
(2008) 10 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6149 of 1994

Dilip Singh

APPELLANT

Vs

Union Bank of India and others

RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 10 RAJ CK 0005

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Jayant Sharma, for the Appellant; R.K. Kala, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Heard learned counsel for the parties.

This writ petition has been filed with the prayer that the respondents be directed to allow the petitioner to continue in their services as Driver and accordingly grant him status of permanent Driver. It has been further prayed that monthly salary be paid to the petitioner at par with the regularly appointed Driver and respondents be directed to give him arrears of salary with interest @ 24% per month. Learned counsel for the petitioner has referred to documents Annexure-2 to Annexure-10 and argued that though petitioner was engaged as Driver through respondent No. 3 but some time in between he was required to discharge work of despatch, collection and delivery of goods and other miscellaneous work of the bank. He has given example of one Shri Adesh Tyagi who has been regularly working as Driver and has been paid salary of the post @ Rs. 2892.80 whereas the petitioner who was discharging the similar duties was paid a very meagre amount. Learned counsel has also referred to Annexure-10, pay-slip for the month of June 1994 to show that petitioner in that month was paid Rs. 1460/- as salary.

2. Shri R.K. Kala, learned counsel for the respondents opposed the writ petition

and argued that dispute of the present nature cannot be adjudicated upon in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It was argued that petitioner should be relegated to the alternative remedy of approaching the industrial Court under the Industrial Disputes Act, 1947. Learned counsel argued that respondent No. 3 had merely engaged the petitioner as personal Driver and paid him out of the Conveyance Allowance that was admissible to him but the petitioner was never engaged on regular basis or otherwise on regular basis by the respondents directly. There was thus no relationship of master and servant. Documents aforesaid do not prove the fact that petitioner was continuously working as Driver. He was merely engaged some time in between 4-5 times and this does not prove his continuous working. Learned counsel has relied on the judgment of Supreme Court in Punjab National Bank Vs. Ghulam Dastagir, judgment of Delhi High Court in Sree Bhagwan v. National Housing Bank and others 2001 (91) FLR 11 (Del.) , and judgment of Allahabad High Court in Singer Sewing Machine Co. Vs. Presiding Officer, Labour Court IV, Kanpur and others, and argued that in these cases, the engagement of Driver by the Senior Officers and payment of wages to him out of the Conveyance Allowance was held to be not an employment between bank and Driver and such Driver was held not to be a workman.

3. I have given my anxious consideration to the rival submissions and perused the material on record as well as the cited precedents.

4. In the normal course, petitioner should have been relegated to the remedy aforesaid alternate remedy but because of the long lapse of time and keeping in view the fact that this petition has remained pending before this Court for last 14 years, it is considered appropriate to decide the matter on its own merit.

5. The documents on which reliance is placed by the petitioner, merely prove that petitioner was assigned petty nature of work, sometimes to get the documents photocopied or to buy the stationery or to despatch certain letters, send items through courier or to get the goods booked in the transport company or get the goods released therefrom or to collect the medicines from the agency. The only document on which reliance is placed to show that petitioner was a Driver is one cheque dated 30.6.1994 which merely proves that petitioner was paid wages in the sum of Rs. 1460/- for the month of June 1994. But all these documents shall have to analysed in the light of the stand taken by the respondents in their reply that petitioner was engaged by the respondent No. 3 as his personal Driver and which is also the contention of the petitioner that he was indeed engaged by respondent No. 3. No document or order showing his engagement as a Driver in the bank itself has been produced on record. When the respondents admit that petitioner was engaged through respondent No. 3 only as his personal Driver and was paid out of the Conveyance allowance admissible to him, he being Chief Manager, there is no basis on which it can be held that petitioner was actually engaged as Driver by the respondent-bank. In the light of the law laid down by the Supreme Court in Ghulam Dastagir supra that a Driver engaged in this

manner by any Manager/Chief Manager of the bank and paid out a conveyance allowance, cannot be treated as an employment in an industry and therefore he cannot be held to have been by the meaning of section 2(s) of the Industrial Disputes Act, 1947. Similar view was taken by the Allahabad High Court and Delhi High Court in M/s. Singer Sewing Machine Company & Sree Bhagwan (supra).

In the light of the discussion aforesaid, I do not find any merit in this writ petition, which is accordingly dismissed.