
(2011) 05 DEL CK 0356
In the Delhi High Court
Case No : Writ Petition (C) 3375 of 2011

Shis Ram

APPELLANT

Vs

Chief General Manager State Bank of India and Another

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 05 DEL CK 0356

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V.K. Vasdev and Avninder Singh, for the Appellant; Anil K. Sangal and Deba P. Mohanty for R-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner impugns the award dated 18th June, 2010 of the Industrial Adjudicator on the following reference:

Whether the action of the Management of State Bank of India in terminating the services of Sh. Shish Ram S/o Sh. Mahavir Singh, Sorter-cum-Messenger w.e.f. 2003 is just and legal? If not what relief the workman is entitled to.

as under:

In view of the foregoing discussions, it is evident that the claimant has miserably failed to establish that he was appointed against a post, on which he has a right to continue. He could not show that his disengagement amounted to retrenchment. He could not attribute any illegality, unjustifiability or impropriety to the action of the Management in terminating his services. His claim is devoid of merits. The same is dismissed. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

2. The Petitioner claims that he was working as a Sorter-cum-Messenger with effect from 1st January, 1995 in the Canteen of the Respondent Bank on daily

wages as and when requirement arose of the Respondent Bank and from the year 1999 to 2003 in the Stationery division. He further claims that he so worked in the Stationery division for 1073 days on daily wages. It is the claim of the Petitioner that he worked for 254 days in the year 1999, for 259 days in the year 2000, for 252 days in the year 2001, for 256 days in the year 2002 and for 52 days in the year 2003. He further claims that his services were terminated on 15th April, 2003 and with effect from 16th April, 2003 he was not permitted entry into the Respondent Bank.

3. The Respondent Bank denied that the Petitioner had so worked. It was the case of the Respondent Bank that the Petitioner was occasionally engaged on casual basis for doing odd jobs purely of casual nature.

4. The Industrial Adjudicator found that the Petitioner had not been issued any appointment letter; that he was not recruited as per the procedure of recruitment prescribed in the Rules of the Respondent Bank; that the Petitioner had failed to prove that he had worked continuously with the Respondent Bank for even 240 days; that he never acquired the status of a "workman" within the definition of Section 2(s) of the Act; that appointment on daily wages cannot be claimed for a regular employment and which would be a backdoor entry detrimental to efficient service and encourage corruption; that thus the disengagement of the services of the Petitioner did not amount to retrenchment within the meaning of Section 2(oo) of the Act; that his services did not continue against a particular job for continuous period of 240 days as contemplated by Section 25B of the Act and the Petitioner had not rendered continuous service for 240 days against any job and his discontinuance did not amount to termination of services; that at one stage the Respondent Bank had regularized temporary employees by a bipartite agreement but that was prior to initial engagement of the Petitioner and thus the Petitioner could not claim parity with those workers also.

5. The counsel for the Petitioner has also not controverted that the Petitioner was never regularly employed and was not issued any appointment letter and his services were never regularized. In the circumstances, the only claim of the Petitioner could be on the basis of 240 days continuous service and on which also finding of fact against the Petitioner has been returned by the Industrial Adjudicator. It has been enquired from the counsel for the Petitioner as to how a case for interference with such finding of fact is made out. The counsel has not been able to substantiate the same. I do not find any pleadings also in this regard.

6. Though the Petitioner has in the pleadings referred to certain documents but the said documents have been dealt with by the Industrial Adjudicator in the award and found to be suspicious and not believed as evidence of 240 days of continuous service by the Petitioner. This Court in exercise of powers of judicial review would not re-appreciate the evidence. Reference in this regard can be made to:

- (i) Govt. of A.P. and Others Vs. Mohd. Narsullah Khan,
- (ii) Sub-Divisional Officer, Konch Vs. Maharaj Singh,
- (iii) Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others,
- (iv) B.C. Chaturvedi Vs. Union of India and others, .
- (v) Sh. Poorna Singh Kain Vs. Union of India (UOI) and Others
- (vi) Suresh Kumar Vs. The Management of Monsanto Enterprise Pvt. Ltd. .
- (vii) Ram Narain Jha Vs. T.M. Apartments Pvt. Ltd.,
- (viii) Municipal Corporation of Delhi Vs. Satish Kumar,

It is settled position in law that a finding of fact even if erroneous unless shown to be perverse or unreasonable would not be interfereable while exercising powers under Article 226 of the Constitution of India. Reference in this regard can be made to Kirloskar Brothers Ltd. v. The Presiding Officer, Labour Court ILR (1976) 1 Del 565, DTC v. Delhi Administration ILR (1973) Del 838, Jawahar Singh and Others Vs. Financial Commissioner and Others, & Kishan Chand Bhatia (thr. LRs.) Vs. Union of India (UOI) and Others,

7. The judgments of the Apex Court i Workmen of English Electric Company of India Ltd., Madras Vs. Presiding Officer and Another, and State of Haryana and Others Vs. Devi Dutt and Others, may also be noticed in this regard; while in the former the Apex Court held that the finding of the Industrial Adjudicator that the workmen had put in more than 240 days as long as on the basis of some evidence could not be disturbed by the High Court, in the latter the Supreme Court deprecated the High Court for interfering with the finding of the Industrial Adjudicator of the workman having not worked for 240 days.

8. In the present case, no case of perversity or unreasonableness is made out. The reasoning given by the Industrial Adjudicator for not believing the documents has not been controverted in any manner whatsoever.

9. There is no merit in the writ petition; the same is dismissed. No order as to costs.

CM No. 7054/2011 (for exemption)

Allowed, subject to just exceptions.