

(2001) 04 RAJ CK 0040
In the Rajasthan High Court
Case No : C.W.P. No's. 3306 and 3372 of 1994

Aravali Kshetriya Gramin Bank and Another	APPELLANT
Vs	
Presiding Officer, Central Industrial Tribunal and Others	RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 77, 78
Industrial Disputes Act, 1947 — Section 25F, 25H

Citation : (2002) 93 FLR 79 : (2002) 4 LLJ 76 : (2002) 1 WLC 296

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.C. Verma, J.—The petitioner Aravali Kshetriya Gramin Bank (here-in-after referred to as the Bank) is challenging the award dated January 10, 1994 (Annexure-10) of the Central Industrial Tribunal in respect of respondent No. 3, Ramesh Chand Gupta. A reference was made to the Tribunal to adjudicate on the terms whether the action of the management of Aravali Kshetriya Gramin Bank, Sawal Madhopur in not considering Shri Ramesh Chand Gupta, daily wages workman for re-employment u/s 25-H of the Industrial Disputes Act, 1947 while engaging fresh hands is justified? If not, to what relief the concerned workman is entitled?

2. The respondent No. 3 (here-in-after referred to as the workman) was initially appointed on October 6, 1986 as a messenger on daily wages. He was removed from service on February 22, 1987 without any notice or any retrenchment compensation. The grievance was made by the workman that his junior was still working and, therefore, there is violation of Section 25-G. Another point raised by the Workman was that there was violation of Rules 77 and 78 of the Rules. It was the case of the respondent that the workman was employed as part time worker only and he was not being paid on monthly basis. No appointment letter was issued to him and the workman of daily wages does not come under the

definition of retrenchment. Section 25-G or 25-H was not applicable as per the petitioner, It was further pleaded that the respondent had left coming to the bank of his own w.e.f. February 22, 1987. As per the case of the petitioner and evidence produced it was admitted that as per seniority list Annexure-4 there were 67 workers who were kept as part time workers on daily wages. It was not denied that subsequent to the termination of service of workman Ramesh Chand Gupta in the bank branch of Batoda, daily wagers such as Ram Khilari Meena, Hari Singh, Prithviraj, Sitaram and Chiranjilal were appointed. The Industrial Tribunal had held that the workman was appointed in Batoda branch on October 6, 1986. He was removed on January 21, 1987 vide Order Annexure W-1 and, therefore, the contention of the petitioner that the workman had left coming of his own was not accepted. Ram Khilari Meena, Hari Singh, Prithviraj, Sitaram were given appointment as daily wagers in February 1987, March 1987, April 1987, August 1987 and November 1987 as mentioned by the Industrial Tribunal in para 7 of its award. The Tribunal had answered the reference in affirmative that not considering the name of the workman for re- employment u/s 25-H of the Industrial Disputes Act was not justified and the relief had been given to the workman to the effect that the workman would be entitled to be taken back in service on February 7, 1989 when he had raised the demand with all consequential benefits.

3. The only point involved in the present case is as to what is the effect of the non-compliance of Section 25-H r/w Rule 77 of the Rules.

4. In the case of Central Bank of India Vs. S. Satyam and others, it was held that Section 25-H provides for re-employment of retrenched workmen. Rules 77 and 78 of the Industrial Disputes Rules require the maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is to issue notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. The Apex Court was seized with the matter whether Section 25-H and Rules 77 and 78 applied only to those workmen who had been retrenched and falling under the category Section 25-F or it was applicable to all other employees as well. It was held that there are two categories of workmen for which the list is required to be maintained i.e. those categories which fall under the definition of retrenchment who have completed 240 days of service in one year and the other category being the workmen who had completed less service. It was held that first of all those employees are to be accommodated who have completed 240 days i.e. first category and if any vacancy is to be left that is to be given to those employees who are falling in the second category; meaning thereby Section 25-H r/w Rule 77 was applicable to those persons also who are having less than one year of service in a year as per their seniority.

5. In the case of Oriental Bank of Commerce Vs. Presiding Officer, Central Govt.

Industrial Tribunal and Another, it was held that Section 25-G and 25H are totally independent provisions though both of them deal with retrenchment. Section 25-G is a general provision covering all cases of retrenchment providing to the workman the minimal safeguard of the observance of the principle of "last come first go" in the matter of effecting retrenchment. It was further held that a person who had completed the service of statutory period or not, he is entitled to the benefits mentioned in Sections 25-G and 25-H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be on the basis of "first come last go" and when the management re-employs certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work.

6. Counsel for the petitioner relies on a judgment of this Court in the *Rajveer Singh v. Judge, Labour Court and Anr.* 1998 III Suppl 143 on the point that the provisions of Section 25-F or 25- H are not applicable in such a case of automatic termination of services. It was held that the workman in that case was only on contractual agreement/employment and the contract of employment had come to an end on March 8, 1983, hence the provisions of Section 25-F of the Industrial Disputes Act are not applicable.

7. In the case of *State of U.P. and Others Vs. Labour Court and Others*, It was held that the daily and casual workers who are engaged in disregard of all rules cannot be allowed to enter government service through the back door i.e. Labour Court cannot be allowed to be used as a legal means for such back door entry. In the case of *U.P State Cooperative Land Development Bank Ltd. v. Taz Mulk Ansari and Ors.* 1998 III LLJ 666 the Supreme Court had held that mere service of 240 days in a year does not entitle a daily rated workman to regularisation. The facts of the said cases are not applicable in the present case and the present case does not relate to regularisation.

8. In the case of *Rajeev Kumar Sharma Vs. State of Rajasthan and Others*, a workman who had put in 240 days of continuous service in all was held to be not entitled to the protection of Sections 25-F and 25-H of the Industrial Disputes Act.

9. In the case of *Indian Airlines Vs. Sebastian*, it was held that the benefits of Section 25-H will accrue only if they are in continuous service as contemplated u/ s 25-B and they also satisfy the requisites contained in Section 25-B and 25-F.

10. In the case of *State of Himachal Pradesh v. Suresh Kumar Verma* 1996(72) FLR 804, it was held that one temporary employee cannot be replaced by another temporary employee and that the appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption.

11. After going through all the authorities as mentioned above, I am of the opinion that the Supreme Court in the case of *Central Bank of India (supra)* had settled the matter that even the workman who has not completed 240 days in a

calendar year do fall under the beneficial provisions of Section 25-H r/w Rule 77 and 78 which is fairly applicable in the present case.

12. After hearing learned counsel for the petitioner and in view of the judgments as rendered by the Hon''ble Supreme Court in Central Bank of India (supra), I am of the opinion that no fault can be found in the order of the Tribunal to the effect that the workman was entitled to the offer to be made for re-employment if any other person was given employment/ appointment after the termination of service of the workman.

No fault is found in the award of Labour Court, the writ petition has no merits and is, therefore, dismissed. No order as to costs.