
(2010) 12 PAT CK 0017
In the Patna High Court
Case No : CWJC No. 8045 of 2008

Bank of India

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Citation : (2010) 12 PAT CK 0017

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Petitioner Bank of India (hereinafter referred to as the "Bank") is aggrieved by the Award dated 31.12.2007 (Annexure-1) passed by the Presiding Officer, Industrial Tribunal, Patna in Reference Case No. 13 (c) of 2004, whereunder the services of Respondent No. 2 who was engaged by the Rajkharwar Branch (hereinafter referred to as the "Branch") of the Bank to serve as Sweeper has been directed to be regularized on the post of Sweeper with effect from 29.3.1990, the date on which he was initially engaged by the Branch to discharge the duties of Sweeper.

2. Challenge is raised on the ground that engagement of Respondent No. 2 in the Branch having been made without observing the mandate of Articles 14 and 16 of the Constitution of India the service rendered by him to the Branch cannot be taken into account for his regularization in the service of the Bank. Further it is submitted that Respondent No. 2 was a casual worker engaged by the Branch Manager without approval of the competent authority, his services could not have been directed to be regularized as he never served the Bank for 240 days in any calendar year. It is also pointed out that as and when Respondent No. 2 was engaged by the Bank for sweeping the floor of the Branch he performed the sweeping work for hardly 1-11/2 hours on the particular day of his engagement and such engagement is not enough to consider his case for regularization in the service of the Bank. In this connection it is also pointed out that sweepers are not required to serve the Branch/Bank for more than 1-11/2 hours in a day and in view of such fact service rendered by the sweeper cannot be taken into

account for regularizing his service in the Bank. Reliance in this connection is placed on the evidence of Management Witness Nos, 1 and 2 who have categorically stated in their evidence that Respondent No. 2 was engaged as a casual sweeper in the Branch without following any process of selection and his engagement has not continued for more than 240 days in any calendar year and in view of such fact he is not entitled for being regularized in the service of the Bank. In support of the aforesaid contention learned Counsel for the Petitioner relied on the two judgments of the Hon''ble Supreme Court i.e. Secretary, State of Karnataka and Others Vs. Umadevi and Others, Mahendra L. Jain and Others Vs. Indore Development Authority and Others,

3. Counsel for Respondent No. 2 has opposed the aforesaid submission and submitted that the Presiding Officer, Industrial Tribunal having considered the evidence of the Management Witness Nos. 1 and 2 and the documentary evidence contained in the letter of the Branch Manager dated 22.8.1991, 16.2.1999 addressed to the Regional Manager of the Bank disbelieved the contention of the Bank that Respondent No. 2 did not discharge duties of the Sweeper in the Branch of the Bank for more than 240 days in any calendar year by recording a categorical finding in paragraphs 9, 10, 11 of the Award that Respondent No. 2 served the Branch for more than 240 days in more than 12 calendar years with effect from 29.3.1990, the date of his initial engagement in the Branch. Learned Counsel for Respondent No. 2 further submitted that in view of the findings recorded by the Tribunal there is no difficulty in concluding that Respondent No. 2 has been a victim of unfair labour practice for more than 12 years and in appreciation of such fact the Tribunal has directed for his regularization invoking its power u/s 15 read with Section 25T of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") . Learned Counsel for Respondent No. 2 with reference to the judgment of the Hon''ble Supreme Court in the case of Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, submitted that the Constitution Bench judgment in the case of Uma Devi (supra) does not denude the Industrial Court of its statutory power to order permanency of the workers who have been victim of unfair labour practice on the part of employer under Item 10 of Schedule 5 of the Act. Learned Counsel for Respondent No. 2 further submitted that Uma Devi (supra) is an authoritative pronouncement for the proposition that the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution of India should not issue direction for absorption, regularization or granting permanency of temporary, contractual, casual, daily-wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme. Learned Counsel for Respondent No. 2 further distinguished the judgment of the Hon''ble Supreme Court in the case of Mahendra L. Jain and Ors. (supra) by submitting that the Sub-Engineers who were seeking regularization in the service of the Indore Development Authority were engaged in connection with Indore Habitat Project which was implemented through the agency of Overseas Development Authority and after execution of the project came to an

end on 30.6.1997 there was hardly any occasion to continue and regularize the Sub-Engineers in the service of the Indore Development Authority.

4. With reference to the documentary evidence produced in support of the claim of Respondent No. 2 i.e. the two letters of the Branch Manager dated 22.8.1991 and 16.2.1999, addressed to the Regional Manager of the Bank and produced before the Tribunal, it is quite evident that Respondent No. 2 was initially engaged in the Branch on 29.3.1990 the date on which the Branch was established and continued in the service of the Branch with the approval of the regional office and was being paid Rs. 175/- per month as wages in the light of the instruction of the regional office contained in letter dated 10.1.1992. In view of the contents of the aforesaid two letters, the Tribunal has rightly recorded a finding in the impugned Award that Respondent No. 2 continued to serve the Branch/Bank for more than 240 days in more than 12 calendar years. From perusal of letter dated 16.2.1999 it is further evident that Respondent No. 2 is getting wage of Rs. 175/- per month for the service rendered by him to the Branch. In view of the contents of the letter dated 16.2.1999 it is quite evident that Respondent No. 2 is a victim of unfair labour practice within the meaning of Clause (10) of the 5th Schedule of the Act and in appreciation of such fact while adjudicating the dispute referred to it the Tribunal has directed for his regularization relieving Respondent No. 2 of the unfair labour practice of which he has been a victim for over twelve years. I do not find any illegality in the Award.

5. The writ petition is dismissed.