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**(2015) 11 AHC CK 0076**  
**In the Allahabad High Court**  
**Case No : Writ-A No. 57512 of 2006**

Kamlesh Kumar

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

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**Date of Decision :** 02-11-2015

**Acts Referred:**

**Citation :** (2015) 11 AHC CK 0076

**Hon'ble Judges :** Yashwant Varma, J.

**Bench :** Single Bench

**Advocate :** Aditya Kumar Trivedi, for the Appellant; Vipin Singh, Ashok Trivedi and Vipin Sinha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Yashwant Varma, J.—Heard learned counsel for parties.

2. This petition seeks quashing of an order dated 8 July 2006 passed by the fourth respondent turning down the claim of the petitioner for being granted the relief of reinstatement and other benefits flowing from being treated as being in continuous service from 2002. A further relief has been sought in the petition for reinstatement of the petitioner with continuity of service on the post of Peon in the Hathgaon Branch of Bank of Baroda.

3. The petitioner asserts that he was engaged as a daily wager in the Hathgaon Branch of the Bank of Baroda from 29 October 1985 and worked in such capacity for a period of 775 days upto January 1990. It is submitted that on 15 August 1991 the bank issued an advertisement indicating its decision to draw up a panel of persons who had been working on temporary basis between 1.1.1982 and 31.12.1990 as a peon for a period of 90 days or more for consideration of their cases against future temporary or permanent vacancies. It is contended that the petitioner was subsequently appointed on 1 October 1991 pursuant to the above advertisement issued by the bank. It further transpires that a case of robbery occurred at the branch which led to initiation of criminal prosecution in which the

petitioner was also arraigned as one of the accused. A charge sheet was submitted against various persons including the petitioner herein. However, the Sessions Judge passed judgment dated 19.8.2004 holding that the charges levelled against the petitioner could not be proved beyond reasonable doubt and accordingly rendered a judgment of acquittal. It becomes relevant to note here that consequent to the incident which took place in the branch on 18 March 2002, the petitioner was taken into custody and came to be disengaged from service. His claim for being reinstated on the post was not acceded to and accordingly he petitioned this Court seeking the relief of reinstatement by filing Writ Petition No. 20272 of 2006. This petition appears to have been preferred after the judgment came to be rendered by the Sessions Judge on 19 August 2004. The above petition came to be disposed of with directions calling upon the fourth respondent to pass an order on the claim of the petitioner within three months from the date of production of the certified copy of the order of this Court. It is pursuant to the above directions that the order dated 8 July 2006 has come to be passed.

4. Learned counsel for the petitioner has submitted that the appointment of the petitioner was made initially on daily wages in 1985 as a consequence of which he worked for 775 days. It is his submission that the petitioner worked during the period 1.1.1982 and 31.12.1990 and was clearly eligible to be considered for appointment in terms of the advertisement issued on 15 August 1991. He would submit that the appointment conferred upon the petitioner on 1.10.1991 was pursuant to the above policy of the respondent bank. It is submitted that subsequent to the acquittal of the petitioner on 19 August 2004, he was entitled to be reinstated on the post and granted all consequential benefits.

5. Learned counsel for the respondent-bank contends that the initial engagement of the petitioner in 1985 was not an appointment made in accordance with the statutory rules and regulations which were in force and prevalent in the respondent-bank. It is submitted that the engagement of the petitioner appears to have been made on daily wages by the branch considering the exigencies of work. It is further submitted that the advertisement of 15 August 1991 is of no relevance insofar as the case of the petitioner is concerned inasmuch as the same was for the purposes of drawing up a panel of persons who had been working on temporary basis in the bank and for their empanelment to be appointed against future temporary/permanent vacancies. It is submitted that the order of 1 October 1991 is not referable to the aforesaid claim and that there is no co-relation between the two acts. Referring to the order dated 8 July 2006, learned counsel submits that the fourth respondent has come to the conclusion that the acquittal of the petitioner was not an "honourable acquittal" and therefore it is his case that the respondent-bank has rightly come to a decision not to re-engage the petitioner. He lastly submits that a temporary employee, such as was the petitioner, is not entitled to reliefs of reinstatement.

6. This Court finds that in paragraphs 4, 8 and 9 of the Counter Affidavit, the

categorical case taken by the bank is that the engagement of the petitioner on daily wages was not in accordance with the statutory rules and regulations which were prevalent in the bank. It is contended in the Affidavit that the engagement of the petitioner was purely in order to meet the exigencies of work and was not pursuant to any process of recruitment which was prevalent in the bank. The petitioner on the other hand in the writ petition and more particularly in paragraphs 29 and 30 thereof asserts that he was appointed on a vacant and sanctioned post of peon after following due process and the rules. What however is clear from the averments taken in paragraphs 29 and 30 of the writ petition is that the petitioner avers as such referring to his appointment made pursuant to the advertisement dated 15 August 1991 and the appointment accorded to him on 1 October 1991. It therefore is clear that the initial engagement of the petitioner was on daily wages made due to exigencies of work and not in accordance with any statutory rules and regulations of recruitment of the respondent-bank. Coming then to the claim which stood formulated and claimed with reference to the advertisement dated 15 August 1991, this Court finds that the appointment order of 1 October 1991 does not refer to the said advertisement or the process which stood enumerated therein. The advertisement of 15 August 1991 applied to persons who had been working on temporary basis and not on daily wages. The said advertisement was indicative of a decision taken by the bank to empanel temporary workers for consideration of their cases for appointment against future vacancies which may arise in the bank. The order dated 1 October 1991 does not refer to the empanelment of the petitioner pursuant to the above advertisement and is ex facie only an indicator of the engagement of the petitioner on temporary basis.

7. Coming then to the order dated 8 July 2006, the Court finds that the judgment of acquittal rendered by the Sessions Judge was not an honourable acquittal. The petitioner was discharged in the said case on the ground that the charges levelled against him could not be proved beyond all reasonable doubt. It is this fact which has weighed with the authority in coming to the conclusion that the re-engagement of the petitioner albeit on temporary basis would not be in the interest of the bank which is a public financial institution. This Court finds no merit in the challenge laid to the above decision arrived at by the fourth respondent. Considering the nature of the involvement of the petitioner in the case in question and the judgment rendered by the Sessions Judge, the conclusion arrived at by the fourth respondent cannot be said to be arbitrary or perverse. Consequently, this Court finds no merit in this petition which shall accordingly stand dismissed.

8. Learned counsel for the petitioner, towards the end has contended that the impugned order is punitive in character and therefore also liable to be set aside. This Court finds no merit in the above submission inasmuch as the order dated 8 July 2006 came to be passed by the fourth respondent consequent to the directions issued on the writ petition of the petitioner.