

(2006) 11 MP CK 0096

In the Madhya Pradesh High Court

Case No : Writ Petition No. 16035 of 2005 (S)

State Bank of India

APPELLANT

Vs

Nathulal Soni and Another

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10(4), 25F

Citation : (2008) 2 MPJR 106

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : V.S. Shroti, with Mr. Ashish Shroti, for the Appellant; J.P. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

R.K. Gupta, J.

This is a petition filed under Article 227 of the Constitution of India.

Before the learned Counsel for the Petitioner could commence his argument on merit, a preliminary objections was raised by learned Counsel Shri J.P. Agrawal for the Respondent No. 1 that the award in the present case was passed by the Tribunal on 29th September, 1999, which is filed on record as Annexure P - 4. On that basis, it is submitted that as the petition has been preferred in the year 2005, therefore, it suffers with undue delay and laches and accordingly the petition deserves to be dismissed.

The petition against the award Annexure P - 4 was admitted for final hearing by an order dated 15.12.2005. Once the petition has been admitted, the question with regard to delay in filling the petition loses its importance and the petition has to be heard on merit.

Apart from the aforesaid, when the ex-parte award was passed against the Petitioner, an application for setting aside the same was filed by the Petitioner on

3.11.1999. The said application was allowed on 13.1.2000 by the Tribunal and the said ex-parte award was set aside. Respondent No. 1 preferred a petition before this Court, which was registered as W.P. No. 1909/ 2000 and this Court passed an order on 21.11.2003 by which the order dated 13.01.2000 was set aside. Thereafter, the Petitioner has preferred the petition before this Court to challenge the award. On the basis of the aforesaid facts, the preliminary objection which has been raised by the learned Counsel for the Respondent No. 1 stands over-ruled, as the petition does not suffer with delay and laches.

Learned Counsel for the Petitioner on merit submitted that before the Tribunal, the terms of reference were as under:

Whether the action of Regional Manager, State Bank of India, Region - IV, Shahdol in disallowing opportunity to Shri Nathoolal Soni s/o Late Sh. Chintamani Soni, Ex. daily wage messenger, SBI Jaithari, for Permanent employment in the bank is legal and justified ? To what relief the workman is entitled ?"

It is submitted by learned Counsel for the Petitioner that the Tribunal while adjudicating the dispute has no jurisdiction to enlarge the scope of reference. It is further contended that keeping in view the nature of the dispute which was referred, the Tribunal was required to adjudicate upon with regard to the action of the management in disallowing the opportunity to Respondent No. 1 for permanent employment in the Bank and whether this action was legal and justified. This was the only scope of reference to be adjudicated upon by the Tribunal. In the present case, the Tribunal has travelled beyond the scope of reference. Consequently, the award passed by the Tribunal is liable to be set aside.

Learned Counsel for the Respondent No. 1 submitted that the Tribunal has jurisdiction to decide all incidental questions arising out of the terms of reference. On this basis, it is submitted that the incidental questions in the present case would also include the termination as well as the reinstatement.

The aforesaid submissions of the learned counsel for the parties are considered.

In the present case, keeping in view the scope of reference, the Tribunal was to adjudicate upon the terms of reference; whether the action of the Management was legal and justified in disallowing the opportunity to the Respondent No. 1 for permanent employment ? Admittedly, on the date when the reference was made i.e. on 7.2.1997, the Respondent No. 1 was not in the services of the Petitioner. The Respondent No. 1 earlier was employed in the Canteen of State Bank of India at Kotma Branch from 01.08.1980 to 30th November, 1981 and at Jaithari Branch he worked from 01.08.1982 till 31st March, 1983. After 1983, the Respondent-workman did not adduce any evidence before the Tribunal that he was in the services of the Petitioner-Bank. The claim of the workman i.e. Respondent No. 1 before the Tribunal was that he applied for permanent appointment as the Messenger in the year 1987 and opportunity as such was

denied to him on the ground that when he joined the services of the Bank he was minor.

On the basis of the facts, which have been referred to in para-3 of the award (Annexure P-4) passed by the Tribunal it is apparent that the Respondent No. 1 though stated that he was wrongly terminated by the Petitioner. The case which was made by the workman before the Tribunal was that the workman applied for permanent appointment as the Messenger in the year 1987, which was denied. This was the ground alleged by the Respondent-workman in support of the dispute and also to challenge the action of the management that the management had not acted legally and was unjustified in denying the opportunity to him to become a permanent employee.

The Tribunal has addressed itself that the initial appointment even though was irregular and termination as such was effected without payment of retrenchment compensation, therefore, termination itself was bad and concerned workman i.e. Respondent No. 1 consequently is entitled to the reinstatement with full back wages.

At no point of time there was a dispute before the Tribunal, which was referred to for its adjudication with regard to the action of the management whether the action of the management in terminating the services of the Respondent No. 1 was legal and proper so that there would have been any occasion by the Tribunal to adjudicate upon the grievance of the Respondent No. 1 against his termination and then to allow the relief in favour of the workman of reinstatement with full back wages. While reading, the award (Annexure P - 4) does not say anywhere that the action of the management in disallowing an opportunity to the Respondent-workman for permanent employment was improper.

The submission so made by the learned Counsel for the Respondent that the matter with regard to termination and reinstatement is an incidental issue to the main reference is devoid of substance. Sub-section (4) of Section 10 of the Industrial Disputes Act, 1947 defines the scope of adjudication by the Tribunal with regard to the terms of reference. Sub-section (4) of Section 10 reads as under:

Where in an order referring an industrial dispute to (a Labour Court, Tribunal or National Tribunal) under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, (the Labour Court or the Tribunal or the National Tribunal, as the case may be,) shall confine its adjudication to those points and matters incidental thereto.

The word "incidental thereto" finds place in Sub-Section 4 of Section 10 of the Industrial Disputes Act, 1947.

The Apex Court dealt with the aspect of scope of adjudication on the terms of reference by the Tribunal in *The Calcutta Electric Supply Corporation Ltd. v. The Calcutta Electric Supply Workers Union and Others* AIR 1959 SC 1191 and in para

5 of its judgment held as under:

..... In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal.

Further the Apex Court has an occasion to consider this aspect of the matter in *Management of Wenger and Co. Vs. Their Workmen*, and in para - 26(A) of its judgment, the Apex Court held as under:

There is one more point which still remains to be considered, and that is in regard to the claim for a share in the service charges in respect of the Claridge's Hotel. We have already indicated the nature of the directions issued by the Tribunal in that behalf. The tribunal has held that no direction need be issued in respect of the employee's claim for a share in the service charges for a period prior to the date of the award. It has, however, purported to issue a direction in respect of the division of the service charged in future, and Mr. Pathak contends that this direction is outside the jurisdiction of the Tribunal because this was not a matter referred to it for its adjudication. Paragraph 1 (d) of the reference clearly supports Mr. Pathak's contention. This clause is worded thus:

Are the workmen entitled to share the service charges collected previously by different managements up to the date of reference of this dispute ? If so, what should be the percentage and what directions are necessary in this respect ? It is plain that the claim which has been referred to the Tribunal for adjudication does not cover a period subsequent to the date of reference. This position is not disputed. We must accordingly set aside the direction issued by the Tribunal in respect of the division of service charges in future.

The Apex Court in *Workmen of British India Corporation Ltd. v. British India Corporation Ltd.* - 1965 II L.L.J. 433 dealt with this aspect of the matter. In the facts of this case, the demand inter alia for increase in wages for clerks and operatives in a woolen mill was referred for adjudication. The Apex Court ultimately came to a conclusion that in such a reference the claim for merger of dearness allowance with basic wages could not be considered by the industrial tribunal. Such question could not be said incidental to the main issue referred for adjudication.

The Apex Court in *Mahendra L. Jain and Others Vs. Indore Development Authority and Others*, , in para - 34, has held as under:

..... Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom.

On the basis of the aforesaid discussion, it is clear that the Tribunal has travelled beyond the scope of reference. The Tribunal while adjudicating upon the scope of

reference cannot travel beyond the scope of reference. The Tribunal has to decide and adjudicate upon the terms of reference and not any other matter, which is outside the scope of terms of reference which were referred to by the appropriate government for its adjudication by the Tribunal.

Therefore, the submission so made by the learned Counsel for the Petitioner has to be accepted.

In the present case, the main issue was to adjudicate upon the action of the Management in disallowing the opportunity to Respondent workman for permanent employment. This has to do nothing with the termination or the reinstatement. The main question which was required to be adjudicated upon was different than decided in the present case. The main question has become incidental to the question of termination and reinstatement and in the present case, the termination and reinstatement become a main question and not the incidental question which is not the terms of reference and thus cannot be treated as incidental. The question decided by the Tribunal with regard to termination and reinstatement cannot be treated to be incidental. The main question with regard to the action of the management in disallowing the opportunity to Respondent workman for permanent employment has not at all been answered by the Tribunal and no relief as such in the award has also been given to the workman. The Tribunal after setting aside the award has granted reinstatement without even answering the main question of reference. Thus, as per the judgment passed by the Tribunal, the main question remains unanswered and the question with regard to the termination which was not in the terms of reference has been answered. Thus, according to the Tribunal the incidental question became the main question and the main question has not even been dealt with.

Thus, the submission, as made by the learned Counsel for the Respondent No. 1 that in the terms of reference the legality and validity of the termination and reinstatement are inherent or incidental, cannot be accepted.

It is also to be seen that before the Tribunal the Management took a plea that the initial appointment of the Respondent-workman was irregular, therefore, he cannot claim reinstatement. In para-5 of the award (Annexure P-4) passed by the Tribunal, the Tribunal has given the reasoning that "Once the management has given employment to the workman morally they are not allowed to raise the objection that the initial appointment was irregular. Whatever irregularities are there are being committed by the Officers of the Bank and the workman cannot be allowed to suffer the consequences of the Officers as he was not the party of the appointment provision."

The aforesaid reasons given by the Tribunal apparently are not in consonance to the judgment passed by the Apex Court in Mahendra L. Jain and Others Vs. Indore Development Authority and Others, wherein paragraph 19 of its judgment the Apex Court has held that an illegal appointment cannot be legalized by taking

recourse to regularization. What can be regularized is an irregularity and not an illegality. A daily wager in the absence of a statutory provision in this behalf would not be entitled to regularization. Thus, a specific plea was raised that the appointment was illegal.

No statutory provision has been made by the Tribunal under which he can claim even irregular appointment as regular one. The finding as such with regard to holding termination as bad, are liable to be set aside apart from the reasoning as given above.

The Tribunal in para-8 of its judgment has held that the termination was without paying retrenchment compensation, therefore, it is violative of Section 25-F of the Industrial Dispute Act, 1947. In this reference, the judgment passed by the Apex Court is relevant, which is reported in AIR 2006 S.C.W. 2497 (Nagar Mahaplaika (now Municipal Corpn.) v. State of U.P. and Ors. wherein it is held that no reinstatement can be granted if the appointment is de-hors to the Rules even though Section 25-F is violated. In the present case, the Tribunal has not at all discussed as to how the appointment of the Respondent-workman was not de-hors to the rules and according to the judgment passed by the Apex Court in Nagar Mahapallka (supra) even though there had been violation of Section 25-F, if the appointment is de-hors to the rules no relief of reinstatement even otherwise could have been given. The burden to prove that the appointment was in accordance with law and the termination as such is violative of Section 25-F was on the Respondent-workman. The Respondent-workman neither adduced any evidence nor has the Tribunal considered the said aspect. Therefore, the award of reinstatement even otherwise has to be set aside.

In view of the aforesaid discussion, the award Annexure P-4 dated 29th September, 1999 is set aside. The matter is remitted back to the Tribunal for its adjudication and the Tribunal shall decide the terms of reference with regard to the action of the management in disallowing an opportunity to the workman for permanent employment. Since the matter relates to the year 1997, therefore, the Tribunal has to decide the case within a period of six months from the date the Petitioner furnishes the certified copy of this order to the Tribunal. The parties shall appear before the Tribunal on 2nd of January, 2007 or thereafter when the Presiding Officer is available. Accordingly, the present petition stands allowed.