
(2016) 12 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 1621 of 2003

S. Kirthivasan

APPELLANT

Vs

The Presiding Officer

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 CLR 193

Hon'ble Judges : Mr. P.N. Prakash, J.

Bench : Single Bench

Advocate : Mr. V. Govardhanen for M/s. Row & Reddy, Advocates, for the Petitioner; Mr. S. Jayaraman for M/s. S. Jayaraman, Advocates, for the Respondent No. 2

Final Decision : Allowed

Judgement

P.N. Prakash, J.—Heard.

2. The matter arises under the Industrial Disputes Act, 1947 (for short I.D. Act). The petitioner is a workman(hereinafter referred to as workman) employed by the 2nd Respondent Bank(hereinafter referred to as the Management). Aggrieved by the Award passed by the Central Government Industrial Tribunal cum Labour Court, Chennai made in I.D. No. 535 of 2001 dated 24.7.2002 in declining to grant him any relief, the writ petition came to be filed. The W.P. was admitted on 21.1.2003. The Application for an interim direction made in W.P.M.P. No. 2034 of 2003 for grant of a job of permanent messenger pending disposal of the W.P. was dismissed by this court on 21.1.2003.

3. Though the matter was listed as early as 18.6.2009 for final disposal, there has been no representation for several hearings. When the matter came up on 26.8.2010, it was represented that a similar issue answered by a division bench was pending appeal before the Supreme Court. On this representation, the learned Judge was convinced to post the matter after the disposal of the said SLP

pending before the Supreme Court. Thus the matter was wantonly delayed for over 7 years. Subsequently it was found out that the matter pending in the Supreme Court has no relevance to the case on hand and hence the W.P. was taken up for final disposal.

4. The workman (petitioner) raised an industrial dispute by his letter dated 11.4.1994 before the Assistant Labour Commissioner Central-II alleging that he was terminated from service w.e.f 3.6.1993. On notice from the Conciliation Officer, the 2nd Respondent Bank filed their remarks dated 30.8.1994. As there could not be any mediation between the parties, the Conciliation Officer sent his failure report to the Central Govt. dated 21.9.1994. Since there was no decision taken by the central govt., the workman sent two reminders to them reminding them about the necessity to pass orders. As there was no reply, he filed a writ petition before this court being W.P.No. 15227 of 1995 and sought for a direction to the government. The W.P. was disposed of on 24.10.1998 directing the central govt. to refer the dispute for adjudication. Accordingly the Govt. of India by their order in reference no. L-12012/258/94-IR (B-I) dated 02.12.98 referred the dispute for adjudication by the Industrial Tribunal at Chennai.

5. The Industrial Tribunal at Chennai took up the dispute as I.D.No. 140 of 1998 and issued a notice to the parties. The workman filed his claim statement dated 24.7.1999. The 2nd Respondent Bank filed their counter statement dated 17.7.2000. In the meanwhile, since the central govt. constituted the Central Govt. Industrial Tribunal cum Labour Court at Chennai (1st Respondent), all the cases pending before the State Tribunal were transferred to the 1st Respondent. On such transfer, the dispute was renumbered as I.D.535 of 2001 and fresh notice was issued to parties. The workman filed a reply statement before the Tribunal dated 17.9.2001.

6. Before the Tribunal on behalf of the workman 6 documents were filed and they were marked as Exhibits W1 to W6. On behalf of the 2nd Respondent Bank, documents were filed which were the extracts from the establishment charges register, the attendance register and cheque account register. They were marked as Exhibits M1 series, M2 series and M3 series. Copies of two settlements between the bank and the majority union dated 17.11.87 and July 88 were marked as Exhibits M4 and M5. No oral evidence was let in by the parties.

7. The Tribunal on the basis of the materials placed before it and upon hearing the parties attempted to answer the order of reference issued by the Central Govt. which is as follows:-

"Whether the action of the management of State Bank of India in terminating the services of Sri Krithivasan w.e.f 3.6.93 is justified? If not to what relief he is entitled?"

The Tribunal held that the workman was engaged as a messenger in its Pudupattinam Branch initially and thereafter, at their Thiruvavur branch subsequently. It recorded the statement of the management that the workman

had manoeuvred to be engaged in Myiladuthurai Branch in 1980 which was in complete violation of the circular issued by the bank dated 31.12.1972. The Tribunal also found that the workman was called for an interview on 26.7.1989 pursuant to the settlement dated 17.11.1987 (Ex.M4) and was interviewed on 26.7.1989. But since the workman had passed S.S.L.C. examination held during March 1980, he was disqualified even when he was engaged initially in 1993 and he could not be included in the panel drawn by the bank. The Tribunal found that as per Ex.W2 the workman had worked in the Pudupattinam branch as a temporary substitute messenger for 97 days in 1983. The Tribunal also found that as per Ex.M4 settlement, more particularly para 11.1 that those who did not fulfil the prescribed eligibility criteria on the date of initial appointment will not be given a chance for permanent appointment. The eligibility criteria for the post of messenger was they should have passed 8th std and should not have passed the matriculation examination as in the case of the workman. The workman was therefore not selected by the Bank since he was a matriculate in 1980, 3 year prior to his initial appointment. The workman was hence disqualified.

8. The workman placed reliance on the judgment of the Supreme Court reported in 2000(2)SCC 606, Mohd.Riazul Usman Gani and Ors.v. District & Sessions Judge, Nagpur and Ors. to contend that having a higher educational qualification than the one prescribed cannot be considered as a disqualification. But the Tribunal got over the said judgment by relying upon the following passage found in the said judgment which is as follows:-

"laying of criteria when there are large number of candidates is permissible, but that criteria must be reasonable and not arbitrary having regard to the post for which recruitment is made. A criteria which has the effect of denying a candidate is to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. However, this ruling has to be confined to the facts of the present case and should not be taken to be a rule of universal application."

Thereafter, the Tribunal held that the settlement between the bank and the majority union marked as Ex.M4 and M5 is binding on the parties in respect of appointments and no other claim can be made de-hors the settlement. For this reliance was placed upon the judgment of the Patna High court reported in (2002) (1) LLJ 952, Harishankar Kumar and Others and State Bank of India and Others and between State Bank of India and Others v. Arun Kumar Verma and Arun Kumar Verma & Others. Though it was contended by the workman that he was not a member of the federation which entered into a settlement and since the settlements were entered into section 18(1) of the I.D. Act, it is not binding on him.

9. However in this dispute the issue is not whether the non-selection of the workman in the interview pursuant to the settlement signed between the federation and the management. On the contrary, as the terms of reference issued by the Govt. of India under section 10(1) of the I.D. Act will clearly show

that whether the workman's termination w.e.f. 3.6.1993 is justified and if not to what relief he is entitled to. As it has been held by the Supreme Court in its decision in Tata Iron and Steel Company Limited v. State of Jharkhand and Ors. reported in (2014)(1) SCC 536, a Tribunal is confined to the order of reference and it may go into incidental issues. The following passages found in the said judgment may be usefully extracted below:

"Para 13 : We would hasten to add that, though the jurisdiction of the Tribunal is confined to the terms of reference, but at the same time it is empowered to go into the incidental issues.

Para 18 : The Industrial Tribunal/Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same. This is the view taken by this Court in number of cases including in the case of National Engineering Industries Limited v. State of Rajasthan & Ors. (2000) (1) SCC 371.

Para 19 : It is for this reason that it becomes the bounden duty of the appropriate Government to make the reference appropriately which is reflective of the real/exact nature of "dispute" between the parties"

10. The 1st Respondent Tribunal unfortunately did not keep these parameters in mind and went on to answer an issue which was not referred to it. Therefore I am not inclined to go into the question as to whether for the possession of a higher qualification, a candidate can be non-suited based upon the settlement between the majority union and the bank management. On the contrary, it is brought to the notice of this court that a division bench of this court by its common judgment dated 30.4.2009, State Bank of India Employees Union v. The Central Government Industrial Tribunal cum Labour Court & Ors. disregarded the settlement as not binding on the workman and also set aside a common award passed by the Tribunal in denying relief to temporary employees who are kept in the waiting list for being enrolled as a regular workman. Anyhow I am not called upon to decide a similar issue in this case.

11. The real dispute between the parties is that the workman claimed that he was kept as a temporary employee in different branches and in para 3 of his claim statement, he had averred as follows:

Branch

No. of days

Year

a)Pudupattinam

97

1983

b)Thiruvavarur

115

1985-86

c)Myladuthurai

541

1990-93

Between September 1991 and July 1992, the petitioner had worked for 250 days.

In para 8, he had averred as follows:

"But when nothing came out, the petitioner written a letter dated 28.3.94 to the respondent Bank stating that he had worked for a number of days over a period of years and had also been called for interviews twice for permanent absorption as Messenger and that at the Mayiladuthurai Branch he had completed more than 240 days during 11 calendar months."

12. In answering these allegations, in paras 11 and 16 it was stated as follows:

"Para 11.This respondent submits that the petitioner"s allegation that he had worked for 541 days in the Mayiladuthurai Branch of the Bank between 1990 and 1993 is not admitted by the respondents herein and they put the petitioner to strict proof of the aforesaid allegation of the petitioner.

Para 16 : The workman worked lastly on 2nd June 1993. Applying the same the workman has worked only for 153 days as indicated below:

1992

:

July

:

21

August

:

21

September

:

14

December 1993:

:

2

January

:

13

February

:

22

March

:

19

April

:

22

May

:

17

June

:

2

153

13. The workman filed a reply statement and in paras 4 and 6 had averred as follows:

"Para 4 : The petitioner submits that M.S. Natarajan, the then Chief Manager of the Bank has given a certificate which was handed over to the petitioner mentioning the number of days worked between Sept. 1990 to June 1993 continuously. I was paid wages by way of bearer cheque. The petitioner used to sign the register maintained for temporary employees. If the records relating to me namely, Bankers Cheque Register, Establishment Salary Register, maintained for the permanent staff in which names of the temporary staff are also produced that will stand as proof of my continuous service with the respondent bank.

Para 6: From Sept. 1991 to June 1993, the employee had worked 382 days excluding Sundays and Bank Holidays. In the aforesaid 22 months, there are 92

Sundays apart from bank holidays like National and Festival holidays. If these holidays are included, the employee had completed more than 480 days in a period of less than 24 calendar months. A copy of the certificate issued by the Mayiladuthurai Branch is enclosed along with this reply and the same maybe read as part and parcel of the reply."

A copy of the certificate found enclosed in page 32 of the typed set filed before this court.

For this reply statement no further rejoinder was filed by the management. On the contrary, the Tribunal merely accepted the stand of the management in the counter that the employment at Myladuthurai was manoeuvred completely by violating the circular of the management issued pursuant to Ex.M-4. However in para 8 of the impugned award, the Tribunal recorded the following finding while rejecting the xerox copy of the document dated 10.11.1992 and it is as follows:

"It is the specific averment in the Respondent's Counter statement that the Petitioner is put to strict proof of his averment in the Claim Statement that he had worked for 541days in Myladuthurai branch of the bank between 1990 and 1993. Though a Xerox copy of the document dated 10.11.92 said to be a certificate issued by Chief Manager of Myladuthurai branch in favour of the petitioner, the same has not been provide by the petitioner with acceptable, legal, supportive oral or documentary evidence."

(emphasis added)

14. And again it observed as follows:

"Here in this case, the Petitioner though produced a Xerox copy of the as the certificate issued by the Chief Manager of Myladuthurai branch as stated earlier it has not been proved."

15. While the Tribunal had accepted Xerox copies of several documents as being marked as can be seen from W-1 to W-6 and M-4 and M-5, it is curious to note that it did not mark the certificate given by no less a person than the Chief Manager of Myladuthurai Branch in favour of the workman. On the other hand, it was eager to reject the said certificate on the ground the same was not proved in the manner known to law. This takes us to the question as to how a document should be proved in the trial before an adjudicating forum constituted under the I.D.Act. In this case, no oral evidence was let in by the parties. It is only in the counter statement the bank management averred that the certificate was manoeuvred.

16. Admittedly the provisions of the Indian Evidence Act are not strictly applicable to the proceedings before the forums created under the I.D. Act. In addition to that Rule 15 of the Industrial Disputes (Central) Rules, 1957 stipulates as to what kind of evidence that can be let in.

"Evidence : A Board, Court, Labour Court, Tribunal, or National Tribunal or an

Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit."

17. If the said rule is applied, then the Tribunal had failed to accept the certificate produced by the workman on the plea that the management had contended that it was manoeuvred. Once a certificate was produced by the workman, then it is incumbent upon the management to file a suitable reply, produce the file in their custody to show that such document did not exist or examine the officer who is a signatory to the said letter, to the effect under what circumstances the letter was given. In the absence of the same, it may not be correct on the part of the Tribunal to reject the said letter by holding that the workman had not acquitted himself by taking the burden of proof on him. The reliance placed upon the judgment of the Supreme Court in *Range Forest Officer v. S.T. Hadimani*'s case reported in (2002)(3) SCC 25. In that case, excepting for the self serving statement of the workman, no other evidence was produced which led the Supreme Court to come to the conclusion as can be seen from the paragraph produced by the Tribunal itself. Therefore, strictly that case may not apply to the case on hand.

18. It must be noticed that the Supreme Court in its judgment in *Municipal Corporation, Faridabad v. Siri Niwas* reported in 2004 (8) SCC 195 discussed that even in cases of application of Evidence Act, in order to attract section 114(g) of the said Act, a party must produce some materials. It was observed as under:

"a party in order to get benefit of the provisions contained in Section 114(g) of the Indian Evidence Act must place some evidence in support of his case. Here the Respondent failed to do so."

19. In this case, the Tribunal did not appreciate the material and merely accepted the ipse dixit of the management. In such circumstances the impugned award will have to be interfered with. The circumstances under which an award can be interfered with by the High court came to be considered by the Supreme Court in its judgment in *Atlas Cycle (Haryana) Limited v. Kitab Singh* reported in (2013)(12) SCC 573. Speaking for the bench, P. Sathasivam J (as he then was) in para 15 observed as follows:-

"It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ Court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari would not permit to assume the role of the appellate Court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ Court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari."

20. In this case, as noted above the workman was not selected for a regular post as he did not qualify as per the settlements in Ex.M4 and M5. That matter is not under challenge. However in the light of the pleadings and material placed by the workman, this court is convinced that the workman had completed 240 days of service in his last spell of employment. But at the same time, the bank management did not terminate the temporary services of the workman in accordance with law and clearly infringed the condition precedents laid under 25-F of the I.D. Act. The consequences of such breach must result in some relief to be granted to the workman. Admittedly, the workman's services as a temporary messenger was dispensed with as early as June 1993. Already it is more than 23 years have elapsed. It is also an irony that a matter like this concerning an individual workman should have its finality only after two decades. Even before this court the matter has been pending for more than 16 years. The question of reinstating the workman at this stage may not be possible both on the ground that he did not challenge his non-selection for permanent recruitment and that even if he has to be reinstated his tenure may not last long.

21. The Supreme Court in *Hari Nandan Prasad and Anr. v. Employer I/R to Mangement of Food Corporation of India and Anr.* reported in (2014)(7) SCC 190 dealt with an Award regarding reinstatement for infringement of section 25-F of the I.D. Act in case of temporary employees who failed to get absorbed under a scheme of absorption floated by the management and it was observed as follows:

"It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principle of fair play and justice.

On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practise the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wagger etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.

The aforesaid examples are only illustrated. It would depend on the facts of each case as to whether order of regularization is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.

In the aforesaid backdrop, we revert the facts of the present case. The grievance of the appellants was that under the Scheme contained in Circular dated 6.5.1997 many similarly placed workmen have been regularized and, therefore, they were also entitled to this benefit. It is argued that those who had rendered 240 days service were regularized as per the provision in that Scheme/Circular dated 6.5.1987. On consideration of the cases before us we find that appellant No.1 was not in service on the date when Scheme was promulgated i.e. as on 6.5.1987 as his services were dispensed with 4 years before that Circular saw the light of the day. Therefore, in our view, the relief of monetary compensation in lieu of reinstatement would be more appropriate in his case and the conclusion in the impugned judgment qua him is unassailable, though for the different reasons (as recorded by us above) than those advanced by the High Court."

(emphasis supplied)

22. Under the above circumstances, I have no hesitation to hold that the impugned Award suffers from manifest illegality and requires interference. While holding that the termination of the workman w.e.f. 3.6.93 as illegal as he was not offered the notice and due compensation as required under law, however he is not eligible for the normal relief of reinstatement with consequential benefits. This court has power to order compensation in special circumstances. Considering the long litigation and the circumstances of the case, it is hereby ordered that the petitioner workman is entitled to get a sum of Rs.2,00,000/- (Rupees Two lakhs) towards compensation in lieu of all relief. The impugned Award is set aside and the 2nd Respondent management is directed to pay the amount within a period of 4 weeks from the date of receipt of this order. The writ petition is allowed to the extent indicated above. However the parties are directed to bear their own costs.