

(2005) 03 AHC CK 0174

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 30313 of 2002

Pramod Kumar

APPELLANT

Vs

The Presiding Officer, Central Government Industrial Tribunal-
Cum-Labour Court and Regional Manager, Canara Bank

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1), 25F

Citation : (2005) 5 AWC 4903 : (2005) 105 FLR 742 : (2005) 3 LLJ 91 : (2005) 2 UPLBEC 1982

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Anil Bhushan and Rajesh Kumar, for the Appellant; Tarun Verma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This writ petition is directed against the award dated 13.5.1998, Annexure 6 to the writ petition, passed by the Presiding Officer, Central Government Industrial Tribunal-cum- Labour Court, Kanpur (for short "Labour Court"). By the impugned award, the Labour Court has granted compensation to the petitioner in lieu of reinstatement.

2. Briefly stated, the facts of the case are that the name of the petitioner was sponsored by the local Employment Exchange and was engaged on 1.4.1985 as daily wager in the Transport Nagar Branch of the Canara Bank, Agra up to 27.11.1989. He worked as daily wager from time to time and worked in different branches of the Bank, namely, Bodla, Jaipur House Colony, Bhainpur from 20.11.1989 to 30.7.1990. He then claims to have been transferred to Canara Bank at Firozabad w.e.f. 30.8.1990 and worked there up to 30.11.1993 without any break and then at Sadar Bazar Branch, firozabad till 20.3.1995. His services were dispensed with by the Regional Manager, Canara Bank, Agra on 21.3.1995.

3. After the conciliation proceedings between the parties failed, the Central Government referred the industrial dispute u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") in the following terms:-

"Whether the action of the management of Canara Bank in terminating the services of Sri Pramod Kumar w.e.f. 21.3.1995 is justified and legal ? If not, to what relief the workman is entitled to ?"

4. The case of the petitioner before the Labour Court was that he was engaged from time to time in different branches of the Bank and had continuously worked w.e.f. 1.4.1985 to 20.3.1995 but he was illegally retrenched. It was also his case that his name was included in the panel of daily wagers of the Bank and he had performed various types of miscellaneous works such as that of peon, water boy, sweeper and coolie for which he was paid wages. He further claimed that the post on which he had worked was of permanent nature and abrupt termination of his services was in contravention of the mandatory provision of Section 25F of the Act which amounted to unfair labour practice as juniors to him are working but he has not been called for re-employment. Counsel for the petitioner placed reliance in *Deep Chandra Vs. State of U.P. and Another*, ; *State of U.P. and Another Vs. Rajendra Singh Butola and Another*, *Nar Singh Pal Vs. Union of India and Others*, : *Samishta Dube Vs. City Board, Etawah and Another*, : *Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation and Anr.*, : *S. Govindaraju Vs. Karnataka S.R.T.C. and Another*, and *The State Bank of India Vs. Shri N. Sundara Money*, in support of his contentions.

5. The case of the respondent-Bank before the Labour Court was that the workman had not continuously worked for 240 days in a calendar year on a post prior to his disengagement as such, the claim of the workman was not maintainable on facts as well as law and that he was not entitled to any relief.

6. The parties filed documentary evidence and also led oral evidence before the Labour Court. A joint inspection of records was also made and inspection report was filed before the Labour Court.

7. The decisions cited by the petitioner are altogether different on facts and law. They are distinguishable from the facts and circumstances of the instant case.

8. The Labour Court, after going through the evidence and pleadings of the parties, has given a finding of fact that the petitioner-workman had never engaged against any permanent post and was a daily wager. It has further given a categorical finding of fact that the petitioner was engaged from time to time in different branches of the Bank for different types of casual/temporary jobs according to the exigencies of work. Since his services were not continuous and as such he was not entitled to reinstatement. Since the workman was found not to have been appointed against a permanent post the Labour Court has held him to be entitled only for compensation in lieu of reinstatement, being a daily wager.

9. It is evident from the pleadings of the workman as well as from the findings of

the Labour Court in the award that the petitioner has not continuously worked in any branch of the Bank much less any evidence of his continuous working against a permanent post.

10. The petitioner had worked on daily wages from time to time during the span often years from 1.4.1985 to 20.3.1995, not against any post, in different places and branches, as such, he had no right to the post. This finding of the Labour Court is based on the joint inspection report submitted by the parties on the working of the respondent-workman. The Labour court has held that :-

There is joint inspection report which goes to show that the concerned workman had not worked continuously, instead he had worked intermittently. Besides there are documents filed by the concerned workman which go to show that concerned workman had not worked continuously. Ext. W-8 is the letter by which the concerned workman was sponsored by the employment exchange. Ext. W-11 is the letter written by senior manager dated 28.4.86 by which the manager had written to H.O. informing that Panna Lal has resigned as part time employee. The concerned workman had applied. He had worked for two years as water boy, hence he may be engaged. Ex. E-13 is the copy of letter dated 11.1.88 by which the manager had requested the Head Office to permit him to engage the concerned workman as part time employee till permanent appointments made. Ext. W-15 is the letter dated 11.12.88 by which the manager had again recommended the case of the concerned workman to engage him as a daily wager when any staff goes on leave. Ext. W-18 is reminder in this regard dated 13.6.90 by which the concerned workman has been asked to collect stationary. From all these documents it emerges out that the concerned workman used to be engaged on some work or through casual nature. He was never engaged to do any work of permanent nature or on any permanent post. Hence my finding is that the concerned workman was not engaged on any permanent post."

11. On the question whether the workman had completed 240 days of continuous service preceding the date of termination, the Labour Court relying upon the original branch inspection note dated 8.12.1997, drew adverse inference against the Bank and held that :-

"..... That the register of Sadar Bazar Firozabad branch between 1.11.93 to 20.3.95 was not available. No explanation has been given by the management as to what happened to this register. It is the positive case of the concerned workman that he had worked at Firozabad Branch during the last one year. As such it was necessary for the management to have filed the register to show the number of working days of the concerned workman. In its absence drawing adverse inference against the management, I believe the evidence of the concerned workman and hold that the concerned workman had completed 240 days in a year preceding the date of retrenchment. Admittedly, no retrenchment compensation and notice pay has been given, hence this termination is bad being in breach, of provisions of Section 25F of I.D. Act."

12. In so far as the question whether juniors to petitioner are working or not, is concerned, it appears that the workman neither pressed nor established before the Labour Court that person junior to him was retained in the establishment or was called for re-employment ignoring his claim.

13. The Labour Court held that the termination of his services without payment of compensation was bad. In these circumstances, the workman being a daily wager was awarded Rs.10,000/- to the petitioner as compensation in lieu of re-instatement.

14. The phrase "continuous service" has been considered by the apex court in a large number of cases. Recently, in D.G.M., Oil and Natural Gas Corpn. Ltd. and Another Vs. Lias Abdulrehman, the Hon'ble Supreme Court considered the scope in similar circumstances as in the present case where the employee had worked in different departments controlled by the apex corporation. Following the decision in The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen, it has been held that different departments are distinct "employers". It further held in paragraphs 4 and 8 of the Report that since respondent had worked in different departments of the appellant in broken periods, he had, therefore, not been in "continuous employment" under the appellant for a period of 240 days prior to his dismissal.

15. It is evident from the perusal of record that the workman had himself stated that he was employed in different branches of the Bank, from time to time. He accepted the employment not in one place but in different places. The different broken periods would, therefore, not constitute "continuous service" or "continuous employment" for the purpose of Section 25F of the Act.

16. It is settled law that the Labour Court can grant relief of compensation in lieu of reinstatement. The petitioner was a daily wager and since the employers could not produce employment register for two years, the Labour Court has rightly drawn adverse inference against the Bank for holding that the workman had worked for more than 240 days in a calendar year preceding to order of termination of service. The petitioner had not been able to prove his continuous service on a permanent and particular post. On his own showing, he was working in different branches of the Bank for performing different types of work which itself is sufficient to show that the appointment was not continuous or against a post.

17. For the reasons stated above, this is not a fit case for interference in the writ jurisdiction under Article 226 of the Constitution.

18. Accordingly, the writ petition fails and is dismissed without any order as to costs.