
(2003) 09 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 35290 of 1996

Gopi Nath Sharma

APPELLANT

Vs

Manager, R.B.I. and Others

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 25F, 25G, 7

Citation : (2003) 5 AWC 4588

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

Bench : Single Bench

Advocate : H.B.P. Singh and V.B.L. Srivastava, for the Appellant; S.S.C, for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.-

1. This writ petition is directed against award dated 30.7.1996, passed by Presiding Officer, Central Government Industrial Tribunal/Labour Court, Kanpur in Industrial Dispute No. 34 of 1989. Through the said award, the Petitioner, workman has been held not to be entitled for any relief.

2. Central Government, Ministry of Labour, New Delhi vide notification dated 25.1.1989 referred the following dispute for adjudication to the Labour Court/Industrial Tribunal:

Whether the action of the management of Reserve Bank of India, Kanpur in striking off the name of Sri Gopi Nath Sharma from the list of approved Peon-cum-Farrash is justified? if not, to what relief the concerned workman is entitled?

3. According to the Petitioner he was selected by Manager, Reserve Bank of India, Kanpur, vide order dated 19.2.1974, against the casual vacancies of permanent employees, and that during the period from May, 1975 to April, 1976 Petitioner worked for more than 240 days and became entitled to the benefit of

Section 25F read with Section 25D of I.D. Act. The further case of the Petitioner is that meanwhile he passed High School, hence his name was not included in the next list and his services were orally terminated. Employer i.e., Manager, Reserve Bank of India, Kanpur, in his written statement before the Labour Court which is Annexure-C.A. 4 to the counter-affidavit filed in this writ petition firstly took a preliminary objection to the effect that reference was barred by time as it had been made after about 13 years and that Petitioner was wait listed for the post of Farrash in 1973 and validity of the said list was extended from time to time. It was also stated in para 3 (iii) that in the case of candidates who are not offered regular appointment in the bank service during the currency of the waiting list in which their names are borne, they are included in the next waiting list and that as per the procedure then followed by the bank, candidates over qualified for the post to which they were originally selected were not considered eligible for inclusion in the fresh waiting list. Accordingly Sri Gopi Nath Sharma who had passed matriculation in 1975 could not be considered for the post of Farrash (Prescribed educational qualification being standard IV to standard VIII) at the time of preparation of fresh waiting list in 1976. Along with written statement chart showing the working days of the Petitioner was filed according to which from July 1975 to June 1976 Petitioner worked only for 58 days. The labour court by the impugned order held that the claim was belated and Petitioner was not entitled to the benefit of Section 25F of I.D. Act as he had not completed 240 days in any calendar year. For arriving at the said finding labour court placed reliance upon the fact that the management had given the evidence of Kanhaiya Lal who had stated that concerned workman had not completed 240 days in any calendar year and he was not cross-examined, hence his evidence was unchallenged.

4. As far as the question of validity of reference is concerned, it has been held that the Industrial Tribunal/Labour Court cannot go into the validity of the reference. The employer can challenge the reference order on the ground of delay through writ petition as held by the Supreme Court in *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, . However, as the reference order was not challenged by the bank, hence labour court was obliged to decide the matter. Labour court was not authorized to go into the validity of the reference including delay. As far as the question of validity of discontinuing the services of the Petitioner due to over qualification is concerned, it is no more *res integra*. Supreme Court in the following authority has held that over qualification (High School) cannot be disqualification for peon in sub-ordinate judiciary where maximum qualification prescribed is VIII pass.

Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others,

5. Such an approach amounts to discouraging acquisition of education on the one hand so much emphasis is laid upon literate society for curing innumerable problems of the country and on the other hand some Government departments/

undertaking and agencies discourage acquisition of higher educational qualification by disqualifying the person for service. Such an approach is clearly arbitrary, discriminatory and not in national interest.

6. Even if the stand taken by employer Bank that Petitioner had not completed 240 days in a calendar year is taken to be correct, it will not make much difference. In the reference order there was no mention of Section 25F. By virtue of the reference labour court was required to judge as to whether the action of the bank in striking off the name of the Petitioner from the list of approved employees was justified or not.

7. Reserve Bank of India being Government undertaking is bound to act fairly in accordance with Articles 14 and 16 of the Constitution of India. Termination of service on the ground of acquisition of higher qualification (matriculation) by the Bank is illegal and violative of Articles 14 and 16 of Constitution. An illegal order of termination of service even if it does not amount to retrenchment, is liable to be set aside on reference by labour court as is evident by Section 7 and Scheduled II item 3 I.D. Act.

Section 7. - (1) The appropriate Government may, by notification in the official Gazette, constitute one or more labour courts for the adjudication of industrial disputes relating to any matter specified in the second schedule and for performing such other functions as may be assigned to them under this Act.

Item 3 Schedule II.-Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.

8. Acquiring higher qualification (High School in the instant case) is not misconduct, hence dismissal of workman on this ground is "wrongful dismissal" falling squarely within the above item.

9. Petitioner has also taken the ground that some of his juniors were retained on the ground that they had not acquired higher qualification. The bank specifically did not deny this fact. In such situation, if the removal of the Petitioner is taken to be retrenchment, he would be entitled to relief u/s 25G of Industrial Disputes Act, which is quoted below:

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

This right does not depend on any particular length of service as held by Supreme Court in Samishta Dube Vs. City Board, Etawah and Another,

10. It is, therefore, held that employer bank wrongly terminated the services of the Petitioner by not including his name in the list prepared after June, 1976 and

that the order of the Labour Court/Industrial Tribunal deciding the reference against the Petitioner-workman is illegal and liable to be set aside.

11. The next thing to be considered is award of back wages. There can be no doubt that the reference was belated and basically workman was responsible for the delay. From the date of termination till the date of reference, i.e., January, 1989, workman is entitled to get nominal/notional wages of 10%. Since the date of reference till today, workman is entitled to 50% wages on the ground of chances of re-employment AIR 2002 SC 1313.

12. Accordingly, writ petition is allowed. Order dated 30.7.1996, passed by aforesaid Industrial Tribunal/Labour Court is set aside. The action of management of Reserve Bank of India, Kanpur, in striking off the name of Petitioner from the list of approved Peon-cum-Farrash after June, 1976, is set aside and it is directed that Petitioner must be reinstated and appointed to the similar post on which the person whose name was included in the list which was valid till 1976 just before the name of the Petitioner is at present working. Back wages must be paid to the Petitioner as aforesaid.