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W.A.No.1277 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.1277 of 2024
and
C.M.P.No.9287 of 2024**

Zonal Manager,
Indian Bank
HRM Department,
Zonal Office,
359, Dr.Nanjappa Road,
Coimbatore - 641 018.

... 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. I. Maghee
W/o Arunjan

...Respondents

Writ Appeal filed under Clause 15 of the Letters patent against the
order passed by this Court in W.P.No.22712 of 2016 dated 18.08.2023.



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For Appellant : Mr.Jayesh B.Dolia
for M/s. Aiyar and Dolia

J U D G M E N T

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This Writ Appeal has been filed by the Bank challenging the order passed by the learned Single Judge made in W.P.No.22712 of 2016 dated 18.08.2023, by which, the Bank was directed to reinstate the 2nd respondent/workman with continuity of service and without backwages.

2. The case of the appellant is that the 2nd respondent was occasionally engaged as a daily wager for the purpose of cleaning the premises on casual and hourly basis. Her engagement was only on daily wage basis and for limited days and limited period. She was paid the wages for the engagement. She was engaged as a casual sweeper as and when required. Since she was only engaged on a stop-gap basis, there is no appointment letter and hence, the question of dismissal from service does not arise. The 2nd respondent raised Industrial Dispute and the Central Government Ministry of Labour and Employment vide order dated 01.07.2014 referred the Industrial Dispute to the 1st respondent as to whether the termination of service of the 2nd respondent is justifiable.



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The 2nd respondent sought for reinstatement with continuity of service and other benefits. The 1st respondent, by award dated 09.10.2015 directed the appellant Bank to reinstate the 2nd respondent as permanent employee along with 50% backwages. Challenging the said order, W.P.No.22712 of 2016 was filed. The Writ Court directed the appellant Bank to reinstate the 2nd respondent/workman with continuity of service and without backwages. Aggrieved by the same, the present Writ Appeal has been filed by the appellant Bank.

3. (i) Learned counsel for the appellant would state that the order of the Labour Court in reinstating the 2nd respondent as a permanent employee is beyond their scope since the reference was made only to the alleged termination of service and not for absorption as a permanent employee. The 2nd respondent was engaged only on causal /temporary basis to clean the Branch premises as and when required. The 2nd respondent was occasionally engaged for limited days and she was paid wages for the work done. She has neither produced any appointment letter nor has she produced any dismissal order. The 2nd respondent has not continuously served in the Appellant Bank for a period of 240 days in



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a calendar year.

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(ii) Learned counsel for the appellant would further state that the Bank statements furnished by the 2nd respondent that the daily wages of the 2nd respondent were deposited in Savings Bank Accounts cannot be ground to come to a conclusion that she was continuously engaged. She worked in interval basis and it cannot be construed to be a continuous employment. There is also no evidence to prove that the 2nd respondent was engaged continuously to do the cleaning work. The case of a mere casual employee cannot be compared with that of a regular employee especially, when the 2nd respondent was engaged for a short duration that too, not continuously engaged. The 1st respondent accepted the evidence of the 2nd respondent, without taking into consideration that such appointments is only a back door entry as the normal appointments are made through employment exchange and by following the procedure contemplated by the bank from time to time.

4. Heard the learned counsel for the appellant and perused the materials available on record.



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5. It is not in dispute that the 2nd respondent/workman was working as daily wage employee in the appellant Bank. She had been receiving daily wages through her savings bank account in the same Branch. She was working from 02.07.2007. Subsequently, she was terminated from service orally from 24.01.2011. It is the contention of the appellant Bank that the 2nd respondent was not in continuous employment for 240 days in a calendar year and hence, she is not entitled for reinstatement. However, the appellant Bank did not mark any documents before the Labour Court to substantiate their case.

6. The 2nd respondent examined herself as P.W.1 before the Labour Court and marked Exs.W1 to W3, the Bank statements of account maintained by the 2nd respondent with the appellant Bank. There was communication between the workman and the Bank to show that the 2nd respondent is continuously employed for 240 days in a calendar year. The amount received from the Bank was deposited by her in the bank account and the same was established for the period from 28.05.2008 to 14.12.2009. The 2nd respondent was also ready to forego the backwages,



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if she is reinstated into service. Further, the Labour Court, considering all the aspects, had ordered for reinstatement. Admittedly, the appellant Bank has not examined any witness before the Labour Court, however, the 2nd respondent has proved her case through documentary evidence viz., Exs.W1 to W3 that she was working under the appellant Bank and receiving wages continuously. Therefore, we find no infirmity or illegality in the order passed by the learned single Judge.

7. In view of the above discussion, we are not inclined to interfere with the order passed by the learned single Judge. Hence, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)

01.04.2024

Index : Yes / No
Internet : Yes
vsi

To



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