
(1991) 12 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Petition No. 3805 of 1991

Puran Chand Saini

APPELLANT

Vs

The General Manager, UCO Bank and Others

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25B, 25F, 25G

Citation : (1992) 1 WLC 179 : (1991) WLN 254

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This writ petition has been filed under Article 226 of the Constitution with the prayer that the termination of the service of the petitioner be declared as illegal & be quashed & the Respondents be directed to allow the petitioner to continue on the post of daily wage casual worker & they be directed to make payment of arrears of salary as well as payment of salary for future period regularly.

2. The case with which the petitioner has approached this Court is that he was initially appointed on the post of casual worker on daily wage basis with effect from 1.6.88. Thereafter he has been continuously working on full time basis as a casual worker on daily wages. He has completed more than 210 days of service without any break. In respect of this assertion that the petitioner has completed more than 240 days of continuous service, the petitioner has placed on record Annexures 1 and 2. Annexure-1 is a letter written by the Chief Officer of the Respondent Bank to the Manager of the Bandikui Branch of the Bank and Annexure-2 is a copy of the letter dated 15-3-90 written by the Manager of the Bandikui Branch of the Bank to the Personnel Department of the Divisional Office of the Bank at Jaipur. The petitioner's case is that as per the provisions contained in settlement dated 12-10-90 arrived at between the Management of

the Respondent Bank and the representatives of the Union the petitioner has acquired a right to be absorbed on regular basis in service of the Bank because he fulfils the minimum required conditions specified in the agreement/settlement which makes him eligible to be absorbed in the service of the Bank. The petitioner had submitted an application for the purpose of his absorption in pursuance of the settlement dated 12-10-89. Instead of absorbing him in service, the manager of the Bandikui Branch of the Respondent Bank all of a sudden removed the petitioner from service on 3-7-91 by directing the petitioner not to mark his attendance. No order has been passed by him in writing but he simply prevented the petitioner from entering the office and marking his attendance. No work is being allotted to the petitioner and he is not being paid salary.

3. The petitioner has stated that the action of Respondent No. 3 in not allowing him to mark attendance in not allowing him to work and in not paying him salary clearly shows that the petitioner's service has been terminated. This action of Respondent No. 3 in terminating the service of the petitioner clearly amounts to retrenchment in violation of Section 2(00) of the Industrial Disputes Act, 1947 (for short "1947 Act"). Before terminating the service of the petitioner, the Respondents have not complied with the mandatory requirements of Section 25F of 1947 Act and therefore, the action of the Respondents in terminating the service of the petitioner is liable to be declared as void. The further case of the petitioner is that he has acquired a right to be absorbed in the service of the Bank in accordance with the conditions contained in the settlement dated 1-10-89. He has completed more than 240 days of service on the date of settlement and, therefore, he is entitled to be absorbed in the service of the Bank.

4. The first argument advanced by Shri Sharma, learned Counsel for the petitioner, is that after his appointment from 1-6-88, the petitioner has been regularly discharging the duties as a casual worker. He is being paid salary on per day basis. He has been doing full time work. He has completed more than 240 days of service. The petitioner falls within the scope of the term workman as defined in Section 2(s) of 1947 Act. The Respondent Bank is an "industry". Termination of service of the petitioner or his removal from service amounts to retrenchment and therefore, before bringing about termination of the service of the petitioner on 3-7-91, it was imperative for the respondents to have given him a notice or pay in lieu of notice, as required by Section 25F(a) and also to have paid him compensation in terms of Section 25F(b). These two provisions have not been complied with by the Respondent No. 3 before directing the petitioner not to mark his attendance and before stopping payment of salary to the petitioner. Shri G.K. Garg and Shri Vijay Singh, learned Counsel for the Respondents on the other hand argued that the very appointment of the petitioner was illegal. The Manager of the Respondent Bank who was posted at Bandikui Branch, was not authorised to engage a casual worker on daily wage basis. Since the appointment of the petitioner itself was invalid the petitioner is not entitled to claim any relief from this Court under Article 226 of the Constitution of India.

5. In my opinion, the argument advanced by Shri R.K. Sharma deserves to be accepted. Provisions of Section 25F read with Section 25G clearly shows that giving of one month's notice together with reasons for retrenchment or payment of one month's salary in lieu of notice as well as payment of compensation constitute two conditions precedent before a valid action for retrenchment can be taken by the employer. To be entitled to one month's notice and retrenchment compensation, a workman is required to fulfil the condition of having served for a period of 240 days in a period of 12 months counted from the date of retrenchment. He is also entitled to the same benefit if he fulfilled the conditions specified in Section 25B(1) of the 1947 Act. The crucial factor is as to whether the workman has actually worked for a period of 240 days or not. The mode of appointment and the competence of the authority which appointed him are all irrelevant for the purpose of determination of the question as to whether the workman has completed 240 days of service or not. It is not the case of the Respondents that the petitioner has played any fraud and on that basis he was engaged on daily wage basis as a casual worker. Mere fact that the Manager of a particular Branch was not authorised or had acted beyond his authority, cannot dis-entitle the petitioner to claim the benefit to which he is entitled u/s 25F of the Act of 1947. An argument similar to one which has been advanced by Shri Garg and Shri Singh, learned Counsel for the Respondents, regarding the nature of appointment of the petitioner was advanced before a Division Bench of this Court in *Prabhu DayalJat v. Alwar Sehkari Bhoomi Vikas Bank Ltd. and Anr.* 1989 (1) R.L.R. 439 and the Division Bench rejected this submission. The Division Bench held that the definition of retrenchment as given in the 1947 Act is wide and comprehensive to include all types of terminations of service unless the termination falls within any of the excepted categories mentioned therein. The petitioner's case is not covered by any of the exceptions contained in the definition of retrenchment, as such, the termination of the petitioner's service amounts to retrenchment. In this case also, it is admitted position that the petitioner's service has not been terminated by way of punishment on the basis of disciplinary action taken by the employer. He has not been removed from service on the basis of voluntary retirement or attaining the age of super annuation or on the ground of continued ill health or on the basis of the terms and conditions stipulated in the contract of employment or on account of non-renewal of the contract of employment. It has not been shown by the Respondents that they have fulfilled the requirements of Section 25F(a) and (b) of 1947 Act. Therefore, it is held that the termination of the service of the petitioner amounts to retrenchment and there has been a clear violation of the mandatory requirements of the Section 25F of 1947 Act and, therefore, the termination of the service of the petitioner from 3-7-91 is liable to be declared as void.

6. The second contention advanced by Shri Sharma, learned Counsel for the petitioner is that the petitioner is entitled to be regularised in service and to be absorbed in the service of the Respondent Bank in accordance with the terms

and conditions contained in the settlement dated 12-10-89. Learned Counsel for the Respondents on the other hand vehemently submitted that the petitioner cannot claim the benefit of the settlement dated 12-10-89. I find from the prayer clause of the writ petition that the petitioner has not made any prayer for absorption in the service of the bank on the basis of the terms and conditions contained in the settlement dated 12-10-89.

7. In my opinion, in the absence of a specific prayer made by the petitioner for giving a direction to the respondents to act in accordance with the terms and conditions contained in the settlement dated 12-10-1989, it will not be proper to examine this issue and to give a direction to the Respondents to absorb the petitioner in the service of the Bank. It will be for the Management of the Respondent Bank to consider the claim for his absorption in accordance with the condition of settlement dated 12-10-89 and if it is found that the petitioner fulfils the eligibility conditions specified in the settlement, there is no reason to believe that the Management of the Bank will not take appropriate action for the purpose of absorption of the petitioner in the service of the Bank.

8. The result of this petition is that it succeeds and is hereby allowed. The termination of the service of the petitioner with effect from 3-7-91 is declared as illegal and void. The respondents are directed to reinstate the petitioner in service with consequential benefits. The petitioner shall be deemed to be continuing in service as if the termination has not been brought about with effect from 3-7-91. The management of the respondent Bank should consider the claim of the petitioner for the purpose of absorption in accordance with the settlement dated 12-10-89 and if it is found that the petitioner is entitled to be given the benefit of absorption, appropriate order may be passed. In case the Management of the Respondent Bank finds that the petitioner is not entitled to be absorbed in accordance with the settlement dated 12-10-89 in that event, the Management of the Respondent Bank will be entitled to take appropriate action in accordance with law. This action would include fresh termination of the service of the petitioner after compliance of the requirements of Section 25F, 25G of 1947 Act and any other provision of law which may be applicable for the regulation on the conditions of service of the petitioner. Parties are left to bear their own costs.