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W.A.No.2652 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

W.A.No.2652 of 2024

A.Velayudham

... Appellant

Vs.

1.The Chairman and Managing Director,
Indian Overseas Bank,
763, Anna Salai,
Chennai – 600 002.

2.The Central Government Industrial
Tribunal cum Labour Court,
Rep. by its Presiding Officer,
Shastri Bhavan, Chennai – 600 006.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent, praying to set aside the order passed in W.P.No.16852 of 2011 dated 29.11.2023 insofar as the learned Judge denied the relief of reinstatement in service, with back wages and other attendant benefits to the appellant and allow the above Writ Appeal.



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For Appellant : Mr.K.M.Ramesh,
Senior Counsel
for Mr.V.Subramani

For R1 : Mr.N.G.R.Prasad

For R2 : Labour Court

JUDGMENT

(Judgment of the Court was made by *R.SUBRAMANIAN, J.*)

Challenging the order of the Writ Court, modifying the Award of the Tribunal in granting lump sum compensation instead of reinstatement with continuity of service, the present appeal has been filed. The following facts are not in dispute:-

- (i)The appellant was engaged on a casual basis though regularly by Bank of Tamil Nadu between 1982 and 1992.
- (ii)In the year 1992, Bank of Tamil Nadu was merged with the first respondent Bank namely Indian Overseas Bank.
- (iii)After the merger, though the appellant's name was not found in the list of employees furnished by Bank of Tamil Nadu, Indian Overseas Bank continued to engage the appellant upto 1995 on a



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casual basis. In 1995, the appellant was terminated.

(iv)The appellant filed a Writ Petition in W.P.No.4283 of 1996, seeking mandamus to direct Indian Overseas Bank to reinstate him as a messenger.

(v)While dismissing the Writ Petition, this Court directed the Bank to consider the representation of the appellant herein, to provide him employment. The said representation was rejected.

(vi)The said order of rejection was challenged again by the appellant herein, by way of an Industrial Dispute and the Government refused to refer.

(vii)The refusal to refer was challenged in W.P.No.39150 of 2002 and this Court passed an order directing a reference, which resulted in I.D.No.19 of 2009.

(viii)The workman/appellant wanted modification of the terms of reference in W.P.No.688 of 2010. This Court vide order dated 19.01.2010, held that it is open to the Industrial Tribunal to go into the question and answer the grievance projected by the workman.

(ix)Thereafter, the Industrial Tribunal ordered reinstatement with all attendant benefits.



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(x) This Award of the Industrial Tribunal was challenged in W.P.No.16852 of 2011.

(xi) The Writ Court agreed with the findings of the Industrial Tribunal and refused to interfere with the same since they were not perverse. It however took note of the fact that the appellant had only 3 years of service left on the date when it passed the order i.e. on 29.11.2023 and thereby, modified the Award of the Industrial Tribunal, directing payment of a lump sum compensation of Rs.2,00,000/-. In determining the amount, the Writ Court took note of the fact that the workman was paid 17B wages @ Rs.1040/- per month and the payment of Rs.1,00,000/- as lump sum compensation pursuant to the interim order passed by this Court.

(xii) Complaining that the quantum of compensation awarded is too meagre, the workman has come up with this appeal, seeking restoration of the Award.

2. We have heard Mr.K.M.Ramesh, learned Senior Counsel appearing for Mr.V.Subramani, learned counsel for the appellant and



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Mr.Stalin, learned counsel appearing for Mr.N.G.R.Prasad, learned counsel for the first respondent.

3. Mr.K.M.Ramesh, learned Senior Counsel appearing for the appellant would vehemently contend that having held that the Award is not perverse, the Writ Court erred in modifying the Award and granting the monetary compensation. He would also contend that the monetary compensation granted for 3 years of service that was left, is too meagre and the appellant would be entitled to much more, even if minimum wages prescribed or taken into account. The learned Senior Counsel would also submit that the factum of employment was never in dispute and therefore, the Writ Court was not justified in not directing reinstatement to the appellant.

4. Contending contra, Mr.Stalin, learned counsel appearing for the first respondent/Bank would submit that all through the services of the appellant as a casual worker, he was never engaged in continuous service of the Bank. Even his employment with the predecessor i.e. Bank of Tamil Nadu, was only as a casual worker. Therefore, he cannot claim

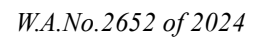


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regularisation with the successor institution. The learned counsel would also attempt to justify the monetary compensation granted by projecting the fact that 17B wages were paid pending the Writ Petition.

5. We have considered the rival submissions.

6. Considering the fact that the appellant's employment throughout was only a casual labourer, we are unable to fault the Writ Court for having modified the Award into one for monetary compensation. Admittedly, the appellant was not a regular employee, therefore, he cannot complain that he was removed from service, without following the due process of law. In any event, the Tribunal has directed reinstatement and that order has been found to be acceptable by the Writ Court. The Writ Court however took into account the advanced age of the appellant to conclude that instead of reinstatement, monetary compensation could be granted. We are therefore, unable to fault the Writ Court for having modifying the Award.



8. The Writ Court has of course taken into account the fact that 17B wages were paid. But 17B wages at Rs.1040/- per month, is too low for sustenance. The appellant had a little less than 3 years of service left on the date of the order of the Writ Court. Considering the cost of living, as well as the salary paid to regular Class IV employees of the first respondent/Bank, we find that the monetary compensation fixed at Rs.2,00,000/- is far too low. Even a Class IV employee/messenger in a Bank that too in a Nationalized Bank today gets nothing less than Rs.30,000/- to 40,000/- per month. A casual employee will get at least half of that. Therefore, we take a monthly income of Rs.20,000/- for arriving at the compensation. Admittedly, the appellant had 3 years of service left and therefore, he would be entitled to Rs.7,20,000/-, as compensation.

9. Accordingly, this Writ Appeal is partly allowed and the compensation fixed by the learned Single Judge in his order dated



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29.11.2023 passed in W.P.No.16852 of 2011, is enhanced to Rs.7,20,000/- in lieu of reinstatement and other benefits ordered by the tribunal. The first respondent/Bank is directed to pay compensation within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

[R.S.M., J]

[C.K., J]

28.11.2024

Index: Yes

Non-speaking order

Internet: Yes

Neutral Citation: Yes

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To

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