
(2007) 05 DEL CK 0076
In the Delhi High Court
Case No : WP (C) No. 18178 of 2004

Shri Narender Kumar

APPELLANT

Vs

The Regional Manager and Others

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2, 25, 25(B), 25F

Citation : (2007) 141 DLT 1 : (2007) 114 FLR 600

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Vijay Kumar, for the Appellant; Sanjeev Narula, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this writ petition, the petitioner has challenged the award dated 09.03.2004 passed by the CGIT cum Labour Court-II. The Ministry of Labour made the following reference for its adjudication to the Industrial Tribunal:

Whether the action of the management of Punjab National Bank, Meerut in terminating the services of Shri Narender Kumar, Sub-staff posted at Extension Counter, P.N.B., KDB Public School, Ghaziabad w.e.f. 12.09.1992 is legal and justified? If not, what relief is the said workman entitled to?

2. The Tribunal has answered the reference in favor of the management by holding the direction of the management of the Punjab National Bank, respondent herein, in terminating the service of the petitioner, Sub- staff, posted at Extension Counter, P.N.B., KDB Public School, Ghaziabad w.e.f. 12.09.1992, as legal and justified.

3. Feeling aggrieved with the said findings, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India. The conspectus of brief facts as stated by the petitioner inter alias are that he was employed by the management of the bank as Sub-staff on 08.11.1989 in its Extension Counter,

P.N.B., KDB Public School, Ghaziabad, where he worked for 616 days during the period w.e.f. 08.11.1989 to 12.09.1992. He also specifically stated that he had worked for 240 days in 12 calendar months during the period as per the table given by him in the Statement of Claim. The petitioner also stated that on 12.09.1992, the management of the bank had abruptly terminated his service without assigning any reason and without complying with the provisions of bipartite settlement governing service conditions of the bank employees and in violation of the provisions of Industrial Disputes Act and principles of natural justice. In para 4(ii) of the Statement of Claim, the petitioner gave monthwise break-up from November 1989 till September 1992 of his employment on the post of Sub-staff. The chart for this period shows that the petitioner had worked for a total period of 616 days and in the year 1992 i.e. from January to September, the petitioner is shown to have worked for 178 days. In Para 4(iii), the petitioner has specifically stated that he has worked for more than 240 days in consecutive 12 months period prior to his removal and has worked for 616 days in all at the Extension Counter of the respondent bank. The petitioner has also stated that he was being paid a sum of Rs. 25/- per day from different expenditure heads of the said Extension Counter of the bank and the said payment, as per the petitioner, was quite less as prescribed under the bipartite settlement and awards between the bank and its employees. The petitioner, thus, termed his termination w.e.f. 12.9.1992 as illegal, unfair and mala fide, besides the same being in violation of the provisions of I.D. Act, bipartite settlement and principles of natural justice. The respondent on the other hand, disputed the said position as stated by the petitioner. The counsel for the respondent contended that the petitioner was never employed by the bank, Therefore, no question of his termination could arise.

4. The respondent also stated that the petitioner was maintaining a S.F. Account No. 1881 with the bank and he used to come as a customer and during his such visits, he also used to do some cleaning work of the branch, intermittently, and for that bank used to pay him some labour charges. The respondent/bank disputed that he ever performed normal duties as a Peon, and Therefore, the provisions of Section 25-F of I.D. Act cannot be made in the case of the petitioner who was never in the employment of the respondent/bank. I have heard the counsel appearing for the parties and have perused the records.

5. Counsel for the petitioner has contended that the entire reasoning given by the Tribunal is against the facts itself and, Therefore, the award passed by the Tribunal is perverse in nature. In the award, the Tribunal has held that it has gone through the written arguments of the petitioner/workman and nowhere it is alleged by the workman that he had worked for 240 days in one calendar year during 1992. Counsel for the petitioner states that this finding of the Tribunal is absolutely against the records, as in Paras 1 and 4 of the Statement of Claim, the petitioner has specifically and categorically stated that he had worked for 240 days continuously in the past 12 months period preceding the date of his termination.

6. The observation of the Tribunal on this finding are reproduced as under:

I have gone through the written arguments of the workman. It has nowhere been alleged that the workman has worked for 240 days in one calendar year during the year 1992. He cannot get the benefit of Section 25-F inasmuch as he has not completed 240 days in one calendar year.

7. To test as to whether there is any inconsistency in the said finding of the Tribunal, it would be relevant to reproduce following paras from the Statement of Claim of the petitioner:

1. That the above mentioned claimant Narindra Kumar was employed by the Management of the Opposite Party as Sub-staff on 8.11.89 as sub-staff in the Extension Counter of the Punjab National Bank at KDB Public School, Ghaziabad. The said Extension counter is functioning under supervision and control of Branch of the said bank at G.T. Road, Ghaziabad. No appointment letter was ever issued by the opposite party to the applicant. The applicant worked in the said Extension Counter for 616 days in the period w.e.f. 8.11.1989 to 12.9.1992 and more than 240 days, in twelve calendars months during this period as it would be seen from the statement given below.

4 (i) ...

4(ii) That the applicant has been employed as sub-staff for the following period.

Nov. 89 2 Days 8.11.89 and 9.11.89 Jan. 90 3 ? 22.1.90 to 24.1.90 March 90 8 ? 6.3.90 to 9.3.90 26.3.90 to 29.3.90 April 90 2 ? 6.4.90 and 11.4.90 May 90 12 ? 17.5.90 to 23.5.90 26.5.90 to 30.5.90 June 90 1.6.90 to 5.6.90 12.6.90, 23.6.90 and 25.6.90 July 90 10 ? 19.7.90 to 28.7.90 August 90 9 ? 7.8.90, 8.8.90, 16.8.90, 18.8.90, 27.8.90 to 31.8.90 Sept 90 14 ? 11.9.90 to 17.9.90 20.9.90 to 26.9.90 Oct. 90 27 ? 1.10.90 to 4.10.90 9.10.90 to 31.10.90 Nov. 90 24 ? 1.11.90 to 24.11.90 Dec. 90 2 ? 5.12.90 and 29.12.90 122 Jan. 91 13 ? 7.1.91 to 10.1.91, 18.1.91, 24.1.91, 31.1.91 Feb. 91 13 ? 16.2.91 to 28.2.91 March 91 31 ? 1.3.91 to 31.3.91 April 91 30 ? 1.4.91 to 30.4.91 May 91 31 ? 1.5.91 to 31.5.91 June 91 30 ? 1.6.91 to 30.6.91 July 91 31 ? 1.7.91 to 31.7.91 Aug. 91 31 ? 1.8.91 to 31.8.91 Sept. 91 30 ? 1.9.91 to 30.9.91 Oct. 91 31 ? 1.10.91 to 31.10.91 Nov. 91 30 ? 1.11.91 to 30.11.91 Dec. 91 21 ? 1.12.91 to 21.12.91 316 Jan. 92 6 ? 3.1.92 to 8.1.92 Feb. 92 25 ? 5.2.92 to 29.2.92 March 92 31 ? 1.3.92 to 31.3.92 April 92 30 ? 1.4.92 to 30.4.92 May 92 31 ? 1.5.92 to 31.5.92 June 92 30 ? 1.6.92 to 30.6.92 July 92 7 ? 1.7.92 to 7.7.92 Aug. 92 6 ? 26.8.92 to 31.8.92 Sept. 92 12 ? 1.9.92 to 12.9.92 178

Total: 1989, 1990, 1991 and 1992 = 616 days

4(iii) That the applicant had worked for more than 240 days in consecutive 12 months" period, while worked for 616 days in the said extension counter of the opp. Party No. 2.

4(vii) That service conditions of the workmen employees in Punjab National Bank

are governed by a set of Awards, and bipartite settlements. As per Punjab National Bank's settlement, a workman, even employed for less than 240 days has to be regularised.

4 (xi) That the Bank has terminated applicants' services in clear violation of Section 25 read with Section 25(B) of the ID Act. According to which the Bank should have given the applicant one month's notice or wages in lieu thereof and retrenchment compensation and notice to the appropriate Govt. but the Bank has not followed this provision, thereby violated the said provision of ID Act and as such termination of the applicant's services is illegal. In this Supreme Court's judgment in case of Sundermani v. State Bank of India may kindly be referred to. According to which if a workman works for 240 days in 12 calendar months, termination of his services without compliance of Section 25 of the ID Act is illegal.

8. The said averments in the Statement of Claim made by the petitioner evidently shows that the said finding of the Tribunal stating that the petitioner in the written arguments did not state that he has worked for 240 days in one calendar year during 1992, is totally incorrect. On the contrary, the respondent in its written statement has vaguely denied the said averments of the petitioner. There is no specific denial to the specific assertions made by the petitioner in the Statement of Claim and, Therefore, it is manifest that the Tribunal has not properly gone through the pleadings of the parties before passing the impugned award. Once, the petitioner has stated a fact in the Statement of Claim even though he might not have specifically dealt with that particular fact in his written arguments, then, in such circumstances, the reliance is required to be placed firstly on the Statement of Claim which is in the nature of a petition and, then, on the written arguments as filed by the petitioner in support of his case set up in the petition. It can't be vice- versa. The entire approach of the Tribunal appears to be perverse and unjustified. The Tribunal got influenced by the figure of 178 days as stated in Para 4 of the Statement of Claim which the petitioner has stated for his period of employment with the bank, from January to September 1992. For reckoning the period of 240 days in a calendar year, the Tribunal ought to have counted backwards the preceding 12 months period from September 1992 and not in the manner adopted by the Tribunal, reckoning period from January onwards till September 1992.

9. I find force in the arguments of the counsel for the petitioner that the Tribunal has not properly taken into account the period of 240 days of petitioner's employment with the respondent/bank. The Tribunal has also not appreciated contradictory stand taken by the respondent in its written statement wherein, on the one hand, the respondent denied the relationship of employer and employee between the petitioner and the bank, while, on the other hand, in Para 3 of written statement, the bank took up the stand that the petitioner being engaged to do the casual work in the bank was not entitled to derive any benefit in accordance with Desai Award which excludes the casual employees from its

operation. The stand of the respondent that the petitioner was a customer of the bank and whenever he used to visit the bank during the course of some bank transaction, the respondent used to take cleaning work from him or for bringing ice etc. in the bank is also quite amazing and interesting. How a bank, a public body, can take work from his customer for cleaning and other such petty jobs without there being any arrangement of taking services of such a person on some explicit terms" It is no doubt that it is a trite law that the initial onus is on the petitioner/workman to establish that he has put in 240 days of service in one calendar year and after discharge of such onus by the petitioner, the onus would shift on the management to prove otherwise. The finding given by the Tribunal stating that the attendance sheet filed by the petitioner appears to be forged is also not supported by any reasoning or rational documents. The respondent/management has not placed on record any document or produced any witness to show as to when the other Peon Mahender Kumar remained on leave and for which period/leave the services of the petitioner against the leave vacancy were utilized. Nothing has come on the record from the side of the respondent/management, in this regard.

10. Counsel for the petitioner has relied upon the judgment of the Division Bench of this Court in Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Others, in order to support his case to counter the contention of the respondent relating to the question whether the nature of the job of the petitioner is covered within the definition of workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The relevant paras of the judgment are reproduced as under:

7. A perusal of the above definition shows that there is no distinction in industrial law between a permanent employee and a temporary employee. As long as the person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the Industrial Disputes Act, and will get the benefits of that Act.

8. Thus, it has been held in Chief Engineer (Irrigation) Chepauk, Madras v. N. Natesan (1973) 2 LLJ 446 and in Management of Crompton Engineering Co. (Madras) Private Ltd. v. Presiding Officer, Additional Labour Court (1974) 1 LLJ 459 (Mad.) that even a temporary employee falls within the definition of workman. Similarly in Elumalai Vs. Management of Simplex Concrete Piles (India) Ltd. and Another, and Tapan Kumar Jena v. General Manager, Calcutta Telephones (1981) Lab.I.C. (NOC) 68 it was held that a casual employee is also a workman. In other words, every person employed in an industry, irrespective of whether he is temporary, permanent or a probationer is a workman vide Hutchiah Vs. Karnataka State Road Transport Corporation, , provided he is doing the kind of work mentioned in Section 2(s).

11. On the other hand, counsel for the respondent has relied upon the judgment of the BSES Yamuna Power Ltd. previously known as Delhi Electric Supply Undertaking Vs. Mr. Rakesh Kumar, . The relevant para 10 is reproduced below:

10. In the present case, the respondent was appointed as a comptist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time-to-time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of respondent is squarely covered u/s 2(oo)(bb) of the Act. Giving of non-extension did not amount to termination of service, it was not a case of retrenchment. The order of Tribunal is perverse.

12. The judgment cited by the respondent is not applicable to the facts of the present case as the same deals with the issue of contractual employment as envisaged u/s 2(oo)(bb) of the Industrial Disputes Act. The argument of the counsel for the respondent disputing that the petitioner is not covered within the definition of workman as envisaged u/s 2(s) of the Industrial Disputes Act, 1947, is thus without any force in view of the judgment of the Division Bench reported in Delhi Cantonment Board's case (Supra).

13. Based on the above discussion, the matter is remanded back to the Tribunal for deciding the present case afresh after properly appreciating the pleadings of the parties and the evidence adduced by them, and then answer the reference.

14. Parties are directed to appear before the Tribunal on 09.07.2007.

15. The Tribunal shall decide the case as expeditiously as possible.

16. With these directions, the petition is disposed of.