

N.Krishnamoorthy Vs. City Union Bank Rep. by Its General Manager

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Court : Chennai

Decided On : Apr-02-2012

Judge : K.Chandru, J.

Acts : [Industrial Disputes Act, 1947](#) - Section 2(s); [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.25852 of 2008

Appellant : N.Krishnamoorthy

Respondent : City Union Bank Rep. by Its General Manager

Advocate for Def. : Mr.G.Anandakrishnan, Adv.

Advocate for Pet/Ap. : Mr.Babu Barveez, Adv.

Judgement :

Writ Petition filed under Article 226 of the [Constitution of India](#) praying for a Writ of Certiorarified mandamus, calling for the records of the Central Government Industrial Tribunal cum Labour Court, Chennai the 2nd respondent herein made in I.D.No.396/04 dated 27.06.2006 and quash the same and direct the 1st respondent to reinstate the petitioner with retrospective effect with all consequential monetary and attendant benefits, backwages and compensation.

ORDER

1. The writ petition is filed by the workman challenging an Award passed by the Central Government Industrial Tribunal cum Labour Court at Chennai (for short CGIT) in I.D.No.396 of 2004 dated 27.06.2006. By the impugned Award, the CGIT held that the workman had raised the dispute belatedly and the delay has not been satisfactorily explained and that he had failed to prove that he is a workman within the meaning of Section 2(s) of the [Industrial Disputes Act, 1947](#) (for short I.D.Act) and also the fact that he had approached the District Munsif Court with a civil suit which was also dismissed. On account of these factors, the CGIT held that he is not entitled for any relief. Challenging the same, the writ petition came to be filed.

2. The writ petition was admitted on 31.10.2008. Pending the writ petition, the application for interim stay was dismissed by this Court on the same day.

3. On notice from this Court, the first respondent Bank has filed a counter affidavit dated 27.06.2009. The workman also filed an additional typed set including an order passed by the District Munsif Court, Mayiladuthurai regarding change of his date of birth. The first respondent Bank has also filed a typed set dated 14.07.2011 containing all documents which were made available before the CGIT.

4. The facts which led to the passing of the impugned Award are as follows:-

The workman claimed that he joined the services of the Bank on 10.07.1981. He was kept as an unpaid apprentice clerk at their Erode Branch. He was not covered by the provisions of Apprentices Act, 1961. He claimed that he had rendered two years of continuous service. When fresh employment was notified during the year 1987, the workman made an application, but however, without assigning any reason, his application was rejected, though the Bank claims that at the relevant time, the workman had crossed the maximum age prescribed for entry to service. It is only for the purpose of proving his real date of birth, he had obtained a direction from the District Munsif Court, Mayiladuthurai dated 30.11.1988 long after his non-employment and also on rejection of his application.

5. However, contending that his termination dated 12.03.1983 was illegal, the workman raised an industrial dispute before the Assistant Labour Commissioner (Central). The said officer after notice to the Bank, as he could not bring about any

compromise between the parties sent a failure report to the Government of India. The Government of India through their Ministry of Labour, by a letter dated 23.07.2004 referred the dispute for adjudication by the CGIT. The workman had not explained the inordinate delay between the date of termination and the raising of the dispute. On receipt of the order of reference made by the Government of India, notice was issued to the petitioner and the first respondent.

6. On receiving notice from the CGIT, the workman filed his claim statement dated 22.12.2004. The Management filed their counter statement dated 14.12.2005. In the counter statement, the Management also referred to the fact that the workman having moved the District Munsif Court at Kumbakonam in O.S.No.670 of 1990, for a direction to provide him the post of Clerk or he should be paid damages of Rs.10,000/-. The suit was dismissed and it became final. Therefore, the Management pleaded that res judicata will apply in raising a dispute. It was further contended by the Management that the workman was employed not as a workman and there is no employer-employee relationship between the workman and the Management. There was no termination of his service. He had worked only for 1 = months. By an order dated, 10.07.1981, he joined as an unpaid Apprentice at Erode. Having undergone Apprenticeship for a period of 1 = months, he did not report to work. He also belatedly raised a dispute long after his termination. Initially, the workman went before the Labour Officer appointed by the State Government. Thereafter went before the officer appointed under the Central Government as in respect of Banking company, the appropriate Government is the Central Government and not the State Government.

7. Before the CGIT, on behalf of the workman, he examined himself as W.W.1. On the side of the Management, one S.Sridaran was examined as M.W.1. While the workman filed 6 documents, which were marked as Exs.W1 to W6, on the side of the Management, they filed 7 documents, which were marked as Exs.M1 to M7. Ex.M1 is the office order given to the workman as an unpaid Apprentice. Ex.M2 is the order of appointment given to him.

8. The CGIT upon evidence placed, (both oral and documentary) held that the workman had failed to prove that he was a workman within the meaning of Section

2(s) of the I.D.Act. That finding of the CGIT was erroneous since the definition of the term 2(s) of the I.D.Act had undergone change by an amendment made by Central Act 46 of 1982. The term 'workman' includes even an apprentice and therefore, it is unnecessary for him to prove that he was a workman within the meaning of Section 2(s) of the I.D.Act as on the alleged date of termination, this amendment had already come into force. To that extent, the CGIT was erroneous in non-suiting the workman. But in respect of other matters, the CGIT correctly took note of the fact of his having filed a suit and that suit was decreed against him which became final and therefore, the contention of the Management that the said decree will operate against the workman is valid.

9. Though initially the Supreme Court held once a workman is covered by the provisions of the I.D.Act, there is implied ouster of the jurisdiction of the Labour Court, subsequently, the Supreme Court vide its judgment reported in (2009) 4 SCC 299 [Rajasthan State Road Transport Corporation and another v. Bal Mukund Bairwa (2)] held that if dispute pertains to matters like non-observance of principles of natural justice or constitutional provisions, civil suit is maintainable. In paragraph 48, the Supreme Court observed as follows:-

"48. In a case where no enquiry has been conducted, there would be a violation of the statutory regulation as also the right of equality as contained in Article 14 of the [Constitution of India](#). In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add that if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory regulation or is otherwise imperative even under the common law or the principles of natural justice, which right having arisen under the existing law, sub-para (2) of para 23 of the law laid down in Premier Automobiles Ltd. shall prevail."

10. The theory of implied ouster has now been rejected by the Supreme Court. Therefore, it cannot be said that the workman has gone to a wrong forum and

therefore, any order passed by the wrong forum will not be binding on the forum which has jurisdiction in the matter. The contention that the earlier decree passed by the Civil Court operates as *res judicata* against the workman is valid. Even otherwise, as admittedly the employment was whether two years or 1 = months, in the present case, the workman had not filed any document to show that he has been working for two years. On the other hand, the order of appointment marked as Ex.M1 clearly shows that the workman's employment did not exceed beyond 1= months.

11. Though Mr.Ananthakrishnan representing M/s.T.S.Gopalan and Co states that the workman had sent a letter subsequently on 28.08.1987 stating that he worked only for few days and he could not continue to serve in the post due to ill-health, it is unnecessary to go into the said issue at this juncture. It is suffice this Court is satisfied that the workman had not established that he had completed 240 days of service in a period of 12 calendar months. His subsequent application and denial of employment notwithstanding the fact he is within the zone of consideration in respect of his actual date of birth, it is unnecessary to go into the said issue because the reference made by the Central Government is only to the extent whether his termination by the Management of the Bank was illegal or justified. Therefore, any subsequent development has no relevance to the case on hand. The petitioner has not made out any case to interfere with the impugned Award. However, it is brought to the notice of this Court that during the period of 1 = months the workman was kept only as an apprentice. It is very sorry state of affairs that work can be extracted from a person without paying any wage. Such a concept is contrary to the constitutional injunction made under Article 23 of the Constitution.

12. While dismissing the writ petition, the first respondent Management is directed to pay wages for 1 = months. Instead of driving the parties to work out the exact rate of wages at this point of time, it is suffice if the Management pays a sum of Rs.5,000/- to the workman, within a period of eight weeks from the date of receipt of a copy of this order. No costs.