

(1990) 05 MAD CK 0005
In the Madras High Court
Case No : W.A. No. 1055 of 1983

P. Manickam

APPELLANT

Vs

State Bank of India and another

RESPONDENT

Date of Decision : 04-05-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(B(2))(a)(ii), 25(B), 25(F), 25(H)

Citation : (1991) 1 LLJ 547

Hon'ble Judges : S. Nainar Sundaram, J;Padmini Jesudurai, J

Bench : Division Bench

Judgement

Padmini Jesudurai, J.—The petitioner in Writ Petition No. 7062 of 1983 is the appellant herein and the respondents there are the

respondents here.

2. The petitioner (ranking of parties as in the writ petition) sought a writ of mandamus against the respondents requiring them to appoint him as

permanent watchman with continuity of service by paying the petitioner all arrears of pay and other benefits from 16th December, 1982.

3. The above prayer was sought on the following averments made in the writ petition. The Petitioner was an ex-serviceman and on release from

army service got his name registered for reemployment with the Secretary, District Sailor's, Soldier's and Airmen's Board, Palayamkottai. The

Secretary of the Board sponsored him and he was appointed on 2nd July, 1981 as watchman in the first respondent branch at Palayamkottai on

temporary basis. He worked continuously for a period of 93 days in the said branch and on 28th December, 1981 he was ousted from service.

The said ouster was not bona fide since another person was appointed in his place. On re-registering himself in the District Employment Office, he

was once again appointed as temporary watchman in the first respondent bank at Tiruchendur on 25th March, 1982 and put in continuous service

of 180 days till 15th December, 1982 when he was orally informed by the branch manager that his services were no longer required. He was

forced to sign blank paper and receive his salary for the 29 (sic) days, which he refused. His termination of services in the above manner was

contrary to S. 25F of the Industrial Disputes Act, 1947, as also CI 2(c) of the conditions of services applicable to temporary employees which

required his absorption in permanent vacancies in any branch in the recruitment district since he had put in more than 90 days of work. It was

violative of S. 25H of the Industrial Disputes Act, since a retired police constable, Paradesi Thever, was taken in his place in the Tiruchendur

branch. It was besides, violative of Arts. 14 and 16 of the Constitution. Since one Arumugam in Tiruchendur and one Victor in Palayamkottai

branch were absorbed in permanent vacancies on the ground that they had put in 270 days of service in period of three years, which benefit was

denied to the petitioner. Since his appeal to other authorities proved futile, he invoked Art. 226 of the Constitution for the reliefs stated above.

4. The respondents filed a common counter admitting that the petitioner was appointed on a temporary basis in the Palayamkottai branch on 2nd

July, 1981 and continued to work till 28th December, 1981 and again was appointed on temporary basis in the Tiruchendur branch on 25th

March, 1982 and continued to work till 15th December, 1982. It was further stated that his services in Palayamkottai branch were terminated on

28th December, 1981 since his services were no longer required and his services in Tiruchendur branch were terminated on 15th February, 1982

for the same reason and also in view of the fact that when the branch manager of Tiruchendur branch questioned him as to why he had suppressed

the fact of his service in the Palayamkottai branch at the time when he was appointed in the Tiruchendur branch, the petitioner absconded from the

branch even without completing his day's work and the bank had to pay his salary by crediting it to his account. It was stated that his outset from

services was bona fide and the other allegation were baseless. The petitioner had an alternative remedy under the Industrial Disputes Act and

neither S. 25F, nor Arts 14 and 16 of the Constitution had in fact been violated. The petitioner, therefore, was not entitled to any remedy at the

hands of this Court.

5. On the learned Judge, dismissing the writ petition on the ground that the appointment of the petitioner was purely temporary and that he had not

put in continuous service for a period of 240 days and could not claim the benefit of S. 25B of the Industrial Disputes Act, that the circulars of the

State Bank of India relied on by the petitioner were intended only for guidance of the management and no legal right would flow from them and

also that the petitioner could work out his remedies raising an Industrial Dispute, this appeal has been filed.

6. Sri. N. G. R. Prasad, learned counsel for the petitioner, would contend that the initial ouster of the petitioner on 28th December, 1981 from

Palayamkottai branch was itself without justification and as such, in view of the fact that in the Palayamkottai branch he had put in service of 93

days and in Tiruchendur branch 180 days and the ouster being unjustified in law, S. 25H of the Industrial Disputes Act would apply. Reliance was

placed on a decision of the Supreme Court in Singh (H. D.) v. Reserve Bank of India and others 1986-I-LLJ-127 It was also contended that the

circulars had been relied on by the respondents for absorbing temporary workers who had put in service of three months and that, therefore, the

petitioner had been discriminated for denying the benefit and the circulars which enjoined a duty on the respondents to prefer him in permanent

vacancies ought to be given effect to.

7. Per contra, Sri Sreekrishnan, learned counsel for the respondents, would contend that the petitioner had not put in 240 days of continuous

service and as such neither S. 25F not S. 25H would apply and that the circulars have no statutory force and are only guidelines intended for the

management. The learned counsel also stated that during the pendency of the writ appeal the respondent bank took a policy decision to offer

employment to those who had put in temporary service for not less than 90 days in a calendar year and on that basis the petitioner was also

appointed on 19th June, 1986 on a permanent basis as a watchman at the bank's branch at Nanguneri and that later on the bank coming to know

that the petitioner was convicted for committing certain criminal offences, a domestic enquiry was held against him and he was found guilty and

dismissed from service with effect from 17th October, 1988. According to the

learned counsel the prayer in the writ petition had practically become infructuous in view of these subsequent developments.

8. The admitted facts are that the petitioner was employed as a watchman on a temporary basis in the bank's branch at Palayamkottai

continuously for a period of 93 days from 2nd July, 1981 to 28th December, 1981, and thereafter continuously worked in the bank's branch at

Tiruchendur for a period of 180 days from 25th March, 1982 to 15th December, 1982. The contention of the learned counsel for the petitioner

that S. 25H of the Industrial Disputes Act would apply cannot be accepted for the reason that the petitioner would not be covered by S. 25F,

since he had not put in continuous service for a period of 240 days is 12 calendar months as defined in S. 25B(2)(a)(ii) of the Industrial Disputes

Act. The petitioner, therefore, is not an employee who could be said to be retrenched under S. 25F Neither S. 25F, nor S. 25H of the Industrial

Disputes Act would apply.

9. The next contention is that the petitioner's claim was not considered when permanent vacancies arose in conformity with the staff circulars

issued by the State Bank of India and the same violates Arts. 14 and 16 of the Constitution since persons similarly placed as the petitioner had

been considered when permanent vacancies arose. In para. 7 of the affidavit sworn to by the petitioner in support of the writ petition, he has stated

that under the conditions of service applicable to temporary employees, a person who had put in 270 days in all in a period of three years is also

entitled for absorption in permanent vacancies and one Samuel has been so absorbed in Tiruchendur branch and one Victor in Palayamkottai

branch. Though such a plea has been taken mentioning the names as well as the branches, where the persons had been absorbed in permanent

vacancies, the respondents have not chosen to deny those averments. Paragraph 11 of the counter dealing with the above allegation is vague and

there is no factual denial of the averments that others similarly placed have been absorbed in permanent vacancies. It is also stated that the

appointment of the petitioner as a temporary watchman was to a post which was a permanent one and when the petitioner was ousted, one

Paradesi Thever who was superannuated from the Tamil Nadu State Police Service and who was then aged 65 was appointed in his place. Even

this allegation has not been denied in the counter which merely reiterates the plea of the respondent that the petitioner was engaged in a purely temporary capacity. When, therefore, the post to which the petitioner was initially appointed was a permanent post and when after the petitioner was ousted, one Paradesi Thever had been appointed and when it is also found that others who had put in 270 days in a period of three years had been absorbed when permanent vacancies arose and had been given permanent jobs, the contention of the learned counsel for the petitioner that there has been a violation of Arts. 14 and 16 of the Constitution has to be accepted. Even the respondents now say that a policy decision was taken during the pendency of this appeal to appoint on a temporary basis those who had already put in temporary service for not less than 90 days in a calendar year and following that the petitioner himself was appointed in another branch of the bank.

10. The learned counsel for the petitioner relies upon the Staff Circular No. 44 issued by the State Bank of India, which also requires that temporary employees in the subordinate cadre who have put in an aggregate service of 270 days or more should be allowed to continue in that capacity and when vacancies arise and if absolutely necessary at the concerned office, and that temporary watchmen who do not possess the requisite qualification for permanent absorption in the bank may be continued in temporary vacancies until they complete 60 years of age. The learned counsel for the respondents would try to get over these circulars by contending that these circulars do not have any statutory force as has been held by a Division Bench of this Court in Writ Appeal No. 404 of 1982. However, when it is shown that others similarly placed as the petitioner himself have been given the benefit of these circulars by being absorbed in the permanent vacancies and when the respondent does not come forward with any explanation as to why the petitioner alone was not so absorbed, this Court has necessarily to infer that the petitioner has been discriminated against and such discrimination is violative of Art 14 of the Constitution. It is in this context that the learned counsel for the petitioner would rely upon an observation of the Supreme Court in *Singh (H. D.) v. Reserve Bank of India and others* (supra), where in the Supreme Court had made an observation that it is unfair labour practice for the Reserve Bank of India to so regulate the employment of the

temporary workers that they are ultimately denied the benefits of the Industrial Disputes Act. It has, therefore, to be held that the termination of the services, of the petitioner on 15th December, 1982, is violative of Art. 14 of the Constitution, since the petitioner alone has been discriminated to deny the benefit of the circulars referred to above, the benefit of which had been given to other employees.

11. Though reinstatement in service would be the normal relief that would flow from an order holding a termination illegal, and though that is the relief that is sought for in this writ petition such a relief cannot now be granted in view of the subsequent developments. The petitioner had been appointed in a permanent post and for certain other reasons, his services have been terminated which we are told is under challenge in this Court in separate proceedings. Whatever that be, in view of this fact reinstatement cannot be ordered. The only other alternative relief would be compensation in monetary terms. The petitioner has filed an affidavit into Court that he was drawing a salary of Rs. 1000 per month when his services were terminated on 15th December, 1982. He had been absorbed on a permanent basis on 19th June, 1986. The petitioner, therefore, claims Rs. 42,000 as back-wages. However, considering all the facts and circumstances of the case, we feel a sum of Rs. 25,000 would be an adequate compensation to the petitioner by way of alternate relief.

12. In the result, the writ appeal is allowed and the respondents are directed to pay the petitioner a sum of Rs. 25,000 (Rupees Twenty five Thousand only) on or before 1st August, 1990. No costs.