

(2004) 08 MAD CK 0091
In the Madras High Court
Case No : Writ Petition No. 2387 of 2001

A. Santhanaraj

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Citation : (2004) 08 MAD CK 0091

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : J. Narayanamoorthy, for the Appellant; S. Vijayadharani, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Seeking a writ of mandamus, the petitioner has brought forth this petition. Affidavit in support of this petition and the counter affidavit are perused.

2. The case of the petitioner is that he joined service as temporary sub-staff on 06.10.1988 in the respondent/Bank and he continued to serve till

11.5.2000. Except without giving break in service for short period, he has been continuously working as found in the affidavit. On number of

occasions, he has worked more than 240 days. At no point of time, he is found fault with or served with any memo for charges. While so, the

services of the petitioner were terminated with effect from 11.5.2000 without assigning any reason or cause whatsoever, but with ulterior intention

of depriving of his legitimate right to be appointed in the post of peon in which he was serving temporarily in the past.

3. The petitioner raised the dispute before the Assistant Labour Commissioner

(C)-II, Government of India, Ministry of Labour, Chennai - 6

wherein the respondent appeared and gave an undertaking to employ him first in the leave vacancy and then to make him a permanent employee in

the post of peon. On that basis, the dispute was closed. But the petitioner was not given any employment as per the undertaking. Hence, the

petitioner has brought forth this petition before this Court.

4. The contention put forth by the learned counsel for the petitioner in the above lines was vehemently opposed by the learned counsel for the

respondent stating that the statement that he was working in service from 1988 is false. But, he had begun to work from the year 1996 temporarily.

He was utilised only as a temporary peon for a short period during 1996, 1997, 1998 and 1999 and even the periods, which have been mentioned

in the affidavit, are only an imagination and all the records are fabricated by the petitioner and one such record is an identity card, which was filed

along with the writ petition, where he has shown himself as a clerk. On coming to know about the same, criminal proceedings have been initiated

against him and now, in view of the ban on recruitment by the Government of India, the respondent could not be directly recruited as a peon and

apart from that, while it is a question of fact to be decided whether he was employed from 1988 or from 1996 or in any one year for more than

240 days, as put forth by him. These are all matters to be brought forth before the appropriate forum to be decided on appreciation of evidence

and without any basis whatsoever, he has come forward before this Court. Hence, the request of the petitioner has got to be rejected by this

Court.

5. After careful consideration of rival submissions made by the learned counsel on either side and on a perusal of the materials available, this Court

is of the considered opinion that the writ petition has no merits. The case of the petitioner is that he was employed as a temporary peon in the

respondent-Bank from the year 1988. But, it is controverted by the counsel for the respondent that his services are utilised for the short periods

during 1996, 1997, 1998 and 1999. Neither before nor thereafter the petitioner was in service. The learned counsel for the petitioner would submit

that even assuming that the petitioner came into service from the year 1996 onwards, he was in service for more than 240 days per year. In order

to substantiate the same, no materials are available and apart from that this is a question of fact to be decided by appropriate forum and not before the writ jurisdiction and this Court is not called upon to enter. In the instant case, the learned counsel brought to the notice of this Court the identity card alleged to have been issued to and filed by the petitioner at the time of filing of this writ petition. A perusal of the xerox copy of the alleged identity card, which was found in page 13 of the typed set would reveal that the petitioner's photograph is found and the petitioner's designation is shown as clerk of the respondent/Bank. Now it is not the case of the petitioner. According to the learned counsel for the petitioner the identity card was M. Chockalingam, J issued by the Bank. Learned counsel for the respondent brought to the notice of this Court that on coming to know about the same, criminal action has been initiated against the petitioner. In the absence of any proof that he was worked from 1988 or 1996 and that too he is working for continuous period of 240 days, there is no question of ordering regularisation of service. However, the petitioner is at liberty to move before appropriate forum for the purpose of regularisation, which is expected to under the provisions of law. The writ petition fails and the same is dismissed accordingly.