

(2002) 11 AHC CK 0057
In the Allahabad High Court
Case No : C.M.W.P. No. 31406 of 1994

Shiv Kumar Awasthi and Others

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6E

Citation : (2003) 1 AWC 399 : (2003) 1 UPLBEC 87

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Sanjay Misra, K.C. Shukla and B.K. Narain, for the Appellant; K.L. Grover, A.K. Pandey and K.S. Shukla and S.C., for the Respondent

Judgement

Rakesh Tiwari, J.—Heard the learned counsel for the parties and perused the records.

2. By means of this writ petition, the petitioners have sought the relief of mandamus directing respondent No. 1, Punjab National Bank, Regional Office, Kanpur, to reinstate the petitioners in service and further directing respondent No. 2 to compute the back wages to which they are entitled to in accordance with law.

3. The facts of the case are that erstwhile Hindustan Commercial Bank was merged with the Punjab National Bank under the scheme of amalgamation vide Notification dated 18.12.1986. It was contemplated in the Notification that all the rights, powers, claims, demands, interest, authorities, privileges, properties, etc. of the Hindustan Commercial Bank shall stand transferred and become the properties and assets of the transferee bank under the scheme of amalgamation.

4. The scheme of amalgamation notified by Notification dated 18.12.1986, provided that Hindustan Commercial Bank Ltd., Kanpur, shall be the transferee Bank and if on the prescribed date, any legal proceeding of whatsoever nature is pending, shall not abate or discontinue and shall be prosecuted and enforced by

or against the transferee bank. Para 10 of the scheme, which is relevant for purpose of deciding the controversy is as under :

"10. All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employee immediately before the close of business on 24.5.1986."

5. Thus, according to Clause 10 of the scheme, the services of the employees shall also stand transferred. Clause 17 of the scheme provided that if any doubt arises in interpreting any of the provisions of the scheme, the same shall be referred to the Reserved Bank of India, whose decision shall be binding on the parties.

6. Prior to merger of Hindustan Commercial Bank Ltd., All India Hindustan Commercial Bank Employees Association (renamed after amalgamation as All India Punjab National Bank Staff Congress) raised as Industrial Dispute with regard to its workmen, which is as under :

"The case of the Association is that on the basis of interview held on 19.11.1981, a list of 158 candidates in order of merit was prepared for permanent appointment in sub-cadre. Later on under pressure from rival Union a second list of 55 candidates was prepared on the basis of interview held on 25.7.1982 for permanent appointment in the subordinate cadre. The candidates of the second list were placed before the candidates of the first list. However, under pressure from rival Union the Management of Hindustan Commercial Bank issued a circular No. 50 dated 15.9.1983, which provided that appointments in permanent vacancies in the subordinate cadre from the two lists would be made in the ratio of 1 : 1 from amongst the rest of the candidates of the first list and the candidates of the second list. According to the Association this is illegal. Upto 13.10.1983, candidates from serial Nos. 1 to 73 of the first list were appointed. On account of the said circular, candidates, whose names appeared at serial Nos. 74 to 158 have suffered great financial loss. The Association therefore, prays that the candidates named at serial Nos. 74 to 158 be given all the benefits with effect from 13.10.1983 including arrears of salary leave etc."

7. The reference was registered as I.D. Case No. 134 of 1986. The reference was prepared prior to the prescribed date of amalgamation. The Central Government Industrial Tribunal-cum-labour court, Kanpur, gave its award on 22.8.1988. In paras 9 and 10 of the award, it has been held by CIT as under :

"9. After hearing the two sides, I am not impressed by the arguments advanced by Sri Joshi authorised representative for the management. The authorised representative for the Association has rightly described the circular as arbitrary and discriminatory. It cannot take away the right which has come to vest in the candidates of the first list.

10. I, therefore, hold that the action of the management of the erstwhile Hindustan Commercial Bank in superseding the candidates mentioned at serial Nos. 74 to 158 in the merit list by the candidates of the second list is unjustified."

8. Dealing with the question of relief granted to the candidates whose names mentioned at serial Nos. 74 to 158 of the first list under Notification dated 18.12.1986 it was held :

"In view of the above provisions of the scheme only such candidates of the first list who got employment in the erstwhile Hindustan Commercial Bank by 24.5.1986, can be granted the relief to which they are entitled, i.e., the relief of their being senior to those candidates of second list who got employment by 24.4.1996. During the course of argument, it has been submitted by the authorised representative on behalf of the candidates of the first list that he wants nothing but seniority over candidates of the second list. Accordingly, candidates named at serial No. 74 onwards who got employment in the erstwhile Hindustan Commercial Bank by 24.5.1986, shall be deemed senior to those of the second list who got employment in the Hindustan Commercial Bank Ltd. by 24.5.1986. The rest of the candidates of the first list are not entitled to any relief. They may seek, if so advised, their remedy through proper forum."

9. Aggrieved by the award dated 22.8.1986, All India Hindustan Commercial Bank Employees Association filed Writ Petition No. 24586 of 1988 before this Court for the relief that the award should be implemented in the letter and spirit that the candidates of the first list, who have been appointed before 24.5.1986 should be paid salary and arrears of salary. According to the association, since those candidates of both the lists, who got appointment in the erstwhile Hindustan Commercial Bank Ltd. prior to 24.5.1986, were being discriminated by Punjab National Bank and after publication of the award, they were not being permitted to join their duties after amalgamation.

10. The writ petition was contested by the Punjab National Bank, Respondent No. 1. In the counter-affidavit it has been averred that the Bank had acted in accordance with the award of the Tribunal. In view of the statement on affidavit, the writ petition was disposed of by the judgment and order dated 31.1.1994 as under :

"In view of the statement on affidavit by the Bank, no further direction is called in the present proceedings under Article 226 of the Constitution of India. The writ petition is disposed of finally."

11. This judgment is appended as Annexure-3 to the writ petition. Consequently, the Association made a representation to the Regional Labour Commissioner (Central) Kanpur, on 15.4.1994 praying that necessary steps have been taken u/s 29 of the U. P. Industrial Disputes Act for implementing the award.

12. On receipt of notice from the Regional Labour Commissioner (Central), Punjab National Bank submitted that a decision was taken by the then

management of the erstwhile Hindustan Commercial Bank Ltd., vide Circular No. 50 dated 15.9.1983, providing that hereinafter the vacancies in the subordinate cadre shall be filled up from both the panels in equal proportion, i.e., in the ratio 1 : 1. It was also submitted before the Regional Labour Commissioner that only relief granted by the Tribunal is that the candidates of the first list, who got employment in the erstwhile Hindustan Commercial Bank before 24.5.1986, shall be deemed to be senior to those candidates of the second list, who got employment in the said Bank by 25.5.1986 and there was no other direction whatsoever by the Tribunal, as the employees have thus stated before the Tribunal that they do not want any other relief. The learned Regional Labour Commissioner ultimately by letter dated 11.8.1994, Annexure-6 to the writ petition, has passed the following order :

"Please refer to the discussion that we had on 3.5.1994 the award does not provide for reinstatement of the workers mentioned by you. It only mentions the dispute regarding seniority, which the management have complied.

Therefore, no action is possible from this office.

Sd. Regional Labour Commissioner."

13. Aggrieved by the communication, the petitioners have filed the present writ petition for the reliefs set out in it.

14. The case as set out in the writ petition is that the petitioners are those persons, who were appointed prior to 24.5.1986 and their names find place in the first and second list. It is alleged that in accordance with the award, the petitioners were entitled to the seniority and inspite of the fact that their rights were determined by the Tribunal after the prescribed date i.e., 18.12.1986, Punjab National Bank even during the pendency of adjudication proceedings and without passing any order stopped taking work from them. It is alleged that during the pendency of adjudication proceedings, service conditions cannot be changed and they cannot be removed from service until the permission of the Tribunal is taken. It is contended that no permission was taken u/s 6E of the U. P. Industrial Disputes Act by the Punjab National Bank and further the effect of the award was that certain category of employees of the select list before 24.5.1986, were to get inter se seniority, whereas the Bank has illegally tried to circumvent the award by not taking work from the petitioners after the amalgamation which amounts to retrenchment/ removal from service without complying the mandatory provisions of the Industrial Disputes Act.

15. In the counter-affidavit filed by the Punjab National Bank, it is stated that none of the petitioners was on the rolls of the employment of the erstwhile Hindustan Commercial Bank on the date of merger i.e., 18.12.1986 and as such, there was no question of their performing any duties whatsoever. It is alleged that from the records available, it was found that prior to amalgamation order, some employees had worked on temporary basis with Hindustan Commercial Bank Ltd. and the process regarding their absorption had commenced and the

interview was being taken on two occasions, i.e., 19.11.1981 when the list of 158 candidates was prepared and second interview was taken on 25.7.1982 when the list of 55 candidates was prepared. Appointment letters were issued to 73 candidates of the first list. By that time, the second list was prepared and appointment letters were issued when vacancy occurred on the basis of 1 : 1 from the remaining candidates of first and second lists. Total appointments made were 107, 73 from the first list and 34 from the second list, who were absorbed and the remaining candidates from both the lists remained unabsorbed and as such they were not employees of the Hindustan Commercial Bank Ltd. at the time of amalgamation.

16. It is further contended that the dispute between the candidates of the first list from serial Nos. 74 to 107 and 1 to 34 of the second list, who have been absorbed, arose as claim was made. The Tribunal gave its award accepting the contention that the candidates of the first list should be given seniority over the candidates of the second list, who had been issued letter by erstwhile Hindustan Commercial Bank Ltd. It is also submitted that the reliefs sought on behalf of non-appointed candidates were rejected by the Tribunal. That award has become final. The directions contained in the award have been complied with by the Bank and, therefore, the representation was rightly rejected by the Regional Labour Commissioner.

17. From the contentions of the parties and the record, it emerges that though some of the petitioners had worked in Hindustan Commercial Bank Ltd., they were not issued any appointment letter or absorbed by the Bank and were not its employees on the specified date of amalgamation, as such they cannot take any benefit of the award. They have never been issued letter for permanent appointment by the erstwhile Hindustan Commercial Bank Ltd. and all those employees, who were on the roll of the bank at the relevant date were taken over by the Punjab National Bank. It is also apparent from the award of the Tribunal that it had rejected the claim of all the candidates, who were not issued letters for permanent appointment. As such, the question of any change of service condition during the pendency of adjudication proceedings u/s 6E of the U. P. Industrial Disputes Act, does not arise.

18. It is settled law that the candidates, who were placed in the panel of the select list, have no legal right to the post. Admittedly, the petitioners never issued the appointment letters after they have been selected in the select list. The Apex Court in Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others, , has held :

"It was not proper for High Court to hazard a guess in the absence of specific pleadings, nor could it draw an inference against appellant bank about existence of vacancies when the bank did not specifically meet respondents' oral assertion that vacancies were existing. The appellant-bank might have been obliged to file a specific reply if even in the course of hearing a contention had been raised and supporting material produced about existence of vacancies but without it,

inference against appellant bank was not proper."

19. In view of the facts stated above, the petitioners having placed only in the panel of select list, but the appointment letters having not been issued, were not on the roll of the bank on the specified date. They cannot be treated as employees of the Punjab National Bank transferred under the scheme of amalgamation. The contention that there was any change in service condition during pendency of the proceedings u/s 6E of the U. P. Industrial Disputes Act, 1947, is also without force.

20. The Regional Conciliation Officer had also examined the matter and came to the conclusion that the award does not provide for reinstatement of workers but only seniority in the list of workers and that the dispute regarding seniority has been complied with.

21. Writ Petition No. 24586 of 1988, challenging the award by the Hindustan Commercial Bank Employees Association for implementation of the award in letter and spirit was also disposed of as the Bank had acted in accordance with due award and did not call for any further direction under Article 226 of the Constitution. Thus, the award had become final and had been complied with by the Bank.

22. The writ petition has no merits and is dismissed. No order as to costs.