

(2004) 10 AHC CK 0162

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8048 of 1997

Narendra Kumar

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal and
Another

RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 2, 77, 78
Industrial Disputes Act, 1947 — Section 25G, 25H

Citation : (2005) 1 AWC 128 : (2005) 1 UPLBEC 151

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.K. Mishra, Pradeep Chauhan, Guru Prasad, Jai Singh and S.N. Dubey, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The Counsel for the parties urge that a very short point in the petition requires a decision and the petition may be heard and decided at the admission stage itself.

2. Heard Sri S.N.Dubey, Counsel for the petitioner, the Standing Counsel for the respondents and perused the record.

3. This petition is directed against the award dated 12.9.96 passed by respondent No. 1. Central Government Industrial Tribunal-cum-Labour Court, Kanpur in Industrial Dispute No. 41 of 1987.

4. The following matter of dispute was referred by the Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-12012/267/88-D. II (A), dated 14.4.87 for adjudication to the Tribunal where it was registered as Industrial Dispute No. 41 of 1987 :

"Whether the action of the Management of Allahabad Bank, Kanpur in terminating the services of Sri Narendra Kumar, Ex-Farrash w.e.f. 6.6.82 and not

considering him for further employment while recruiting fresh hands u/s 25H of the Industrial Disputes Act is justified? If not, to what relief is the concerned workman entitled?"

5. The admitted, facts are that the petitioner workman had worked as Farrash on casual basis in leave vacancies from 8.3.82 to 5.6.82 in the Philkhana Branch of Allahabad Bank at Kanpur for about 3 months but was not engaged thereafter. According to the petitioner he was discharging duties of permanent nature on a permanent post and that his services were illegally terminated, which is in violation of Sections 25G and 25H of the Industrial Disputes Act, 1947.

6. In the written statement filed before the Labour Court it was averred by the Bank that the concerned workman had not been appointed on or against any permanent post but was engaged to meet the exigencies of work due to non-availability of permanent employee who was already working in the Bank on the post to meet the exigencies of work and that the provisions of Sections 25G and 25H of the Industrial Disputes Act are not attracted in the facts and circumstances of the case.

7. The Labour Court by its award dated 12.9.96 has held that;

"The concerned workman in his cross-examination has stated that at Philkhana Branch Kanpur there was one permanent post of peon and one Sweeper. Ram Kishan was the name of peon. However, he has denied the suggestion that he was engaged when Ram Kishan went on leave. On the other hand, Janardan Prasad Tiwari had alleged that concerned workman had not worked on a permanent post and that he was engaged to meet the exigencies of work. From the evidence of workman it is evident that one permanent post of peon was already there which was manned by Ram Kishan. If it is so, obviously there was no permanent vacancy of peon in this Branch, hence it will be idle to say that the concerned workman had worked on a permanent post. Instead there appears more probability in the case of Bank that the concerned workman was engaged to meet the exigency of work,"

8. The Counsel for the petitioner has placed reliance upon Central Bank of India Vs. S. Satyam and others, , wherein it has been held by the Apex Court that the benefit of Section 25H is available to all the retrenched workmen and is not confined to retrenched workmen covered by Section 25F read with Rule 2(oo) of the Industrial Disputes (Central) Rules, 1957. It has further been held that definition of "retrenchment" is wide and covers terminations of workmen who have worked less than one year also and further that the Industrial Disputes Rules 77 and 78 can not curtail ambit of Section 25H.

9. A supplementary affidavit annexing therewith an application appending the list of documents filed on behalf of the management before the Labour Court has also been filed by the petitioner. It is evident from the affidavit that a notification was published in Employment News dated 6th/12th March, 1993 by Allahabad Bank regarding recruitment for the post of Peon-cum-Farrash only from amongst

those employees who had earlier worked in the erstwhile United Industrial Bank Ltd. which had merged in the Allahabad Bank as well as from the erstwhile employees of Allahabad Bank who had worked with the Bank as Peon-cum-Farrash. The advertisement was also published on 7.10.1988 and 9.10.1988 in Newspaper "Amar Ujala". Circular No. 145, dated 28.2.84 regarding recruitment of Peon-cum-Farrash was circulated amongst the employees and a copy of the circular was also filed by the management before the Labour Court, in support of its case that vacancies had been notified to all the erstwhile employees. The copy of the advertisement is also appended as Annexure-2 to the writ petition by the workmen, Relevant extract of the advertisement is as under :

"Allahabad Bank (A Government of India Undertaking)

Recruitment of Full time Peon-cum-Farrash/Full time Sweeper, from the persons engaged on temporary full time basis in Allahabad Bank including erstwhile UIB Ltd.

The Bank intends to draw State-wise panels to fill up future vacancies against posts of full time Peon-cum-Farrash, full time Sweeper from persons who worked as such on (illegible) full time basis for a minimum period of 90 days at any of the branch/office of Allahabad Bank and or erstwhile UIB Ltd. In the respective State during the period from 1.1.82 to 31.10.92."

10. From Annexure-3 to the writ petition, which is format for the post of Peon-cum-Farrash and the application of the petitioner in pursuance of the aforesaid advertisement it appears that the vacancies had been advertised to settle all disputes of erstwhile persons who had worked in the erstwhile United Industrial Bank or Allahabad Bank for 90 days or more and who were claiming appointment in the Bank on basis of preference of their earlier working in the Bank. This is evident from Clause 5 of the directions for the candidates which States that

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11. The petitioner was eligible and had applied for the posts against the advertisement. It is further evident from the perusal of the application form of the petitioner that Adjudication Case No. 41/1987 in respect of termination of the services of the petitioner was also pending before the Central Government Industrial Tribunal-cum-Labour Court, Kanpur. Incidentally this petition is filed against the award given in the aforesaid Adjudication Case No. 41/1987. The Tribunal by the impugned award held that the provisions of Section 25H are not attracted in the facts and circumstances of the case.

12. It is not in dispute that the petitioner was the last person in his category in the Philkhana Branch of the Allahabad Bank at Kanpur when he was retrenched, hence Section 25G is not attracted in his case. In so far as applicability of Section 25H of the Industrial Disputes Act, 1947 is concerned, the Labour Court after

appreciation of evidence has held that there was no post of Pcon-cum-Furrash vacant in the Bank as the petitioner was employed in leave vacancy of Ram Kishan. The petitioner has not filed his written statement with the writ petition nor had he pleaded before the Labour Court that after he was disengaged on 6.6.82 other person was appointed/engaged in his place but he was not offered engagement on preferential basis at the branch. For this reason also Section 25H of the Industrial Disputes Act, 1947 is not attracted in this case.

13. It is also not in dispute that vacancies for the post of full time "Peon-cum-Farrash", full time Sweeper were advertized in Newspaper having wide circulation. The Bank also issued circulars in this regard to the employees and the petitioner in pursuance thereof applied and offered himself for re-employment, therefore, any grievance of the petitioner that after his disengagement he was subsequently also not offered opportunity for being considered for recruitment for the post of Peon- cum-Farrash stood waived. There is no illegality or infirmity in the impugned award in holding that Section 25H was not applicable as he also acquired to the selection.

14. Admittedly, the petitioner had worked for about 3 months in exigencies of work and he was offered to apply and appear in the examination for the post of Peon-cum-Farrash vide advertisement in Newspaper circulars issued by the Bank. It is not disputed by the Counsel for the petitioner that the examinations were held that the petitioner was no successful and the selected candidates have joined the post.

15. It is the nature of appointment which is relevant and not the nature of the post. The post may be of permanent nature but the appointment against the post may be casual, temporary or even permanent, which may depend upon the circumstances in each case. e.g. temporary appointments may be made against a post of permanent nature where the post is to be filled up by selection or promotion process or on casual basis as in the instant case where the appointment was made for 90 days in view of temporary need for such appointment due to non- availability of permanent appointee of the post.

16. For the reason aforesaid, I am of the firm opinion that the provisions of Sections 25G and 25H arc not attracted and otherwise also there is no sufficient compliance of Section 25H of the Act. The Counsel for the petitioner has not shown any illegality of perversity in the impugned award.

17. For the reasons stated above, the writ petition is dismissed. No order as to costs.