
(2007) 03 CAL CK 0063
In the Calcutta High Court
Case No : F.M.A. 1848 of 2003

Mohan Chandra Ghosh

APPELLANT

Vs

Central Bank Of India and Others

RESPONDENT

Date of Decision : 03-03-2007

Acts Referred:

Citation : 111 CWN 545

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Asoke Banerjee and Subir Kr. Bhattacharyya, for the Appellant;M. R. Sarbadhikari and Mrs. Suparna Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred at the instance of the writ petitioner who filed the writ petition for issuance of appropriate order directing the concerned respondents to absorb the said writ petitioner permanently in the subordinate cadre of the Central Bank of India and consequently appoint him as a Peon at any of the offices in the concerned region. The said writ petitioner also claimed fixation of security and payment of arrear wages from the date of coming into effect of the circular dated 12th March, 1991 issued by the Central Bank of India (hereinafter referred to as the "said bank"). The said writ petition was finally heard and dismissed by the learned Single Judge by the judgment and order dated 3rd July, 2000 wherefrom the instant appeal has been preferred.

2. The appellant herein was engaged as a Canteen boy in the Shyam bazar Branch of the respondent bank and while working in the said canteen, services of the said appellant were utilised by the bank on casual basis. The appellant thereafter claimed permanent absorption in the subordinate cadre of the Central Bank of India pursuant to the circular dated 12th March, 1991 issued by the said bank since the said appellant had put in more than 240 days of temporary service within 12 calendar months during the period on and from December,

1982 to November, 1983. It has been specifically provided in the said circular that the temporary employees who had put in 240 days of temporary service in any continuous period of 12 months after 1st December, 1982 upto 31st December, 1990 will be considered for absorption. The relevant portion of the said circular dated 12th March, 1991 is quoted hereunder:

"3.1. Temporary employees who have put in 240 days of temporary service in any continuous period of 12 months after 01-01-1982 upto 31-12-1990 will be considered for absorption in the immediate available vacancies without any test and interview."

3. Therefore, now it is to be decided whether the appellant herein is entitled to be absorbed in the bank's employment in terms of the aforesaid circular dated 12th March, 1991 for working more than 240 days in temporary service of the said bank.

4. It has been specifically submitted on behalf of the appellant that the services of the said appellant were utilised by the bank in place of sub staff as temporary employee for more than 240 days during the period December, 1982 to November, 1983 and therefore, the appellant is entitled to claim permanent absorption in the subordinate cadre of the said bank in the immediate available vacancy without any test or interview in terms of the aforesaid circular dated 12th March, 1991 issued by the respondent-bank.

5. Mr. Subir Kr. Bhattacharyya, learned Counsel of the appellant referred to and relied on several correspondences and documents of the respondent-bank wherefrom it would appear that the responsible officers of the said bank under whom the appellant directly worked during the said period, not only forwarded the aforesaid claim of the appellant for absorption having worked for more than 240 days in 12 calendar months during December, 1982 to November, 1983 but also recommended for absorption of the said appellant in bank's service in the subordinate cadre.

6. From the documents annexed with the writ petition we find that the Zonal Manager of the Central Bank of India by written communication dated 18th April, 1992 advised the regional office of the said bank to appoint the appellant in the bank as Peon upon verifying the particulars of the said appellant in the light of the aforesaid circular dated 12th March, 1991. The said letter of the Zonal Manager is reproduced hereinbelow :

"Regional Officer North Calcutta

Date : 18-04-1992

Sub: Recruitment of Sub-staff-preference to persons who have worked on temporary basis for 240 days - absorption of Shri Mohan Ch. Ghosh who has worked for 246 days at Shyambazar Branch.

In pursuance to Central office Circular No. 90-91/622 dated 12-03-1991 advising

to consider the cases of those temporary employees who have put in 240 days of temporary service in any continuous period of 12 months after 01-01-1982 upto 31-12-1990 for absorption in immediate vacancies without any test and interview, Regional Offices were advised to forward the cases of the candidates who might come under the purview of the above Circular. Your office informed us of the above case stating that during the period December 1982 to November 1983 Shri Mohan Ch. Ghosh worked for 246 days.

You had vide your letter No. RO:CAL: N:PRS:90-9I/O 1/4759 dated 14-02-1991 signed by Regional Manager forwarded a list of candidates who have completed 240 days inter-alia stating that Shri Ghosh of Shyamabazar Br. has worked 246 days in the capacity of Sub-staff during the Calendar year December 1982 to November 1983. Though subsequently it was observed that the records showing the fact Sri Ghosh have 246 days on different dates could not be verified due to destruction of papers at the Branch level, Regional Office mentioned that Sri Ghosh has actually worked for 246 days.

As per the papers submitted by you Shri Mohan Chandra Ghosh, who has worked as a Casual substaff at Shyambazar Branch for 240 days during the Calendar year December 1982 to November 1983, is prima facie eligible for absorption in Bank's subordinate cadre against the substaff vacancies of 1992-1993 to be allotted to our Zone by Central Office.

Central Office have, in their Circular C0:90-91:622 dated 12-03-1991, issued detailed guidelines regarding absorption of temporary employee. You are advised to go through the same carefully and verify the particulars of Shri Ghosh in the light of the said circular and appoint him in the Bank as Peon in case he is found eligible.

Please acknowledge receipt and act accordingly.

R. SETHI ZONAL MANAGER"

7. Chief Manager, Shyambazar Branch of the bank also by the written communication dated 8th June, 1992 informed the appellant herein as hereunder:

"Dept..... No.

Date 08-06-1992.

Sri Mohan Chandra Ghosh

Reg : Your application for absorption in Bank's sub-staff cadre having worked for more than 240 days in 12 calendar months during 1982-1983.

We are pleased to inform you that out Zonal office has favourably considered your application for appointment in the bank's subordinate cadre for the reason of your working for more than 240 days in the temporary vacancy of sub-staff during the period December, 1982 to November, 1983 and you are therefore, asked to submit:

(1) School Leaving Certificate (2) Age proof certificate (3) Affidavit (draft enclosed) for our submission to NRO as per letter RO/CAL(N)/ PRS/92-93/05/552 at 04-06-1992.

For Central Bank of India Shyambazar Branch Chief Manager"

8. The Assistant-General Manager of the said Central Bank of India also by the written communication dated 13th July, 1992 addressed to the Central office of the said bank at Bombay specifically recommended for appointment of the appellant. The relevant portion of the aforesaid document is quoted hereunder:

"As regards documentary proof of Shri Ghosh"s having worked for 240 days during 19S2-83, we have to state that we have made it clear that check of the vouchers could not be made since the same are not available. However, we once again reiterate that keeping in view that facts conveyed by ARM vide his letter dated 02-091991, we recommend that the appointment be made."

9. The authorities of the respondent bank, however, in the affidavit-in-opposition categorically mentioned that the petitioner"s services were utilised by the bank on purely casual and on part-time basis without referring to any document. The respondent bank took the aforesaid stand in the affidavit-in-opposition ignoring the earlier recommendations of the responsible officers of the said bank, which have been referred to hereinbefore. The learned Single Judge, however, placed reliance on the aforesaid affidavit filed on behalf of the bank ignoring the earlier recommendations of the responsible officers of the said bank regarding absorption of the appellant pursuant to the circular dated 12th March, 1991 for serving the said Bank on temporary basis for more than 240 days during 1982 1983 within 12 calendar months. The learned Single Judge should have appreciated that the respondent bank in the aforesaid affidavit-in-opposition did not disclose any document wherefrom it would appear that, the appellant herein served the bank on part-time basis.

10. Furthermore, genuineness and correctness of several written communications issued by the responsible officers of the bank supporting the claim of the appellant were never questioned and only sought to be avoided on the ground that the said appellant had no authority to produce those documents as the same were internal office communications of the bank to which the appellant could not have any access.

11. It has been submitted on behalf of the respondent bank that the appellant herein served the bank as part-time employee on casual basis since he was a regular full time employee of the canteen. It is not in dispute that the appellant herein was employed in the canteen of the bank in the year 1981 and it has been claimed by the appellant that while working as a canteen boy, the services of the said appellant were utilised by the concerned branch of the bank on casual basis in place of a sub-staff for more than 240 days within 12 calendar months during the period on and from December, 1982 to November, 1983. Therefore, while the services of the appellant were utilised by the respondent bank, the concerned

canteen of the said bank had no scope to utilise the services of the said appellant. The Canteen committee also did not claim that during the aforesaid period, services of the said appellant were utilised nor even any document was produced on behalf of the respondent bank wherefrom it would appear that during the period on and from December, 1982 to November, 1983, services of the appellant were utilised by the canteen of the concerned bank as full time employee.

12. In any event, from the various correspondences of the responsible officers of the said bank it appears that the appellant herein served the bank on casual basis in place of sub-staff for more than 240 days within 12 calendar months during the period on and from December, 1982 to November, 1983.

13. It has been argued on behalf of the respondent bank that the letters issued by the Regional Manager, Zonal Manager and the Chief Manager of the respondent bank which have been referred to and relied upon by the appellant and mentioned hereinbefore, are all manipulated but we are unable to accept the same as the respondent bank in the affidavit-in-opposition filed in connection with the writ petition specifically admitted the existence and validity of those documents. The relevant paragraphs from the said affidavit-in-opposition are set out hereunder:

.....

(xix) The Chief Manager in ignorance of the facts and in absence of any records in the branch wrote the said letter of June 8, 1992.

(xxi) The Assistant General Manager of the Zonal office of the Bank did not know the facts and did not have the requisite documents of the Branch and he was misled by wrong statements and by his letter dated July 13, 1992 he made it clear that check of the vouchers could not be made and he wrongly made the recommendation on the assumption that facts conveyed by the Asstt. Regional Manager vide his letter dated 02-09-1991 were true.

10)..... The petitioner is not entitled to rely on any of the internal correspondence annexed to the petition and the bank is not bound by the internal correspondence and the petitioner cannot acquire any right by virtue of internal correspondence which apparently took place many years after the petitioner claimed to have worked for 240 days upto November, 1983....."

14. The learned Counsel of the respondent bank also argued before this court that the claims of the appellant should be adjudicated before the industrial forum since various disputed questions of fact have been raised by the appellant herein. Undisputedly, the learned Single Judge did not dismiss the writ petition on the ground of any disputed questions of fact. Furthermore, we have also examined the validity of the claims of the appellant herein on the basis of the undisputed documents and circulars Issued by the respondent bank. Several documents

referred to and relied upon by the appellant in support of his claims for absorption in the bank's service were duly considered by the learned Single Judge and the respondent bank also did not dispute the validity and/or correctness of those documents before the learned Single Judge. As mentioned hereinbefore, even in the affidavit-in-opposition, respondent bank duly accepted and admitted the existence and validity of those documents.

15. Upon considering the rival contentions of the respective parties and on examination of the documents annexed with the writ petition and also considering the impugned judgment under appeal passed by the learned Single Judge we are satisfied that the services of the appellant herein were utilised by the bank for more than 240 days within 12 calendar months during the period on and from December, 1982 to November, 1983 and therefore, the respondent bank cannot deny absorption of the said appellant in the subordinate cadre pursuant to its own policy decision as has been categorically mentioned in the circular dated 12th March, 1991.

16. The learned counsel of the respondent bank referring to a Constitutional Bench decision of the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, submits that the circular dated 12th March, 1991 itself or any other policy decision regarding absorption of the temporary casual employees is void ab-initio since all the controversies about the absorption of the casual employees have been set at rest by the aforesaid decision. We are, however, unable to hold that in view of the aforesaid decision of the Apex Court, policy decision of the respondent bank regarding permanent absorption of the temporary casual employees as mentioned in the circular dated 12th March, 1991 should be considered as invalid, illegal or inappropriate and therefore, not applicable in the present case. In the aforesaid decision, Supreme Court considered the matters relating to employment without following a regular procedure or even through the backdoor. In the aforesaid case, Supreme Court, however, observed :

"17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed..... "

17. In the present case, in terms of the specific circular dated 12th March, 1991, services of the temporary employees who have put in 240 days temporary service within 12 calendar months after 01-01-1982 were in the available vacancies without any test and interview. The appellant herein demanded absorption in the bank's service following the prescribed procedures and guidelines particularly in terms of Paragraph 3.1 of the circular dated 12th March, 1991 issued by the respondent bank and therefore, it cannot be said that the said appellant is seeking regularisation of service in an illegal or irregular manner or through any back door process.

18. In view of the existence of the aforesaid circular, claim of the appellant for absorption in the available vacancy could not be denied and the aforesaid decision of the Supreme Court, in our opinion, cannot be made applicable in the facts of the present case particularly, in view of the existence of the aforesaid circular dated 12th March, 1991, which specifically provides absorption of the temporary employees under certain circumstances.

19. The learned Counsel of the respondent bank also cited the following decisions of the Supreme Court in support of his arguments, which, in our opinion, cannot be made applicable in the facts of the present case.

- 1) (2006)1 SCC 106 [R.M. Yellatti vs. Asstt. Executive Engineer]
- 2) (2006)8 SCC 487 [Avtar Singh Hit vs. Delhi Sikh Gurdwara Management Committee & Ors.]
- 3) (2006)1 SCC 337 [ONGC Ltd. & Anr. vs. Shyamal Chandra Bhowmik]
- 4) (2005) 8 SCC 264 [U. P. State Spinning Co. Ltd, vs. R. S. Pandey & Anr.]
- 5) (2005) 2 SCC 470 [Dhampur Sugar Mills Ltd. vs. Bhola Singh]

20. Scrutinising the impugned judgment and order passed by the learned Single Judge, we find that the said learned Single Judge dismissed the writ petition relying on the averments of the respondents made in the affidavit-in-opposition since the same were not controverted by the appellant by filing any reply in answer to the said affidavit-in-opposition. In our opinion, the learned Single Judge while considering the averments of the respondents mentioned in the affidavit-in-opposition should not have altogether ignored the contents of the various documents wherein the responsible officers of the respondent bank specifically admitted the claims of the appellant herein. The learned Single Judge also erroneously overlooked the specific averments made in the said affidavit-in-opposition of the respondent bank wherein the existence and validity of those documents relating to the claim of absorption of the appellant in terms of the policy decision of the respondent bank pursuant to the circular dated 12th March, 1991 has been admitted.

21. For the reasons discussed hereinbefore, we are of the opinion that the respondent bank wrongfully and illegally failed and neglected to absorb the appellant permanently in the subordinate cadre in terms of the circular dated 12th March, 1991 inspite of fulfillment of the eligibility condition as mentioned in Paragraph 3.1 of the said circular. The decision of the learned Single Judge, therefore, in our opinion, is erroneous and cannot be sustained in law.

22. Accordingly, we set aside the impugned judgment and order under appeal passed by the learned Single Judge and direct the respondent bank to absorb the appellant permanently in the subordinate cadre in the Central Bank of India and appoint the said appellant as a Peon at any office in the concerned region against the available vacancy and also pay regular salary including all other admissible

allowances from the date of appointment.

23. Since a considerable time has already been lapsed, the authorities of the respondent bank are directed to issue formal letter of appointment in favour of the appellant in terms of this order within a period of two weeks from the date of communication of this order positively.

24. The instant appeal thus stands allowed.

25. There will, however, be no order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.