

(1998) 12 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 17758 of 1990

Ravi E. and Others

APPELLANT

Vs

Chairman, Lakshmi Vilas Bank Ltd. and Another

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2, 25B(1), 25B(2), 9A

Citation : (2000) 3 LLJ 1355 : (2000) WritLR 292

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—In this Writ Petition, the petitioners 1 to 6 have sought for issue of writ of certiorarified mandamus by calling for

the records relating to the common award passed by the Industrial Tribunal, Madras, the second respondent herein, in I.D.Nos. 74, 78 and 86 of

1986 and I.D.Nos. 1, 9 and 14 of 1987 and to quash the same and direct the reinstatement of all the 6 petitioners with back wages, continuity of

services and other attendant benefits.

2. The petitioners before the Industrial Tribunal, Madras claimed as follows:

The petitioners entered into service under the first bank as sub-staffs on (1) May 7, 1979, (2) November 9, 1979, (3) November 23, 1979, (4)

March 8, 1982, (5) January 13, 1983, (6) February 7, 1980, respectively. When they were taken into service, the minimum educational

qualification prescribed by the first respondent-bank was S. S. L. C. Since they were qualified, as they had passed S.S.L.C., they were called for

the interview. They attended the interview and also got through in the written

examination. After medical examination, they were taken into service of the first respondent-bank. The petitioners were permitted to work continuously as temporary staff in the place of leave vacancy of the permanent staff and all of them were permitted to work from 1979 to 1985. Suddenly, by oral order, they were terminated by stating that the workers who failed in 8th standard alone would be retained as sub-staff and others would be terminated from service. Since the petitioners were all qualified by having passed S.S.L. C. as per the earlier circular issued in 1975, suddenly they became disqualified in view of the fresh circular issued on August 6, 1985 stating that the 8th standard failed candidate alone would be qualified for the post of sub-staff. Admittedly, Section 9-A notice was not issued to the petitioners prior to the reduction of educational qualification. They not only worked continuously for a number of years but also worked continuously for more than 240 days in a block of 12 months. Therefore, the termination of the service of the petitioners under oral orders is not proper and legal.

3. The first respondent-bank filed a counter statement contending as follows:

The petitioners are only temporary sub-staff who were engaged for a few days in a year. No temporary sub-staff was engaged for a period of more than 240 days continuously in a block of 12 calendar months. In 1985, a Board Meeting was held. In the said meeting, it was decided to reduce the qualification for temporary sub-staff from S.S.L.C passed to 8th Standard failed. In pursuance of the said resolution, the respondent-bank subsequently engaged only persons with a qualification of 8th standard failed. The petitioners were not in continuous service within the meaning of Section 25-B of the Industrial Disputes Act. Hence, their services were dispensed with and as such, the same would not amount to termination.

4. Since the industrial disputes raised by the petitioners are the same, the second respondent Industrial Tribunal framed common issue and recorded evidence in a single trial and passed the common award dated November 13, 1989 holding that the petitioners were not entitled to any relief, since the action of the management in terminating the services of the petitioner is justified.

5. Being aggrieved over this award, the petitioners have filed this writ petition.

6. Ms. Geetha, the learned counsel appearing for the petitioners, would contend that the learned Presiding Officer, Industrial Tribunal, Madras

committed a grave error in coming to the conclusion that the petitioners have not put in any continuous service as contemplated u/s 25-B of the

Industrial Disputes Act. It is also vehemently contended by the learned counsel for the petitioner though there are materials to show that there is

unfair labour practice adopted by the first respondent-bank, the second respondent-Tribunal had totally ignored to consider the same, resulting in

the miscarriage of justice, which warrants the interference of this Court.

7. Mr. Karthik, the learned counsel appearing for the first respondent-bank, representing T.S.Gopalan & Co., in support and justification of the

award passed by the second respondent and also on the strength of the counter affidavit filed before this Court, would contend that the reasonings

given in the award passed by the second respondent are proper and they do not call for any interference, especially when the Tribunal has dealt

with every one of the factual aspects and has given a clear finding in favour of the management, on consideration of all materials placed before the

Tribunal on the correct perspective.

8. The counsel for both the parties have cited the following judgments with reference to the powers of this Court under Article 226 of the

Constitution in the matter of interference with the factual findings given by the Tribunal and also to substantiate their contentions urged before this

Court. Those decisions are as follows:

(1) Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, ;

(2) N. Mohandas v. Southern Industrial Polymers (P) Ltd., Ranipet and Ors. 1996 III LLJ (Suppl) 518 (Mad);

(3) Mohan Lal v. Management Bharat Electronics Ltd. 1981 LIC 806;

(4) Central Bank of India Vs. S. Satyam and others, ;

(5) A. V.Krishnamurthy v. Govt. of Tamil Nadu 1985 I LLN 165;

(6) Anil Kumar Vs. Presiding Officer and Others, ;

(7) H.D. Singh Vs. Reserve Bank of India and Others, .

9. I have given my anxious thought to the respective submissions made by the counsel on either side. I have also gone through the impugned award

as well as other records including depositions and exhibits.

10. It is true, as pointed out by Mr. Karthik, learned counsel appearing for the respondent, that the High Court in the proceedings under Article

226 of the Constitution, does not act as an appellate authority, but exercises with the limitation of judicial review to correct the errors of law or

procedural errors leading to manifest injustice or violation of the principles of natural justice. In other words, the High Court cannot embark upon

fresh evaluation of evidence, as if it were the Court of first appeal, since judicial review is not akin to adjudication of cases on merits as an

appellate authority.

11. It is well settled that where the findings of the Tribunal are based on some evidence, which is relevant and sufficiently proves and the evidence

relied upon reasonably supports the truth, it is not the function of the High Court in a petition under Article 226 of the Constitution of India to

review the evidence and to arrive at an independent finding on the evidence. The Tribunal is the sole Judge of facts. If there is some legal evidence

on which the findings can be based, the adequacy or reliability of that evidence is not a matter, which can be permitted to be canvassed before this

Court in proceedings under Article 226 of the Constitution of India.

12. It is equally well established rule that though this Court shall not interfere in writ jurisdiction by assessing the factual materials once again, as if it

were an appellate Court, yet, if this Court finds that there is a breach of the well accepted principles governing the Tribunal's enquiry, it can

definitely interfere with that. This Court under Article 226 of the Constitution of India has jurisdiction to interfere when the conclusion of the

Tribunal is not supported by any acceptable evidence at all. The proceedings before the Tribunal are also judicial in character and the conclusion to

be reached by such Tribunal shall be on the basis of the acceptable evidence. Such evidence must be with some degree of some definiteness.

13. Similarly, if any material evidence has been overlooked, definitely, this Court could interfere with in order to set right the injustice caused.

14. Where the Tribunal's enquiry affects the livelihood of a person, it has to be held, in accordance with the principles of natural justice, the

minimum expectation is that the award shall be a reasonable one. This Court may not enter into the adequacy or sufficiency of evidence. But,

where the evidence is annexed to an award and no co-relation is established

between the two showing application of mind, then this Court is constrained to hold that the order of termination based on such proceeding, disclosing non-application of mind would be unsustainable.

15. In the light of the principles enunciated by this Court as well as the Apex Court, I have to see whether the impugned award is a reasoned one which confirmed such termination holding that it is justified.

16. The counsel for both the parties took me through the award and the relevant deposition and documents and submitted at length. On careful consideration of those submissions and on careful scrutiny of the records in the instant case, I am of the view that the second respondent-Tribunal has failed to consider various important materials which would be highly relevant for deciding the issue raised in this case.

17. Firstly, let me take Section 25-B(2) of the Industrial Disputes Act. According to the 1 Section, it has to be established that the workman was in continuous service for 240 days in a block of 12 months. In order to establish this, W.W. 1 and W.W.2 have given oral evidence that they have worked for 240 2 days in calendar months. They also marked the statements, giving the details of the working days. In order to refute this piece of oral evidence, the first respondent-bank also produced a statement of papers to prove that ^ the petitioners have not worked continuously for about 240 days in a year or in a block of 12 calendar months.

18. According to the petitioners, the statement filed by the management is not true. Even assuming that the said statement is true, if Saturdays and Sundays are included, it would show that the petitioners have worked for 240 days.

19. However, the second respondent Tribunal held that Saturdays and Sundays cannot be included and that therefore, the petitioners have not worked for 240 days in a continuous period of 12 months by taking into consideration of the statement filed by the first respondent in preference to the oral and documentary evidence adduced by the petitioners.

20. The question whether the inclusion of Saturdays and Sundays is permissible or not, has been clearly dealt with and answered by the Apex

Court in H.D. Singh v. Reserve Bank of India (supra). Though this judgment has been referred to in the award passed by the Tribunal, in my view,

the Tribunal has not understood the basic concept, as propounded by the Apex

Court with regard to the inclusion of those Saturdays and Sundays for calculating the 240 days.

21. Whatever it is, I am not able to understand as to why the Tribunal has not gone into the aspect whether the statements filed by the management in the form of papersheets are supported by original registers.

22: The Apex Court in the decision in H.D. Singh v. Reserve Bank of India (supra) would observe that in the absence of production of original

documents, the statements made by the workmen have to be accepted. Fortunately, in the instant case, both parties would admit that Attendance

Registers were maintained from 1983 onwards and the same were available.

When such being the case, there is no reason as to why those registers were not produced before the Tribunal by the management in support of the statements.

23. In fact, the petitioners have filed an affidavit before this Court stating that they filed petition for summoning those documents before the

Tribunal. Even then, the registers were not produced for perusal by the Tribunal.

24. In this context, the observation of the Apex Court in the case supra is quite relevant, which is as follows:

The appellant charged the Bank with having tampered with the records. To contradict the appellant's case, the first respondent-bank did not

produce its records. The appellant wanted the relevant records to be filed but they were not produced. In the absence of any evidence to the

contrary, we have necessarily to draw the inference that the appellant's case that he had worked for more than 240 days from July, 1975 to July,

1976 is true.

25. Therefore, it is clear that the Tribunal has failed in its duty in summoning those original registers which were admittedly available with the

respondent-bank or to draw the adverse inference in favour of the petitioners, as laid down by the Apex Court. If it is found, on perusal of those

records, the petitioners have worked for a period of 240 days in a block of 12 months, then it is clear that the petitioners are entitled to the relief

sought for.

26. There is yet another aspect of the matter, as pointed out by the learned counsel for the petitioners. There is no dispute that the petitioners have

worked for a long number of years. As stated earlier, the first three petitioners have joined in the service of the bank in the year 1979, the 4th

petitioner joined in 1982, the 5th petitioner joined in 1983 and the 6th petitioner joined in 1980 and all of them have been terminated on August 6,

1985. According to the learned counsel for the petitioners, the petitioners are qualified to seek the relief under the Industrial Disputes Act, since

they would come u/s 25-B(1), irrespective of the proof that the petitioners have worked for 240 days in a period of one year, as contemplated u/s

25-B(2) of the Act.

27. On perusal of the relevant Sections of the Industrial Disputes Act, it is obvious, that before a workman complains of a retrenchment being not

in conciliation, u/s 25-F. he has to show that he has been in continuous service under the employer who has retrenched him from service. Section

25-B(1) reads as under: -

A workman shall be said to be in continuous service for a period if he is, for that period in uninterrupted service, including service which may be

interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is

not due to any fault on the part of the workman.

28. Thus, Sub-section (1) of Section 25-B would introduce a deeming fiction in that where workman is in service for a certain period, he is

deemed to be in continuous service for that period, even, if the service is interrupted on account of sickness or authorised leave or an accident or a

strike which is not illegal or a lockout or a cessation of work would certainly interrupt the service. These interruptions have to be ignored to treat

the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which would be deemed to be

uninterrupted would be continuous service for the period for which the workman has been in service. Thus, Sub-section (1) mandates that

interruptions therein indicated are to be ignored thereby that on account of such cessation and interrupted service shall be deemed to be

uninterrupted and such uninterrupted service shall be deemed to be continuous service.

29. As pointed out by the learned counsel for the petitioners, the Tribunal had considered only Section 25-B(2) with reference to the calculation of

240 days in a year, but failed to consider the question as to whether it would come u/s 25-B(1).

30. The fact remains that both W. W. 1 and W.W.2 would specifically state in their deposition that their cessation of work in between all these

years is not due to the fault of them, but only at the instance of the management. W.W. 1 would say:

(Vernacular omitted)

31. In the light of these materials, the Tribunal ought to have considered whether Section 25-B(1) would be applicable to the petitioners or not.

The non-consideration of these materials, in my view, would make it clear that the award was passed without application of mind.

32. One more aspect has to be considered at this juncture. The counsel for the petitioners would submit that the management has adopted an

unfair labour practice by issuing circulars to see that the petitioners being sub-staff would not be in service continuously for 90 days.

33. On careful scrutiny of the circulars and other documents and the evidence of M. W. 1, it is revealed that the management issued several

circulars on various dates to various branches that the casual labourers should not be engaged for more than 30 days at a stretch and 90 days in a

year. In one of the circulars dated November 6, 1985, the management would warn about violation of the circulars and instructions by allowing the

sub-staff to work continuously. The relevant words are these:

We learn that some branches are utilising the services of temporary peons continuously without any break violating our circular instructions. Any

violation in this regard will not only be viewed seriously but such Managers will be held personally liable for all consequences arising out of such

transgression.

The Chief Manager examined as M.W. 1 on behalf of the first respondent also would admit this in clear terms. This is as follows:

(Vernacular omitted).

34. The word unfair labour practice is defined in Section 2(ra) of the Industrial Disputes Act which reads as under:

Unfair labour practice"" means any of the practices specified in the Fifth Schedule;

Item 10 of 5th Schedule is as follows:

To employ workmen as badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

35. So, in the light of this definition of unfair labour practice, it is clear that there were circulars by the management, as admitted by the Manager of the Bank. The relevant observation of the Apex Court in *H. D. Singh v. Reserve Bank of India* (supra) is as follows:

The confidential circular directing the officers that workman like the appellant should not be engaged continuously but should as far as possible, be offered work on rotation basis and the case that the appellant is a badli worker have to be characterised as unfair labour practice. The 5th Schedule to the Industrial Disputes Act contains a list of unfair labour practices as defined in Section 2(ra).

We have no option but to observe that the I bank, in this case, had indulged in methods amounting to unfair labour practice. The plea that the appellant was a badli worker also has to fail.

36. The above discussion would clearly reveal that the Tribunal has ignored to consider these aspects on the basis of the materials placed on record and failed to come to the proper conclusion in the light of the decisions of the Apex Court referred to above.

37. It is also to be noticed that the Tribunal itself would hold that when there is reduction of educational qualification, Section 9-A notice ought to have been issued by the management, but the management failed to do so. In such an event, the Tribunal would not say that the petitioners are not entitled to the relief sought for, as the termination of the petitioners from service by the management was just and proper.

38. In view of what is stated above, I deem it fit to remand the matter to the Tribunal to consider these aspects.

39. In the result, the Writ Petition is allowed and the impugned award of the Tribunal is set aside. The Tribunal is directed to restore the proceeding on file and hear the parties by giving an opportunity to them for adducing additional evidence if any, and thereafter, to decide the matter in accordance with law in the light of the materials available on record and on the basis of the principles propounded by this Court as well as the Apex Court. There is no order as to costs.