

**(2008) 12 MAD CK 0251**

**In the Madras High Court**

**Case No : Writ Petition No. 1090 of 2003**

L. Anandakumar

APPELLANT

Vs

The Presiding Officer, The Central Government Industrial  
Tribunal cum Labour Court and The Managing Director,  
Repatriate Co-operative Finance and Development Bank Ltd.

RESPONDENT

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**Date of Decision : 02-12-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226  
Industrial Disputes Act, 1947 — Section 25F

**Citation : (2008) 12 MAD CK 0251**

**Hon'ble Judges : M. Jaichandren, J**

**Bench : Single Bench**

**Advocate : M. Muthupandian, for the Appellant; A.V. Bharathi, (R2), for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent.

2. This writ petition has been filed by the petitioner praying for a writ of Certiorarified Mandamus, to quash the award of the first respondent Industrial Tribunal cum Labour Court, dated 31.1.2002, made in I.D. No. 54 of 2001, and to consequently reinstate the petitioner in the service of the second respondent Bank, with backwages, continuity of service and other attendant benefits.

3. It has been stated that the petitioner was appointed as a Senior Assistant in the second respondent Bank, in the year 1990. After serving in the Bank for nearly a year, he was terminated from service by invoking Clause-6 of the terms of the Appointment Order. The order terminating the petitioner from service by the second respondent Bank is arbitrary and a colourable exercise of power. It is also malafide in nature. The management of the second respondent Bank had not issued any notice to the petitioner before invoking Clause-6 of the

Appointment Order. No reason has been given for terminating the service of the petitioner. In spite of the petitioner carrying on the duties assigned to him, satisfactorily, the order of termination has been issued by the management of the second respondent Bank. If the second respondent Bank wanted to terminate the service of the petitioner for unsatisfactory performance of work, it should have been done only in the manner known to law, by conducting an enquiry and by giving an opportunity to the petitioner to put forth his case. However, the second respondent Bank had issued the termination order, without following the procedures prescribed by law and without following the principles of natural justice.

4. Aggrieved by the order of termination, the petitioner had approached the Conciliation Officer for a settlement of the dispute. Since the conciliation had failed, a Failure Report, dated 19.8.96, had been sent to the Government of India, Ministry of Labour. The Government of India, by an order, dated 7.3.2000, had referred the matter to the first respondent Industrial Tribunal cum Labour Court for adjudication. The first respondent Industrial Tribunal cum Labour Court, by an order, dated 31.1.2002, had dismissed the reference, without any justification. Therefore, the petitioner has filed the present writ petition before this Court, under Article 226 of the Constitution of India, challenging the award of the first respondent Industrial Tribunal cum Labour Court, dated 31.1.2002, made in I.D. No. 54 of 2001.

5. An additional counter affidavit has been filed by the second respondent denying the claims made by the petitioner. It has been stated that the petitioner was originally offered the post of Trainee Senior Assistant, by a letter, dated 26.12.91. The petitioner had accepted the offer and had given his concurrence by a letter, dated 11.1.92. Based on the acceptance of the petitioner, the second respondent Bank had sent an appointment letter, dated 22.1.92. As per the terms of the appointment letter, vide Clause No. 3, the petitioner would be on training for a period of six months. The second respondent Bank may extend or curtail the period of training at its discretion depending upon his performance. In the appointment letter, it was also stated that the second respondent Bank may, at its discretion, without giving any notice, can dispense with the service of the petitioner, during the training period, if his performance is found to be unsatisfactory. It was also specified in the appointment letter that during the training period the petitioner would be paid a consolidated monthly salary of Rs. 1200/-. The petitioner had accepted the offer and had signed the duplicate copy of the appointment letter by stating that he had accepted the terms and conditions of the appointment. Thereafter, he had reported for duty on 29.1.92. He had also executed the service bond, as required under the rules of the Bank, on 29.1.92.

6. It has been further stated that right from the beginning the performance of the petitioner was not satisfactory. The petitioner had been warned several times by the officials of the second respondent Bank to improve his performance.

However, after four months of his appointment, the second respondent Bank had reviewed the performance of the petitioner when he was working as a Trainee and it was found that his performance as a Trainee was not satisfactory. The petitioner was given a memo, dated 20.6.92, advising the petitioner to improve his efficiency and performance within the stipulated period of six months. Despite the memo issued to the petitioner, there was no improvement in his performance. Therefore, another memo, dated 26.8.92, had been issued to the petitioner informing him to improve his performance and stating that his period of training had been extended by three months, with effect from 17.8.92. However, before the completion of the extended period of three months the petitioner had gone on leave, from 26.10.92 to 22.11.92, on medical grounds, by submitting a leave application, dated 27.10.92. However, he had not obtained the prior permission of the competent authority before going on leave. Even though the leave was not sanctioned the petitioner had extended the leave from 23.11.92 to 20.11.92, vide his leave application, dated 23.11.92. Again by a letter, dated 21.12.92, he had extended his leave from 21.12.92 to 7.1.93. Even thereafter, he had not joined in duty, as he had extended the leave till 14.2.93, vide his letter, dated 18.1.93. In effect, the petitioner had been on leave, unauthorisedly, from 26.10.92 till 14.2.93. Since the petitioner had not completed the extended training period of three months, the second respondent Bank had dispensed with his service, invoking Clause No. 6 of the appointment letter, considering his poor performance and his long absence from duty.

7. It has been further stated that the contention of the petitioner that he was a probationer is denied. In fact, he was only a Trainee. It has been further stated, on behalf of the second respondent Bank, that the words 'probation' and 'probationer' have been mistakenly used in the counter affidavit filed on behalf of the second respondent, on 28.3.2008, to describe the status of the petitioner. Therefore, an additional counter affidavit had been filed on behalf of the second respondent rectifying the inadvertent mistakes committed in the counter affidavit filed earlier. Since the petitioner continued to be a Trainee, Section 25-F of the Industrial Disputes Act, 1947, cannot be applied to the case of the petitioner. The first respondent Industrial Tribunal cum Labour Court had misconstrued the status of the petitioner in coming to its conclusions holding that the termination of the service of the petitioner is illegal, as it has been done without following the procedures prescribed u/s 25-F of the Industrial Disputes Act, 1947.

8. The learned Counsel for the petitioner had submitted that the award passed by the first respondent Industrial Tribunal cum Labour Court, is arbitrary and violative of Article 14 of the Constitution of India. The claim of the second respondent Bank that the performance of the petitioner was not satisfactory is disputed. Therefore, the first respondent Industrial Tribunal cum Labour Court was not correct in proceeding as if the performance had not been satisfactory, even though there was no proof to establish the same. The first respondent Industrial Tribunal cum Labour Court had committed an error in holding that the termination order issued by the second respondent Bank, terminating the service

of the petitioner, did not attach any stigma to the petitioner. Further, the order of termination issued against the petitioner is punitive in nature. Even if it had been found that the petitioner was only a probationer, an enquiry ought to have been conducted by the second respondent Bank before his services were terminated by the second respondent Bank. The first respondent Industrial Tribunal cum Labour Court had failed to correctly appreciate Ex.M.5, by which the training period of the petitioner had been extended by three months, with effect from 17.8.92. The three months period would have expired, on 16.11.92. Therefore, from 17.11.92, the petitioner could not have continued as a Trainee. Further, the first respondent Industrial Tribunal cum Labour Court had also erred in not coming to the conclusion that an enquiry ought to have been conducted by the second respondent Bank even if the petitioner had continued only as a Trainee. Since the petitioner was not a Trainee from 17.11.92, Section 25-F of the Industrial Disputes Act, 1947, would be applicable to him. Since the procedures prescribed therein had not been followed by the second respondent Bank before terminating the services of the petitioner, the termination order is arbitrary and illegal. Therefore, the award of the first respondent Industrial Tribunal cum Labour Court, dated 31.1.2002, made in I.D. No. 54 of 2001, holding that the termination of the petitioner from service, with effect from 19.1.93, by the management of the second respondent Bank, is legal and justified, cannot be held to be valid.

9. The learned Counsel appearing on behalf of the second respondent Bank had contended that the petitioner had continued to be a Trainee even after 16.11.92 and therefore, the provisions of Section 25-F of the Industrial Disputes Act, 1947, is not applicable to the petitioner. Since the petitioner was neither a probationer nor a confirmed employee his services were terminated, due to his unsatisfactory performance, without issuing a show cause notice and without conducting an enquiry. The petitioner had continued to be a Trainee, as borne out from the records of the second respondent Bank. In such circumstances, the first respondent Industrial Tribunal cum Labour Court was right in holding that the termination of the petitioner from service, from 19.1.93, by the management of the second respondent Bank, is not liable to be set aside. Therefore, the present writ petition filed by the petitioner is liable to be dismissed, as devoid of merits.

10. In view of the contentions raised by the learned Counsels appearing on behalf of the parties concerned and view of the averments made in the affidavit filed in support of the petitioner and the counter affidavit filed on behalf of the second respondent and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason for this Court to set aside the award of the first respondent Industrial Tribunal cum Labour Court, dated 31.1.2002, made in I.D. No. 54 of 2001, as illegal and void.

11. It is seen that the first respondent Industrial Tribunal cum Labour Court had rightly come to the conclusion that Section 25-F of the Industrial Disputes Act, 1947, would not be applicable to the case of the petitioner since he had not been

confirmed in service as a regular employee. It cannot be said that the petitioner had completed his training period for being confirmed in service. The second respondent Bank, having found the performance of the petitioner to be unsatisfactory during his training period, had terminated the services of the petitioner. In such circumstances, it cannot be held that such termination is arbitrary or illegal, even though no enquiry had been conducted before the said order had been passed. In such circumstances, Section 25-F of the Industrial Disputes Act, 1947, would not be applicable to the petitioner. Even though the petitioner had been a Trainee for an initial period of six months, in accordance with Clause-3 of the terms and conditions of the Order of Appointment, dated 22.1.92, his training period had been further extended. From Clause-6 of the terms and conditions of appointment, it is seen that the second respondent Bank may, at its discretion, without giving any notice, dispense with the services of the petitioner during his training period, if his performance was found to be unsatisfactory. In Clause-7 of the terms and conditions of appointment, it has been stated that on completion of the training period, satisfactorily, the petitioner would be on probation for a period of one year. The Bank may extend the period of probation depending on the performance of the petitioner, in its discretion. According to Clause-11 of the terms and conditions of appointment, the petitioner would be confirmed in the services of the Bank, if he was found to be suitable for the post at the end of the probationary period. Otherwise, his services would be dispensed with and the second respondent Bank would not be responsible or liable, in any manner, for the consequences of such termination of service. In Clause-12 of the terms and conditions it has been stated that, during the period of probation, the Bank may at its absolute discretion terminate the services of the petitioner by giving 15 days notice or salary in lieu thereof, if he was found unsuitable for service.

12. It is not in dispute that the petitioner had not been confirmed in service as a regular employee after his satisfactory completion of the training period or the probationary period. Even if the petitioner could be considered as a probationer, the second respondent Bank could have terminated his service by issuing 15 days notice to the petitioner, according to Clause-12 of the terms and conditions of his appointment. Since the petitioner has not been in a position to show that he was a probationer, at the relevant point of time, after completing his training, satisfactorily, it cannot be held that the procedures prescribed, u/s 25-F of the Industrial Disputes Act, 1947, ought to have been followed by the second respondent Bank before terminating the services of the petitioner. In such circumstances, this Court is not inclined to interfere with the award of the first respondent Industrial Tribunal cum Labour Court, dated 31.1.2002, made in I.D. No. 54 of 2001. Hence, the writ petition stand dismissed. No costs.