. However, it is pertinent to note that, without conducting proper enquiry and without affording opportunity to the petitioner to prove his innocence, the said termination order was passed as against the petitioner, which is not sustainable. Further, the petitioner examined himself as WW1 and marked exhibits W1 to W7, however, without taking into consideration any of the said material documents produced by the petitioner, the 1st respondent had mechanically dismissed the dispute raised by the petitioner, vide present impugned order, which cannot be acceded to. He further more submitted that, the petitioner has documents to show that he has worked for 240 days continuously in a calendar year and only based on which he obtained certificate. Hence, he submitted that, it would suffice, if this Court sets aside the impugned award and remand the matter to the 1st respondent for fresh adjudication, enabling the petitioner to mark fresh documents to substantiate his claim and accordingly prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent submitted that, admittedly, based on the declaration given on the basis of the certificate issued by the then Branch Manager, an interview was conducted and the petitioner was absorbed as Messenger in the 2nd respondent bank and was served with an appointment letter dated 11.06.2012. Subsequently, upon verification, it was found that the certificate of employment issued by the concerned Branch Manager, which was marked as Exhibit W2 before the 1st respondent itself is a fraudulent one and pursuant to the complaint given by the 2nd respondent bank, the investigation pertaining to fraud committed in the absorption of certain employees landed before the CBI and enquiry is in

progress. While so, apart from Ex.W2, the fraudulent certificate obtained by the petitioner by way of misrepresentation, no other document was submitted by him to show his continuous employment of 240 days in a calender year in the 2nd respondent bank. Hence, the 1st respondent after taking into consideration all the above said facts had passed the present impugned order, rejecting the dispute raised by the petitioner, which does not warrant interference of this Court. Further a criminal case has been filed as against the union leader and an employee of the 2nd respondent bank and after the fraud was found out, the 2nd respondent issued charge sheet to the Branch manager concerned and it is evident that the certificate of experience obtained by the petitioner is false and thereby he is not eligible for absorption as per the 12(3) Settlement dated 17.02.2011. Further, though it is the major claim of the petitioner that he has been terminated from service without conducting any enquiry, which is a clear violation of principles of natural justice, however, since it is a case of fraud it vitiates the very appointment itself and therefore there was no necessity to conduct an enquiry before terminating the petitioner from service. Accordingly, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. Admittedly, the 2nd respondent bank had entered into a settlement under Section 12(3) of ID Act on 17.02.2011 with the recognised Trade Union, as per which, it has agreed to absorb temporary messengers/ sweepers as one time absorption subject to the satisfaction of certain education qualification and prior service conditions and on basis of the said settlement, the petitioner made application for absorption in the 2nd respondent bank and based on the Ex.W2, the experience certificate produced by the petitioner, he was appointed as Messenger, vide order dated 11.06.2012 and he was confirmed in service with effect from 11.12.2012 and was subsequently terminated from service by order dated 31.05.2014. Though the petitioner's service was confirmed based on the certificate of employment issued in his favour by the then Branch head of the 2nd respondent bank, however, the said certificate itself was questioned by the 2nd respondent bank along with various other certificates issued by the

respective Branch Manager and the same is pending for enquiry before the CBI, as the same are alleged to have been issued in a fraudulent manner based on the recommendation of union leaders. While such being the legal position, relying upon the said certificate issued by the then Branch Manager to show that he was in continuous employment of 240 days in a calender year in the 2nd respondent bank is not sustainable and the petitioner has to independently prove the same either before the 1st respondent or before this Court.

7. Further, though the petitioner claim that he joined the services of the 2nd respondent bank during February 2008, however, except his oral assertion, no single proof has been submitted by the petitioner to show that he was engaged by the 2nd respondent Bank in the year 2008 itself and he had been continuously working in the 2nd respondent bank until the application dated 23.03.2011 submitted by him for absorption.

8. On the other hand, the 2nd respondent bank claim that the petitioner had joined the services of the 2nd respondent bank only on 28.12.2010 i.e.,

subsequent to the cut-off prescribed in the 12(3) settlement dated 17.02.2011, which itself is sufficient to show that he is not eligible for absorption as per the terms of the above said 12(3) settlement. Further, the 2nd respondent bank had produced statements from 24.02.2007 and upto 09.04.2011 to show all miscellaneous transactions of the 2nd respondent bank on daily basis, in which the petitioner's name does not find a place anywhere during the relevant period.

9. Hence, in the absence of establishing his continuous employment of 240 days in a calender year in the 2nd respondent bank by relying upon any other document other than Ex.W2, the 1st respondent had rightly dismissed the dispute raised by the petitioner holding that the petitioner had been absorbed in the service of the 2nd respondent bank as a result of fraud, in which this Court does not find any fault with and accordingly, is not inclined to interfere with the same.

10. For the reasons aforesaid, this Writ petition stands dismissed. No costs.

21.08.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

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