
(2013) 04 AHC CK 0122

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 35484 of 2011

Regional Manager

APPELLANT

Vs

Central Government Industrial Tribunal and Others

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2013) 5 ADJ 42 : (2013) 5 AWC 5100 : (2013) 137 FLR 1043 :
(2013) LLR 824

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Sanjiv Singh, for the Appellant; Sanjai Kumar and Pravesh Kumar,
for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The workman was appointed as a casual daily rated worker from 4.1.989 and continued to work on a daily rate basis till 12.9.1998 when his services was terminated by the bank. The workman, being aggrieved by the termination of his services, raised an industrial dispute. Before the Labour Court, the workman specifically contended that he was appointed on a casual basis by the Branch Manager and that he was given appointment on a day to day basis and in this fashion, he continued to work continuously for almost 10 years and, that he had worked for more than 240 days in a calendar year. In support of his submission the petitioner also filed an original certificate given by the Branch Manager indicating the length of service, which he had worked during the tenure of that Branch Manager. The petitioner bank denied the claim of the workman contending that the initial appointment of the petitioner was ex fade illegal and against the procedure. The petitioner contended that temporary or permanent vacancy could only be filled up by the Regional Manager in accordance with paragraph 20.7 of the bi-parte settlement and that the Branch Manager had no authority in law to appoint the workman in question. The bank also denied the

certificate issued by the Branch Manager contending that they doubted the genuineness of the said certificate.

2. The Tribunal, after considering the entire material held that the workman had worked for more than 240 days in a calendar year and that he worked continuously from 1989 till 1998 on a day to day basis. The Tribunal found that the provisions of Section 25-F had not been complied with, inasmuch as, retrenchment compensation etc. was not paid to the workman before retrenching his services and consequently the order of termination was illegal. The Tribunal also found that juniors to the petitioner continued to remain in service and that the provisions of Section 25-G and 25-H of the Industrial Disputes Act had also been violated, which provides that the last person employed should be the first to be retrenched which had not been done by the employers. The Tribunal further found that after terminating the service of the workman, fresh workers were engaged which indicates that there was a continuous requirement of work. The Tribunal accordingly held that the management of the bank was not justified in terminating the services of the workman, who was engaged as casual worker on daily rate basis. The Tribunal accordingly directed reinstatement with 50% back wages. The petitioner, being aggrieved by the said award, has filed the present writ petition.

3. Heard Sri Sanjeev Singh, the learned counsel for the petitioner and Sri Pravesh Kumar, the learned counsel for the respondents.

4. The learned counsel for the petitioner submitted that since the initial appointment of the petitioner was ex facie illegal and that the Branch Manager had no jurisdiction to issue an appointment, the workman could not be reinstated in service through this back door method. In support of his submission, the learned counsel for the petitioner placed reliance upon the decision of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, . The learned counsel further submitted that the petitioner had categorically denied the certificate alleged to have been issued by the Branch Manager and consequently the burden fell upon the workman to prove the bank certificate. The learned counsel for the petitioner further submitted that the workman failed to prove the bank certificate and, contended that the bank certificate could not be taken into consideration. The learned counsel for the petitioner further submitted that there is no evidence to indicate that the workman had worked for 240 days in a calendar year and that the Tribunal had committed a manifest error in holding it otherwise, which was not based upon any concrete evidence.

5. Having heard the learned counsel for the parties at some length, the Court is of the opinion, that the submissions raised by the learned counsel for the petitioner is bereft of merit. The Tribunal has considered the matter in depth and has appreciated and dealt with the evidence. The Court does not find any error.

6. The submission that the appointment of the petitioner was against the

procedure prescribed under the bi-parte settlement, is patently erroneous. Reliance has been made on paragraph 20.7 of the bi-parte settlement which provides as under:

Temporary workman can be appointed for a limited period for work, 1 which is of an essentially of temporary nature or second which is a temporary increase of work of a permanent nature or 3rd in a temporary vacancy caused by absence of a permanent workman.

7. According to the petitioner, as reflected in their written statement, employment of temporary workmen against temporary or permanent vacancy could only be filled up by the Regional Manager. There is no quarrel with the aforesaid proposition. The Court finds that the workman was not appointed as a temporary-employee, but, was employed as a casual workman on a day to day basis. The witness of the management MW-1 has admitted this fact that the workman was appointed on a casual basis by the Branch Manager, who was the competent person. There is a distinction between the engagement of a person on a temporary basis on a temporary or a permanent post and engagement of a casual workman on a day to day basis. The Court finds from a perusal of the written statement of the employers that they do not dispute that the Branch Manager could not appoint a casual workman in his Branch Office for exigencies of work.

8. In the light of the aforesaid, the Court finds from the evidence that has been brought on record, that the Branch Manager was competent to engage casual workmen on a day to day basis for exigencies of work, which in the instant case was done, but, in this fashion, the Branch Manager allowed the workman to continue for years, which he should not have done. But, having allowed the workman to continue for years, the workman became entitled to the protection given u/s 25-F, G and H of the Industrial Disputes Act. If a person is required to be retrenched, the Bank was required to comply with the provisions of the Industrial Disputes Act, which in the instant case has not been done. The Court finds that the stand of the employer that the procedure was not followed, is patently erroneous. Paragraph 20.7 of the bi-parte settlement is not applicable. The Regional Manager does not come into picture. The Branch Manager was competent to engage casual workman, which he did. The Tribunal has given a finding that the workman was engaged as a casual workman on a day to day basis. This is a finding of fact, which is based on the appreciation of the evidence and which the Court finds it to be correct.

9. The workman had relied upon a certificate which was produced in original, If the employer doubted the genuineness of the certificate, the burden lay upon them to prove that it is a forged document. Merely by alleging that it is a forged document does not place the onus upon the workman. The burden remains with the employer to prove that the document is a forged document. In the instant case, no effort was made by the bank to produce the signatory of the certificate. The Tribunal was justified in taking reliance on this certificate and in coming to

the conclusion that the workman, on the basis of his evidence, had worked for 240 days in a calendar year and that he had worked continuously for almost 10 years. In the light of the aforesaid, coupled with the fact that the Tribunal has given a specific finding that the juniors to the workman remained in employment and that after the termination of the workman new workers were engaged, the Court is of the opinion, that the action of the respondents in terminating the services of the workman was not based on any justifiable reasons. The Court is of the opinion, that the award of the Tribunal is perfectly correct, which requires no interference.

The writ petition fails and is dismissed.