
(1996) 12 AHC CK 0094
In the Allahabad High Court
Case No : Special Appeal No. 385 of 1994

State Bank of India and Another	Vs	APPELLANT
Man Phool and Others		RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10

Citation : (1996) 12 AHC CK 0094

Hon'ble Judges : D.P. Mohapatra, C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : Navin Sinha and S.N. Verma, for the Appellant; J.S. Tomar and Ganga Prasad, for the Respondent

Final Decision : Partly Allowed

Judgement

D.P. Mohapatra, C.J.—This appeal, filed by the State Bank of India, Main Branch, Railway Road, Farrukhabad, through its Branch Manager and the Regional Manager, State Bank of India, Region-II, Mahatma Gandhi Marg, Kanpur, is directed against the judgment/order dated 8.4.1994 of Civil Misc. Writ Petition No. 33050 of 1990. (Since reported in 1994 (3) AWC 1340), in which the learned single Judge allowed the writ petition with certain directions. The operative portion of the judgment/order reads:

The upshot of the aforesaid discussion, applying Aristotelian and Baconian reasonings, the present petition succeeds and is allowed. The impugned orders dated 22.1.1987, 10.3.1987 and 16.11.1990 (Annexures 2, 3 and 9 to the writ petition) are quashed by issuing a writ of certiorari. Respondent Nos. 3 and 4, namely the State Bank of India, Main Branch, Railway Road, Farrukhabad and the Regional Manager, State Bank of India, Region II, Mahatma Gandhi Marg, Kanpur are directed to reinstate him (the Petitioner) forthwith and to regularise the services of the Petitioner in Class IV in the Bank and to treat him to be in continuous service since 4.12.1979 and to pay his wages regularly and other

admissible emoluments. The Petitioner will be entitled to back wages and other emoluments since 4.12.1979. The back wages would be paid within two months from the date a certified copy of this judgment and order is furnished. There shall be no order as to costs.

2. The factual backdrop of the case necessary for decision of the controversy may be stated thus:

The Petitioner-Respondent Man Phool, who is a Law Graduate, was engaged as a Water Boy and was serving in the State Bank of India. Farrukhabad Branch on a daily wage of Rs. 6. He discharged his duties in the Bank on the working days and served at residence of the Manager of the Bank on holidays. He was disengaged after putting in service for certain period about which there is considerable difference between the parties. While according to the Respondent, he had put in 113 days of service including holidays, but was not paid wages for 96 1/2 days according to the Appellants he had served only for 83 days. According to a Circular issued by the Bank, a daily wage employee who has served for more than 90 days and does not possess educational qualification in excess of that prescribed for the post, is entitled to be considered for regularisation in the post. For the post of Water Boy, the educational qualification prescribed is Class VIII. Since he was not considered for regularisation in service, the Respondent filed Civil Misc. Writ Petition No. 9822 of 1988 in this Court which was dismissed by a Division Bench of the Court on 11.1.1990 (Annexure 4 to the writ petition) on the ground that the Petitioner has an alternative remedy and he can make an application to the Central Government for making a reference u/s 10 of the Industrial Disputes Act, 1947. The relevant portion of the order reads.

A counter-affidavit has been filed on behalf of the Respondents wherein it has been stated that the Petitioner has worked only 83 days and thus was not entitled for regularisation in service. Since this is a disputed question of fact, it cannot appropriately be decided in the proceedings under Article 226 of the Constitution. In fact the remedy available to the Petitioner is to approach the Industrial Court by way of reference.

The petition is dismissed on the ground of alternative remedy.

In pursuance of the said order the Petitioner raised an industrial dispute which culminated in the order of the Central Government dated 16.11.1990 (Annexure 9 to the writ petition) refusing to refer the dispute to the Labour Court/Industrial Tribunal for adjudication holding, inter alia, that the Petitioner had only put in 83 days of service and, therefore, was rightly not considered for regularisation of service. Thereafter, the Petitioner filed the present writ petition not only assailing the order of the Central Government refusing to make a reference to the Labour Court/Industrial Tribunal, but also seeking a writ of mandamus directing regularisation of his service according to the Circular of the Bank which was sought in the previous writ petition.

3. The learned single Judge, as the impugned judgment/order shows, considered

the case of the Petitioner on merits, accepted his plea that he has served for 96 days, held that the case of the Bank that his educational qualification being much in excess of the prescribed qualification for the post, he could not be considered for regularisation in service under the Bank's Circular was unjust, improper and illegal and directed his reinstatement in service with full back wages and other consequential service benefits from 1979. The learned single Judge, while noting the objection raised on behalf of the Appellants that the writ petition seeking consideration of the case on merit was not maintainable in view of the dismissal of the previous writ petition by a Division Bench of this Court, brushed aside the same holding that considerable time has elapsed in the meantime and it is either necessary nor proper to send the Petitioner to the Industrial Tribunal for adjudication of the dispute.

4. The main thrust of the submissions of Sri S. N. Verma, learned Counsel for the Appellants, is that the judgment/order of the learned single Judge is clearly unsustainable on the ground that a Division Bench of this Court having dismissed the previous writ petition filed by the Petitioner-Respondent seeking regularisation of his service, the learned single Judge could not take a different view on the matter which amounts to reviewing the decision of the Division Bench. Sri Verma also makes submissions on the merits of the case of the Appellants that the Respondent had served only for 83 days and that even if he had served for 96 days he could not be considered for regularisation in view of the other criterion laid down in the Bank's Circular that his educational qualification was in excess of the qualification prescribed for the post of Water Boy.

5. Sri Ganga Prasad appearing for the Petitioner-Respondent tried to justify the judgment/order of the learned single Judge.

6. We have carefully perused the impugned judgment and considered the submissions made by the learned Counsel for parties. In our considered view, the appeal is to be allowed for the reasons that the learned single Judge misdirected himself and exceeded his jurisdiction in considering the case of the Respondent on merit, while in the previous writ petition filed by him, a Division Bench of this Court had declined to entertain and dismissed the case in limine on the ground of alternative remedy and that in pursuance of the said order, the Respondent had himself made an unsuccessful attempt in getting the matter referred by the Central Government to the Labour Court/Industrial Tribunal.

7. The short question for consideration in the present writ petition was regarding correctness and validity of the order of the Central Government refusing to refer the industrial dispute for adjudication to the Labour Court/Industrial Tribunal. The learned single Judge, in his judgment has held, and in our view rightly, that the order of rejection (Annexure 9 to the writ petition) is unsustainable. The position is well-settled that while considering the question whether a matter should be referred to the Labour Court/Industrial Tribunal for adjudication, the only consideration to be made by the Central Government is whether an

industrial dispute exists or is apprehended or not and if there exists an industrial dispute or such a dispute is apprehended, it is incumbent on the part of the Central Government to refer the dispute for adjudication to the Industrial Tribunal or the Labour Court, as the case may be. The Government is not entitled to take a final decision on the dispute raised by the parties and cannot decide the matter on merit. In the present case, as noted earlier, the Central Government declined to refer the dispute to the Industrial Tribunal holding that the Petitioner-Respondent had served only for 83 days. This question was to be determined by the Tribunal and not by the Central Government. Furthermore, this Court dismissed the previous writ petition on the ground of availability of alternative remedy before the Industrial Tribunal and had directed the Respondent to approach the Government for a reference u/s 10 of the Industrial Disputes Act, 1947, which he did. In the circumstances, the Central Government should have referred the dispute to the Industrial Tribunal for adjudication.

8. Regarding the question whether the present writ petition seeking the relief of reinstatement in service-regularisation of service and consequential service benefits is entertainable, the matter is concluded by the decision of the Apex Court in the case of *State of U.P. and another Vs. Labh Chand*, , In which the question has been answered in the negative. It will be beneficial to extract the relevant observations made in the judgment:

When a Judge of single Judge Bench of a High Court is required to entertain second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another single Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternate remedy. Second writ petition cannot be, so entertained not because the learned single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same Court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognised power. Besides, if a learned single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed in limine by another learned single Judge or a Division Bench of the same Court, it would encourage an unsuccessful writ Petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such Court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the Court refusing to entertain a writ petition. That is why,

the Rule of Judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject-matter respecting which the first writ petition of the same person was dismissed by the same Court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary Rule in exercise of writ Jurisdiction of Courts.

9. In view of the aforementioned authoritative pronouncement of the Apex Court, it is clear to us that in the present case the second writ petition seeking the relief of regularisation of service could not be entertained by the learned single Judge in view of the dismissal of the previous writ petition filed for the same purpose by the Division Bench on the ground of alternative remedy. The resultant position is that the part of the judgment allowing the writ petition on merits and directing reinstatement/regularisation of the Petitioner in service with full back wages and other emoluments is clearly unsupportable and has to be set aside. However, the other part of the judgment of the learned single Judge holding that the order of the Central Government refusing to refer the dispute to the Industrial Tribunal for adjudication to be unjustified is sustainable. In the facts and circumstances of the case discussed in the foregoing paragraphs, it is our considered view that this Court should direct the Central Government to make a reference of the dispute to the Labour Court/Industrial Tribunal for adjudication. It is ordered accordingly.

10. The appeal is allowed in part. The judgment/order of the learned single Judge directing reinstatement of the Petitioner-Respondent and regularisation of his service in Class IV in the Bank and that he may be treated in continuous service since 4.12.1979 and paid his salary regularly and other admissible emoluments is quashed. The judgment order, in so far as it directs that the order dated 16.11.1990 (Annexure 9 to the writ petition) refusing to refer the dispute to the Industrial Tribunal be quashed is maintained and the Union of India, Respondent No. 2 through Secretary, Labour Ministry, New Delhi is directed to make a reference of the dispute to the Industrial Tribunal for adjudication within two months from the date of production of a certified copy of this judgment before it. We hope and trust that the Industrial Tribunal will dispose of the proceedings within a reasonable time without undue delay.