

(2006) 11 AHC CK 0139

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2257 of 1986

Dhirendra Prasad Misra

APPELLANT

Vs

Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour
Court, Kanpur & Ors.

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 25

Citation : (2006) 11 AHC CK 0139

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Petitioner was appointed as Mini Deposit Collector with Punjab National Bank in its branch office at Dammal Kanpur by its Regional Manager on 2041977. Services of the petitioner were terminated on 31121978 without any notice or chargesheet. Petitioner was also not paid the retrenchment compensation as required by Section 25F of Industrial Disputes Act. Petitioner raised a belated Industrial Dispute. Reference was made by the Government on 2971982. Number of the said reference was L12012/286/81D II (A). From the number of the referring order, it appears that Government was approached for making reference in the year 1981. Reference was registered before Presiding Officer, Central Government Industrial Tribunal cum Labour Court Kanpur as Industrial Dispute No. 53 of 1983. The Tribunal gave the award on 3091985, which has been challenged through this writ petition.

2. Tribunal held that petitioner was not workman as defined under Section 2(s) of Industrial Disputes Act hence no procedure was required to be followed before terminating his services and he could not raise the Industrial Dispute.

3. Learned Counsel for both the parties have placed reliance upon an authority of the Supreme Court reported in Indian Bank Association v. Workmen of Syndicate Bank, 2001(2) LBESR 564 (SC) : AIR 2001 SC 946. In the said authority, it has been held that deposit Collectors employed by Banks are workmen within the

meaning of Section 2(s) of Industrial Disputes Act (para 24) and that commission received by deposit collectors is nothing else but wage in accordance with Section 2(rr) of the Act (Para 25). However, Supreme Court held that Deposit Collectors employed by Banks could not be directed to be treated as regular workmen and they could also not be paid same pay scales which were being paid to regular employees.

4. In view of the above Supreme Court authority, the view of the tribunal that the petitioner being Mini Deposit Collector was not workman under Section 2(s) of the Act is not correct.

5. Admittedly neither petitioner was terminated on the basis of any misconduct after providing opportunity of hearing nor notice and compensation as provided under Section 25F of the Act was given to the petitioner hence his termination was illegal. However, after 28 years it is not at all advisable to reinstate the petitioner. At the time of termination of petitioner's services legal position was not very clear regarding status of Mini Deposit Collectors of Bank. Dispute was also raised by the petitioner after about 3 years. In the writ petition filed 20 years before petitioner's age was shown to be of 38 years hence now he must be of 58 years of age. Recently Supreme in various authorities has held that even if termination is found to be illegal still it is not necessary in every case to direct reinstatement vide:

(1) Haryana SEDC v. Mamni, 2006(3) LBESR 151 (SC) : AIR 2006 SC 2427.

(2) M.P. State Agro Industrial Development Corporation v. S.C. Pandey, 2006 (2) SCC 716.

(3) Dhampur Sugar Mills v. Bholu Singh, 2005(1) LBESR 928 (SC) : 2005 (2) SCC 470.

(4) U.P. State Brassware Corporation v. U. N. Pandey, 2006(1) LBESR 348 (SC) : 2006 (1) SCC 479.

6. In the first authority of Mamni even though termination was found to be illegal still in lieu of reinstatement with full back wages only lump sum compensation of Rs.25000/ was awarded.

7. In the second authority, it was held that employee was daily wager holding no post and his appointment being contrary to rule, he had no right still it was necessary to comply with provisions of Section 25F of the Act before terminating the services which was not done. However in lieu of reinstatement with full back wages only lump sum compensation of Rs. 10000/ was awarded even though workman was working under interim order of Labour Court.

8. In the third authority, it was[held that even if a workmen is appointed under some scheme and scheme is over still provision of Section 6N of U.P. Industrial Disputes Act equivalent to Section 25F of I.D. Act were attracted. However, in the said authority reinstatement was not directed as provisions of Section 6N of

U.P.I.D Act had been complied with.

9. In the fourth authority, it was held that the establishment was closed down in 1993 hence employee was entitled to get only 25 percent of wages from the date of termination till the closure of unit. Reference may also be made to Nagar Maha Palika v. State of U.P. & Ors., 2006(2) LBESR 858 (SC) : AIR 2006 SC 2113, wherein it was held in para 30 that:

?however there cannot be any dispute that provisions of Section 6(N) of U.P. Industrial Disputes Act has not been complied with, we are however of the opinion that instead and in place of issuing a direction for reinstatement of services interest of justice will be subserved if compensation of Rs. 30000/ per person is directed to be paid?.

10. Keeping in view all the above facts and position of law, I hold that termination of petitioner"s services was illegal and violative of Section 25F of Industrial Disputes Act. However, instead of reinstatement I direct that petitioner shall be paid Rs.25000/ as compensation. The compensation shall be paid within three months from today failing which since after three months till the date of actual payment interest at the rate of one percent per month shall also be payable. I do not find any reason or occasion to reinstate the petitioner.

11. Writ petition is accordingly allowed.