
(2006) 02 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14605 of 1985

Regional Manager, State Bank of India

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Citation : (2006) 02 AHC CK 0125

Hon'ble Judges : Bharati Sapru, J

Final Decision : Partly Allowed

Judgement

Bharati Sapru, J.—This petition has been filed against an award of the Labour Court passed in adjudication case No. 194 of 1984 in proceedings under Section 10 of the Industrial Disputes Act. The reference made was thus:

?Whether the action of the management of State Bank of India, Region III, The Mall, Kanpur, in relation to their Jhonstonganj Branch, Allahabad in terminating the services of Shri Mahatma Mishra, Exmessenger with effect from 491982 and not considering him for further employment as provided under Section 25H of the Industrial disputes Act, is justified, if not to what relief is the workman concerned entitled.?

2. By the award dated 1051985 the Industrial Tribunalcum Labour Court has reinstated the respondent No. 2 with full backwages.

3. I have heard learned Counsel for the parties and have also perused the record.

4. The facts appear from the record are that the respondent No. 2 was engaged as temporary employee at Jhonstonganj, Allahabad of the petitioner Bank on 3151982, his services were termination by way of an oral order on 391982. It is stated by the petitioner that workman had worked only 88 days and without break. The facts as stated by the petitioner are that the petitioner bank had not given to the respondent workman any appointment letter, any termination letter and as workman was not permanent employee, no notice was also given to him.

5. The petitioner Bank contends that as the nature of engagement of respondent workman was of casual nature and not against any permanent post or vacancy and also on account of fact that under the Sastry Award and Desai Award, it was open to the Banks to engage such casual workman, it had done so and the workman was not liable to be reinstated on this account.

6. Learned Counsel for the petitioner bank has argued that the award of the Labour Court is vitiated on account of the fact that the Labour Court has wrongly come to the conclusion that the respondent workman had been engaged against permanent post. He argues that the labour Court has wrongly recorded that the job of the messenger, for which the workman, had been engaged was of a permanent nature. He argues that finding has been without any basis whatsoever or any discussion on the subject that the job of the messenger was of permanent nature. He reiterates the contentions of the bank that the respondent workman had been engaged only for a short period as a messenger as there was temporary requirement in the bank. The finding, as he argues, is completely erroneous in absence of any discussion that job of a messenger was of a permanent nature.

7. His second argument also arises from the first argument and he argues that it was not within the scope of reference made to the industrial tribunal to go into the question of existence of vacancies. His third argument is that the findings recorded by the Labour Court on 'unfair labour practice' is also vitiated in absence of any specific pleading or any proof in this regard.

8. Learned Counsel for the petitioner has relied on a recent decision in the case of Regional Manager, State Bank of India v. Raja Ram, reported in 2004 (8) SCC 164, on a question as to what amounts to 'unfair labour practice', the Hon'ble Supreme Court has held that it is only when the year after year and for many years, the employees are continued in service with artificial breaks in the service with object to deprive them status and privileges of a permanent workman. Can it be said that it was a case of 'unfair labour practice'?

9. Sri Arnab Banerjee learned Counsel appearing for the petitioner argues that in the present case, since the admitted position is that the workman has worked only 88 days, it cannot be said that respondent workman had been deprived of a permanent status having continued to work with the Bank year after year.

10. Sri Banerjee has also argued that it is also open to the bank under the Sastry Award and the Desai Award to engage workman of casual nature when exigencies of work require such employment. Para 5.22 (4) of the Sastry award is quoted below:

Sastry Award

“(522.(4)) The services of any employee other than a permanent employee or probationer may be terminated, and he may leave service, after 14 days' notice. If such an employee leaves service without giving such notice he shall be liable

for a week's pay (including all allowances).?

Para 23.19 of Desai Award is also quoted below :

Desai Award

?(23.19) There is no merit in the demand that where daily rated and/or temporary hands remain in employment for an aggregate period of 3 months during any 12 consecutive months they should be deemed to be probationers and should be so covered and absorbed against permanent vacancies. The said demand is opposed by the banks and the same is rejected. As regards the demand that all employees working for 3 months or more should be deemed as confirmed, save as otherwise provided in this award no directions are given.?

11. Sri Banerjee also argues that the bank clearly pleaded before the Industrial Tribunal that no other person had been engaged after the respondent No. 2 had been asked to leave the service on the post of messenger. This pleading has been made in para 6 of the written statement, which reads as under :

?(6) Para 5 of the claim statement is not admitted. It is submitted that neither the workman was appointed against any vacancy at the said branch nor any other workman was engaged after the termination of the services of the workman against any vacancy. It is further submitted that provisions of Section 25G and H of Industrial Disputes Act, 1947 were not attracted to the case of the workman.?

12. In reply to the contentions as raised by the learned Counsel for the petitioner, Sri R.C. Shukla appearing on behalf of the respondent workman has brought into the notice of this Court that the finding as recorded in the award is that prior to the appointment of respondent workman, one other person had been engaged as a messenger and on the very day, when the respondent workman was terminated, one Vasudeo was engaged in the capacity of messenger. He has argued that the bank had resorted to a method and device of temporary engagement in order to deprive the workmen of their rights to be regularized as permanent workman and one after another being engaged in spite of the circulars had been issued by the Bank that the temporary workman not to be engaged by the bank beyond the period of 90 days.

13. It is on the basis of this circular, Sri Shukla has argued that the Labour Court has given its finding on ?unfair labour practice?. It is on this proposition of law, he argues that if it was necessary to terminate workman because there was no work, then another workman should not have been engaged at all.

14. In reply Sri Banerjee has argued that the Labour Court has wrongly come to the conclusion that both the Sastry Award and Desai Award were in the nature of standing orders. He states that this issue has never gone into by the labour Court and the finding recorded by the Labour Court that Sastry Award and Desai Award are standing orders is wholly perverse and on this reason also, the impugned award is vitiated.

15. Having heard both parties and I am of the view that the arguments made by the Counsel for the petitioner bank have substance and are liable to be accepted by this Court. It is correct to say that there was no reference before the Labour Court to come to the conclusion that the post itself was permanent post or that the vacancy existed against which, a workman could have been adjusted. The contention of 'unfair labour practice' is also not correct. On his own saying the respondent workman has since worked only for 88 days, it could not be said that any 'unfair labour practice' had been indulged by the bank against the workman of depriving him of work after he had worked 88 days.

16. The contentions of the petitioner Counsel that under the Sastry Award and Desai Award, it was open to the bank to engage temporary workman in exigencies of work is also correct. It is always open to the bank to engage any temporary servant for a short period if there is any need to do so. If a workman is engaged for 88 days, it cannot be said that he was subjected to any kind of 'unfair labour practice' or be that he had perfected his right or claim to be regularized against a post, even though it was admitted to workman that he had no appointment letter in his favour and no termination letter had been passed against him.

17. Such are the facts of the case but also with passage of time the picture has changed. The workman, according to him, was terminated on 3/9/1982 and an award was passed in his favour on 10/5/1985 giving him reinstatement with full back wages.

18. The Award of the Labour Court was stayed completely by the order of this Court dated 21/11/1986 but the said stay order of this Court was subsequently modified completely by the order dated 15/9/1987 by which the workman was reinstated and the order was passed to give him full backwages also.

19. The petitioner Bank, in its rejoinder affidavit in para 5, stated that they have complied with the order dated 15/9/1987 of this Court, as a result of which, the Bank is paying month to month wages to the respondent workman. The bank has also paid back wages after the date of the award upto 14/9/1987 and thereafter from 15/9/1987 onwards. In all, more than 20 years have passed.

20. Although I am of the opinion that the status of the workman concerned could not have been turned into a permanent status after being worked for a period of only 88 days, yet I feel that it would be in the interest of justice and equity now to allow the workman to be reinstated with the Bank but he is not entitled to any backwages.

21. It is wellsettled that backwages is not natural consequence in every case of reinstatement. Moreso in view of the fact that neither the workman has been able to make a case that he is not gainfully employed nor there is any discussion with regard to this nor any specific pleading or proof has been made in this regard.

22. Recently in the case of Kendriya Vidyalaya Sangathan v. S.C. Sharma, 2005 SCC (L & S) 270, wherein the apex Court has held that the payment of backwages involves a discretionary relief and each case has to be dealt with on its own peculiar facts and circumstances. The Labour Court must apply to its mind to the question while determining the entitlement of a person to backwages. It is not for the employer to show that the employee is gainfully employed, rather it is a burden on the employee to show that he was not gainfully employed.

23. In another decision of the Hon"ble Supreme Court as reported in the case of General Manager, Haryana Roadways v. Rudhan Singh, 2005 SCC (L & S) 716, wherein the Full Bench of the apex Court has held that order for payment of backwages should not be passed in a mechanical manner but a host of factors such as the method and nature of appointment, qualifications of workman, length of service and availability of alternative work have to be considered.

24. The apex Court has reiterated its view in the case of U.P. State Brassware Ltd. v. Udai Narain Pandey, reported in 2006(1) LBESR 348 (SC) : JT 2005 (10) SC 344.

25. Thus, the sum and substance of the matter is that it is not the absolute consequence of reinstatement that in every case, full backwages are to be granted, but that the issue of grant of backwages must be gone into and the grant, if any, of backwages must be given proper consideration which shall of course vary from case to case.

26. In view of the above discussion, the writ petition is partly allowed. I modify the award of the Labour Court to the extent that no further backwages shall be paid to the respondent workman. However, his reinstatement shall continue.

27. The writ petition is partly allowed but there will be no order as to costs.