
(2005) 04 AHC CK 0144
In the Allahabad High Court
Case No : Writ Petition No.2226 (S/S) of 1994

Sarjan Kumar

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2005) 04 AHC CK 0144

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Smt. Bulbul Godial learned counsel for the petitioner and Sri V.K. Srivastava, learned counsel for opposite parties No.1 to 3.

2. Learned counsel for the petitioner has submitted that the petitioner was engaged as daily wager/peon from 4.8.1990 in the services of the Central Bank. He was engaged on daily rated basis of Rs.20/ per day. The petitioner had worked for the period from 4.8.1990 to 20.8.1993. However, some artificial breaks were made in the said service. According to the learned counsel for the petitioner, since the petitioner had completed more than 240 days services, he has become a regular workman within the meaning of Sections 2(s) and 2(z) of the U.P. Industrial Disputes Act, 1947. The petitioner has been disengaged from services by oral order of termination without following the procedure as laid down under Section 6(N) of the U.P. Industrial Act, 1947 which is primateria of Section 25(F) of the Industrial Disputes Act, 1947.

3. The Central Bank of India is an industry within the meaning of Section 2(j) of the U.P. Industrial Disputes Act, 1947 and the petitioner's services ought not to have been terminated without following the due procedure and the action of terminating the services by an oral order is unjust, unfair, arbitrary and discriminatory.

4. Smt. Bulbul Godial has pointed out that this is an admitted writ petition in

which this Court has been pleased to pass interim order on 2.5.1994 providing that if the work and post are available the opposite parties will allow the petitioner to work and pay him salary.

5. Sri V.K. Srivastava has submitted on the basis of counter affidavit filed by him that the petitioner was merely a daily wager. He had worked for a short period of sixty days only and in support of his submission, a chart has been submitted by the bank indicating the names of such daily wagers, period of their engagement and the wages paid to them. Learned counsel for the Central Bank has categorically submitted that the petitioner can not be treated as employee or regular employee of the Bank. He was used to be engaged on day today basis as per exigencies of Bank's Management. The petitioner can be defined as casual worker daily wager paid on daily rated basis. It has been denied by the Bank that the petitioner has continuously worked in the Bank. The provisions of U.P. Industrial Disputes Act shall not be applicable in the present set of circumstances and the petitioner is not entitled for any of the benefits claimed by him. The petitioner had not completed more than 240 days in a calendar year. It has also been pleaded by the Bank that the petitioner may approach the Labour Court for redressal of his alleged grievance.

6. Smt. Bulbul Godial resisted the submission made in the counter affidavit and has stated that the chart submitted by the Bank has not been properly made. In fact for the period when the petitioner actually worked the payment of wages were given in the name of other workers.

7. I have heard the learned counsel for the parties and gone through the material on record.

8. There is no order of formal engagement or appointment issued in favour of the petitioner. Learned counsel for the petitioner has placed payment vouchers in support of his version that the petitioner was an employee of the Bank and also supported the chart inclosed with the counter affidavit submitted by the Bank. As indicated in the chart and other documents of the petitioner did not work for 240 days in a calendar year, however the petitioner has established that employeeemployers relation existed during the period from 4.8.1990 to 20.8.2003. Since it is not borne out of the record that the petitioner has worked for 240 days in a calendar year and there is no order of appointment as such it can not be inferred that he was a workman as define under the provison of U.P. Industrial Disptues Act. The petitioner can not claim status as regular workman. He was merely a casual worker paid on daily rated basis. There appears to be no violation of terms and conditions of employment or some other statutory Rules. The petitioner has failed to establish any legal right to hold the post in the services of the Bank.

9. The writ petition is accordingly dismissed. However, this Court is of the view that since this petition was admitted and an interim order was granted by this Court on 2.5.1994 and the order remained operative directing the opposite

parties to allow the petitioner to work and pay him salary. In view of this fact it is open for the local appropriate authority of Central Bank of India to consider the case of the petitioner sympathetically and if the work and post is available he may be provided with some employment.

(Ordered accordingly)