

(2002) 03 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10687 of 1996

Ganga M.

APPELLANT

Vs

Zonal Manager, Indian Bank and Others

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25H

Citation : (2002) 3 ALT 383 : (2002) 94 FLR 460 : (2002) 4 LLJ 33(2)

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Judgement

P.S. Narayana, J.—The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in not considering the petitioner's case for regularisation in regular vacancy in preference to outsiders, in spite of serving for ten years as Sweeper as illegal and unjust and consequently direct the respondents to regularise the petitioner in the post of permanent part-time sweeper with all consequential benefits and pass such other suitable orders.

2. Heard the counsel on record.

3. The case of the petitioner is that she had been working as temporary Sweeper on daily wages since 1987 and whenever the permanent Sweeper had gone on leave at Gokavaram Branch, East Godavari District. It is stated that the regular Sweeper Nukamma retired on June 30, 1994 and since then services of the petitioner were being utilized regularly for the duties as Sweeper and she had been discharging her duties to the satisfaction of her superiors without any remark whatsoever. It is also stated that she had studied upto V Class and registered herself with Employment Exchange and she is well qualified and experienced to hold the said post of Sweeper in the respondents- Bank. It is also stated that due to the retirement of Nukamma on June 30, 1994, a regular vacancy arose. It is further stated that the writ petitioner made representation dated November 25, 1995 for regularising her services in the existing vacancy at

the said branch and the Branch Manager vide his letter dated November 26, 1995 forwarded the representation confirming that she had been working as Sweeper on daily wages and he also recommended her case on the ground that she had gained experience in the Branch for the last 18 months and having requisite qualifications. It is further stated that the Manager vide his letter dated April 9, 1994 also stated that V. Nukalamma is relieving on June 30, 1994 and that the writ petitioner was working in the leave vacancy and also requested the Regional Manager to confirm the petitioner in the said post of permanent part-time Sweeper. Thereafter, the Manager vide his letter dated August 30, 1994 engaged the petitioner in the post of part-time Sweeper with effect from July 1, 1994 and also requested the Regional Manager to fill up the vacancy of permanent part-time Sweeper at the earliest and also recommended the case of the petitioner and in spite of the recommendation of the Manager to consider her case for the said post, her case was not considered. It is also stated that on the instructions of the Zonal Manager, the Regional Manager alleged to have advised the Branch Manager not to engage the services of the petitioner vide his letter in the month of January 1996. Several other allegations also had been made and it was ultimately stated that the petitioner had put in enough experience by having ten years of service as sweeper. It is also stated that the workmen shall be regularised by ignoring the artificial break for short periods and hence the writ petitioner also is entitled to regularisation.

4. Sri G. Vidya Sagar, the learned Counsel for the writ petitioner had drawn my attention to the representations made by the writ petitioner and learned counsel also contended that in view of the length of service which the writ petitioner had put in already, her services can be regularised. In the alternative the learned counsel also submitted that in case the Court feels that the relief of regularisation as prayed for cannot be granted, at least it is a fit case for considering her case in preference to the other persons in the light of Section 25-H of the Industrial Disputes Act, 1947, hereinafter referred to as "I.D. Act" in short. The learned counsel also had placed reliance on a decision of the Apex Court in Central Bank of India Vs. S. Satyam and others, in this regard.

5. Sri Prasad the learned counsel representing the respondents-Bank on the contrary had contended that the mere fact that the writ petitioner was working as a Sweeper for some time will not confer any legal right on her to claim the relief of regularisation and hence the writ petitioner is not entitled to any relief. The learned counsel also has contended that no doubt certain proceedings had been issued. But however, these proceedings are the internal correspondence of the Bank and will not confer, any right on the writ petitioner to claim regularisation.

6. Heard both the counsel and also perused the material available on record.

7. In the representation made to the Zonal Manager by the writ petitioner, all the details had been narrated and a request was made to consider her case for appointment. Apart from this aspect of the matter, the fact that Smt. V.

Nukalamma retired on June 30, 1994 is not in dispute. It is also not in serious dispute that the writ petitioner had been engaged and had discharged the duties of sweeper for some time. It is also specifically stated that the writ petitioner studied upto V Class and registered with the Employment Exchange also and she is fully qualified and also experienced to be appointed as Sweeper in the respondents-Bank. From the correspondence it is also clear that the then Manager of the Bank had recommended the case of the writ petitioner. But however she was not continued. It may be that as contended by the learned standing counsel representing the respondents-Bank, the mere fact that the writ petitioner had put in some service may by itself not be sufficient to get the relief of regularisation as such. But at the same time, in view of Section 25-H of the I.D. Act, the writ petitioner who worked for sufficiently a long time is entitled to preference in the case of re-employment over other persons. Section 25-H of the I.D. Act, dealing with Re-employment of retrenched workmen reads as follows:

"Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

In the decision referred supra, the Apex Court observed as follows 1986-II-LLJ-820 at pp. 826 & 827:

"The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2. Section 25-F also uses the word "retrenchment" but qualifies it by use of the further words "workman... who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman... who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F. 10. The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word

"retrenchment" used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman."

In the light of the view expressed by the Apex Court and also in view of the provisions of Section 25-H of the I.D. Act, I am of the considered opinion that the writ petitioner is entitled to have preference over other persons in the case of filling up of the future vacancies. Hence, a direction is issued to the respondents to consider the case of the writ petitioner to the post of Sweeper in preference to others in future vacancies. Except this relief, no other relief can be granted relating to regularization at this stage.

8. In the light of the same, the Writ Petition is disposed of with the above direction. No order as to costs.