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W.A. 635 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2024

Delivered on : 10.09.2024

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE P.DHANABAL**

W.A.No.635 of 2021

R. Ramaprabha

... Appellant/
2nd respondent

VS.

1. The Dhanalaxmi Bank Ltd., (Formerly
Known as Dhanalakshmi Bank Ltd.),
Zonal office, Om Shakthi Towers,
163, Anna Salai, Chennai-600002.
Rep. By its Asst. General Manager
and Regional Head.

... 1st Respondent/Petitioner

2. The Presiding officer,
Central Government Industrial
Tribunal -cum- Labour Court,
Shastri Bhavan, Chennai-600002

... 2nd Respondent

3. Teamlease Service (P) Ltd.,
81, vukan Towers,
Thirumalai Pillai Road,
T.Nagar, Chennai 600017Rep. By its
Sr. Vice President (Regulatory)

... 3rd Respondent

Page No.1/12



W.A. 635 of 2021

Prayer: Writ Appeal filed under Clause XV of the Letters patent Act, to set aside the order of the learned Single Judge made in W.P.No. 26358 of 2014 dated 22.11.2019.

For appellant : Mr. K.M.Ramesh Senior Counsel
For Mr.V.Subramani

For respondents : Mr. P.Ragunathan for R1
R2-Court
Mr. Anand Gopalan for R3.

JUDGMENT

J.NISHA BANU, J.

This Writ Appeal is filed challenging the learned Single Judge order passed in W.P.No.26358 of 2014 dated 22.11.2019, whereby, the Award passed by the Labour court, was set aside and held that the question of challenging the discharge order issued by the Writ Petitioner-Bank does not arise as the 2nd respondent-employee has been appointed in the 3rd respondent-organisation.

2. The case of the appellant is that she was appointed as Marketing Executive by the 1st respondent bank by an order dated 13.07.2007 on a consolidated monthly salary of Rs.8000/-. Though the appointment was on



W.A. 635 of 2021

contract basis for one year, she was in continuous employment till termination of service i.e upto on 31.01.2010.

2.2. On 31.01.2010, the Branch Manager.1st respondent Bank terminated her from service on the ground that marketing work was outsourced and that she will be employed in the same category by M/s. Team Lease Services Pvt. Ltd, Bangalore/3rd respondent for time being and later, she will be recruited back to the same place. On believing the same, she was absorbed under Team Lease Services Pvt. Ltd/ 3rd respondent and continued to work for the 1st respondent bank.

2.3. While, the appellant was waiting for absorption in the 1st respondent bank, she was issued a letter indicating certain allegations of misdemeanour. Appellant denied the charges and made several representation to the 3rd respondent seeking to reinstate her but she was not given any reply.

3. Challenging the termination order dated 19.07.2011 issued by the



W.A. 635 of 2021

3rd respondent, appellant raised an industrial dispute under Section 2-A of the I.D Act, 1947, claiming reinstatement with all other terminal benefits.

The Labour Court, after analysing the case and evidence, passed an Award dated 09.07.2014, granting reinstatement to the appellant in the 1st respondent bank.

4. Aggrieved by the said Award, the 1st respondent Bank preferred W.P.No.26358 of 2014. The grounds raised in the writ petition was that there was no relationship of “Master and Servant” between 1st respondent and appellant as on 19.07.2011; in such circumstances, the dispute under section 2A cannot be maintained against the 1st respondent bank and further, it is not open to the tribunal to consider whether the appellant can be declared as an employee of the 1st respondent bank.

5. The learned Single Judge, held that “Master-Servant” relationship was in existence between the employee and the 3rd respondent company and therefore, the employee is entitled to claim relief only against the 3rd respondent company certainly not against the Bank. Challenging the said



W.A. 635 of 2021

findings of the learned Single Judge, the appellant has filed the present Writ Appeal.

6. Mr.K.M.Ramesh, the learned Senior counsel for the appellant would submit that the learned Single Judge erred in interfering with the impugned award passed by the Tribunal which was passed on appreciation of facts and evidence. The Appellant-employee was originally appointed under 1st Respondent -Bank and completed her three years of continuous service and she was entitled to be granted permanent status as per the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. In order to avoid absorption, the Bank resorted to unfair labour practice on the ground that she was inducted in the services of the 3rd Respondent company but later on terminated her services. As far as the allegations framed against the appellant is concerned, the said allegations have not been proved by issuing a charge sheet, holding an enquiry by following the principles of natural justice. Under these circumstances, the order passed by the learned Single Judge, need to be interfered.



W.A. 635 of 2021

WEB COPY 7. Mr.P.Raghunathan, learned counsel appearing for the 1st respondent-Bank would submit that the appellant was lastly employed by 3rd respondent. Therefore, if at all the employee needs to be reinstated, it can be done only by the 3rd respondent-company. The Tribunal does not have jurisdiction to grant reinstatement in the services of the 1st respondent because the dispute was under section 2A of the I.D. Act wherein, it can relate only to discharge, dismissal or retrenchment. The Tribunal cannot decide the status of the “workman”. The appellant has not stated anywhere in her evidence before the tribunal that she remained unemployed during the period from cessation of employment. Therefore, she is not entitled to reinstatement under any of the respondents. Hence the present Writ Appeal is liable to be dismissed.

8. Mr.Anand Goapalan, learned counsel appearing for the 3rd respondent-company submits that the 3rd respondent entered into an agreement with the 1st respondent Bank to provide certain services. Pursuant to the same, it had deputed its employees to work for the 1st respondent



W.A. 635 of 2021

bank. The appellant was appointed by the 3rd respondent on 01.02.2010 and she was terminated by communication dated 19.07.2011. The appellant raised an industrial dispute challenging her termination order dated 19.07.2011 and also against her cessation of employment with 1st respondent bank w.e.f 31.01.2010. The appellant in her cross examination admitted to the effect that her dispute was only against the 1st respondent Bank and she did not claim any relief against the 3rd respondent. Therefore, the 3rd respondent did not contest the dispute thereafter. The tribunal has not given a finding that the termination order dated 19.07.2011 was bad in law. Hence, no relief can be granted against the 3rd respondent-company.

9. Heard both sides and perused the records carefully.

10. In this Writ Appeal, the points to be determined are as under:-

- (i) Whether the appellant is a “workman” under section 2(S) of ID Act.
- (ii) Whether the appellant is a employee of the 1st respondent or 3rd respondent.

11. The appellant is a Marketing Executive in the 1st respondent Bank, which is assumed to be in managerial or supervisory work in nature.



W.A. 635 of 2021

It is well established position of law that mere nomenclature of the post is not a sufficient ground to determine whether the appellant herein comes under the ambit of “workman” under section 2(s) of the ID Act or not.

12. In the present case, the first respondent Bank failed to prove that the appellant was working in a managerial or supervisory capacity. As per Apex Court decision in ***ARKAL GOVIND RAJ RAO VS CIBA GIEGY OF INDIA LTD, BOMBAY reported in AIR 1985 SC 985***, it is held that to decide whether a person is a “workman”, the court must find out the primary and basic duties of the concerned and if he is incidentally asked to do some other work which may not necessarily be in tune with the basic duties, his additional duties cannot charge the character and status of the person concerned.

13. In the case on hand, the appellant was not doing any supervisory job. Actually, she canvass deposits for the first respondent Bank and that as there was instruction by the 1st respondent Bank, she has been terminated. Further, before termination, the first respondent had not complied with the



W.A. 635 of 2021

provisions of the Act. Therefore, the appellant definitely will come under the definition of “workman” under section 2(s) of ID Act.

14. It is seen that the appellant was projected as an employee of the third respondent. In fact the 3rd respondent is a contractor who works for 1st respondent. The appellant was discharged only as an outsourced employee and doing the same work for both the 1st respondent and 3rd respondent.

15. The Chief Manager, 1st respondent Bank by giving assurance that they will take back the appellant, stated that she could secure a permanent employment with the 1st respondent Bank only by joining duty with the 3rd respondent, terminated her services and further stated that the marketing work was outsourced. The documents produced were just an arrangement to show her as an employee of 3rd respondent.

16. Though the appellant was terminated from service by the 3rd respondent, it was only for namesake, but actually it was done by the 1st



W.A. 635 of 2021

respondent. The 3rd respondent was a registered contractor and he was competent to supply persons on contract basis. All this would show that the 1st respondent itself who had continued to engage the appellant though under the guise of doing it through the 3rd respondent, terminated the services of the appellant, without following any procedure.

17. Apparently, from 13.07.2007, the petitioner had been working under the 1st Respondent continuously. In spite of this, she was not given any notice of termination. On the other hand, she was shown as an employee of the 3rd Respondent and allowed to continue in the service of the 1st Respondent which clearly shows that the appellant was an employee of the 1st respondent. The Tribunal has found on appreciation of oral and documentary evidence that the 1st respondent Bank is the real employer and held that the appellant is entitled to claim reinstatement only from the 1st respondent Bank. The allegations raised against the appellant has not been proved and there was no enquiry following the principles of natural justice. The findings of the learned Single Judge in re-appreciating the evidence and come to a different conclusion is unwarranted as the industrial dispute has



W.A. 635 of 2021

been been rightly answered by the learned Judge, Labour Court. Therefore,
the appellant is entitled to be reinstated in the 1st respondent Bank.

18. In the light of the foregoing discussions, this Writ Appeal stands allowed. The award of the Labour court passed in I.D.No.42 of 2012 dated 09.07.2014 is restored. The order of the learned Single Judge passed in W.P.No.26358 of 2014 dated 22.11.2019, is set aside. No costs.

[J.N.B.,J.]

[P.D.B.,J.]

10.09.2024

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

nvsri

To

1. The Regional Head, Dhanalaxmi Bank Ltd., (Formerly Known as Dhanalakshmi Bank Ltd.),

Zonal office, Om Shakthi Towers,
163, Anna Salai, Chennai-600002.

2. The Presiding officer, Central Government Industrial Tribunal -cum- Labour Court,

Page No.11/12



Shastri Bhavan, Chennai-600002

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W.A. 635 of 2021

J.NISHA BANU,J.

and

P.DHANABAL, J.

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Pre-delivery Judgment in

W.A. No. 635 of 2021

10.09.2024

Page No.12/12