

(2012) 01 DEL CK 0168

In the Delhi High Court

Case No : Writ Petition (C) 10568 of 2006

Sandeep Kumar

APPELLANT

Vs

Corporation Bank

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0168

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Chandra Shekhar Yadav, for the Appellant; Rama Arora, for the Respondent

Judgement

P.K. Bhasin, J.—The petitioner-workman challenges the correctness of the award dated 8th March, 2006 of the Labour Court whereby the reference made to it by the appropriate Government at his instance in respect of his grievance that his services were illegally and unjustifiably terminated by the respondent-bank has been answered against him and it has been held that he had failed to establish that his services had been terminated illegally.

2. The relevant facts and which are not in dispute also are that the petitioner undisputedly was employed by the respondent-bank as a daily wager on 28th March, 1998 and he was paid Rs. 60 per day and as per the case of the petitioner his services were brought to an end with effect from 27th March, 1999. Since he felt that his services had been terminated illegally he raised an industrial dispute by approaching the Authority under the Industrial Disputes Act for referring his dispute to the industrial adjudication. The conciliation officer conducted conciliation proceedings between the petitioner-workman and the respondent-management but no settlement could be arrived at. As per the failure report of the conciliation officer the respondent-management had failed to comply with the provisions of Section 25F of the Act which it was required to comply with since the petitioner-workman had worked with the respondent-bank for more than 240 days before the termination of his services. The appropriate

Government then referred the dispute about the legality of the termination of the services of the petitioner to the Labour Court in the following terms:-

Whether the action of the management of Corporation Bank in terminating the services of Shri Sandeep Kumar w.e.f. 27.3.1999 is legal and justified? If not, what relief is the workman entitled to?

3. The petitioner-workman in his statement of claim had pleaded that he had been employed with the respondent-bank on 26th March, 1998 and thereafter he had worked continuously for more than 240 days and then with effect from 27th March, 1999 his services were terminated without assigning any reason.

4. The respondent-bank in its written statement admitted that the petitioner-workman was employed with it with effect from 26th March, 1998 as a daily wager but it was claimed that his appointment was only as a stop gap arrangement since the bank's Mundka branch where he was employed had been opened on 26th March, 1998 and as appointment of regular employees would have consumed sufficient time by inviting names from the employment exchange the bank manager in exercise of its powers given to him under the circulars of the Central Government had engaged temporary employees, including the petitioner herein, as a stop gap arrangement only to meet contingency needs and when regular employees were recruited the petitioner's employment was discontinued with effect from 27th March, 1999 as there was no requirement thereafter for having daily rated workers.

5. The learned Labour Court after examining the evidence adduced from both the sides gave its award dated 8th March, 2006 rejecting the claim of the petitioner that he had worked with the respondent-bank for a period of 240 days preceding the date of termination of his services and, therefore, it held that no fault could be found with the respondent-bank taking a decision for not continuing his daily wage appointment any further.

6. Feeling aggrieved by the award of the Labour Court the petitioner-workman filed the present writ petition.

7. Arguing for the petitioner-workman his learned counsel submitted that when in the claim statement filed before the labour Court he had categorically pleaded that he had worked with the bank for more than 240 days the respondent-bank was expected to either admit that averment in its written statement or deny the same and to plead as to for how many days he had worked if not for 240 days but that was not done. Therefore, in the absence of denial of this categorical averment in the claim statement the same stood admitted by the respondent-bank and in view of that admission it was not necessary for the petitioner-workman to adduce any evidence as that admission itself was the best piece of evidence to be utilized in his favour by the Labour Court but the Labour Court had ignored that aspect and concluded that since the burden was on the petitioner-workman to establish that he had worked for more than 240 days and he had not discharged that burden by adducing sufficient evidence and so he was

not entitled to any relief on the basis of only his own statement that he had worked with the respondent-bank for more than 240 days. It has also been contended that in the cross-examination of the petitioner-workman it was not even suggested to him that he had not worked continuously from 26th March, 1998 to 27th March, 1999 and not only that the management itself had also not produced any evidence or any records to show that he had worked with the respondent-bank for a period of less than 240 days. Thus, the decision of the labour Court, as per the counsel is perverse.

8. Learned counsel for the respondent-bank, on the other hand, while candidly admitting that neither any appointment letter was issued nor any written termination order was passed and further that no records were maintained by the respondent-bank regarding the employment of daily rated workers who had been engaged at the Mundka Branch of the bank, submitted that the appointment of the petitioner-workman was on daily wage basis and that would mean that every day his contract of employment was being renewed and, therefore, the termination of his services would not amount to retrenchment and consequently even if it is accepted that the petitioner had worked with the respondent-bank for more than 240 days compliance of Section 25F of the Act was not necessary. Counsel also submitted that is the burden of proving that the petitioner had worked for more than 240 days with the respondent-bank as held by the Supreme Court in *Chairman, Oil and Natural Gas Corporation Ltd. and Another Vs. Shyamal Chandra Bhowmik*, as also in *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, , and the Labour Court has rightly held that he had not discharged that burden and so in any event non-compliance of Section 25F of the Act does not help the petitioner's case.

9. After having considered the aforesaid submissions made from both the sides and perusing the record I find myself in full agreement with the submissions made by learned counsel for the petitioner that it is not a case of merely a bald statement on oath of the workman that he had worked for a period of 240 days but in fact his case is fully substantiated by the non-denial by the respondent-bank in its written statement of the averment that the petitioner-workman had worked for more than 240 days and in view of that admission the petitioner-workman was not required to establish any further evidence. I have gone through the averments made in the claim statement and the written statement of the respondent-bank and I find that the respondent-bank had not at all denied the averment of the petitioner-workman that he had worked with the bank for more than 240 days.

10. I, am therefore, of the view that learned Labour Court was totally unjustified in rejecting the claim of the workman and its award is unreasonable and, therefore, has to be set aside.

11. The question which now arises is as to what relief the petitioner deserves to be given considering the fact that the petitioner-workman had worked with the respondent-bank only from 26th March, 1998 to 27th March, 1999, and that too

as a daily wager the relief of reinstatement in service would not be the appropriate relief to be given to him and a lumpsum payment in lieu of the relief of reinstatement and back wages etc. would be the most appropriate relief which can be given to the petitioner-workman.

12. This writ petition is accordingly allowed and while setting aside the award of the Labour Court the petitioner-workman is granted lumpsum compensation of Rs. 75,000/-. Additionally, he is also awarded costs of this litigation which are quantified at Rs. 10,000/-