
(2015) 05 RAJ CK 0100
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5116 of 2014

Shiv Prasad

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2015) 05 RAJ CK 0100

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : K.C. Sharma, for the Appellant; C.P. Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—The petitioner is aggrieved of the order dated 18-3-2014 passed by the Zonal Manager, UCO Bank (hereinafter the Bank") dismissing the representation filed by him for regularisation of his services.

2. The facts of the case are that the services of the petitioner as casual labour engaged on 12-3-1991 were dispensed with on 1-10-1991. Writ petition No. 3548/1992 followed. Vide order dated 25-3-1994, this court directed that the petitioner be reinstated. The Bank was however allowed to resort to Sections 25F and 25G of the Industrial Disputes Act, 1947 (hereinafter the 1947 Act") if so warranted. Pursuant to court's order dated 25-3-1994, the petitioner was reinstated on 6-5-1994. Availing the liberty granted by this court, the respondent bank invoked Sections 25F and 25G of the ID Act and dispensed with his services on 6-5-1994 by paying retrenchment compensation. This time aggrieved of his retrenchment, the petitioner raised an industrial dispute under the provisions of the 1947 Act before the Industrial Tribunal, Jaipur (hereinafter the Tribunal"), which vide award dated 27-12-1999 found the petitioner's removal/retrenchment from service illegal and required the petitioner to be reinstated

with back wages. The Bank challenged the award dated 27-12-1999 before this court under writ petition No. 4991/2000, but without success. The writ petition was dismissed on 8-5-2006. DB Civil Special Appeal (Writ) No. 742/2006, at the instance of the Bank also suffered the same fate on 7-4-2011. The petitioner was consequently reinstated in service under the award dated 27-12-1999.

3. The petitioner then filed writ petition No. 5257/2011 inter alia seeking a direction for his regularisation in bank service with retrospective effect claiming that his juniors similarly placed had been regularised in the Banks service. Vide order dated 16-5-2012, this court directed the Bank to consider the case of the petitioner for regularisation of his services within three months of receipt of the representation from the petitioner. The petitioner's representation dated 22-5-2012 praying for regulation of his services was dismissed by the Zonal Manager of the Bank on 9-8-2012 by a speaking order.

4. The petitioner again preferred a writ petition No. 13272/2012 before this court, which was finally disposed of by order dated 4-12-2013 requiring the Bank to again consider the petitioner's case for regularisation within two months from the date of receipt of certified copy of the courts order. Thereafter the petitioner's case for regulation of services with the Bank has been dismissed vide order dated 18-3-2014, albeit the petitioner has been continued in service as a casual labourer. Hence this writ petition.

5. Mr. K.C. Sharma, appearing for the petitioner has submitted that the representation filed by the petitioner pursuant to order of this court on 4-12-2013 has not been fairly considered and the impugned order dated 18-3-2014 passed by the Bank refusing regulation of his services is wholly arbitrary and discriminatory. It has been submitted that the petitioner has been in services of the Bank for the last about 24 years and in terms of the undertaking by the Bank in DB Civil Appeal (Writ) 742/2006 on 7-4-2011, wherein it was stated that the petitioner would be allowed to continue in the employment of the Bank till his retirement, the petitioner was/is entitled for regularization. It has been submitted that even while on the one hand in terms of the undertaking by the Bank on 7-4-2011 in DB Civil Appeal (Writ) 742/2006 the petitioner was to continue in the employment of the Bank till his retirement, on the other hand non regularisation of his services would only facilitate petitioner's exploitation, and would be wholly unconscionable. It has been submitted that the petitioner discharges similar nature of work as discharged by those employed as regular employee with the Bank. It has been submitted that vide order dated 4-12-2013 in writ petition No. 13272/2012 this court has directed that the petitioner, having completed 24 years of service (at the relevant time) with the Bank, should be considered for regularisation of his services, inter alia for the reason that even subsequent to award dated 27-12-1999 whereby the petitioner was reinstated, he had worked with the respondent Bank for over ten years. It has been submitted that the petitioner is thus entitled to regularisation of his services in terms of the judgment in the case of Secretary, State of Karnataka

and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 . Reliance has also been placed on the judgment of this court in the case of Ammini P.T. (Smt.) Vs. Union of India and Others, (2012) 4 RLW 2892 , wherein the Hon''ble Division Bench of this court found that the petitioner before it having worked for 27 years on the post of Staff Nurse in P&T (Post Telegraphs) dispensary No. 2, denial of confirmation on the ground of lack of requisite prescribed educational qualification was harsh and unjust. In the circumstances, the Hon''ble Division Bench held that over 27 years of service was equivalent to the requisite academic circular for eligibility. The underlying intent of the Hon''ble Division Bench was equitable justice and not formal and whimsical approach to the issue of regularization. This should be accordingly and similarly directed in the present case. And therefore the impugned order dated 18-3-2014 passed by the Zonal Manager of the respondent Bank denying regularisation of service of the petitioner despite 24 years of service as a casual Class-IV employee be set aside and the Bank be directed to regularise the services of the petitioner.

6. Reply to writ petition has been filed. It has been submitted that the petitioner was engaged as a casual labourer on daily wages basis and he was never recruited through the regular mode compliant with Article 16 of the Constitution of India. No due process as envisaged by the relevant rules was resorted to. It has been submitted that the respondent Bank is indeed obliged to continue the petitioner in its employment till the date of his retirement/superannuation as per its undertaking before this court on 7-4-2011 in DB Civil Appeal (Writ) 742/2006, yet that undertaking cannot be construed to entitle the petitioner to be regularised on the post without his fulfilling the conditions laid down by the Hon''ble Apex Court in the case of Uma Devi (supra). It has been submitted that the petitioner would however continue to work as a casual labourer with the Bank on payment of minimum wages in the pay scale of regularly employed Class-IV employees. It is emphatically submitted that the petitioner does not have a legal or statutory right to be regularised nor regularisation of petitioner's services in the facts obtaining is warranted with reference to any decided case of the Hon''ble Supreme Court or this court. It has been submitted that contrarily the petitioner cannot be regularised in terms of the judgment of the Hon''ble Supreme Court in the case of State of Karnataka v. Uma Devi (supra), wherein it has been held that merely because a temporary employee or casual worker continues for a time beyond the term of appointment even for years, he would not, by that fact alone, be entitled to be absorbed in regular services or made permanent if the initial appointment was not made following the prescribed due process under the relevant Rules. It has been pointed out that the Hon''ble Supreme Court has cautioned the courts that they cannot exercise the powers to protect temporary/adhoc employment, which was not regularly made, even if an employee had rendered several years in that capacity. The Hon''ble Supreme Court has set out essential tests for the regularisation of an employee working on

temporary/adhoc capacity, which are (i) employee has worked for 10 years or more, (ii) employee was appointed on a duly sanctioned post but without the benefit of interim order of any court or Tribunal (iii) the employee possesses the minimum qualifications stipulated for the appointment to the post in issue.

7. It has been submitted that the petitioner does not fulfill the second criteria for regulation as set out by the Hon''ble Supreme Court in the case of Uma Devi (supra), as he was not appointed against any sanctioned post in the first instance. It has been submitted that for appointment to a post in the subordinate cadre i.e. Class-IV which the petitioner holds, the respondent Bank did not call for the names from the local Employment Exchange, nor was the petitioner considered for appointment by the Selection Committee constituted by the Bank for the purpose. It has been submitted that the petitioner's appointment was de hors the governing rules and not even on a sanctioned post. On the issue of discrimination, it has been submitted that no person junior to the petitioner and similarly appointed has been regularised by the respondent Bank. And it has been submitted that neither Lal Chand nor Nand Lal were similarly situated as the petitioner, as Lal Chand was appointed as per Banks procedure under Recruitment Rules, and thereafter has been promoted to the post of Clerk. Similarly, Nand Lal was appointed as per Bank's procedure and has since retired on 31-7-2009. It has been submitted that his aspect of the matter has been considered in writ petition No. 13272 decided on 4-12-2013 wherein it has been recorded that the petitioner was engaged as casual worker intermittently on daily wages. His name was not even mentioned in muster roll of the Bank and the petitioner was never subjected to procedure of Banks recruitment rules. It has been submitted that the entire gamut of reason for non regularisation of the services of the petitioner have been set out in the impugned order dated 18-3-2014 passed by the Bank.

8. Heard counsel for the parties and perused the material available on record.

9. The rights of casual worker/adhoc employee for regularisation are no more res integra in view of the judgment of the Hon''ble Supreme Court in the case of State of Rajasthan and Others Vs. Daya Lal and Others, AIR 2011 SC 1193 : (2011) 128 FLR 928 : (2011) 1 JT 457 : (2011) 2 LLJ 193 : (2011) 1 SCALE 408 : (2011) 2 SCC 429 : (2011) 1 SCC(L&S) 340 : (2011) 1 SCR 707 : (2011) AIRSCW 905 : (2011) 1 Supreme 410 , wherein it was held:--

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not

go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidate cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right."

10. In the case of *State of Karnataka v. Uma Devi* (supra) the Hon"ble Supreme Court held thus:--

"There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

11. The right of regularisation in terms of judgment of the Hon"ble Apex Court in *Uma Devi* (supra) requires that the appointments temporary, ad hoc or casual wholly contrary to the prescribed procedure, cannot be protected lest back door entries with passage of time are regularised contrary to the provisions of Articles 14 and particularly 16 of the Constitution of India which provides for equal opportunities for all in public employment. What therefore is to be seen, before a case for regularisation of service can be made out, is (i) as to whether the post on which the temporary/ad hoc/casual employee appointed was a sanctioned post; (ii) whether recruitment procedure prescribed therefor was largely followed albeit with a fault; and (iii) whether the person employed temporary/ad hoc/casual basis seeking regularisation of service worked for 10 years or more before 1-4-2006 without intervention of a court. Absent all or any of the three conditions, regularization cannot be claimed.

12. In the instant case, from the facts on record it transpires that albeit the petitioner was engaged as a casual labourer on 12-3-1991, yet he was not so engaged on the basis of regular procedure for recruitment of Class-IV employees by the Bank obtaining at the time of his appointment. The respondent bank has categorically stated in its reply to writ petition that for recruitment in its subordinate cadre, the bank is required to call for the names from the local

employment exchange and selection from amongst the names sent by the Employment Exchange, thereafter to be made by the constituted committee of the bank. It is not the petitioner's case that he was appointed on a sanctioned post by a committee constituted for the purpose by the Bank, and therefore his appointment was not illegal but only irregular for reason of certain lacunae.

13. Relying on the law enunciated in the case of Uma Devi(supra) I am of the considered view that nothing illegal or arbitrary can be attributed to the impugned order dated 18-3-2014 passed by the Bank whereby the petitioner's representation for regularisation in service of the Bank was dismissed.

14. Reliance placed by the petitioner on the judgment of the Hon'ble Division Bench of this court in the case of Ammini PT (supra) is not apposite to the facts of the instant case. In the said case the issue was as to whether lack of educational qualification of the petitioner before that court could entail the result of her not being regularised for that reason on the post of Staff Nurse. The Hon'ble Division Bench on the basis of judgments of the Hon'ble Supreme Court concluded that long experience equals educational qualification and can be enough for suitability. It was further held that the issue of educational qualification should be considered at the time of initial appointment and not subsequently thereafter to leave the incumbent in no man's land with being overage for fresh employment. Therefore it was directed that the petitioner in the case before the Court be regularised on the post of Staff Nurse despite lacking in formal educational qualification required therefor as per the recruitment rules. What is important to note is that in the said case the respondent admitted that the petitioner was initially appointed against a sanctioned post.

15. In the instant case, from the facts detailed hereinabove, it transpires that the petitioner was only appointed as a casual labourer, not against sanctioned post and without following the prescribed procedure for recruitment by calling his name from the local employment exchange and there was a back door entry. In the circumstances he cannot be held to be entitled for regularisation of his service. The impugned order dated 18-3-2014 therefor does not suffer from any legal infirmity or unconstitutionality owing to arbitrariness in the cross hair of Article 14 of the Constitution of India.

16. Consequently, I find no force in the petition. Dismissed.

17. At the time of pronouncement of judgment today 14-5-2015, it has been informed that the petitioner has expired. As the petitioner has expired subsequent to judgment being reserved, to my mind there is no legal obstruction in pronouncement of the judgment. The legal representative of the petitioner shall be free to take remedy against this judgment by way of DB Civil Special Appeal (Writ), if so advised.