



W.P. No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. Nos.17766 & 17824 of 2017 and 12547 & 12549 of 2019
and
W.M.P. No.19279 and 19337 of 2017**

W.P.Nos.17766 and 17824 of 2017:

Indian Overseas Bank,
Represented by its Managing Director,
Central Office,
Annasalai, Chennai-2.

... Petitioner in all the writ petitions

-VS-

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

... 1st Respondent in all the writ petitions

2. G.Tamil Mani
2017

... 2nd respondent in W.P.no.17766 of

2. P.Selvakumar

...2nd respondent in W.P.No.17824 of 2017

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari calling for the records of the first respondent in connection with the award pronounced in ID.No.42, 39/2013 dated 13.05.2016 and quash the same.

For Petitioner	:	Mr.K.K.Shivashanmugam
For Respondent	:	R1 Court
		Mr.T.Ramkumar R2



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W.P.Nos.12547 & 12549 of 2019:

G.Tamil Mani

... Petitioner in W.P.No.12547 of 2019

2. P.Selvakumar

... Petitioner in W.P.No.12549 of 2019

-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-2.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in connection with the award pronounced in ID.No.42 & 39/2013 dated 13.05.2016 and quash the same insofar as denial of reinstatement, continuity of service, back wages and other attendant benefits to the petitioner and direct the second respondent management to reinstate the petitioner in service with full back wages, continuity of service with all other attendant benefits.

For Petitioners : Mr.T.Ramkumar

For Second Respondent : Mr.K.K.Sivashanmugam



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COMMON ORDER

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Since the issue involved in these matters are one and the same, all the writ petitions are disposed of by way of this common order. For the sake of convenience, the petitioners in W.P.Nos.17766 and 17824 of 2017 are referred to as "Bank" and the petitioners in W.P.Nos.12547 & 12549 of 2019 are referred to as "workmen".

2. These writ petitions have been filed seeking to quash the order in ID.Nos.42 & 39/2013 dated 13.05.2016.

3. The case of the Bank is that the petitioner is a nationalized bank. The employment under workmen bank is a public employment and not the private employment. Any public employment has to be in terms of the constitutional scheme there is a recruitment board for recruiting officers, clerks and the subordinate staffs for the nationalized bank in accordance with the constitutional scheme. The workmen has stated to have been temporarily engaged as sweeper-cum-messenger on daily wages basis in Tiruvellaivoil Branch. However, the bank denied the claim and contention of the workmen worked as sweeper-cum-messenger in the said branch.



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4. It is the further case of the petitioner Bank that the persons who were engaged on daily wages or temporary basis without proper recruitment process in the banking sector, cannot claim to have fundamental right to be absorbed or regularized in public employment service. While the facts being so, All India Overseas Bank Employees Union, recognized Union raised Industrial Dispute for regularization/absorption of adhoc / irregular engagement in the permanent post of messenger/sweepers before the Assistant Commissioner of Labour (Central), Chennai. After discussion, the petitioner Bank entered into a settlement dt. 17.02.2011, wherein the Bank has agreed to absorb the casual/temporary messenger/sweeper subject to certain conditions and fulfillment of the Banks recruitment norms such as qualification service period, age etc. As per the above settlement, besides other eligibility, the essential conditions for absorption such as age educational qualification, and working period were provided in detail for absorption of the temporary messengers/sweepers. The temporary messengers/sweepers must have worked and completed 240 or more days in a calendar year preceded to 15.11.2010 and continued to be working. The petitioner bank following the above settlement dated 17.02.2011, issued circular to all Regional Offices under Circular No. EST/71 / 2010- 2011 dated 23.03.2011 for absorption of casual/ temporary



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messengers/ sweepers in permanent vacancies as a onetime measure. The

Regional Offices were instructed to collect declaration in the form of Annexure A from the eligible casual/temporary messengers /sweepers. The Regional Office instructed to conduct interview based on the undertaking cum declaration given by the eligible applicants. After the process of the interview, the eligible member was inducted at the respective places with the appointment letters and conditions thereof. The workmen submitted their application in Annexure A stating that they were engaged as messenger from 11.09.2009 to 15.04.2011 in the Tiruvellaivail Branch without any documents in support of having worked continuously in a calendar year for 240 days. Mere submission of application by the 2nd respondent will not make him entitled to be absorbed as either as messenger or sweeper in the banking sector unless and until the requisites terms and conditions with regard to age, educational qualification and service qualification are found complied with by the Competent Authority. The Writ petitioner bank did not consider their application for absorption as it did not comply with the terms and conditions of the settlement. They were also disengaged from service from 22.07.2014 by the Writ Petitioner bank as their casual daily wages service were intermittent.

5. In the above circumstances of non-absorption of the workmen into the



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post of messenger, they raised an Industrial Dispute under Section 2-A of the Industrial Disputes Act, 1947. The Government of India, Ministry of Labour, vide its order No. L-12012/09/2015-IR (B-II) dated 18.03.2015 has referred this Industrial Dispute for adjudication to adjudicate the following issue:

"Whether the action of the Management of Indian Overseas Bank, Chennai in connection with the termination of the petitioner Shri. P.Selvakumar is justifiable or not? If not, to what relief the workman is entitled?"

6. In this regard, the Presiding officer, Central Government Industrial Tribunal-cum-Labour Court, Chennai, after perusing pleadings, proof affidavits and documents of both parties pronounced the impugned award dated 13.05.2016, directing the petitioner herein to pay Rs. 1 ,00,000/- as compensation within a month of publication of the award to the workmen herein. In case of default of payment within the prescribed period, the petitioner Bank herein shall pay interest @7.5% from the date of award, which is not unsustainable in law. Challenging the said impugned order, the Bank has filed writ petitions in W.P.Nos.17766 and 17824 of 2017 before this Court.

7. The case of the workmen is that they joined in service as temporary Messenger with the Bank in the year 2008 and 2009 respectively at Vallur and



workmen had been employed continuously without any break. On 17.02.2011,

in the Bank's services. As the workmen were being eligible to be absorbed in

documents and the Bank Management called the workmen for the interview.

in service without assigning any reasons. While so, on 16.12.2013, when the

informed that they have been terminated from service. The workmen were not

services, the workmen raised an industrial dispute in ID No.42 of 2015 before

award dated, 13.05.2016, the first respondent had held that the workmen's

termination is unjustified and instead of reinstatement and back wages, the Bank

was directed to pay the workmen a compensation of Rs.50,000/- and 1,00,000/-

respectively. Challenging the said award, the workmen have filed writ petitions

No.12547 and 12549 of 2019 before this Court.

8. The learned counsel for the Bank submitted that admittedly the



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workmen were joined temporarily as Sweeper on daily wages basis. Their engagement in the Bank is irregular as they were not appointed by due recruitment process of the Board and they have no legal right to seek permanent absorption in public employment. After discussion, as an exceptional onetime measure, the Bank had entered into a settlement dated 17.02.2021, wherein the Bank has agreed to absorb the casual/temporary messenger/sweeper subject to certain conditions and fulfillment of the Bank's recruitment norms such as qualification, service period, age, etc., The workmen are not entitled to for any relief. The Industrial Tribunal, without going through the settlement, held that the termination of the workmen from service is violation of Section 25F of the ID Act, which is unsustainable one. Further, the order of the Labour Court is perverse and the same is contrary to the case reported in Secretary, State of Karnataka Vs. Umadevi and others.

9. Per contra, the learned counsel for the workmen submitted that admittedly, the Bank engaged the workmen on temporary basis and issued wages from the Bank and the workmen were continuously working more than 240 days, in which, the learned Presiding officer also, after proper appreciating the evidence available on record, has rightly held that the termination of the Petitioner's services is in violation of section 25(f) of the Industrial Disputes Act,



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1947 as the management had not followed the said condition precedent for effecting retrenchment. when the court held that the termination of service of an employee is unjustified and the and fact that termination is set aside by the Labour Court, the petitioner is entitled to normal and natural relief of reinstatement with continuity of service with full back wages of the Interim Period.

10. However, without following the aforesaid procedure contemplated under Section 25(f) of the ID Act for the payment of one month salary and decided to oral termination, in which, the respective workmen rightly approached the Labour Court under Section 2(a)(2) of the ID Act. In the above circumstances, the award of the learned Presiding Officer, 1st respondent Labor Court in denying him the relieves of reinstatement, back wages, continuity of service and other attendant benefits for the period of his non-employment and reinstatement in service even after setting aside the order of dismissal is unreasonable and erroneous. Hence, the learned counsel prays that the impugned award is liable to be set aside and allow the writ petitions.

11. Heard the learned counsel for the Bank and the learned counsel for the workmen and perused the materials available on records.



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12. The facts of the case are not in dispute. Admittedly, the Bank engaged the workmen on temporary basis as Sweeper cum Messenger on daily wages basis, in the year 2011. However, all of a sudden, in the year 2013 and 2014 the Bank decided to disengage the workmen. Hence, the workmen raised an industrial dispute.

13. This Court perused the impugned order. On perusal of the same, it is seen that the Bank has to follow Section 25(f) of the ID Act while terminating the workmen from the service. Whereas the the bank has not followed the said procedure, the Labour Court has arrived at a conclusion that awarded a compensation in terms of regularizing the scheme introduced by the Bank in which, the workmen are not suitable for regularization. Thereby, the Labour Court has rightly awarded compensation in faovur of the workmen, which cannot be interfered with and therefore, all the writ petitions are liable to be dismissed.

14. For the reasons stated aforesaid, the writ petitions are dismissed. No costs. The Bank is directed to deposit the amount awarded by the Labour Court with 6% interest within a period of four weeks from the date of receipt of a copy



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of this order. Liberty is granted to the workmen to withdraw the said amount

from the Labour Court with accrued interest. Consequently, the connected

Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCS : Yes/No

To

The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
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M.DHANDAPANI, J.

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**W.P. Nos.17766 & 17824 of 2017
and 12547 & 12549 of 2019**

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