

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2007

CORAM

THE HONOURABLE MR.JUSTICE DHARMARAO ELIPE
and
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.2160 of 2000

Indian Bank,
Rep. by its Assistant General Manager,
Personnel Department,
Head Office,
No.31,Rajaji Salai,
Chennai -1.

...

Appellant

Versus

1.Smt.S.Maheswari

2.The Presiding Officer,
Industrial Tribunal,
Madras

...

Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order in W.M.P.No.22602/2000 in W.P.No.16490 of 1997 dated 13.10.2000 this Writ Petition presented to this Court under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records connected with ID105/92 on the file of the 2nd respondent and quash the award dated 24.04.97 made therein and communicated to the petitioner Bank by order dated 07.08.97 to the Government of India Ministry of Labour received to the petitioner on 18.09.1997.

For Appellant : Mr.V.T.Gopalan Additional Solicitor General
for M/s.Ramasubramaniam Associate

For Respondents : Mr.D.Hariparanthaman

JUDGMENT

S.PALANIVELU, J.

This appeal has been directed against the Order of the learned Single Judge passed in W.M.P.No.22602/2000 in W.P.No.16490 of 1997 dated 13.10.2000, directing the appellant Bank to pay the respondent/employee her last drawn wage of Rs.3,000/- per month from April,1999 to October,2000, within a period of four weeks and continue to pay the same last drawn wages every month till the disposal of the Writ Petition.

2. The facts succinctly narrated as follows:-

The first respondent was employed as clerk cum shroff-typist in the appellant Bank in the Kumarapalayam Branch. She was, on her own request, transferred to the Zonal Office, Coimbatore. She joined duty on 08.12.1989 and indicated that she was availing one week joining time and then she did not report for duty from 15.12.1989 onwards. By communication dated 30.12.1989, she was called upon to report for duty and the letter was sent to the address given by her to the Bank. As she did not report for work on 15.12.1989 and after awaiting for a few days, on 30.12.1989, the Bank sent a letter to the First respondent to the address given by her asking her to report for duty immediately. While the employee acknowledged the receipt of the letter dated 30.12.1989, the petitioner received the letter dated Nil on 03.01.1990 stating that she was suffering from pain in the Vertebral bone and requested for leave without giving any specific time duration. The bank informed her by letter dated 03.01.1990 to apply for the leave in the prescribed format with medical certificate. This letter was sent to the employee to the address given by her by the bank. No response was forthcoming from the employee and the Bank had no knowledge whatever about her whereabouts and for the first time after about one year she wrote to the Bank by her letter dated 26.12.1990 giving her address at Bangalore but without enclosing any medical certificate for alleged illness. Nothing was thereafter heard from the employee and almost one year later, the Bank received a letter dated 24.01.1991 that as per Doctor's advice she must stay at Bangalore. In the meanwhile since nothing had been heard from her, the Bank had issued letter dated 19.03.1990 sent to her last known address as available with the bank informing her that as a result of clause 17(a) of the fifth Bipartite Settlement she had terminated her services with the Bank herself.

3. The net result was that from 09.12.1989 she was continuously absent from duty. Eventually since the petitioner was absent continuously, the Bank invoked clause 17(a) of the Bipartite Settlement dated 10.04.1989 and informed the employee by letter dated 19.03.1990 that in terms of the said settlement she had herself voluntarily terminated her services on her own volition her employment with the Bank with effect from 17.04.1990 (i.e.) from the date of expiry of 30 days in

terms of clause 17(a) of the said Bipartite Settlement. Even this letter sent to her was not served on her. The termination of services was referred as I.D.No.105/1992 before the second respondent. After elaborate trial, the second respondent held that the Bank had rightly come to the conclusion that because of the long absence of the employee without any intimation, she was deemed to have voluntarily retired from the services. The Industrial Tribunal expressed its helplessness to interfere in the matter because this was not a case of punishment for misconduct, but a case of relinquishment of services by the employee by her own action. The learned Judge found that the employee had shown supine indifference in informing the Bank of her absence for a period of over one year.

4. The Second respondent Tribunal on 24.04.1997 passed an award directing the reinstatement of the first respondent from the date of award in her old seniority as on 08.12.1989 without continuity of service, back wages and other benefits, however with no costs. The second respondent Management has carried the matter W.P.No.16490 of 1997 in praying to issue a Writ of certiorari and call for records in the above said I.D. and quash the award dated 24.04.1997 made therein and communicated to the petitioner by an order dated 07.08.1997 of the Government of India, Ministry of Labour received by the petitioner on 18.09.1997.

5. While the matter was pending before this Court, the employee filed W.M.P.No.17487 of 1998 to vacate the interim stay which was already granted in the writ petition and W.M.P.No.17488 of 1998 for a direction under Section 17-B of the Industrial disputes Act. After hearing both the parties, the learned Single Judge made the interim stay absolute subject to complying with the following directions:

- i) The Petitioner/Management is directed to pay a sum of Rs.45,000/- within a period of two weeks from the date of receipt of the copy of this order.
- ii) In addition to this, Management is directed to pay last drawn wages i.e. Rs.3,000/- per month for February and March, 1999 and the same has to be paid before 15.03.1999.

In the said order after considering the circumstances, the registry of the High court was also directed for posting the matter for final hearing on 22.03.1999, and that if the writ petition was not listed for final hearing, the employee may move the Court for appropriate directions.

6. The learned Single Judge by means of an order dated 13.10.2000 in W.M.P.No.22602 of 2000, directed the Appellant Bank to pay the wages under Section 17(B) of the Act as mentioned above and continue to pay the same last drawn wages every month till the disposal of the writ petition and that it is open to the writ petitioner(Management) to take appropriate steps for posting writ petition for final hearing as directed

earlier. But none of the parties appears to have moved the Court for early disposal of the matter.

7. It is very much stated by the learned counsel for the Management that as it transpired from the conduct of the employee that she had no intention to join the duty and only on the ground of sympathy the Industrial Tribunal directed her reinstatement. Section 17-B of the Industrial disputes Act reads as follows:-

17B. Payment of full wages to Workman pending proceedings in higher Courts. Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court: Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period of part thereof, the Court shall order that no wages shall be payable under this section for such period of part, as the case may be.

8. Passing of an order favourably to an employee under section 17-B, would follow filing of an affidavit by the employee stating that she had not been employed in any establishment during such period. In this matter, a separate affidavit was not filed by the employee. However in the counter affidavit filed by the employee for the writ petition filed by the Management, it has been affirmed she was not employed and despite her best efforts she was unable to get alternative employment and that she was suffering economic hardship. Further in the affidavit accompanying W.M.P.No.22602 of 2000 it is mentioned that she was not paid wages under Section 17-B of the Act, from March,1999 onwards, thus she was suffering from non-employment.

9. In VIVEKANAND SETHI -Vs- CHAIRMAN, J & K BANK LTD., AND OTHERS (2005 (5) Supreme Court Cases Page 337), the Supreme Court has held that Section 17-B of the Industrial Disputes Act cannot be applied in view of the fact that the workman did not file an affidavit before the Tribunal in support of his contentions and as required under law. However in this case the employee has mentioned about her non-employment during relevant period before the learned Single Judge.

10. Adverting to the grounds raised by the appellant Management, there is no mention about the alternative employment, if any, undertaken by the employee.

11. It is statutory obligation on the part of the Management to pay back wages as contemplated under Section 17-B of the Act and there is no ground to reject the claim of the employee. Considering all these circumstances in this matter, the order passed by the learned Single Judge is sustainable and no interference is warranted which deserves to be confirmed.

12. In fine, this writ appeal is dismissed. The order passed by the learned Single Judge in Writ Miscellaneous Petition No.22602 of 2000 in Writ Petition No.16490 of 1997 dated 13.10.2000 is confirmed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

rrg

To

1.Indian Bank,
Personnel Department,
Head Office,
No.31,Rajaji Salai,
Chennai -1.

2.The Presiding Officer,
Industrial Tribunal,
Madras

1 cc To M/s.Ramasubramanian Associates, Advocate, SR.29558.

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W.A.No.2160 of 2002

MBS (CO)
RVL 15.05.2007