



W.P.No.12510 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.11.2023
PRONOUNCED On : 05 . 04.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Writ Petition.No.12510 of 2014
and M.P.Nos.1 & 2 of 2014

M. Manoharan

... Petitioner

Vs.

1.The Presiding Officer
Central Government Industrial Tribunal – cum-
Labour Court,
Sasthri Bhavan Haddows Road,
Chennai-600 006.

2. Chief General Manager,
State Bank of India,
Local Head Office,
16, College Road,
Chennai-600 006.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of certiorari calling for the records and papers relating to I.D.No.32 of 2011 from the files of the 1st respondent Tribunal and quash its impugned award made therein dated 23rd September, 2013 insofar as the 1st respondent has granted only lumpsum compensation of



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Rs.1,00,000/- instead of granting reinstatement in service, with continuity of service, with backwages, and all other attendant benefits.

For Petitioner : M/s.K.M.Ramesh, Senior Counsel
For R2 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

ORDER

This Writ Petition is filed challenging the award for issuance of Writ of Certiorari to quash the award dated 23.09.2013, passed by the first respondent Labour Court in I.D.No.32 of 2011.

2. The brief facts of the case as narrated in the affidavit enclosed in this Writ Petition are as follows:

The petitioner was appointed as Scavenger in the second respondent Bank on 20.09.1995, on a consolidated wages of Rs.190/- per month at Arni Branch. Prior to that, the petitioner was engaged by the said branch for scavenging work with Rs.20/- per week. From 04.04.1998, the consolidated wage of the petitioner was enhanced to Rs.440/- per month. The petitioner working hours were three to six hours per day. His pay was again revised to Rs.740/- per month with effect from 01.11.1997 on account of Seventh Bipartite Settlement dated 27.03.2000. As per the Eighth Bipartite



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Settlement, petitioner's salary was revised to Rs.1050/-. The petitioner was paid bonus from 1995 under Payment of Bonus Act, 1965. The State Bank Staff Union listed the petitioner's issue of regularizing the service of the petitioner in the agenda of their discussion with the Management. The Union has demanded converting the service of the petitioner from part time employment to full time employment with effect from 01.04.2006. However, on 30.04.2008, the second respondent Bank orally terminated the petitioner's service with effect from 01.05.2008. No notice was given to the petitioner. The procedure under Section 25-F of the Industrial Disputes Act, 1947 is not followed. The petitioner was put up 480 days of service in previous two calendar years from the date of termination. The petitioner is entitled for permanency as per the Section 3 of the Tamil Nadu Industrial Establishments (Permanent Status to Workmen) Act, 1981.

3. The petitioner has raised I.D.No.32 of 2011, before the first respondent Tribunal and after completion of enquiry, the impugned award has been passed, directing the second respondent to pay the compensation of Rs.1.00 Lakh within a period of one month, failing which to pay interest at the rate of 9% per annum. The issue raised by the petitioner to regularize the service, reinstatement with backwages was declined. Aggrieved by the



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Award dated 23.09.2013 passed by the 1st respondent Labour Court, denying the permanency of the employment and reinstatement with back wages, the petitioner has come forward with the present Writ Petition.

4. A detailed counter affidavit has been filed on behalf of the 2nd respondent bank, wherein, it has been stated that the petitioner was engaged clean the toilet of the Arni Branch and the duration of such work in a day was for 30 minutes. Apart from cleaning the toilet, he used bring water. Though there were part time employees in the service of the Bank, the petitioner was not a permanent part time employee. He was a Scavenger.

5. The Petitioner made a representation to convert him from part time employee to full time employee. As he was not a part time employee and only a casual, the representation was not countenanced. However, his wage was increased from time to time. By the Circular dated 07.02.2006, the Local Head Office, Chennai of the respondent Bank advises all branches that all part time sweepers who possess the requisite qualification sponsored by the Employment Exchange, and such of those who could read and write in the vernacular language could be made as a General Attendant and such of those who were not regularized were to be discontinued. The said circular is not



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applicable to the petitioner. It was only in 2008, it came to the knowledge of the Zonal Office that the petitioner continued as a casual labour. On 30.04.2008 the Branch put an end to his service.

6. The Petitioner raised an industrial dispute claiming reinstatement as a permanent employee. The 1st respondent Labour Court has passed the Award, denying the relief sought for by the petitioner, but awarded the compensation at Rs.1,00,000/-, which was also paid to the petitioner by way of cheque and the same was also encashed by him on 28.06.2014. Further, the petitioner was gainfully employed as Security Guard in the service of CSI Bureau Facility Service (P) Ltd. Therefore, the petitioner is not entitled to the relief as sought for and hence, the 2nd respondent sought for dismissal of the writ petition.

7. Learned counsel for the petitioner has submitted that the reference from the Central Government to the first respondent Labour Court was to consider the regularization of the petitioner and thereby the first respondent Tribunal should have given finding on that. The Tribunal has not considered properly Section 25 F of the Industrial Dispute Act and reinstatement of the petitioner should have been ordered. It is also submitted that the petitioner is



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worked 13 years without any break as full time employee and since oral termination is unjust, backwages should have been ordered.

8. Learned counsel for the petitioner has relied on the decision of Hon'ble Apex Court in **BHUVNESH KUMAR DWIVEDI VS. HINDALCO INDUSTRIES LIMITED**, reported in (2014) 11 Supreme Court Cases 85, which reads as under:

“22. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under [Articles 226](#) and [227](#) of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant.”

9. The learned counsel appearing for the second respondent submitted that the petitioner never worked as full time employee, thereby, Section 25-F



of the Industrial Dispute Act does not apply. The petitioner is not entitled for permanency and the Tribunal has no jurisdiction to direct the second respondent to make the petitioner service permanent.

10. Learned counsel for the second respondent has relied on the judgment of Hon'ble Supreme Court, in Civil appeal No.6883- 6884 of 216 dated 03.10.2019 , which runs as under:

“In case any such candidates are found, then the learned Judge would take a call as to what would be the compensation to be paid to such persons as there is no question of now giving them employment.”

“Considering the long period of litigation and the number of persons affected and considering the various aspects as stated above in my opinion a sum of Rs.50,000/- to each temporary employees/respondents before the Hon'ble Supreme Court payable by the State Bank of India would meet the ends of Justice. Therefore, I direct the State Bank of India the petitioner before the Hon'ble Supreme Court to pay a sum of Rs.50,000/- to each of the respondent/temporary employees before the Hon'ble Supreme Court within a period of one month from the date of receipt of this order.”



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WEB COPY 11. Heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

12. The Tribunal on consideration of the pleadings, the first respondent Tribunal have settled the following five issues:

1. Whether the reference is bad in law?
2. Whether the Management is justified in terminating the services of the First Party?
3. Whether the First Party is entitled to reinstatement in service?
4. Whether the First Party is entitled to regularization as full time general assistant.
5. Whether the First Party is entitled to any other relief?

13. While deciding the issue Nos.1 and 4, the Tribunal held that even though the reference made by the Central Government includes regularization of the service of the regularization of the petitioner, on account of the statutory limitations of the Tribunal, question of regularization cannot be considered by the Tribunal and thereby both the



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issues decided accordingly. A reference can be made under Section 2A of the Industrial Dispute Act, for determination of Industrial Dispute in respect of discharge, dismissal, retrenchment or otherwise termination of the services of the workmen, thereby, Section 2A does not give any scope for considering the regularization of the service of the petitioner/workmen, therefore, when the jurisdiction of the Labour Court inherently lacks to consider the regularization of service of a workmen, the Tribunal cannot go ahead and decide, as to whether the workmen is entitled for making his service permanent with the second respondent. Therefore, that part of reference made to the first respondent Tribunal by the Central Government cannot be considered. Thereby, the Tribunal has rightly declined to consider the question in respect of making the petitioner's service permanent under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

14. In respect of other issues are concerned main contention of the petitioner is that he has been working as a full time worker since 1998, on consolidated wages and his service should have been made permanent . The law in respect of making permanency is very much settled. The petitioner contention is that he was working as full time basis cannot be accepted as



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even according to the contents of the claim petition, the petitioner used to extend his service for a period of three to six hours a day and the Staff Union of the Bank has also requested the second respondent Bank for converting the petitioner's services from part time to full time. Therefore, until he was terminated with effect from 01.05.2008, the petitioner was working only as part time employee. Once the petitioner was working as a part time employee, the third respondent is not under the obligation to give a notice of one month or to pay one month salary prior to termination.

15. The Labour Court has discussed extensively in respect of the Section 25 of the Industrial Dispute Act, and concluded that in case of violation of Section 25 F of the Industrial Dispute Act, it is not necessary that petitioner should be reinstated back into service.

16. Section 25 F is extracted hereunder:

*“25F. Conditions precedent to retrenchment of workmen.—
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of*

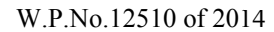


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notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

17. On plain reading of Section 25 (F), it is clear that if a workmen has worked continuously for a period of one year, he cannot be terminated unless workmen is given one month notice in writing, explaining the reasons of retrenchment and retrenchment compensation has been paid for every 15 days of average pay for every completed year, otherwise reinstatement is not valid. Once retrenchment is not valid, the workmen has to be reinstated, declaring his retirement/termination is against Section 25 F of the Industrial Dispute Act, 1947. In the case on hand, the petitioner is worked not as full time, but worked as part time.

18. Be that as it may, the petitioner himself in his evidence before the



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20. In fact, on going through the grounds of the Writ Petition, the main trust of the petitioner request is to consider for regularization his service as an Attender. According to the second respondent, the Scavenger Post have already been abolished in the second respondent Bank since 2008. Attender or Peon or the post that are available in the Bank in the last grade service, the petitioner has studied only second standard. He cannot read, write and speak and that in order to absorb the petitioner as an Attender, he must require



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basic educational qualifications which the petitioner do not posses.

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21. In view of all the above, what is emerging is that the petitioner is not willing to be reinstated as part time Scavenger. Even if, the petitioner is willing to be reinstated as such, there is no such post in the Bank as same abolished in the year 2008. He can be absorbed as an Attender or Peon, however he has no basic educational qualifications. Therefore, the only option left for the petitioner/workmen is to accept the compensation that was awarded by the first respondent Labour Court. In view of the above, there are no merits and the Writ Petition filed by the petitioner is liable to be dismissed.

22. Finally, the scope of interfering with Writ Petition is very very narrow. Unless petitioner makes out a case that the award passed by the Labour court is patently perverse and was passed either against the evidence or ignoring the evidence. Therefore, on going through the record, more particularly, the award, this Court finds that the Labour Court, has passed reasoned order in the circumstances that existed before the Court thereby the award is not perverse. Accordingly, there is no scope for this Court to intervene.



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Dr.D. NAGARJUN, J.

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23 . In the result, Writ Petition is dismissed. No costs Consequently,
connected miscellaneous petitions are closed.

05.04.2024

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Index:Yes/No

Neutral Citation: Yes/No

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