

(2012) 12 MP CK 0022
In the Madhya Pradesh High Court
Case No : Appeal No. WP/20200 of 2012

Sanjay Kumar Shrivastava	Vs	APPELLANT
Regional Manager, Bank of India and Another		RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (2013) 136 FLR 1098 : (2013) 2 LLJ 394 : (2013) 1 LLN 197

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : K.N. Pethia, for the Appellant;

Final Decision : Dismissed

Judgement

Rajendra Menon, Judge

1. Challenging an interlocutory order passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur on 8.11.2012, in a proceeding pending before him under the Industrial Dispute Act on a reference made, petitioner has filed this writ petition. Petitioner was working as a Messenger (Casual Labour) with the Bank of India. According to the petitioner, he was engaged in the year 1990 and was working continuously. The Bank of India Employees Union has raised an industrial dispute on behalf of the casual employees like the petitioner, in the matter of regularization of their service and refusing to grant them benefit of permanent appointment.

2. On the dispute raised by the Union, the appropriate Government vide Annexure P/3 has referred the reference for adjudication to the Central Government Industrial Tribunal - cum- Labour Court, Jabalpur to the effect as to whether the action of the Management of Bank of India in not regularizing the services of 13 casual workmen, is appropriate or not, and terminating the service of five of them is justified or not?

3. Petitioner is one of the employees affected and whose case is pending

adjudication before the Tribunal. Grievance of the petitioner is that after the dispute was referred the petitioner has been removed from service and, therefore, the same being in violation to the provisions of Section 33 of the Industrial Disputes Act (hereinafter referred to as the "Act"), he filed a writ petition challenging the said termination before this Court. In the said writ petition, W.P. No. 19373/2011, this Court on 23.11.2011 came to the conclusion that if action is taken in violation to section 33 of the Act, petitioner should approach the Tribunal where the matter is pending, and the Tribunal was directed to consider and decide the claim of the petitioner for interim relief.

4. Petitioner has initiated proceedings u/s 33 of the Act, and in the said proceedings he sought the interim relief of staying his termination. The prayer for interim relief having been rejected by the impugned interlocutory order - Annexure P/1, petitioner is before this Court.

5. Shri K.N. Pethia, learned counsel for the petitioner, vehemently argued that once the service of the petitioner is terminated in breach of the provisions of Section 33 and when the service conditions have been changed during the pendency of the industrial dispute, the Tribunal should have granted interim relief to the petitioner and in refusing to grant interim relief, it is stated that an error has been committed and, therefore, interference is sought for.

6. The Industrial Tribunal has dealt with this aspect in detail and has taken note of the objections raised by the Bank. The objections raised by the Bank in the matter of granting interim relief were two folded. The first contention of the Bank was that the petitioner is a daily rated casual employee, he is granted work on daily wages as and when available and they made a submission that whenever work is available, he is being called and, therefore, there is no termination or change of service conditions. That apart, it was pointed out that under the Industrial Dispute Act, there is no provision for grant of interim relief and, therefore, the application be rejected. The Tribunal after taking note of the law laid down by the Supreme Court, in the case of *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, came to the conclusion that even though interim relief cannot be granted, but wherever admissible an interim award can be passed granting some benefit.

7. Thereafter, the learned Tribunal examined the matter on merits and found that there is already an order of maintaining status quo and the employee/workman is a casual labour, granted work on day to day basis and even if no interim relief is granted, there is no irreparable loss to him, as he can always be compensated in terms of money, while granting him final relief in the pending industrial dispute. Accordingly, finding that there is no irreparable loss and finding balance of convenience not available in favour of the workman, the application is rejected and the case is listed for final hearing alongwith the pending industrial dispute.

8. The reasons given by the learned Tribunal for rejecting interim relief and the legal provisions indicated therein are reasonable, in accordance with law and I

see no reason to interfere into the matter at this interim stage. The question of changing the service condition during the pendency of the industrial dispute and breach of section 33 is pending before the Tribunal and finally if such a breach is determined on inquiry in the pending industrial dispute, the Tribunal can always grant relief to the petitioner of all loss caused, he can be compensated by payment of arrears of salary or monetary benefit.

9. Under such circumstances, it is not a fit case where interference at this interlocutory stage is called for particularly when the dispute on merits is pending adjudication before the Tribunal. Accordingly, finding no ground to interfere into the matter, the writ petition is dismissed.