



WEB COPY



W.P.No.33542 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.33542 of 2017 &
W.M.P. Nos.37063 of 2017, 1990 of 2018, 20345 of 2020 &
8535 of 2023

The Chairman and Managing Director,
Indian Bank,
Corporate Office,
250-260, Avvai Shanmugham Salai,
Chennai 600 014

... Petitioner

Vs.

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
I Floor, 'B' Wing,
26, Haddows Road, Shastri Bhavan,
Chennai 600 006.

2. The President,
Indian Bank Employees Federation (BEFI)
No.302A, ACRUX Gokul Plaza,
Cuttack Road,, Bhubaneswar 751 006, Orissa

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records relating to the
Award made in I.D. No.67 of 2015 dated 21.07.2017 (published in the



W.P.No.33542 of 2017

Government Gazette on 31.08.2017) on the file of the 1st respondent and to quash the same.

For Petitioner : M/s. Rita Chandrasekar
for M/s. Aiyar and Dolia
R1 : Tribunal
For R2 : Mr.Balan Haridas

ORDER

This Writ Petition has been filed by the petitioner Bank challenging the Award dated 21.07.2017 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, in ID No.67/2015, which was later notified in the Government Gazette on 31.08.2017.

2. Briefly into the facts of the case before dealing with the merits or otherwise of the Award.

2.1. The petitioner Bank, viz., Indian Bank is a Nationalised Bank with its Corporate Office in Chennai, represented by its Managing Director and CEO. The 2nd respondent is a Trade Union in the name and style of Indian Bank Employees' Federation affiliated to BEFI with its registered office in Bhubaneswar, Orissa, represented by its President.



W.P.No.33542 of 2017

It appears that the 2nd respondent Union served a notice of strike dated 28.06.2012 proposing to go on all India strike on 20.07.2012 and submitted a charter of demands. After receiving the said notice as is customary the Assistant Labour Commissioner(C) issued a notice dated 12.07.2012 calling upon the parties for a conciliation meeting proposed to be held on 18.07.2012. In the meeting held on that day the Assistant Labour Commissioner(C) had advised both the parties to have a bilateral discussion and resolve the issue amicably though the petitioner Bank had categorically represented that the same demands were already discussed with the majority Union i.e., Federation of Indian Bank Employees' Union (affiliated to AIBEA) pursuant to their strike notice dated 26.03.2012. The Assistant Labour Commissioner(C) however postponed the conciliation meeting to 03.08.2012 and on 01.08.2012 itself the petitioner Bank gave it in writing as to the earlier conciliation meeting with the majority Union and that there was mutual discussion leading to the withdrawal of the strike notice and that as the matter was already closed, the present strike notice was not maintainable. Despite this letter, the meeting of conciliation took place as scheduled and the talks failed subsequent to which Assistant Labour Commissioner(C) had forwarded the failure report dated 23.03.2015 to the Secretary, Ministry of Labour



W.P.No.33542 of 2017

and Employment, Government of India. Pursuant to this, the Ministry of Labour and Employment referred the matter to the 1st respondent for adjudication vide orders dated 13.05.2015. This was taken up as ID No.67 of 2015 by the 1st respondent. The present petitioner filed W.P.No.18052/2016 before this Court in which the IA No.100/2016 filed in ID No.67/2015 by the present petitioner was challenged. This Court had dismissed the Writ Petition stating that the said IA was filed belatedly giving an impression that the present petitioner wanted to prolong the litigation. A direction to dispose the ID No.67 of 2015 within three months was given in the said Writ Petition. The 1st respondent Central Government Industrial Tribunal-cum-Labour Court, took up the case for trial.

2.2. The 2nd respondent Union scaled down its demand to just 8 out of the 24 raised in the charter of demands attached to the strike notice. The charter of demands (reduced to 8 in the claim petition before the Tribunal) read as,

- a) Annual incentive to allowances.
- b) Recruitment in clerical and subordinate cadre including Armed Guards.



W.P.No.33542 of 2017

WEB COPY

c) Increase in reimbursement of fuel expenses to Armed staff from 5 litres to 15 litres of petrol.

d) Regularisation of temporary employees and canteen employees in the Bank Service.

e) Filling up sweeper vacancies.

f) Promotion of part time sweepers as sub staff.

g) Canteen subsidy to be increased Rs.25/- per day.

h) Risk premium for GSLI scheme to be borne by the bank.

One witness was examined as M.W.1 and Exhibits M.1 to M.12 were adduced on behalf of the petitioner Bank (respondent in ID 67/2015), while the Union had examined three witnesses W.W.1 to W.W.3 and marked Ex.W.1 to Ex.W.189 on their side. The Central Government Industrial Tribunal-cum-Labour Court, Chennai after analysing the various documents and depositions gave the following Award.

(a) The respondent is directed to frame a scheme in tune with Ex.W34 for regularisation of the temporary sub-staff and sweepers. The scheme shall be framed and implemented within one year.

(b) The respondent shall pay all the temporary sub staff and sweepers at the entry level scale of permanent sub-staff and sweepers



W.P.No.33542 of 2017

respectively, until the scheme is implemented.

WEB COPY

(c) The Respondent shall take steps to give promotion to sweepers as sub-staff as per Government guidelines.

(d) The respondent shall also take steps to implement the annual incentive scheme."

3. M/s. Rita Chandrasekar, learned counsel for the petitioner would contend that prima facie the ID in itself was not maintainable and that the Ministry of Labour & Employment erroneously referred the matter to the 1st respondent for adjudication instead of conciliation. The matter referred to the 1st respondent was based on a 'failure report' submitted by the Assistant Labour Commissioner(C) who on receiving a strike notice from the 2nd respondent conducted conciliation meeting in which both the parties did not agree on any point. The charter of demands was general in nature and no specific complaint or grievance from any individual employee was referred to, it was contended. Her further contention was that the individual cases of some temporary sub staff, canteen employees, etc., were brought in at the trial stage and the Central Government Industrial Tribunal-cum-Labour Court, Chennai, even without verifying whether they are members of the 2nd respondent



W.P.No.33542 of 2017

Union allowed for examination of them as witnesses, which according to her, was unwarranted. It was also contended by her that even when the High Court empowered with writ jurisdiction under Article 226 of the Constitution can only direct the Government to formulate any scheme, the Central Government Industrial Tribunal-cum-Labour Court, Chennai, has no powers whatsoever to direct the Bank to devise or formulate any scheme much less advise them on policy guidelines.

4. Per contra Mr.Balan Haridas, learned counsel for the 2nd respondent would contend that the ID Act is all encompassing and that Section 2(n) clearly defeats the argument of the petitioner that such general matters cannot be termed as individual dispute especially when the 'conditions of labour' is mentioned prominently. It was further contended that the reference by the Government to the Central Government Industrial Tribunal for adjudication was as per clause 12(4) of Industrial Disputes Act and therefore cannot be found fault with. He also pointed out that there is no such bar in Industrial Disputes Act as to with which Union the Management can negotiate and that the reason cited by the present petitioner that the 2nd respondent was a Minority Union due to which they were excluded from any mutual discussion was



W.P.No.33542 of 2017

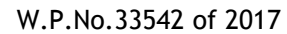
not acceptable. According to the learned counsel for the 2nd respondent, the Award also was general in nature and the Central Government Industrial Tribunal-cum-Labour Court, was empowered to give such directions especially when the matter was referred to them for adjudication.

5. Before going into the merits of the case, the need to analyse the schedule as mentioned in the order No. L-12011/22/2015-IR(B-II) dated 13.05.2015 by the Ministry of Labour and Employment, Government of India issued to the Central Government Industrial Tribunal-cum-Labour Court for adjudication.

"Whether the action of the Management of Indian Bank, Chennai, regarding not considering the charter of demands placed by the petitioner Union vide strike notice dated 28.06.2012 is justifiable or not? If not so, to what relief the petitioner is entitled to?"

The two elements of this schedule are,

- a) Management of Indian Bank not considering the charter of demands.
- b) Relief which Union is entitled to.



"The General Secretary of Indian Bank Employees' Federation vide their strike notice dated 28.06.2012 raised an industrial dispute against the management of Indian Bank over charter of demands. The same is enclosed as Annexure I. The management's comments dated 01.08.2012 is enclosed as Annexure II.

3. *Despite all out efforts made by the Conciliation Officer, no amicable settlement could be brought out owing to the rigid stand of the parties and hence the instant industrial dispute is thus ended in failure. To the suggestion of the Assistant Labour Commissioner / Conciliation of Officer to refer the dispute for voluntary*



W.P.No.33542 of 2017

arbitration the union agreed whereas the management did

WEB COPY *not agree as they felt there is no merit in the case.*

*Hence a report under Section 12(4) of the Industrial
Disputes Act, 1947 is submitted herewith."*

Based on this the Ministry of Labour and Employment acted by way of the order dated 13.05.2015. The contents of the failure notice dated 23.03.2015 and that of the order dated 13.05.2015 are not in consonance with each other.

5.1. The stance of the petitioner Bank was that the charter of demands was already discussed with the majority Union and based on their mutual discussions withdrawal of the strike notice dated 26.03.2012 given by the majority Union took place. The petitioner Bank has also adduced documentary evidence in the form of circular for having taken care of the demands of the employees in the bank and it is not as though the employees have been left in the lurch. The one fact that is clear is that despite the petitioner Bank initially resisting the attempt for any dialogue with the 2nd respondent citing that the latter is a minority Union and as per their Management Relation (MR) policy, only majority Unions need to be invited for bilateral talks, the conciliation process took place



W.P.No.33542 of 2017

and that too for three long years from 2012 to 2015. It is also a fact that the offer for arbitration was strongly declined by the petitioner Bank while the 2nd respondent Union was ready for it. Firstly whether the Ministry of Labour and Employment was right in referring the matter for adjudication to Central Government Industrial Tribunal-cum-Labour Court is to be explored. Mr. Balan Haridas, learned counsel for the 2nd respondent argued that Section 10 of the Industrial Disputes Act under clause(d) of Sub-section (1) and sub-section (2A) empowers the Central Government to do it.

5.2. Clause(d) of Sub-Section (1) of Section 10 of the Industrial Disputes Act reads as under:

"(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing.

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:



W.P.No.33542 of 2017

5.3. The Second schedule lists out the matters within the

jurisdiction of Labour Courts.

- a) The propriety or legality of an order passed by an employer under the standing orders.
- b) The application and interpretation of standing orders.
- c) Discharge of or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.
- d) Withdrawal of any customary concession or privilege.
- e) Illegality or otherwise of a strike or lock out and
- f) All matters other than those specified in Third schedule.

The Third schedule specifies matters within the jurisdiction of Industrial Tribunals.

- a) Wages, including the period and mode of payment.
- b) Compensatory and other allowances.
- c) Hours of work and rest intervals.
- d) Leave with wages and holidays.
- e) Bonus, profit sharing, Provident Fund and Gratuity.
- f) Shift working otherwise then in accordance with standing orders.
- g) classification by grades.



W.P.No.33542 of 2017

WEB COPY

h) Rules of discipline.

i) Rationalisation.

j) Retrenchment of workmen and closure of establishment and

k) Any other matter that may be prescribed.

5.4. The contention of the learned counsel for the petitioner Bank that such demands are like the ones which are placed before the IBA while the bipartite settlement gets finalised which applies to the entire Banking Industry. However, in this matter it is also to be remembered that the majority union of the same Bank Federation of Indian Bank Employees' Union (FIBEU) had already represented to the petitioner Management with similar demands and they were agreed to be resolved due to which their strike notice was withdrawn in an earlier conciliation talks with the Assistant Labour Commissioner(C). In such circumstances with no clear agenda presented by the 2nd respondent Union the 1st respondent ought to have restricted itself. In making an Award the Central Government Industrial Tribunal-cum-Labour Court, according to this Court, has exceeded its brief.



W.P.No.33542 of 2017

5.5. The Central Government Industrial Tribunal-cum-

Labour Court could have appointed one or more persons having special knowledge of the matter to advice it. The Central Government Industrial Tribunal-cum-Labour Court by its observations has exposed its incomplete understanding of the core issues. The 1st respondent being overzealous has analysed the figures of number of sub staff over a period of 2012 to 2016 and observed thus:

"It is to be seen how the branches are managing. Is it without any sub-staff? The documents available would show that several persons are engaged as casuals. They are being utilized to do the work of sub-staff and sweepers."

"During the discussion it was stated that regarding the issue of absorption of temporary sub-staff from the approved panel the Management has informed to have already initiated action and sought for clarification from the circles. Thus it could be seen that the practice was to prepare a panel from among the temporary sub-staff and absorb them."

Such arbitrary conclusion by the Central Government Industrial Tribunal-cum-Labour Court defies logic especially in the light of 'Recruitment policy in PSB's circular dated 10.12.2013 issued by

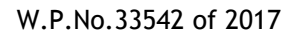


W.P.No.33542 of 2017

Ministry of Finance, Government of India. A relevant portion of the circular is extracted here.

"it has come to the knowledge of this Department that some Banks have regularized the services of contractual employees leading to litigation in various courts". It further goes on to state that "the ratio of Umadevi's case is binding on the Government as well as the PSUs in the same way as it is binding on the courts."

5.6. Now let us see what Umadevi case was about. The Apex Court in ***Secretary, State of Karnataka & Others vs. Umadevi (3) and others*** reported in ***(2006)4 SCC 1*** held that *"merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules."* It was also observed that *"It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their*



5.7. Despite these clear cut guidelines the Central Government Industrial Tribunal-cum-Labour Court has concluded that "*it is apparent Banks are having the power to take steps for absorption of its employees by framing scheme or otherwise*". Another unwarranted observation by the 1st respondent Central Government Industrial Tribunal-cum-Labour Court is "*In fact, they are being exploited naming casual workers*". Such unwarranted conclusions based on half truth prevail in the Award.

5.8. The Central Government Industrial Tribunal-cum-Labour Court has gone one step further by concluding that "*Uma devi does not denude the Industrial and Labour of their statutory power under Section 30 read with Section 32 of MRTU and PULP Act to order permanency of*



W.P.No.33542 of 2017

the workers who have been victims of unfair labour practice on the part of the employer under item 6 of Schedule-IV where the posts on which they have been exist. Uma Devi cannot be held to have overridden the powers of the Industrial and Labour Court in passing appropriate order under Section 30 of MRTU and PULP Act, once unfair labour practice on the part of the employer under Item-4 of Schedule-IV is established".

Item 6 of Schedule IV reads as *"To abolish the work of a regular nature being done by workmen and to give such work to contractors as a measure of breaking a strike"*.

As such I do not find any unfair labour practice on the part of the petitioner Bank. I do not understand as to how such a conclusion has been arrived by the Central Government Industrial Tribunal-cum-Labour Court.

5.9. Regarding the cause of the temporary employees the Central Government Industrial Tribunal-cum-Labour Court observes that

"Ex.W157 would show that the Bank was not willing to discuss the cause of the temporary employees which has been raised by the recognised Union as well. In the reply given by the Bank to the Federation of Union, it is stated that the recruitment of sub-staff and conversion of part time



WEB COPY



W.P.No.33542 of 2017

sweepers into sub-staff cadre are governed by the Government of India guidelines and the request of the Federation to absorb casual employee cannot be acceded to. So it is clear that even at the time of last settlement the matter was not considered. Execution of a settlement by the Bank and the recognised union is not a bar in granting a relief to the petitioner, in any case".

This observation again exposes the ignorance of the Central Government Industrial Tribunal-cum-Labour Court. It has to be understood that whether it's the majority recognised Union or the minority one (like the 2nd respondent) the policy of the Bank (petitioner) if any when executed would benefit all and is not selective or discriminatory. This aspect was highlighted by the petitioner Bank in the conciliation talks also but was never understood by the Conciliation Officer. He ought to have mentioned as to what were the common points between the two charter of demands submitted by the majority Union FIBEU and that of the minority Union IBEF (the 2nd respondent) and which were agreed upon earlier by the petitioner Bank in the earlier conciliation proceedings with the majority Union. In this regard the Industrial Disputes Act is very categorical. Sub-section 5 of Section 10 of the Industrial Disputes Act reads as



W.P.No.33542 of 2017

Section 10(5) in The Industrial Disputes Act, 1947

WEB COPY

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal] under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments."

Thus it is clear that the act of the Assistant Labour Commissioner(C) in not mentioning as to what were the common issues already agreed upon in the earlier conciliation talks with the majority Union is not acceptable. The reference made by the Government of India to the Central Government Industrial Tribunal which went on the premise that nothing prevents the minority union from getting their grievances redressed is



W.P.No.33542 of 2017

also serious lacuna in the entire process. That the petitioner Bank had a MR policy in place and it authorised only the majority Union to negotiate but the benefits would accrue to all the employees of the Bank irrespective of their membership, was misconstrued by the Central Government Industrial Tribunal. The respondent Trade Union has only tried to vie with the other union on account of rivalry in which the Central Government Industrial Tribunal has fallen prey. Such acts of Unions settling their scores with the help of legal forums is to be seriously condemned. When United Forum of Bank Unions is a reality in bilateral settlement talks with IBA why not within the Bank if the Unions are really interested in benefiting the employees.

5.10. The relevant portions of the judgment in ***the Secretary, State of Karnataka vs. Uma Devi (3)*** (cited supra) are extracted to make the legal position very clear.

"It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts



WEB COPY



W.P.No.33542 of 2017

whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.

"The High Courts acting under Article 226 should not therefore, ordinarily issue directions for absorption, regularisation or permanent confirmation unless the recruitment itself was made regularly and in terms of the constitutional scheme".

This being the decision of the Constitutional Bench of the Apex Court, the Central Government Industrial Tribunal making unwarranted observations and directing the petitioner Bank to devise a scheme to regularise the temporary employees within one year and order for payment to them at the entry level of permanent sub-staff till the scheme is implemented are all without application of mind. The directions of the promotion of the existing sweeper as sub-staff and giving annual incentive to all are equally arbitrary. The Central Government Industrial Tribunal ought to have exercised restraint and understood that Supreme



W.P.No.33542 of 2017

Court is not only the Constitutional Court but also the highest Court in the Country and the final Court of appeal. By virtue of Article 141 of the Constitution what the Supreme Court lays down is the law of the land. Orders such as this Award which are inconsistent with the legal conclusions arrived at by the Supreme Court not only creates confusion but also brings in arbitrariness. In the name of individualizing justice, the rights of the numerous cannot be trampled upon to satisfy the few who were before the Central Government Industrial Tribunal.

5.11. Section 11 Sub-Section 5 of the Industrial Disputes Act, 1947 reads as under:

"A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it."

This provision is akin to the 'Amicus Curie' in the Higher Courts.



W.P.No.33542 of 2017

6. Thus I do not find any merit in the Award of the Central Government Industrial Tribunal. In the result the Award of the 1st respondent Central Government Industrial Tribunal is quashed. The Writ Petition is allowed with costs. Consequently connected Writ Miscellaneous Petitions are closed.

19.10.2023

bga

Index : yes/no

Speaking /Non speaking Order

To

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
I Floor, 'B' Wing,
26, Haddows Road, Shastri Bhavan,
Chennai 600 006.
2. The President,
Indian Bank Employees Federation (BEFI)
No.302A, ACRUX Gokul Plaza,
Cuttack Road,, Bhubaneswar 751 006, Orissa



WEB COPY



W.P.No.33542 of 2017

R.HEMALATHA, J.

bga

**W.P.No.33542 of 2017 &
W.M.P. Nos.37063 of 2017, 1990 of 2018,
20345 of 2020 & 8535 of 2023**

19.10.2023