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W.A.No.265 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.07.2024

Delivered on: 10.09.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.265 of 2024
and CMP.No.1672 of 2024

The President
Indian Bank Employees Federation (BEFI)
No.302 A, ACRUX Gokul Plaza
Cuttak Road
Bhubaneswar 751 006
Orissa

...Appellant/2nd respondent

Vs

1.The Chairman and Managing Director
Indian Bank, Corporate Office
250-260, Avvai Shanmugham Salai
Chennai-600 014

2.The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court, 1st Floor, 'B' Wing
No.26, Haddows Road, Shastri Bhavan
Chennai 600 006

.... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 19.10.2023 passed in W.P.No.33542 of 2017.



W.A.No.265 of 2024

For Appellant : Mr.Balan Haridas

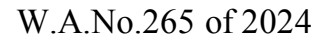
For Respondents : Mr.S.Ravindran, Senior counsel
for M/s.Rita Chandrasekaran
for M/s.Aiyar & Dolia for R1
R2-court.

JUDGMENT

Per J.NISHA BANU, J.

This Writ Appeal is filed as against the order passed by the learned Single Judge in W.P.No.33542 of 2017 dated 19.10.2023, whereby, the Award passed by the Central Government Industrial Tribunal has been quashed and the writ petition filed by the Indian Bank was allowed. Aggrieved Indian Bank Employees Federation has filed this writ appeal.

2. The learned Single Judge, while quashing the award passed by the industrial Tribunal cum Labour court, held that the common points between the two charter of demands submitted by the majority union FIBEU and that of the minority Union IBEF (appellant) and which were agreed upon earlier by the Indian bank in the earlier conciliation proceedings with the majority Union was never understood by the Conciliation Officer and that the act of the Assistant Labour Commissioner(C) in not mentioning as to what were the common issues already agreed upon in the earlier conciliation talks with the majority union is not acceptable.



4. The findings of the learned Single Judge also points out that the unwarranted observations of the Central Government Industrial Tribunal and directing the Bank to devise a scheme to regularise the temporary employees within one year and order for payment to them at the entry level of permanent sub-staff till the scheme is implemented are all without application of mind and against the Constitution Bench of the Apex Court. The learned single Judge also pointed out that the directions of the promotion of the existing sweeper as sub-staff and giving annual incentive to all are equally arbitrary. The Central Government Industrial Tribunal ought to have exercised restraint and understood that Supreme Court is not only the Constitutional Court but also the highest Court in the Country and final court of appeal. By virtue of Article 141 of the Constitution what the Supreme Court lays down is the law of the land. The Award passed by the Industrial Tribunal and Labour Court is inconsistent with the legal conclusions arrived at by the Supreme Court not only creates



W.A.No.265 of 2024

confusion but also brings in arbitrariness. In the name of individualizing justice, the rights of the numerous cannot be trampled upon to satisfy the few who were before the Central Government Industrial Tribunal.

5. The learned Single Judge also extracted Section 11 Sub Section 5 of the ID Act that A Court, Labour Court, Tribunal or National Tribunal may, if it so thinks fit, appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding before it.

6. The above findings of the learned Single Judge has been challenged in this writ appeal. The learned counsel for the appellant- Employees Union would submit that though it was claimed by the 1st Respondent Bank as if there was a settlement between the Bank and the recognized Union with regard to the issue referred for adjudication, no such settlement was produced and consequently the Tribunal held that there is no settlement of issues, which was referred for adjudication. As such, the findings of the learned Single Judge that the Bank adduced documentary evidence in the form of Circular for taking care of the demands of the employees in the Bank and that the Employees were not left in lurch, is not sustainable.



W.A.No.265 of 2024

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7. The learned counsel for the appellant Union would submit that the Tribunal held that all the employees of the Union are doing the work of Sweeping/Sub-staff for several years and that they are exploited by paying meager wages and that they are doing same work of regular sweeper/sub-staff and that same would amount to unfair labour practice under item 10 of Schedule V of the ID Act. In such circumstances, the Tribunal directed the Bank to frame scheme for absorption and other consequential benefits is in tune with the decision of the Apex Court rendered.

8. The Tribunal held that there are vacancies; that the employees are working for several years and doing the permanent nature of work, that the employees are exploited and that the Bank is indulging in unfair labour practice and that the last of the appointment was in the year 2007 by drawing the employees from the panel maintained for casual/temporary and that the mode of recruitment itself is by absorption from among casual/temporary.

9. The learned counsel for the appellant union would further submit that the finding of fact of the learned Single Judge that absorption of casual employees cannot be acceded to and thus even at the time of last settlement the matter was not considered, is against the guideline of the Government of India



W.A.No.265 of 2024

guideline.

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10. The learned counsel for the appellant union also submitted that the reasons assigned by the Tribunal is well considered one and the ratio that if an employee who had been irregularly appointed in the past and continued in service for 10 years is entitled for regularization and therefore, the learned Single Judge quashing the award passed by the Tribunal by holding that it was arbitrary is contrary to law.

11. Per contra, the learned counsel for the respondent Bank would submit that the award passed by the Tribunal with directions to frame a scheme is not in consonance with the Act. He would further submit that the order of reference made by the appropriate Government is invalid in law and hence the Tribunal should have rejected the reference.

12. Heard both sides and perused the records carefully.

13. The Tribunal after appreciating the evidence and pleadings placed before it, directed the Bank to device a scheme to regularize the temporary employees. The Tribunal had come to such a conclusion after finding that the employees are continuously working and they are being exploited by paying poor wages and that they are doing regular nature of work and that the Bank is



W.A.No.265 of 2024

engaged in unfair labour practice and therefore the employees are entitled for regularization.

14. The direction of the Tribunal in respect of promotion of sweepers as sub-staff and giving annual incentive is concerned, the said direction is passed by taking note of the evidence that already settlement in that regard taken place and that was also based on Government of India Guidelines.

15. Further, the duties and responsibilities of the employees who are doing in the position of sub-staff temporary employees are discharging the same duties as regular employee who would be assigned to do such work. The principle of "equal pay for equal work" would be applicable to all the temporary employees concerned. Therefore, the claim of the employees union viz., the appellant union for their regularization and claiming wages on par with the pay scale of regularly engaged employees, is concerned, the Tribunal has rightly directed the bank to frame a scheme in respect of regularization of temporary sub staff and sweepers. It is admitted by Bank that no regulations or scheme framed so far to regulate the temporary employees.



W.A.No.265 of 2024

16. The provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, would govern the employees who completed 480 days of continuous service in 24 calendar months. In this regard, the Tribunal given the finding that temporary sub-staff and temporary sweepers working in the Bank are doing work similar to permanent sub-staff and permanent sweepers respectively in the Bank; many of them have been working in the Bank for years without getting even minimum wages. Further the Tribunal held that they are entitled to be regularized in the service of the respondent Bank and they are entitled to be paid wages equal to that of their co-employees who are in regular service at the entry level, until the scheme is finalized and implemented. In our considered opinion, to deny regularisation or setting aside the direction to frame a scheme under the fallacious parameters is nothing but exploiting the temporary employees and denying their right to claim wages on par with the employees who are holding the same post in the similar organisations.

17. In the light of the above reasonings, we conclude that the learned Single Judge was not justified in setting aside the Award of the Tribunal by largely relying upon the judgment of the Supreme Court in the case of Umadevi.



W.A.No.265 of 2024

In the case on hand, the Tribunal directed the Bank to frame a scheme for regularisation and other aspects. As far as the said direction of the 2nd respondent-Tribunal is concerned, the Bank was directed to frame a scheme in tune with Ex.W.34, which is a scheme framed by another Bank. The learned Judge, Tribunal, need not have stated that the framing of the scheme should be in tune with Ex.W.34. The 1st respondent Bank can frame their own scheme for regularization and for promotion.

18. In the result, the impugned order passed by the learned Single Judge dated 19.10.2023 in W.P.No.33542 of 2017 is set aside and the Award passed by Central Government Industrial Tribunal cum Labour Court in I.D.No.67 of 2015 dated 21.07.2017, is restored with the modification as stated supra. Accordingly, the Writ Appeal is allowed. The award/direction of the Tribunal shall be carried out by the Respondent-Bank within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Internet:Yes/No
nvsri

(J.N.B.J.) (P.D.B.J)
10.09.2024



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W.A.No.265 of 2024

**J.NISHA BANU ,J.
and
P.DHANABAL,J.**

nvsri

To

- 1.The Chairman and Managing Director
Indian Bank, Corporate Office
250-260, Avvai Shanmugham Salai,
Chennai-600 014.
- 2.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
1st Floor, 'B' Wing,
No.26, Haddows Road,
Shastri Bhavan,
Chennai 600 006.

**Pre-delivery Judgment in
W.A.No.265 of 2024**

10.09.2024