



W.A.No.1031 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

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

**W.A.No.1031 of 2024 &
CMP.No.7365 of 2024**

The Chairman and Managing Director,
Indian Bank, Corporate Office,
254-260, VP Raman Road,
Royapettah, Chennai 600 014

.. Appellant

Vs

1. The Presiding Officer,
Central Government Industrial
Tribunal Cum Labour Court,
1st Floor, B Wing, 26 Haddows
Road, Shastri Bhavan,
Chennai 600 006.
2. General Secretary,
Indian Bank Employees Association,
No.17, Ameerjan Street,
Choolaimedu, Chennai 600 094.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.08.2023 made in W.P.No.524 of 2017 passed by the learned Single Judge.



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For Appellant : Mrs. Rita Chandrasekaran
for M/s. Aiyar and Dolia
For Respondent : R1- Court
Mr.Balan Haridoss for R2

JUDGMENT

(Order of the Court was made by J.NISHA BANU, J.)

This Writ Appeal is preferred by the appellant/Management challenging the order dated 07.09.2023 passed in W.P.No.524 of 2017, whereby, the learned Single Judge modified the award dated 29.08.2016 passed by the Government Industrial Tribunal-cum-Labour Court, Chennai in I.D.No.71 of 2015.

2. The operative portion of the impugned order reads thus'

'10. Accordingly, this Writ Petition stands disposed of with the following modification tot he 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 servie as per the award passed by the labour court within a period of two



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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.'

3. The facts leading to filing of this writ appeal is as follows;

(i) Ms.Daivanidhi was engaged as a Temporary Part time sweeper in the appellant Management for the past 15 years as there is no permanent part time sweeper in that branch. Upon appointment of one permanent part time sweeper by way of transfer, she was engaged as a casual sweeper whenever permanent part time sweeper was absent.

(ii) Against her engagement on a stop-gap basis, the 2nd respondent/Association raised industrial dispute before the Government Industrial Tribunal-cum-Labour Court, Chennai in I.D.No.71 of 2015 on the ground that she has been worked continuously as temporary part time sweeper for 15 years and there is no proper policy guidelines in appellant/Management regarding regularisation of long serving temporary part time employees and



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thereby it sought a direction to absorb her in appellant/management's service.

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(iii) Refuting the claim, a counter was filed by the Appellant/Management stating that Daivanidhi was engaged only as a daily wagger for the purpose of cleaning the premises on casual and hourly basis and her engagement was restricted for half an hour a day, that too, for limited days. On appointment of permanent part time sweeper, she was engaged as casual sweeper and since she ceased herself from being engaged, no question of appointment or dismissal arise, hence she is not entitled to claim any relief whatsoever.

(iv) The Labour Court, after appreciating the witnesses and documents adduced on either side, reinstated the said Daivanidhi in service as part time sweeper and directed to regularise her service with effect from 18.07.2014 along with 25% backwages with interest at the rate of 7.5% per annum on the ground that the action of the appellant/management, retaining the employee continuously in the same position for several years without giving her any privilege amounts to unfair labour practice.

(v) Aggrieved against the order of reinstatement and regularisation



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along with 25% of backwages, the Appellant/Management filed W.P.No.524 of 2017, wherein, the learned Single Judge, by the order impugned, confirmed the order passed by the Labour Court as far as reinstatement and regularisation is concerned, however, with regard to backwages, it modified the order to the extent that the employee is not entitled for the same, as there is nothing on record to prove that the employee was not gainfully employed during her non-employment period. Challenging the same, this Writ Appeal is filed.

4. Learned counsel appearing for the appellant/Management submitted that the employee, who was represented by 2nd respondent Union, was only engaged as a temporary labourer on stop gap basis, when the permanent part time sweeper was absent and she was paid wages for the work done, hence her employment cannot be construed to be a continuous employment, however, the learned Single Judge had erroneously held that she is entitled for reinstatement and regularisation. The learned Single Judge erred in accepting the evidence of 2nd respondent without taking into consideration that such appointments is only a back door entry, whereas, normal appointments are



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made through employment exchange and by following the procedure contemplated by the Bank from time to time. Stating so, he urged that in any case, she was worked only as a daily wages and was not given consolidated wages accepting her as a temporary part time sweeper and therefore, she is not at all entitled for the relief of regularisation. Therefore, he prayed to set aside the order passed by the learned Single Judge.

5. Per contra, the learned counsel appearing for the 2nd respondent submitted that the Daivanidhi worked as temporary part time sweeper in the Kellys Branch of appellant/Management for the past 15 years and on posting of a permanent part time sweeper, by transfer, her services were utilised for toilet cleaning and sundry works. She started working in the appellant/management for daily wages @ 15/- per day, and even after 15 years, she was earning @ Rs.50/- per day. Both the Labour Court and Writ Court on carefully scrutinising the oral and documentary evidence, came to the conclusion that the employee is entitled for reinstatement and regularisation in service. Hence, the same cannot be interfered with.



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Therefore, he prayed for dismissal of this writ appeal.

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6. Heard the learned counsel appearing for the Appellant/management and the learned counsel appearing for the 2nd respondent/Association and perused the materials and documentary evidence available on record.

7. Perusal of records would go to show that admittedly, Daivanidhi was working in Kellys Branch of the appellant/Managmenet for doing the cleaning work. Ex.W4 and Ex.W.5 would go to prove that even after posting of permanent Part Time Sweeper, the workman concerned had been doing the work of cleaning the premises whenever she was on leave. On appreciation of both oral and documentary evidence, the labour court rightly came to a conclusion that the appellant/management has availed the services of the workmen as a casual employee for a long period and retained her in the same position for years without giving her any privilege. Hence, in view of the above, the Labour Court has reinstated her in service and regularised her service with effect from 18.07.2014 along with all benefits as that of a regular



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employee. In the absence of any proof regarding the concerned workmen has not been gainfully employed during her non employment period, the award granting 25% of back wages was rightly set aside by the Writ Court.

8.For the foregoing discussions, We do not find any reason to interfere with the order passed by the learned Single Judge. The Writ Appeal is devoid of merits. Therefore the same stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

[J.N.B.,J.] [P.D.B.,J.]
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Index: yes/no
Internet:yes/no
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P. DHANABAL, J.**

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