
(2014) 04 DEL CK 0241
In the Delhi High Court
Case No : W.P. (C) 21445/2005

State Bank of India

APPELLANT

Vs

Beero and Another

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 3 LLJ 87 : (2014) LLR 608

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Anil Kumar Sangal and Mr. Siddharth Sangal, Advocate for the Appellant; Ravi Shankar Garg, Advocate for R1, Advocate for the Respondent

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition by the State Bank of India is to the award dated May 05, 2005 in I.D. No. 115/97 whereby, the Industrial Tribunal held the termination of the services of the respondent No. Smt. Beero, Safai Karamchari w.e.f. April 24, 1995 is not justified and directed her reinstatement with 50% back wages.

2. The Industrial Dispute was referred by the Central Government vide its letter dated August 08, 1997 on the following terms:

Whether the action of the management of SBI, main branch, New Delhi in terminating the services of Smt. Beero, Safai Karamchari, w.e.f. 24.04.95, working on daily wages basis (on casual basis) is justified? If not, what relief the concerned workman is entitled to and from what date?

3. The case set up by the respondent was that she was kept on duty in the month of November, 1992 on the post of Sweeper on daily wage basis. She was not issued any letter. She was issued an identity card on June 24, 1993. According to her, she opened an account in the same branch on April 23, 1994 and her address is of her serving the place i.e. IAAI Extension Counter of bank near Palam Airport. According to her, a total amount of Rs. 3450/- for the period

March 1994 to February 15, 1995 has been accumulated. It was her case that the management got angry and without giving her wages and other benefits, refused employment to her w.e.f. April 24, 1995.

4. The case of the petitioner was that the services of the respondent was utilized at the Extension Counter at the International Airport for sweeping the premises on daily basis on a daily payment of Rs. 5/- during the month of November, 1992. This amount was enhanced to Rs. 10/- per day in the month of April, 1993. According to the petitioner, this was not a regular/permanent arrangement but strictly, on casual basis and she was paid for the days, she cleaned the premises. The petitioner would also state that there is no post of sweeper in the Extension Counter of the bank at International Airport. The payment to her was made on the basis of the bills submitted by her. There was no relationship of master-servant.

5. The Tribunal in the impugned order, was of the following conclusion:

The management witness has admitted that the staff on the extension counter of the Bank including one officer, two clerks and one sweeper and one messenger. The sweeper sometimes acts as messenger. The sweeper-cum-messenger was employed after the discontinuation of the services of Smt. Beero. The name of sweeper-cum-messenger is Sh. Ram Pal. He has been kept in service on 3/4th monthly pay. Smt. Beero was paid through the Bank's cheque. From this admission of the management witness there is post of messenger cum sweeper in that extension counter and when the services of Smt. Beero was discontinued another employee was taken into service at her place. The management witness categorically admitted that there is one post of messenger cum sweeper. Even if it is assumed for the sake of the argument that Smt. Beero was a temporary employee, another employee cannot be engaged discontinuing her services. She can be replaced by a regularly selected employee. It has been held in 1992(4) SCC 152 that an ad hoc or temporary employee should not be replaced by another ad hoc and temporary employee. He must be replaced by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority. In the present case, Smt. Beero has been replaced by Ram Pal admittedly. As such, a temporary employee has been replaced by another temporary employee. The management cannot do so in view of the law cited above. In 1977 (3) LLN 65, the Hon'ble Supreme Court has held that the termination of services of daily wages workmen in accordance with the term of appointment is not retrenchment. In the present case, there is no term of appointment and no appointment letter has been given to the claimant. So this law is not applicable. In the present facts and circumstances of the case, Smt. Beero has worked for more than 240 days and she has been made payment on monthly basis as is apparent from the document filed on the record. The payment has been made on the recommendation of Asstt. General Manager. She has been paid Rs. 250/- every month. So it cannot be said that she had been appointed on daily wage basis. It is proved that there is post of messenger cum

sweeper and she has been working as messenger cum sweeper. She can be replaced by a regular selected candidate but, she has been replaced by another temporary candidate Ram Pal. Since there is need of sweeper cum messenger, so there is no question of retrenchment. The respondent should not have replaced Smt. Beero after taking her services for more than 240 days by another temporary employee. The action of the management is wrong.

6. The learned counsel for the petitioner-bank would submit that the conclusion of the Industrial Tribunal is totally erroneous inasmuch the conclusion arrived at by the Industrial Tribunal was not even the case set up by the respondent No. 1 in her claim petition. He would further submit that the engagement of the respondent No. 1 was only on daily wage basis and she was paid for the days she has worked. According to him, working on daily wage basis does not confer any right of a regular employee. He would rely upon the ratio of the judgment of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, in support of his contention.

7. On the other hand, the learned counsel for the respondent No. 1 sought adjournment which was declined.

8. Having considered the submissions made by the learned counsel for the petitioner and on perusal of the record, I note that the Tribunal has, on the basis of the deposition of the bank's witness, held that after the discontinuance of the service of the respondent No. 1, one Ram Pal (the correct name being Brahm Pal) has been appointed. The Industrial Tribunal has found fault with his appointment as according to it, a temporary employee cannot be replaced by another temporary employee, *moreso*, after taking her (respondent No. 1) services for more than 240 days. I do not find such a case was even set up by the respondent No. 1 in the claim petition. No averments that her termination was in violation of Section 25-F, 25-G and 25-H of the Act. Her case was that she was not being paid wages between March 1994-95. Even though, she has sought for her reinstatement, such a relief could not have been granted by the Industrial Tribunal without there being a foundation in the claim petition. Further, during cross examination, if it has come on record that Brahm Pal has been engaged in her place, it is not known what was the nature of appointment of Brahm Pal. In the absence of any suggestion that the appointment of Brahm Pal was a temporary employment, the Tribunal could not have inferred so. It is also not clear whether Brahm Pal was a fresher. These aspects need to have been gone into before the Tribunal could have concluded in the manner which the Tribunal has done in the impugned order.

9. The Supreme Court in the matter reported as *Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari*, , the court has held as under:

13. Section 25G requires the employer to "ordinarily retrench the workman who was the last person to be employed in a particular category of workman unless for reasons to be recorded the employer retrenches any other workman". This

"last come first go", rule predicates. 1) that the workman retrenched belongs to a particular category; 2) that there was no agreement to the contrary; 3) that the employer had not recorded any reasons for not following the principle. These are all questions of fact in respect of which evidence would have to be led, the onus to prove the first requirement being on the workman and the second and third requirements on the employer. Necessarily a fair opportunity of leading such evidence must be available to both parties. This would in turn entail laying of a foundation for the case in the pleadings. If the plea is not put forward such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless such a plea is raised. [See AIR 1930 57 (Privy Council) , Bondar Singh and Others Vs. Nihal Singh and Others,].

15. In the first appeal, the respondent had raised no allegation of violation of Section 25G in his statement of claim before the Industrial Tribunal. His only case was that Section 25H of the Act had been violated. Section 25H unlike Section 25G deals with a situation where the retrenchment is assumed to have been validly made. In the circumstances, if the employer wishes to re employ any employee, he must offer to employ retrenched workman first and give them preference over others. The two sections viz. 25G and 25H therefore operate in different fields and deal with two contradictory fact situations. The Tribunal ignored the fact that there was no pleading by the respondent in support of an alleged violation of Section 25G. Indeed the order of reference by the Central Government did not also refer to Section 25G but only to Section 25H. In the circumstances it was not open to the Tribunal to "go off on a tangent" and conclude that the termination of service of the respondent was invalid because of any violation of Section 25G by the appellant.

10. That apart, the basis for the Industrial Tribunal to conclude that the respondent No. 1 has put in 240 days of working preceding the year of termination, is also not known. The post in question is a public post. Surely, any appointment to such a post requires eligibility in terms of the recruitment rules. Moreso, when the direction of the Industrial Tribunal is for the reinstatement of the respondent No. 1 as Messenger-cum-Sweeper. The conclusion of the Industrial Tribunal is totally perverse in this regard and is liable to be set aside. I do so. The writ petition is allowed with no order as to costs.