

(2013) 09 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 480-S Of 2009 c/w Others Writ Petition (OWP) No. 101-S/2010, Others Writ Petition (OWP) No. 485-S/2010, Others Writ Petition (OWP) No. 483-S/2010, Others Writ Petition (OWP) No. 482-S/2010, Others Writ Petition (OWP) No. 481

Jammu and Kashmir Bank Ltd.

APPELLANT

Vs

Swaran Singh

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 JKJ 703

Hon'ble Judges : Bansi Lal Bhat, J

Bench : Single Bench

Judgement

Bansi Lal Bhat, J.

OWP No. 101-S/2009

1. Petitioner-Bank is aggrieved of the common award of the Industrial Tribunal cum Labour Court, Chandigarh dated 27.10.2009 in terms

whereof petitioner-Bank has been directed to frame a policy for regularization of the respondents and appoint them against the permanent

vacancies in accordance with the rules. The legality and correctness of this award, common to seven cases and identical awards passed in fifteen

cases of similar nature have been questioned through the medium of these writ petitions. Consequent upon the reference made by the Central

Government u/s 10 of the Industrial Disputes Act, 1947 the parties before the Tribunal filed their pleadings.

2. Issues before the Industrial Tribunal cum Labour Court, Chandigarh (for brevity 'Tribunal') were:--

1. Whether the workmen were appointed by the Management of Bank as

temporary Security Guards against the permanent vacancy?

2. Whether the workmen are entitled for regularization of their services?

3. The case of the respondent-workmen before the Tribunal was that they were temporarily appointed by the Management of the petitioner-Bank

as Security Guards on consolidated salary against the clear vacancies. According to copies of letters of appointment filed by the respondents each

respondent was appointed as Security Guard cum-Watchman by the petitioner-Bank against reserved vacancies. Respondents worked

continuously in the same way as permanent Security Guards were working, though they were not paid wages at par with the permanent Security

Guards. Respondent-workmen raised a dispute for regularisation of their services with retrospective effect on the ground that they were

continuously working against the reserved vacancies in temporary capacity against the provisions of Bipartite Settlement dated 19.10.1966.

Petitioner-Bank on the other hand denied the relationship of master and servant between the petitioner-Bank and respondents. Petitioner's case

was that respondents were not appointed against any substantial vacancy, but their appointment was made on contract temporarily. It was further

pleaded that as per the nature of services rendered by the respondents to the Bank, they were not entitled to regularization or appointment.

4. On the pleadings of the parties and the proof produce, Tribunal formulated the following points for determination:--

1. "Whether workmen are the employees of Jammu & Kashmir Bank Ltd., and there exists a relationship of employer-employee between them?

2. Whether the workmen are working with the management of the bank as per the terms and conditions of appointment order annexed with the

statement of claim?

3. Whether the workmen are entitled for the relief sought by them in the statement of claim?

5. The Tribunal found that the respondents were appointed against existing vacancies, though the work for which the respondents were appointed

was not temporary in nature. Such vacancies were caused by increasing work or because of absence of permanent workmen. The respondents

were working against such vacancies continuously in violation of Para 20.7 and 20.8 of the Bipartite Settlement. Respondents, permitted to

continue till further orders reveals that they were appointed against the existing work. The Tribunal arrived at the conclusion that the respondents were appointed temporarily against the permanent work available with the Bank and their appointment was described as being made on "contract basis" only to prevent them from beneficiary right under the Industrial Disputes Act and so called contract, was an unlawful labour practice. The Tribunal held that the respondents were appointed temporarily for permanent work available in the Bank and accordingly, held that the respondents were employees of the petitioner-Bank.

6. The findings recorded by the Tribunal have been seriously questioned by the petitioner-Bank, taking serious objections to Tribunal's view that the respondents were not contractual employees. Per contra, respondent-workmen have contended that the findings recorded by the Tribunal cannot be tinkered with unless it is shown that awards are vitiated by error. The reference can be challenged immediately by making the Government a party as the petitioner-Bank was a signatory to bipartite agreement figuring at serial No. 25. Since the reference has not been challenged, it is not permissible to go behind the reference, though it is permissible for the Court to lift the veil in appropriate cases. The reference cannot be assailed at this stage.

OWP No. 480-S/2009

OWP No. 485-S/2009

OWP No. 483-S/2009

OWP No. 482-S/2009

OWP No. 481-S/2009

OWP No. 479-S/2009

OWP No. 478-S/2009

OWP No. 477-S/2009

OWP No. 476-S/2009

OWP No. 473-S/2009

OWP No. 471-S/2009

OWP No. 474-S/2009

OWP No. 475-S/2009

OWP No. 472-S/2009

OWP No. 470-S/2009

7. The petitioner-Bank is aggrieved of the award of the Tribunal dated 12.09.2008 in terms whereof the Management of the petitioner-Bank has

been directed to frame a policy to regularize the workmen within a period of three month from the date of order, failing which respondent-

workmen were deemed to have been regularized in service on the post they are working from the date of their engagement.

8. Consequent upon the reference made by the Central Government (Ministry of Labour, Government of India) notice of the reference was issued to the parties.

9. The issues before the Tribunal were 'whether the action of management of J&K Bank Ltd. representing through Chairman, J&K Bank Ltd, in

not regularizing the services of workmen w.e.f. 04.04.2000 is just, fair, legal and justified, if not, what relief workmen are entitled to, and from which date'.

10. The case of the respondent-workmen was that they were appointed on temporary basis for two months on consolidated salary of Rs. 2000/-

per month against clear vacancies. It was pleaded that the posts against which they were appointed was reserved category post meant for ex-

servicemen and duties were of perennial nature. It was further pleaded that the Management of the petitioner-Bank had earlier recruited armed

guards on temporary basis on consolidated pay of Rs. 1200/- per month and later on they were regularized. The respondent-workmen raised a

dispute that they were qualified and performing their duties as are being performed by permanent armed guard, therefore, they are entitled for

regularization. Respondent-workmen also pleaded before the Tribunal that management of the petitioner-Bank being member of the Indian

Banking Association is governed by Bipartite Settlement and Shastri and other awards in terms of Section 18 of the Industrial Dispute Act, 1947

(for brevity 'Act'). In terms of pare 20.7 and 20.8 of the Bipartite settlement dated 19.10.1966, temporary workmen could be appointed only for

a limited period of work i) which is essentially temporary in nature or ii) which is an increase in the work of permanent nature or iii) in temporary

vacancy caused by the absence of a permanent workman.

11. The management of the petitioner-Bank opposed the claim of the workmen and pleaded that the respondent-workmen are not entitled to the relief of regularization since their engagement was not in accordance with the Rules and regulations. It was pleaded that engagement of respondent-workmen is governed by the conditions governing the engagement of the respondent-workmen as temporary contractual armed guards and not by the awards and Bipartite settlements. It was denied that respondent-workmen were entitled to any special consideration on the basis of the certificated produced by them. It was further pleaded that State Government had provided security to the vulnerable branches of the management and in view of the improvement in law and order situation, deployment of armed guards was not necessary.

12. Heard rival sides and perused the record.

13. It is not disputed that the respondents were employed as Security Guard-cum-Watchmen by the petitioner-Bank on different dates temporarily

with their appointments described as being on 'contract basis'. It is also not disputed that the respondents have been working since long without

break and rendering of services on their part has remained uninterrupted. The material before the Tribunal justifies the conclusion that the

respondents were working against the vacancies which arose either due to increase in the work or was caused by absence of permanent workmen.

Thus they were working against existing vacancies since long. It is also not disputed that the petitioner-Bank is signatory to bipartite agreement. It

is not the case of the petitioner-Bank that the awards are based on no evidence or wrong appreciation of evidence. It is, therefore, apt to examine

whether these awards can be questioned by invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. '

14. In G.M. ONGC, Shilchar Vs. ONGC Contractual Workers Union, , the Honâ??ble Apex Court held that the High Court is fully justified in

interfering with an award of an Industrial Tribunal on account of patent illegality, such interference is justified, if award is contrary to law laid down

by Supreme Court and passed as a measure misplaced sympathy and thus perverse. Interference is Limited to a few cases where there is patent

illegality and perversity. It was further held that it was permissible to lift the veil for adjudication upon the real dispute, whereas in the given case

real dispute between the parties was whether they were employees of appellant organisation or contract labours, though described as "contract workers" in the reference.

15. In *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, , the Hon'ble Apex Court held that the Tribunal must look to the pleadings of the parties to find out the exact nature of the dispute, because in most of the cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble.

16. In *Binny Ltd. Vs. Their Workmen*, , the Hon'ble Apex Court held that in absence of Government from the array of the parties, it is not possible to come to any finding as to whether there was any material to form an opinion about the existence of a dispute to enable it to make reference u/s 10 of the Industrial Disputes Act.

17. In *Dr. A.R. Trag Vs. Presiding Officer Labour Court*, , this Court held that when the matter is determined on enquiry after parties participated in the proceedings or in any case had the opportunity to participate in the proceedings and lead evidence, it hardly appears appropriate or just to interfere with the impugned award in exercise of writ jurisdiction.

18. In *The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another*, , the Hon'ble Apex Court held that when upon consideration of evidence, labour Court comes to a conclusion that the management's action amounts to victimisation of the employees, it would not be open to High Court in a petition under Article 226 of the Constitution of India to disturb that findings except on the ground of an error apparent on the face of the record or on the ground that there was no evidence at all to support it.

19. In *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, , the Hon'ble Apex Court held that the question whether the relationship between the parties is one as between employer and employee or between master and servant is a pure question of fact. The decision of Industrial Tribunal on a question of fact determinable by it is not liable to be questioned in proceedings under Article 226 of the Constitution of India unless at the least it is shown to be fully unsupported by evidence.

20. In *D.N. Banerji Vs. P.R. Mukherjee and Others*, , it was held that dismissal

whether wrongful is a question for Tribunal and no interference by

the High Court under Articles 226 and 227 of the Constitution is warranted unless there is grave miscarriage of justice or flagrant violation of law.

21. In *Kays Constructions Co. (Private) Ltd. Vs. Its Workmen*, it was held that where a valid reference is made to the Tribunal in regard to an

Industrial Dispute and the Tribunal having considered the relevant facts found that the workmen have been improperly locked out and are entitled

to re-instatement, the validity of the award cannot be challenged on abstract legal grounds.

22. In this batch of writ petitions, petitioner-Bank has not, upon reference of dispute by the Central Government to the Tribunal, come forward to

challenge the order of reference after seeking impleadment of Government as a party to the dispute. It is, therefore, safe to conclude that the

dispute raised by the respondents validly gives rise to a reference under the Industrial Dispute Act, such disputes were directly between the

workmen and the employer. The nature of dispute covers all sorts of relationship between the parties as master and servant. The Tribunal has not

enlarged the scope of its jurisdiction by determining the nature of relationship between the parties with reference to their terms of engagement. The

respondent-workmen were permitted to continue against the vacancies caused due to increase of work or absence of permanent workmen. It is

not the case of the petitioner-Bank that the findings are based on no evidence or absence of evidence. Therefore, such findings of question

determinable by the Tribunal within the scope of its jurisdiction and not shown to be based on no evidence or wrong appreciation of evidence

cannot be termed perverse, thus, not constituting an error apparent on the face of record. Findings, recorded by the Tribunal are based on

appreciation of evidence. Recording of findings of fact fall within the domain of the Tribunal and this Court, in exercise of its writ jurisdiction Article

226 of the Constitution of India, would not sit as an appellate Court to review such finding unless there is an error apparent on the face of the

record relating to a question of law and the same has resulted in miscarriage of justice.

23. Individual writ petitions have been filed by the petitioner-Bank against the awards passed in 15 reference made by the Central Government.

Common award has been passed with respect of seven workmen including Rajinder Singh which has been questioned in OWP No. 101-S/2010

titled The Chairman, Jammu and Kashmir Bank Ltd and Anr. v. Rajinder Singh and Ors. The claim of the respondents has been made through the

Jammu and Kashmir Unit of All India Ex-service Bank Employees Federation as reveals by awards other than the common award passed in

Rajinder Singh's case. This brings to four that apart from the individual workmen pursuing their claims, the Union espousing the cause of the

workmen and pursued it.

24. The petitioner-Bank heavily relies upon the judgment rendered by Hon'ble the Apex Court in ONG Commission's case (supra). The judgment

takes care of the arguments advanced on behalf of the petitioner-Bank by holding that the award in question cannot be interfered with, except on

the ground that it suffers from an error apparent on the face of record. No patent illegality or perversity of findings has been brought to the notice

of this Court. Besides defining the limits of jurisdiction of this Court under Article 226 of Constitution of India, it was held that disputes concerning

employment and matters related thereto arising out of or relating to employment under the State or its instrumentalities in Uma Devi's case has no

application to the cases arising out of the Industrial Disputes where employer is not a State or instrumental of the State. Admittedly, petitioner-

Bank is not a State for the purposes of Clause 12 of the Constitution of India. Petitioner's contention that the judgment rendered in Uma Devi's

case is applicable in the instant case is misconceived.

25. In Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Hon'ble Apex Court held that it was impermissible to issue

direction for and for support of regular recruitment process for the posts concerning absorption, regularization, or permanent continuance of

temporary, contractual, casual, daily-wager or Adhoc employees appointed/ recruited and continued for long in public employment dehors the

constitutional scheme of public employment. Such directions could not be issued to merely consider equity for the handful of people approaching

the Court with a claim whilst ignoring equity for the teeming millions seeking employment. The Hon'ble Apex Court directed the Union and

State Government and their instrumentalities to set in motion the process for

regular recruitment in the cases where temporary daily wagers were employed against vacant sanctioned posts.

26. In the instant cases, the reference of dispute does not relate to existence of posts or manner/method or nature of employment of workman, but

to the reasons of petitioner-Bank in not regularising their services, thus no objection can be entertained with regard to the reference. The plea of

the petitioner-Bank that dispute arising out of and relating to employment of J&K Bank are not referable to Industrial Tribunal/Labour Court has

been repelled by this Court in Dr. A.R. Trag's case (supra). Petitioner-Bank having failed to demonstrate that the impugned awards suffers from an

error on the face of record and judgment in Uma Devi's case being not found applicable coupled with the fact that the finding of fact recorded by

the Tribunal cannot be interfered with in exercise of writ jurisdiction of this Court, further that the petitioner-Bank is a signatory to Bipartite

agreement, I am of the consider view that the instant writ petitions are devoid of merit and the same are, accordingly, dismissed.