

(2022) 12 DEL CK 0183

In the Delhi High Court

Case No : Civil Writ Petition No. 18065 Of 2004

Karanvir Singh

APPELLANT

Vs

Dy. General Manager

RESPONDENT

Date of Decision : 23-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 10(4), 18(1), 25F
State Bank of India Act, 1955 — Section 50

Citation : (2022) 12 DEL CK 0183

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Mahesh Srivastava, Vaibhav Manu Srivastava, Rajiv Kapur, Tushar Bagga

Final Decision : Dismissed

Judgement

Gaurang Kanth, J

1. The present petition has been preferred by the Petitioner under Article 226 of the Constitution of India against the award dated 19.07.2004 (hereinafter referred to as "Impugned award") passed by Presiding Officer, Central Government Industrial Tribunal, New Delhi in ID. No. 181/98.

2. Vide the impugned award, the learned Labour Court denied relief to the petitioner since he failed to prove that he was appointed as a Messenger-cum-Water boy through a regular process. Also, learned Labour Court held that the petitioner was unable to establish that he moved an application for absorption in the service in pursuance of the Bipartite Settlement, therefore, is not entitled to regularisation of service.

FACTS RELEVANT FOR ADJUDICATION OF THE MATTER

3. Brief facts giving rise to the present petition is that the petitioner was recruited as Messenger-cum-Water Boy in January 1983 at Nangli Sakrawati

branch of the Respondent Bank. He rendered his service till December 1986, after which his service was terminated by the respondent Bank.

4. Meanwhile, on 17.11.1987, the Bank entered into a Bipartite settlement under Section 2(p) read with Sec. 18(1) of the Industrial Disputes Act, 1947 ("the I.D. Act") with the All India State Bank of India Staff Federation ("the union"), for providing a chance to temporary employees for permanent appointment in the Bank. The same was circulated vide Respondent's Circular dated 23.04.1988. Eligibility of employees entitled for permanent appointment is provided in the settlement as under:

"....

NOW THESE PRESENTS WITNESS AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The following category of temporary employees in subordinate cadre will be given a chance for being considered for permanent appointment in the Bank's service against vacancies likely to arise in 1987 to 1991:

(i) Category 'A' ; Those, who have completed 240 days temporary service in 12 months or less after 1.7.1975.

(ii) Category 'B': Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months after 1.7.1975.

(iii) Category 'C' ; Those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 1.7.1975 or a minimum of ,70 days' aggregate temporary service in any continuous block of 36 calendar months after 1.7.1975.

....."

5. Thereafter multiple settlements/agreements were made between the union and the Bank on 16th July, 1988, 27th October, 1988 and 9th January, 1991 relating to permanent appointment of the eligible temporary employees in subordinate cadres in the Bank.

6. In January 1989, the petitioner was re-appointed in Respondent's service at the same branch on the existing vacancy. He worked there up to 30.11.1997, however his services were again terminated by respondent Bank without assigning any reason.

7. Aggrieved by the termination, the petitioner raised an industrial dispute which was referred by the Central Government to the Tribunal for adjudication. The term of reference was as follows:

"Whether the action of the management of State Bank of India in not regularizing the services of Shri Karanvir Singh, messenger cum water boy w.e.f 1983 is just fair and legal. If not, what relief the concerned workman is entitled to?"

8. Petitioner filed his statement of claim before the learned Labour Court wherein it was alleged that the Respondent has illegally terminated the petitioner's service in December 1986 and subsequently again on 30.11.1997. It was alleged that the respondent Bank failed to serve any notice before terminating the service which was in contravention of para 522(4) of the Sastry Award and Section 25-F of the I.D. Act. Further, it was asserted by the petitioner that he submitted application with the concerned Branch of the respondent Bank for regularisation in pursuance of Circular dated 23.04.1988 since he qualified for absorption. However, while he was denied benefits of settlement, the employees with lesser years of service were given permanent employment in the Bank.

9. Countering the claims made by the petitioner, the respondent filed written statement wherein it was averred that appointment of petitioner was irregular and void-ab-initio since the concerned Branch Manager had no authority to appoint any person in the Bank. As appointment is void ab initio, provision of Section 25-F of the Act will not be applicable in the present dispute. Also, that the petitioner never applied to the Bank for his permanent absorption, hence, now cannot be allowed to raise the dispute.

10. After hearing both the parties, the learned Labour Court passed the impugned award on 19.04.2007 vide which it was held:

"7. In view of the discussions made above I am of the opinion that the claimant applicant has failed to prove that he was appointed to the job of Messenger-cum-Water boy through a regular process or that he was entitled to be retained or regularized or that he moved an application for absorption and regularization in the job in view of the Bipartite Settlement entered into in January 1991. Therefore, the workman is not entitled to the relief claimed. Hence the award is accordingly passed"

11. The petitioner through the present petition is challenging the validity of impugned award.

SUBMISSIONS MADE ON BEHALF OF PETITIONER

12. Mr. Mahesh Srivastava, learned counsel appearing for the petitioner has vehemently argued that the petitioner's services were terminated in contravention of procedure contemplated under Section 25-F of the I.D. Act. He has contended that petitioner continued to work in both spells for more than 240 days i.e. 1983 to 1986 and 1989 to 1997. In light of the same, the service of petitioner could have been terminated only after compliance of Section 25-F of the I.D. Act.

13. Learned counsel further argued that the petitioner submitted the application on prescribed form to the Bank as required for permanent absorption in the bank. Learned counsel relied upon the affidavit filed before the learned Labour Court wherein it was deposed that the petitioner applied for permanent absorption in prescribed Performa along with service certificate issued by the

Branch manager as per the Bipartite settlement.

14. For cementing the claims made by the petitioner, learned counsel has placed reliance upon the judgement delivered in *The Punjab Land Development & Reclamation corporation Ltd., Chandigarh vs. Labour Court, Chandigarh* (1990) 3 SCC 682; *Maharastra State Road Transport Corporation and Others vs. Casteribe Rajya Parivahan Karamchaei Sanghatana* (2009) 8 SCC 556; *Jasmer Singh vs. State of Haryana* (2015) 4 SCC 458.

15. With these submissions, learned counsel for the petitioner prays for the setting aside of the impugned Award.

SUBMISSIONS MADE ON BEHALF OF RESPONDENT

16. Mr. Rajiv Kapur, learned counsel appearing on behalf of the respondent has submitted that the impugned award does not suffer from any infirmity. Learned counsel has stated that learned Labour Court has rightly confined its inquiry to the question referred while answering the reference i.e. regularisation of service in terms of section 10(4) of the I.D. Act.

17. Further, it is submitted that no master-servant relationship exists between the respondent Bank and the petitioner since the petitioner was not appointed through a regular recruitment process. In terms of Section 50 of the State Bank of India Act, 1955, the Branch Managers are not the competent authority to appoint a Messenger. His appointment since made by a Branch manager, is prima facie irregular and void ab initio. It is settled principle of law that absorption and regularization in the service can be claimed / granted only when the contract of employer - employee relationship subsists between the parties.

18. Learned counsel submitted that Petitioner cannot claim benefits of the settlement/agreement dated 17.11.1987 entered between the union and respondent Bank, since he himself lost the opportunity by not applying to the concerned branch of the respondent Bank in prescribed Performa. Further, the petitioner has not completed benchmark of 240 days of continuous work, which is essential for attracting applicability of Section 25-F of the I.D. Act.

19. Learned counsel rebutted the contentions made by the petitioner that the respondent bank acted in contravention of Section 25-F of the I.D. Act. It was submitted that a person who claimed the benefit of Section 25 F of I.D. Act is required to establish that he is in permanent rolls of the Bank having been validly appointed. However, in the present case, the petitioner was not able to discharge this burden upon himself.

20. With these submissions, learned counsel for the respondent prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

21. This Court had heard the arguments advanced by the learned counsels for both the parties and perused the documents on record and Judgments relied

upon by the parties.

22. Having gone through the material on record, the question that falls for the consideration of this Court is whether the action of the management of State Bank of India in not regularizing the services of Shri Karanvir Singh, Messenger-cum-Water Boy w.e.f 1983 is just, fair and legal.

23. In the present case, it is the case of the petitioner that his service was terminated w.e.f 30.11.1997. However, the term of reference was confined to his regularization in service w.e.f 1983. There is no reference qua his alleged illegal termination. No additional issue was framed by the learned Labour Court. The petitioner neither challenged the term of reference nor pressed for framing additional issues. Since the learned Labour Court conducted the enquiry limited to the term of reference, i.e, the issue of regularization, hence this Court is also restricting the examination limited to the term of reference, i.e, regularization of the petitioner as a Messenger-cum-Water Boy w.e.f 1983.

24. The law regarding the regularisation of an employee is no more *res integra*. As per the settled proposition of law, the regularization can be done only as per the regularization policy declared by the Government, and nobody can claim the regularization as a matter of right *de hors* the regularization policy. The Hon'ble Supreme Court reiterated this position in *State of Rajasthan and Ors. vs. Daya Lal and Ors.* (2011) 2 SCC 429, which reads, *inter alia*, as follows:

"12. We may at the outset refer to the following well principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

25. In view of the legal position as discussed herein above, it is necessary to examine the facts of the present case. The respondent Bank had entered into Settlement Agreements with its employee Unions and formulated Scheme for the regularisation of the temporary employees. The said Scheme was given wide publicity by duly publishing it in the daily newspapers. An employee is entitled for the regularisation only if he satisfies the regularisation policy of the Management. It was the categorical stand of the respondent that the petitioner never applied under the said Scheme for regularisation. However, it was the case of the petitioner that he applied for regularisation. The burden of proof was on the Petitioner to prove that he applied under the said regularisation Scheme. However, the Petitioner failed to place on record any document to show that he ever applied for the permanent absorption under the Scheme. The petitioner stepped into the Witness box as WW-1 and deposed that he submitted his application for regularisation through Nangli Sakravati Branch. However, no particulars of the said application, including the date of the application, was placed on record. MW-1 and MW-2 deposed categorically that the petitioner never applied under the Scheme. The Petitioner failed to cross-examine the Management Witnesses on these aspects. The petitioner failed to summon the relevant records from the respondent Bank. The process of regularisation happened in the year 1991. However, there is no representation/letter from the petitioner till his termination. There is nothing on record to show that the petitioner ever applied for the permanent absorption under the Scheme of the respondent Management.

26. This Court examined the impugned Award in detail. The relevant portion of the impugned Award, reads, inter alia, as follows:

"The respondent bank has admitted that he worked there on temporary basis or

on daily wages and in view of the Bipartite Settlement dated 27.10.88 and 9.1.91 entered into between the employees Union and respondent bank. The workman was eligible to apply for regularisation but he failed to do so. As such, he is not entitled to the relief claimed. The workman in his statement of claim has averred that he applied for his absorption or regularization in view of the above said bipartite agreement but in his statement he did not depose so not any suggestion was put to the witness of the management MW-1 that he so applied. MW-1, Shri M.M. Sharma also stated in his evidence that he did not apply for absorption in the service or for regular appointment. Workman also failed to file copy of the application vide which he applied to the bank and he also failed to put/file copy of the application or he ever asked the Bank to produce the record to show that he had moved such an application. The burden to prove that he applied for regularization of his job was upon the workman. In my opinion he has failed to prove his claim that he so applied, in view of the above discussions the workman is not entitled to the reliefs claimed.”

27. This Court finds no infirmity or perversity in the findings of the learned Labour Court. Learned Labour Court passed the impugned Award based on the evidence on record.

28. Both the parties raised issues relating to existence of employer/employee relationship between the parties. In view of the fact that the petitioner never applied for the regularisation under the Scheme of the respondent's Bank, the petitioner is not entitled for regularisation. Hence this Court does not think it necessary to examine the other issues as the same was not part of the reference.

29. In the light of the detailed discussions herein above, this court holds that the impugned award does not suffer from any illegality or perversity. Learned Labour Court did not commit any error by confining its inquiry to the questions referred to it under Section 10(4) of I.D. Act. Regularisation is not a matter of right and therefore this Court cannot direct the respondent Bank to regularize the services of petitioner. This Court is not inclined to interfere with the impugned award while exercising the jurisdiction vested in it under Article 226 of the Constitution of India.

30. The present Writ Petition is dismissed in the aforesaid terms. No order as to costs.