

(1985) 02 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3005 of 1980

Arun Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(00), 25F

Citation : (1985) PLJR 723

Hon'ble Judges : L.M. Sharma, J

Bench : Single Bench

Advocate : S. Mukherjee, S.J. Mukhopadhyaya and Ashok Kumar Sinha No. 4, for the Appellant; T.K. Prasad, Ramjit Prasad and Rajendra Kishore Prasad, for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—By the present application under Article 226 of the Constitution of India, the petitioner has challenged the Award of the Central Government Industrial Tribunal, Dhanbad. The petitioner was appointed as a clerkcum Godown keeper under Punjab National Bank, the respondent No. 2, in 1971, on a temporary basis and worked from time to time, with many breaks in service. He was in employment in the month of June, 1973 when his services were terminated with effect from 23.6.73 without payment of retrenchment compensation or wages in lieu of notice. He pressed his claim for continuity of service which was not accepted and an attempt for conciliation also failed. Ultimately, a reference was made under the Industrial Disputes Act, 1947 for deciding whether the action of the Bank in terminating the petitioner's services was justified and to what relief, if any, the petitioner was entitled to.

2. The Management in its written statement stated that in terms of the settlement entered into between the Bank and All India Punjab National Bank Employees' Federation on 13.7.82 it was essential for a temporary hand to pass

a written test before he could be absorbed on a permanent basis. The petitioner, accordingly, appeared at the written test but failed. In these circumstances, his services were validly and justifiably terminated.

3. The petitioner had also claimed a permanent status in the service on the basis of certain averments which need not be detailed here. The Bank denied the claim and asserted that the petitioner was not entitled to continue, in service. The first issue framed for decision of the question as to whether the petitioner was entitled to be treated as a permanent hand was answered by the Tribunal against the petitioner which was not challenged before me at the time of hearing of the case. The other point which was agitated before the Tribunal Was in regard to the legality of the order of termination in absence of compliance with the provisions of section 25F of the Act. The Tribunal held that the termination of the petitioner's service did not amount to retrenchment within the meaning of the expression in section 2(00) of the Act and the petitioner was, therefore, not entitled to any relief. This finding has been strenuously challenged by Mr. Mukherjee.

4. It was argued on behalf of the Bank before the Tribunal that the petitioner Was not discharged from service as having been rendered surplus. He was discharged on account of his failure at the written test which disqualified him from being absorbed in the service on substantive basis and, therefore, he cannot be treated to have been retrenched as to attract section 25F of the Act. The Tribunal accepted the argument and held that the termination of the petitioner's service could not be characterised as illegal on the ground of non-compliance of the conditions of section 25F of the Act.

5. The view expressed in the Award that the termination of the service of a workman, can be held to be "retrenchment" within the Act only where he is rendered surplus is not correct. The relevant section 2(00) is quoted below:--

2(00)--"Retrench" means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued illhealth

The expression "for any reason whatsoever" was considered by the Supreme Court in the The State Bank of India Vs. Shri N. Sundara Money, and it was observed that it was very wide and almost admitting of no exception. In Santosh Gupta Vs. State Bank of Patiala, the facts were similar to those in the present case. The termination of service of the workman in that case was also due to his failure to pass the test which would have enabled her to be confirmed in the

service. The Supreme Court relying on Sundara Money's case held that "the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was retrenchment within the meaning of section 2(00) and, therefore, the requirement of section 25F had to be complied with". The award of the Industrial Tribunal was accordingly set aside.

6. Mr. Tara Kishore Prasad, the learned counsel representing the Management, contended that in view of the amendment in section 2(00) by insertion of sub-clause (bb) after subclause (b), which is in the following terms, it should now be held that the Supreme Court decisions referred to above have been rendered inapplicable:--

(bb)--Termination of the Service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein.

The argument has to be rejected on two grounds. The amendment came into force on 21.8.84 while the petitioner was discharged in 1973. The amending Act did not make the amendment retrospective. The question which arises for decision is whether the discharge order was passed in accordance with law and in that context the law as it stood then is relevant. The second answer is that there is nothing to show that the appointment of the petitioner was for a fixed period expiring on his failure to pass the examination. The test was held for the purpose of confirming the employees in service and, therefore, on the petitioner's failure at the examination, his services did not automatically come to an end I, therefore, hold that the decision of the Tribunal as contained in Annexure "3" is illegal. The same is accordingly quashed.

7. The next question which arises is as to relief the petitioner must be held to be entitled to, in the facts and circumstances of the case. In view of its decision, there was no occasion for the Tribunal to deal with this point. Further, the parties could not have led evidence in 1979, relevant for deciding whether the petitioner should be granted wages for the period after the award. I, therefore, remit the case to the Industrial Tribunal-cum-labour Court No. 2 (as suggested at the bar on the ground that the Tribunal-cum-labour Court No. 3 is not now functioning at Dhanbad) for deciding the point after permitting the parties to lead further evidence. The writ application is accordingly allowed, but in the circumstances without costs.

S.H.S Abidi, J.

I agree.