

(1994) 04 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33050 of 1990

Man Phool

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 4, Order 8 Rule 5
Constitution of India, 1950 — Article 226, 51A
Industrial Disputes Act, 1947 — Section 10

Citation : (1994) 3 AWC 1340

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Navin Sinha, V.K. Singh, for the Appellant; Sharad Verma, for the Respondent

Final Decision : Allowed

Judgement

B.L. Yadav, J.—By this petition under Article 226 of the Constitution of India, the relief claimed is for issuance of a writ of Certiorari quashing the orders dated 22-1-87, 10-3-87 and 16-11-90 (Annexure-2, 3 & 9 respectively), and for issuance of a writ of Mandamus directing the Respondent Nos. 3 and 4, the Bank to regularize the services of Petitioner and to pay him arrears of his wages.

2. Portrayal of the essential facts are that the Petitioner was appointed by Respondent Nos. 3 & 4, namely, the State Bank of India, Main Branch, Farrukhabad and the Regional Manager, State Bank of India, Mahatma Gandhi Marg, Kanpur, as Water Boy on 13-8-79 and was serving the State Bank of India, Farrukhabad, Respondent No. 3. He was appointed on daily wages at the rate of Rs. 6/- per day. He worked in that capacity till 3-12-79. He discharged his duties in the Bank on working days and served at the residence of the Manager of the State Bank of India on holidays. Even though for that period he was not paid any wages. The Petitioner has completed 113 days of service including holidays. The Petitioner was paid his wages for 96 days. In para 4 of the writ petition it was

stated that he was paid a total sum of Rs. 597/- as his wages from 13-8-79 to 3-12-79 on 12 different dates. The amount on different dates was paid thus Rs. 54/, Rs. 48/, Rs. 36/, Rs. 36/, Rs. 45/-, Rs. 66/-, Rs. 60/-. Rs. 48/-, Rs. 54-, Rs. 30/-, Rs. 54/ and Rs. 48/-. The amounts, however included the payment of wages for 7 days and a half for holidays, i.e., 14th, 15th, 19th, 25th and 26th August, 1979, 2nd September, 8th September and 9th September, 1979. For 15th August, however, he was paid only half of the wage. In view of the circular issued by the Respondent Bank as the Petitioner served more than 90 days, he acquired a right to be regularised and a right for being offered permanent appointment. On 28-5-86 he made a representation with a prayer to permit him to serve the Bank (Annexure-1 to the petition).

3. Another representation was made on 12-12-86. A reply was received, however, from the State Bank of India, Farrukhabad that the Petitioner was not entitled to be regularised as he has served only 83 days (Annexure-2 to the Petitioner). A similar order was passed by Respondent No. 3 on 10-3-87. The Petitioner had preferred a writ petition No. 9822 of 1988 in this Court which was dismissed by a Division Bench of this Court on 11-1-90 (Annexure-4 to the petition), on the ground that he has an alternative remedy and he can make an application to the Central Government for making a reference u/s 10 of the Central Industrial Disputes Act. The application was, however, filed before the Labour Commissioner for making reference. But the same was rejected by the Central Government on 16-11-90 on the ground that the Petitioner has" worked for 83 days, there was delay in making reference. Against these orders the present petition has been filed.

4. Learned Counsel for the Petitioner urged that the Petitioner has worked continuously as Water Boy for 96 1/2 days and was paid wages at the rate of Rs. 6/- per day. Even though he has worked 113 days, consequently he was entitled to be regularised. These facts were stated in paras 2, 3 and 4 of the writ petition, but an evasive reply was given in paras 5 & 6 of the counter affidavit, and even though para 4 of the writ petition gives details of the wages paid, but the same was not replied. The amount of wages received by the Petitioner was a conclusive proof as to for how many days he has worked. The reply of para 4 of the writ petition giving details of the wages to the tune of Rs. 579/- at the rate of Rs. 6/- per day was conspicuous by its absence from the counter affidavit, rather a chart has been prepared as to how the amount was paid. But as para 4 of the writ petition has not been replied nor the details of payment has been replied, hence the only inference to be drawn is that the Petitioner was paid a sum of Rs. 579/- and he has worked for 96 1/2 days. In such matters the proceedings in a writ petition are civil proceedings and consequently at least the substance of the relevant provisions of the Code of Civil Procedure, 1908, (for short the Code), would apply. In the instant case, in view of Order 8 Rules 3, 4, 5 of the Code read together, in a case an averment in the plaint or the writ petition was not specifically denied, as in the instant case, there was no denial to the facts stated in para 4 and other facts were not specifically denied in the corresponding

paragraphs of the counter affidavit, hence it would be assumed that it has been admitted to the Respondents. In this view of the matter considering entire facts and circumstances, the Petitioner has completed requisite number of days more than 90 days and he was entitled to be regularized.

5. Conversely learned Counsel for the Respondents refuted the submissions made by the learned Counsel for the Petitioner and urged that the Petitioner has worked only for 83 days. The chart Annexure-C.A. 1 appended to the counter affidavit indicates the number of days the Petitioner worked. Hence the claim of the Petitioner for regularisation was unfounded, and that as the Petitioner was a Law Graduate when he accepted the job as a Water Boy, was over qualified for regularization as he was in the capacity of Class IV employee. Much emphasis was laid by the learned Counsel on this aspect of the matter and he pointed out that Annexure-12 to the counter affidavit was a circular relevant for the purpose, which indicates that 90 days must have been completed as a daily wage and his qualification must not have been more than Class VIII. Reliance was placed on *The State Bank of India Vs. Shri N. Sundara Money*, and *Hoshnak Singh v. Union of India* AIR 1979 SC 1328.

6. The petition is being decided on merits as learned Counsel for both the parties have agreed to that effect.

7. Having heard the learned Counsel for the parties, the points for determination are as to whether the Petitioner has completed 90 days as a daily wage so as to entitle him for regularization; whether the qualification of Law Graduate would disentitle the Petitioner for rendering service of a Water Boy; and whether the earlier writ petition having been dismissed on the ground of alternative remedy, the present petition would not be maintainable?

8. As regards the first point, suffice it to say that paras 2, 3 and 4 of the writ petition give details as to how the Petitioner has completed 96 1/2 days service apart from holidays and that he has received a sum of Rs. 579/- as wages. These paragraphs were replied in paras 5 & 6 of the counter affidavit, but the receipt of a sum of Rs. 579/- was not denied, nor para 4 of the writ petition was denied in the counter affidavit. In para 7, however para 5 of the writ petition was denied. Non denial of para 4 of the writ petition would indicate that it was admitted by the Bank Respondent Nos. 3 & 4, and that the Petitioner received Rs. 579/- and has worked for 96 1/2 days. In such matters the provisions of Order 8 Rules 3, 4 & 5 of the Code would be relevant. Rule 3 provides that denial in the written statement must be specific and evasive denial must not be made, rather point of substance has to be positively denied and allegations made with diverse circumstances would not be sufficient to deny. Rule 5 provides that every allegation of fact, if not specifically denied shall be deemed to be admitted except as against a person under disability. There is a proviso to Rule 5 which indicates that if a fact has not been specifically denied, the court would accept as if the same has been admitted by the Defendant or the Respondent as in the present case. It needs no emphasis that rules of procedural law are not by themselves an

end but those rules are the means to achieve the ends of justice. In other words, the rules of procedure are tools with a view to achieve justice. They are not to act as an obstruction to the pathway to justice. It has to be kept in mind that such construction must be applied which promotes justice and at the same time prevents its miscarriage. See Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni, and Deshbaadhu Gupta v. N.L. Anand JT (1993)(5) 313.

9. It has to be recalled that the main function of a proviso is to carve out an exception to the main enactment. It cannot, therefore, be so interpreted as to set at naught the main enactment. See S. Sunderam v. V.R. Pattabhiram AIR 1987 SC 588 , A.N. Sehgal and others Vs. Raje Ram Sheoram and others, . In the present case also it is by way of exception that the court would be required some additional evidence to prove those facts which have been evasively denied. In other words, as the denial in paras 5 & 6 of the counter affidavit to paras 2, 3 & 4 or the writ petition (which were not denied at all), was evasive, consequently the details given in para 4 of the writ petition have to be assumed and accepted as if the same has been admitted. For that it would require no proof, rather we have no option but to accept that the Petitioner has worked for 96 1/2 days and was paid Rs. 579/- as wages.

10. As regards the second point as to whether the Petitioner can be said to be disqualified as he was a Law Graduate, in these hard days of unemployment, almost every Government either claiming to be socially oriented or believing Gandhian philosophy otherwise, shows no interest in opening channels of employment to the citizens of this country, where about more than half of the population lives below the poverty line. Even if by chance those who claim to render better social justice get a chance to come in power, they show total apathy to the real problem of the teeming millions. Even though justice--social, economic and political is the Preamble of our Constitution and they take oath to work in accordance with the provisions of the Constitution, in this context I am constrained to say that administration of justice can no longer be merely a protector of legal rights, but whenever occasion demands it must be dispenser of social justice." I am conscious of an eminent jurist Bentham's theory which was about greatest happiness on greater number. As the time changes, so must be the administration of justice. The modern jurisprudence has shifted from fine spun technicalities and abstract rules (to which learned Counsel for the Respondent had laid great emphasis). In these days human beings must be treated as human beings. Even though instead of having passed VIII Class for the post of Class IV employee, if he is a Law Graduate, he must be treated as human being engaged to satisfy the genuine human needs. In case the Petitioner was over qualified, the Respondents would not be handicapped, rather they would receive better services from a highly qualified person. See Sadhuram Bansal Vs. Pulin Behari Sarkar and Others, .

11. The mattes can be viewed from another angle. In case the relevant circular

filed as Annexure-12 to the petition indicates the educational qualification for a Class IV employee as having passed Class VIII but it does not lay down that if some candidate is more qualified and he has a higher degree he would be disqualified. The relevant provisions of the Circular (Annexure-12 to the counter affidavit) have to be interpreted keeping in view the provisions of Article 51-A(j), Part IV-A of the Fundamental Duties in the Constitution of India added by the Constitution 42nd Amendment Act, 1976, which came into force on 3-1-1977. It mandates that It shall be the duty of every citizen of India to strive towards excellence in all spheres with individual and collective activity so that the nation constantly raises to higher levels of endeavour and achievements. The word "excellence" in common parlance signifies to be "superior, to surpass, to have good qualities of higher degree than others. In case the Petitioner was highly qualified he would certainly make endeavour to surpass others while performing his duties. Consequently the qualification" of having passed Class VIII has to be interpreted in the light of fundamental duties. The object of relevant rules prescribing Class VIII as minimum qualification, but not indicating that Signer qualification would be a bar, is that by no stretch of the imagination the higher qualification of L.L.B. could be said to be a bar as it was consistent with the object of the framers of the Constitution in enacting Article 51-A of the Constitution. In case the submissions made by the learned Counsel for the Respondents: that the relevant circular (Annexure-12 to the counter affidavit), indicating Class VIII to be the requisite qualification for a peon or class IV employee and the higher qualification was to operate as a bar is accepted, in that event In any humble opinion, borrowing words of the Lord Diplock the relevant provisions of the circular would be converted into a veritable Rogue's Charter. See *Devis and Co. Ltd. v. Alrhes* (1977) AC 931. Similarly Hon'ble Desai, J. of the apex Court in a Constitution Bench Case *R.N. Naik v. A.R. Antulay* 1984 SC 648, held that the relevant provisions of the Act must be so construed as to advance its object and purpose, and his Lordship refused to interpret in such a way that it would convert the provision into a Regu's Charter. Under the circumstance of the case. I am of the considered opinion that the higher qualification need not be taken as a bar either for appointment or for regularization of the service of Petitioner. See *Mohan Kumar Singhania v. Union of India* 1992 Supp. (1) SCC 594.

12. Reverting to the next question as to whether this petition would be a bar as the earlier writ petition filed by the Petitioner was dismissed on the ground of alternative remedy, as the earlier writ petition was not dismissed on merits, nor it was dismissed on any other ground, rather the Petitioner was directed by a decision of the Division Bench of this Court dated 11-1-90 (Annexure-4 to the petition) to seek his remedy by way of reference. No doubt he availed that remedy, but the reference was rejected on the ground that the Petitioner has completed only 83 days, which was incorrect as he has worked for 96 1/2 days as held earlier and the delay in preferring the reference was also held to be a factor in not making reference. Whereas u/s 10 of the Central Industrial Disputes

Act, the provisioning were that at any time if there was an industrial dispute or the same was apprehended, reference can be made by the Central Government to the proper Labour Court or the Tribunal. There was no time limit fixed u/s 10 for making reference. Consequently the Central Government was not justified in taking into consideration the delay in making reference,

13. Normally I would have referred the matter to be considered by the Central Government, or the matter could have been referred to the Tribunal or the Labour Court to decide the dispute, but as the matter has dragged on for too long and the points are clear as it is obvious that the Petitioner has worked for 96 1/2 days, hence it would be just an exercise in futile in requiring the Tribunal to decide the dispute treating it to be an industrial dispute. In such matters the Court is required to make a purposive approach to attain social ends envisaged in the relevant provisions and the Act. The whole scheme of a relevant provisions have to be considered as an integrated whole and practical means have to be evolved to achieve the social ends as the social justice is the Preamble of our Constitution. At the same time benevolent provisions have to be kept in mind and even where two interpretations are permissible, that which furthers the beneficial and social object, should be preferred. See *Som Prakash Rekhi v. Union of India* AIR 1981 SC 212; *Othevlatha Lakhmi Amma v. N. Goindan Nair* JT 1990 3 SC 23; *Dyson Holding's Case* (1975) 3 AE.R. 103.

14. It would not be justified to refer the matter either to the Central Government to make a reference again or to the Tribunal to adjudicate upon it.

15. The upshot of the aforesaid discussion, applying Aristotelian and Beconian reasoning, the present petition succeed; and is allowed. The impugned orders dated 22-1-1987, 10-3-1987 and 16-11-1990 (Annexure 2, 3 and 9 to the writ petition) are quashed by issuing a writ of Certiorari. Respondent Nos. 3 and 8, namely, the State Bank of India, Main Branch, Railway Road, Farrukhabad and the Regional Manager, State Bank of India, Region II, Mahatma Gandhi Marg Kanpur are directed to reinstate him (the Petitioner) forthwith and to regularise the services of the Petitioner is Class IV in the Bank and to treat him to be in continuous service since 4-12-1979 and to pay his wages regularly and other admissible emolument. The Petitioner will be entitled to back wages and other emolument since 4-12-1979, The back wages would be paid within two months from the dale a certified copy of this judgment and order is furnished. There shall be BO order as to costs.

16, A copy of this judgment and order be issued to the parties within a week on making a proper application.