
(1997) 05 PAT CK 0017
In the Patna High Court
Case No : CWJC No. 11605 of 1995

Satyadeo Prasad	Vs	APPELLANT
Union of India(UOI) and Others		RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B

Citation : (1999) 3 LLJ 859

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Ravi Shankar Prasad and Mithilesh Kumar Sinha, for the Appellant;
T.K. Jha and Chittaranjan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—In this writ application, the prayer of the petitioner is to issue an appropriate writ, order or direction to respondents No. 2 and 3 for regularisation of his service by absorbing him in the regular full time vacant post of Peon in the Reserve Bank of India (in short "the Bank").

2. In short, the relevant facts of the case are that in the year 1989 the Bank called for the names of persons eligible for appointment in the Bank from the Employment Exchange, pursuant to which the name of the petitioner along with others was sent by the Employment Exchange. The Bank selected the petitioner for appointment as Ticca Peon in its service and, accordingly, issued the appointment letter dated June 26, 1989 (Annexure 1). The petitioner was required to attend his duties regularly, failing which would entail the removal of his name from the panel list. Similar letters were issued to other candidates also.

3. According to the case of the petitioner, Mazdoor, Peon and Khitmatgar are Class IV posts in the respondent Bank and the appointment to the said posts can be made by absorption of the persons working as Ticca Mazdoor, Peon and Khitmatgar on the basis of the seniority in the wait list.

4. The petitioner claims to have regularly marked attendance in the attendance register. The cause of regularisation of the services of the Ticca Mazdoors, Ticca Peons and Ticca Khitmatgars had been taken up by All India Reserve Bank Workers Federation (in short "the Federation") and a study team comprising the representatives of the Bank and the Federation was constituted on April 2, 1991 which submitted its report on November 19, 1992 recommending their absorption on the regular full-time posts in the Bank. After the said recommendation, a settlement was arrived at between the Bank and the Federation in which it has been agreed that the existing practice of engaging persons on daily wages on temporary and ad hoc basis in various cadres in Class IV shall be discontinued and after increasing the strength of the posts, services of the persons, who had rendered continuous service of three years or more as on November 19, 1992, shall be absorbed at the Centre where they have been working or at other Centres where the vacancies are available.

5. In accordance with the said settlement, a consolidated wait list containing the name of 92 persons, including the petitioner, was prepared by the Bank. The Bank, however, when adopted "pick and choose" method while absorbing the persons from the approved consolidated panel, one Lalendra Nath Singh came to this Court for similar relief in C.W.J.C.No. 1749 of 1995. Even earlier to that some such people had come to this Court in C.W.J.C. 2335 of 1994, on whose regularisation the said writ petition was withdrawn. In C.W.J.C. No. 1749 of 1995 this Court after examining the terms of settlement and various provisions of law held that the petitioner of the said case was entitled for being considered for regular/part time employment, as per the provisions contained in Annexure A to the counter affidavit and non-consideration of his case by the authority concerned was arbitrary and violative of Articles 14 and 16(1) of the Constitution of India, besides the provisions contained in Annexure A, whereby the respondent-Bank had formulated the scheme by entering into the Memorandum of Settlement with the Federation. This Court also relied upon the provisions contained in Section 25B of the Industrial Disputes Act (in short "the Act") for the purpose of interpretation of the words "continuous service" which, according to the Bank, the petitioner of the said case had not rendered as was required under the provisions of the settlement.

6. The Bank preferred Letters Patent Appeal No. 1695 of 1995 in this Court against the said judgment/order which has finally been disposed of by a Division Bench of this Court, vide judgment contained in Annexure 7. In the said case, the respondent-Bank had raised various contentions, including the maintainability of the writ petition with which the Division Bench did not feel persuaded to reject the claim of the writ petitioner on that ground, rather upheld the direction given in the writ case with the only modification that regularisation/absorption shall take place strictly in accordance with the conditions incorporated in the Memorandum of Settlement against the available or future vacancies and that while doing so, strict compliance of the reservation policy would be adhered to. The Division Bench, however, did not find any justification to give different

meaning of "continuous service" by taking aid of Section 25B of the Act in view of different conditions of the Memorandum of Settlement of the parties and order of the Bank. The Court also held that this also cannot be disputed that as per condition No. 10 of the Memorandum, those Ticcas, who were being engaged for work regularly, had to rank senior in the consolidated list to those who used to report for work, but were not engaged.

7. Learned counsel for the petitioner contended that the terms of settlement only provided that the vacancies in the cadre of Peon shall be filled up by the existing "Staff Candidates" in the cadre of Mazdoors and Khitmatgars/Tea-boy/Waiter on the basis of their seniority to be reckoned from the date of appointment and not from the date of engagement, but the Bank has been illegally and arbitrarily acting contrary to the same. Further it was contended by the learned counsel for the petitioner that there was nothing provided in the terms of settlement regarding the reservation policy being adhered to in the matter of filling up the vacancies from the said wait list which is completely foreign to the terms of settlement. However, according to him, the petitioner also belongs to the Scheduled Caste and thus, his case should have been considered for regularisation strictly according to his position in the wait list irrespective of the date of engagement. It was also contended that in not following the said policy, the action of the Bank will be wholly arbitrary and violative of Articles 14 and 16(1) of the Constitution of India, besides being mala fide inasmuch as the favourites can get undue advantage in the matter of giving engagement by the authorities without following the seniority as per the wait list and that would deprive the persons higher in the merit list of their regularisation.

8. On the other hand Mr. Jha, learned Senior Counsel appearing for the Bank submitted that in view of the Division Bench judgment in the case of Lalendra Nath Singh (supra), the question raised by the petitioner stands concluded. Moreover, when the petitioner has not alleged that he was not given the opportunity for engagement which has deprived him of his due seniority, then this Court may refrain from going into the question as to whether the date of appointment or the date of engagement is the relevant criteria for regularising the persons from the wait list. Learned counsel also again raised the objection regarding the maintainability of the writ petition, in view of the remedy provided under the Act for enforcement of the terms of settlement.

9. I do not find substance in the last submission of Mr. Jha with respect to the maintainability of the writ petition. This question was answered by me earlier and the Division Bench also, having regard to the admitted position that in terms of the Memorandum of Settlement, most of the candidates, who were included in the consolidated list, have been regularised/absorbed, did not find it proper to reject the claim of the writ petitioner in the case of Lalendra Nath Singh (supra) on the said ground. This matter also arises out of the same settlement and as such I do not find any substance in the submission of Mr. Jha regarding maintainability of this writ petition.

10. There may be some substance in the submission of the learned counsel for the petitioner that as per Clause 7 (ii) of the said settlement, the vacancies are to be filled up on the basis of the seniority to be reckoned from the date of appointment, but that was prior to Switch-Over Scheme was introduced vide Clause 8 of the said settlement. Clause 8 of the Switch-Over Scheme provides that the operation of the existing Switch-Over Scheme shall be suspended till the first regular wait list for service staff is prepared. As per Clause 9, the existing current wait list for the posts of Mazdoor, Peon and Khitmatgar/Tea-Boy/ Waiter are cancelled. However, under its proviso the claims of the Switches presently borne on the said list have not been effected and they are to be appointed as provided in the clauses thereafter, which include Clause 10 which has been considered by the Division Bench of this Court. Thus, I do not find any merit in the contention of the learned counsel for the petitioner in this regard.

11. As regards the contention of the learned counsel for the petitioner that the reservation policy is to be followed in filling up such vacancies is completely foreign to the settlement, I find it difficult to consider the same in view of the Division Bench judgment of this Court in the case of Lalendra Nath Singh (supra). In paragraph 18 of the said judgment, the Division Bench has held that while taking steps for regularisation/ absorption, the Bank authorities cannot ignore the reservation policy of the Government or its policy to provide appointment on compassionate ground against respective vacancies.

12. The writ application is, thus, dismissed, but without costs.