
(2012) 12 CAL CK 0048
In the Calcutta High Court

Case No : M.A.T. No. 973 of 2009 arising out of W.P. No. 18243 (W) of 1998

State Bank of India and Others

APPELLANT

Vs

Mitra Kumar Mondal and Another

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2013) 137 FLR 350 : (2013) LabIC 800 : (2013) 1 LLJ 503 : (2013) LLR 251

Hon'ble Judges : Tapen Sen, J;Dipak Saha Ray, J

Bench : Division Bench

Advocate : Ashim Kr. Rout, Sandeep Pal Choudhury and Indrajit Bhattacharjee, for the Appellant; Tapabrata Chakraborty and K.M. Hossain, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—This Appeal is directed against the judgment and Order dated 3.8.2009 passed by the learned Trial Judge in W.P. No. 18243 (W) of 1998 (Mitra Kr. Mondal v. State Bank of India and Others) whereby and whereunder the said learned Judge answered his own queries in the following manner:

(a) Whether the writ petitioner was in service when the Petition was moved?

(Ans.) The question is answered in the affirmative.

(b) Whether any relief as prayed for by the writ petitioner can be granted?

(Ans.) I am of the view that if a person has been working with the Bank for a number of years then he cannot be removed without a formal Order indicating some reasons.

In order to adjudicate, it would be necessary for us to briefly dwell on the facts which have led to the filing of this Appeal.

2. It appears that the petitioner/respondent herein apprehended discontinuance of his service from the appellant Bank (hereinafter referred to for the sake of

brevity as the Appellants). Apprehending such a threat, he filed W.P. No. 18243 (W) of 1998 (subject matter of this Appeal) wherein he prayed for the issuance of a writ of prohibition prohibiting the Respondents from discontinuing with his services and for the issuance of a writ of mandamus commanding upon the appellants to confirm him as a permanent employee on the post of a Messenger on which post he had been continuously working for more than 3 (three) years. He also prayed for the issuance of a writ of mandamus commanding upon the respondents to regularise his services with the appellants as a Messenger by making him permanent on the said post.

3. In the writ petition, the petitioner made out a case to the effect that he had worked as a temporary Messenger in the Hura Branch of the appellants from 17.12.1982 to 12.4.1995. There were some intervals but he worked for more than 607 days. He further stated that pursuant to an interview held on 27.12.1991, he was empanelled as a temporary employee and a list of such temporary employees was published in April, 1992. The petitioner relied upon the call letter issued to him on 11.12.1991 asking him to appear at an interview to be held on 27.12.1991. His Roll number, as indicated in the said letter, was BUR/PUR/8/01. This document has also been enclosed in the Paper book at page 23. It further shows that subsequently, a Merit List, as per the interview, was published (see page 24 of the Paper book) showing the empanelment of the writ petitioner at Sl. No. 4.

4. The petitioner has stated that thereafter, on 27.10.1998 and 9.1.1991, the appellants and its recognised Union entered into an Agreement for providing the norms of recruitment of Messengers after preparation of the said List of the empanelled temporary staff. The petitioner also stated that this Agreement however was not renewed and therefore, that List of temporary staff who were empanelled in April, 1992 (as stated above) came to be cancelled from 31.3.1997.

5. The Petitioner further stated that he was working since 13.4.1995 in the Hura Branch continuously without any break and although no letter of appointment was issued to him, he was nevertheless treated as a permanent staff. The Petitioner stated that he had been deputed at Burdwan Zonal Office, Purulia Branch, Stationery Department at Calcutta and so on and so forth. He has also stated that even after cancellation of the Panel on 31.3.1997, he was still allowed to continue to work as a Messenger till 10.8.1998. It appears from page 43 of the Paper-book that on 10.8.1998, he sent a letter for leave on medical grounds and in para-19, he stated that since then, he was on medical leave. The learned counsel for the Petitioner relied upon a letter dated 19.11.1997 written by the senior Manager and addressed to the Senior General Manager wherein he stated as follows:

The above Shri Mitra Kumar Mondal empanelled candidate is being utilised as general cadre messenger on full time basis without break and his monthly salary and allowances are being paid through Establishment w.e.f. April 1995. So

Appointments/engagement letters have been issued by the appropriate Authority till date. This has been pointed out by last Central Office Audit & Inspection dated 22.11.1996 in page No. 61 under establishment. The branch has two permanent messengers one of which is Messenger-cum-Daftry and recently one part-time messenger is also now attached to this establishment since a few months. His services are also being utilised as full time in stop gap of the above permanent vacancy when it becomes needed as per practice of the bank.

Under the above circumstances, we shall be glad to receive your instruction, procedure to be adopted to regularise the position and also to rectify the irregularity as pointed out by Central Office Audit & Inspection dated 22.11.1996.

6. Leaned counsel for the appellants stated that the petitioner was, at best, a settlement employee and therefore his remedy, if any, lay before the Industrial adjudicatory machinery and not before this Court. We would however reject this plea at this stage itself because the writ petition was admitted for hearing; it came to be decided by Order of the learned single judge and that Order is now under Challenge in this Appeal. It would therefore be a travesty of justice if, at this belated stage, the petitioner is made to invoke the industrial adjudicatory process.

7. The learned counsel for the appellants then submitted that even if the petitioner has completed 240 days as a casual or an ad hoc employee, that by itself did not create nor confer any vested right upon him to claim permanency or regularisation. Learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others, in support of his contention that an empanelled candidate has no right to claim appointment against available vacancies which existed on the date of publication of his results. He has also relied upon the judgment passed in Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., in support of his contention that in the absence of any post, a mere assignment on ad hoc duties could not give him the status of permanency and therefore, the appellants, cannot be compelled, by reason of the Order of the learned single Judge, to allow him to continue to work.

8. Learned counsel further relied upon the judgment passed in the Supreme Court in the case of Secretary, State of Karnataka and Others v. Uma Devi and Others 2006 (3) Sup 415 in support of his contention that when a person enters in temporary employment or gets engaged as a contractual or casual worker and when his engagement is not based on a proper selection, such a person cannot invoke the theory of legitimate expectation for being confirmed the post.

9. We are aware of such limitations but in the instant case, we are satisfied that the judgments referred to above cannot apply. Firstly, we have noticed that the writ petitioner entered into service in 1991 not on the basis of any procedure that can be said to be improper but on the basis of an interview, in which he faced well and as a result, his name was published in the list of the temporary

employees. Subsequently in 1997, the Senior Chief Manager of the Bank, wrote to the Assistant General Manager (quoted above) stating that the Petitioner was being utilised as a general cadre Messenger on full time basis without any break and that his monthly salary and allowances were being paid through the establishment w.e.f. April, 1995. He also stated that the petitioner had not been given any appointment/engagement letter till date and that this had been pointed out by the previous central office audit and inspection report dated 22.11.1996. This letter goes to show that there was no fault on the part of the Petitioner, rather the Bank, on its part, continued to utilise his services on the one hand, but did not give him a letter of appointment for reasons best known to them although, the same letter also shows that the Branch had two permanent Messengers, one of which, was a Messenger-cum-Daftry and then, a part-time Messenger was attached to the said establishment. The chief Manager requested the Assistant General Manager for instructions to be adopted to regularise the position and rectify the irregularity pointed out by the Audit team on 22.11.1996.

10. Apart from the aforesaid, we must also take notice of the fact that the letter dated 24.11.1998 sent by the Branch Manager to the Asst. General Manager (see page 375 of the paper book) demolishes the plea of the Bank that the services of the Writ Petitioner was discontinued from 10.8.1998. In fact, the said letter says that no discontinuation letter was sent.

11. We cannot also lose the track of the fact that in reply to the Affidavit-in-opposition in Para-14 (see page 79 of the Paper-book) the writ petitioner had very specifically pleaded discrimination. He had stated that several persons named therein had been appointed in the year 1995, when the panel was in force. All of them belonged to the same 1991 Panel to which the petitioner also belonged. Yet they were given regular appointment. The said paragraph reads as follows:

14. With reference to paragraph 5(d) of the said affidavit, I deny the allegation that since panels have lapsed I cannot have any claim to be absorbed against permanent vacancy as no such vacancy for my permanent appointment arose when the panel was in force. I state in this connection that several persons, namely, Parameswar Maghi, Kalipada Sahis, Boochuram Bauri, Girish Banga, Dharu Bauri, Chandra Kalindi, Sanatan Kondi, Rabilochon Roy, Santosh Bauri and others were appointed in the year 1995 when the panel was in force and all of them belonged to 1991 panel to which I also belonged and their date of initial appointment were after the date of my initial appointment. It is also pertinent to mention here that Rabilochon Roy who also belonged in the 1991 panel was of the same branch where I worked, namely, Hura Branch of the State Bank of India and his initial appointment was on 12.4.1987 whereas my initial appointment was on 17.12.1982.

For the foregoing reasons, we are of the view that if the learned Trial Judge, on the basis of the aforesaid set of facts and circumstances, came to the conclusion that the writ petitioner was in service when the petition had been moved and

therefore, the Bank cannot remove him without a formal Order indicating reasons, then, in our opinion, the learned single Judge cannot be said to have passed an irregular or wrong Order. Under the circumstances, we are of the view that the Order of the learned single Judge does not deserve to be interfered with. We accordingly Dismiss the Appeal. No Order as to costs. Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.

Dipak Saha Ray, J.

I agree.