
(2019) 12 OHC CK 0007
In the Orissa High Court
Case No : Writ Appeal No. 307 Of 2019

UCO Bank Represented By Its General Manager & Another	APPELLANT
Vs	
Sk Fayajuddin	RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Orissa High Court Order, 1948 — Article 4
Code Of Civil Procedure, 1908 — Section 100

Citation : (2020) 129 CLT 342

Hon'ble Judges : Sanju Panda, J; S.K. Sahoo, J

Bench : Division Bench

Advocate : Subrat Mishra, S. Mohapatra, B.N. Swarnakar, Surendra Nath Panda

Final Decision : Dismissed

Judgement

S.K. Sahoo, J

1. Aggrieved by the impugned judgment and order dated 20.06.2019 passed by the learned Single Judge of this Court in W.P. (C) No. 13355 of 2015,

the unsuccessful appellants therein have preferred the present writ appeal.

2. The appellants were the opposite parties and the respondent was the petitioner in W.P.(C) No.13355 of 2015 wherein a prayer was made by the

respondent seeking for a direction to the opposite party-Bank to regularize his services forthwith taking into account his past service, for the purpose

of calculating retirement benefits at least from the year 2007 when the services of his juniors were regularized and further to grant him all

consequential service benefits by quashing the order dated 17.07.2015 under Annexure-14 passed by the appellant no.2 i.e. Zonal Manager, UCO

Bank, Zonal Office, Sambalpur, Odisha (opposite party no.2 in the writ petition).

This Court allowed the writ petition and quashed the order dated 17.07.2015 under Annexure-14 passed by the appellant no.2 and directed the

appellants to regularize the services of the respondent in the post of driver in which he has been discharging his duty on being duly selected pursuant to

the advertisement dated 17.02.1995 under Annexure-1 to the writ petition.

3. The case of the respondent is that he was engaged as a personal driver by the Zonal Manager, UCO Bank, Bhubaneswar w.e.f. 27.03.1989 to

drive the car of the Bank provided to the Zonal Manager for his official use by the Bank. Along with the respondent, others were also appointed for

similar nature of job under the Bank. Pursuant to the notification issued under Annexure-1 dated 17.02.1995, the Bank invited applications in the

prescribed proforma from the personal drivers of Branch Managers/Divisional Managers and subordinate staff members possessing the requisite

driving licence for the post of driver to work at Dhera Branch. In response to same, the respondent applied for the post and on being selected, he was

engaged as driver. The Zonal Manager vide letter dated 20.03.1995 sought approval for appointment of the respondent as permanent driver in the

vacancy of driver for the currency chest of Dhera Branch to drive the Bank's cash van which was not responded to by the authority of Head

Office of the Bank. The Zonal Manager of the UCO Bank again sought permission vide letter dated 23.02.1996 for appointment of the respondent as

driver indicating therein that in case the same is not possible, to authorise him to engage the respondent at least on daily wage basis. The competent

authority of the Head Office of the Bank authorised the Zonal Manager, Bhubaneswar as per letter dated 01.07.1996, to engage the respondent as

casual driver on daily wage basis to drive the cash van of Dhera Branch. Accordingly, the respondent was engaged as casual driver on daily wage

basis by the Zonal Manager to drive the cash van w.e.f. 10.07.1996. Subsequently, the Bank came out with a circular dated 30.05.2002 to empanel

the daily wagers for regularization in bank service. The Branch Manager, Dhera Branch submitted a statement mentioning the details of the

respondent's engagement, wages paid etc. as per format to the controlling office. Some of the casual drivers approached the CGIT, Kolkata for

regularization of their services by filing Reference Case No.45 of 2003 and the Tribunal passed the award on 17.07.2006 as "No Dispute" since

the matter was settled amicably between the parties. Accordingly, the Board of Directors of UCO Bank approved the absorption of thirty nine

personal drivers in regular service of the bank as Peon-cum-Farash as a one-time measure. Even though the personal drivers were absorbed on

regular basis as Peon-cum-Farash, the case of the respondent was not taken into consideration for which he submitted a representation on 08.12.2014.

The services of the respondent were neither regularized against the clear cut vacancy of driver nor were he absorbed regularly at par with his

counterparts as Peon-cum-Farash. As his services were not regularized, he approached this Court in W.P.(C) No.4147 of 2015 and this Court by

order dated 10.03.2015 disposed of the said writ petition directing the appellants to consider the representation filed by the respondent. In compliance

of the same, the appellant no.2 passed the order dated 17.07.2015 under Annexure-14 to the writ petition rejecting the representation of the

respondent dated 08.12.2014 stating, inter alia, that the demand for regularization/absorption in Bank's services is devoid of any merit and

accordingly, his request was declined.

4. It is the case of the appellants that since the absorption of thirty nine personal drivers in regular service of the Bank was approved by the Board of

Directors of UCO Bank as a one-time measure on the basis of settlement arrived between the parties during the pendency of Reference Case No.45

of 2003 pending before the CGIT, Kolkata which was filed by some casual drivers and the respondent's service was not regularised against a

clear cut vacancy of drivers and he was never absorbed regularly at par with his counterparts as Peon-cum-Farash, there is no illegality or irregularity

in the order of the appellant no.2 in rejecting the representation of the respondent.

5. The learned Single Judge in the impugned judgment after carefully considering the contentions raised by the learned counsel for the parties as well

as facts pleaded on their behalf held that in the order impugned, it is categorically admitted that the personal drivers who were attached to different

Branch Managers/Divisional Managers and subordinate staff members of the Bank have been absorbed as Peon-cum-Farash pursuant to the award

dated 17.07.2006 passed by the CGIT, Kolkata in Reference Case No.45 of 2003 and if the petitioner was not absorbed as driver for some reason or

other, he could have been absorbed as Peon-cum-Farash in compliance of such award but the same was not done by the concerned authority even

though the juniors to the respondent were absorbed on regular basis in the Bank. It was further held that when a clear cut vacancy was available at

Dhera Branch and the Bank issued an advertisement on 17.02.1995 under Annexure-1 fixing eligibility criteria mentioned therein, pursuant to which

the respondent submitted his application and having been selected, he got appointed as driver and discharged his duty w.e.f. 16.07.1996, it cannot be

said that the judgment passed by the Honâ??ble Supreme Court in the case of Secretary, State of Karnataka and others -Vrs.-Umadevi and others

reported in (2006) 4 Supreme Court Cases 1 is not applicable. Since there was availability of regular post and the respondent was selected by

following due procedure and has been discharging his duty, he cannot be denied regularization of service, taking into consideration the length of service

he had rendered in the post itself and when there is still requirement for the Bank. When the services of some personal drivers have been regularised

by absorbing them as Peon-cum-Farash in the bank service, pursuant to the award dated 17.07.2006 passed by the CGIT, Kolkata, there was no

justifiable reason available with the Bank not to regularise the services of the respondent at par with his counterparts whose services have already

been regularised. Accordingly, the order dated 17.07.2015 passed by the appellant no.2 under Annexure-14 was quashed.

6. Mr. Subrat Mishra, learned counsel appearing for the appellants contended that irregular appointments can be regularised and not illegal

appointments as observed by the Honâ??ble Supreme Court in the case of Umadevi (supra). The respondentâ??s initial appointment was illegal due

to advertisement in the notice board and as no due procedure was followed in view of the ban on appointment. The respondent was not qualified to be

regularised as per UCO Bank circular dated 19.10.1989. It is contended that since the services of some personal drivers were regularised as peons on

the basis of CGIT award and the respondent did not approach the Tribunal for similar relief, he cannot claim parity with those persons whose services

were regularised. He placed reliance in the case of Umadevi (supra) and also on the decision of the Honâ??ble Supreme Court in the case of Smt.

Asha Devi -Vrs.- Dukhi Sao reported in A.I.R. 1974 S.C. 2048 and contended that since the findings of the learned Single Judge are perverse and the

same is contrary to the records, it should be set aside.

Mr. Surendra Nath Panda, learned counsel appearing for the respondent on the other hand supported the impugned judgment and contended that since

the respondent was discharging his duties as a personal driver of the Zonal Manager, UCO Bank, Bhubaneswar w.e.f. 27.03.1989 and pursuant to

notification issued under Annexure-1 dated 17.02.1995, he applied for the post and on being selected, he was engaged as driver and discharging his

duties and the competent authority of the Head Office of the Bank authorised the Zonal Manager, Bhubaneswar as per letter dated 01.07.1996, to

engage the respondent as casual driver on daily wage basis to drive the cash van of Dhera Branch and accordingly, the Zonal Manager passed the

order and the respondent has served the Bank for more than two decades and services of similarly situated persons have been regularised since long

and the posts are lying vacant and the Bank is utilizing the services of the respondent since long, there is no illegality in the order of the learned Single

Judge in directing the appellants to regularise the services of the respondent in the post of driver and also quashing the order dated 17.07.2015 passed

by the appellant no.2 under Annexure-

14. He relied upon the decisions of the Honâ??ble Supreme Court in the case of Amarkant Rai -Vrs.- State of Bihar reported in 2015 â??II- Labour

Law Journal 1 and Narendra Kumar Tiwari -Vrs.- State of Jharkhand reported in 2018 -IV-Labour Law Journal 331.

7. Let us first examine the power of a Division Bench while entertaining a Letters Patent appeal against the judgment of a Single Judge.

In the case of Smt. Asha Devi (supra), it is held that the power of a Division Bench hearing a Letters Patent appeal under Cl. 10 from the judgment of

a Single Judge in first appeal is not limited only to a question of law under section 100 Civil Procedure Code but it has the same power which the

Single Judge has as a first Appellate Court. The limitations on the power of the Court imposed by Ss. 100 and 101 Code of Civil Procedure cannot be

made applicable to an Appellate Court hearing a Letters Patent Appeal for the simple reason that a Single Judge of the High Court is not a Court

subordinate to the High Court.

This writ appeal has been nomenclatured as an application under Article 4 of the Orissa High Court Order, 1948 read with clause 10 of the Letters

Patent Act, 1992. Letters Patent of the Patna High Court has been made applicable to this Court by virtue of Orissa High Court Order, 1948. Letters

Patent Appeal is an intra Court Appeal where under the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of

the same jurisdiction as vested in the Single Bench.

(Ref:- (1996) 3 SCC 52, Baddula Lakshmaiah -Vrs.- Shri Anjaneya Swami Temple.) The Division Bench in Letters Patent Appeal should not disturb

the finding of fact arrived at by the learned Single Judge of the Court unless it is shown to be based on no evidence, perverse, palpably unreasonable

or inconsistent with any particular position in law. This scope of interference is within a narrow compass. Appellate jurisdiction under Letters Patent is

really a corrective jurisdiction and it is used rarely only to correct errors, if any made.

In the case of B. Venkatamuni -Vrs.- C.J. Ayodhya Ram Singh reported in (2006) 13 Supreme Court Cases 449, it is held that in an intra-court

appeal, the Division Bench undoubtedly may be entitled to reappraise both questions of fact and law, but entertainment of a letters patent appeal is

discretionary and normally the Division Bench would not, unless there exist cogent reasons, differ from a finding of fact arrived at by the Single Judge.

Even a court of first appeal which is the final court of appeal on fact may have to exercise some amount of restraint. Similar view was taken in the

case of Umabai -Vrs.- Nilkanth Dhondiba Chavan reported in (2005) 6 Supreme Court Cases 243. In the case of Commissioner of Income Tax -Vrs.-

Karnataka Planters Coffee Curing Work Private Limited reported in (2016) 9 Supreme Court Cases 53,8 it is held that the jurisdiction of the Division

Bench in a writ appeal is primarily one of adjudication of questions of law. Findings of fact recorded concurrently by the authorities under the Act and

also in the first round of the writ proceedings by the learned Single Judge are not to be lightly disturbed.

A writ appeal is an appeal on principle where the legality and validity of the judgment and/or order of the Single Judge is tested and it can be set aside

only when there is a patent error on the face of the record or the judgment is against established or settled principle of law. If two views are possible

and a view, which is reasonable and logical, has been adopted by a Single Judge, the other view, howsoever appealing may be to the Division Bench; it

is the view adopted by the Single Judge, which would, normally be allowed to prevail. If the discretion has been exercised by the Single Judge in good faith and after giving due weight to relevant matters and without being swayed away by irrelevant matters and if two views are possible on the question, then also the Division Bench in writ appeal should not interfere, even though it would have exercised its discretion in a different manner, were the case come initially before it. The exercise of discretion by the Single Judge should manifestly be wrong which would then give scope of interference to the Division Bench.

8. Coming to the facts of the case, it is not in dispute that the respondent has rendered his service as personal driver of the Zonal Manager, UCO bank, Bhubaneswar w.e.f. 27.03.1989. It is also not dispute that a notification for filling up the post of Bank's driver at Dhera Branch was issued on 17.02.1995 in which applications were invited in the enclosed proforma from personal drivers of Branch Managers/Divisional Managers and subordinate staff members who possess the requisite driving licence. The age, qualification and other guidelines were given in the said notification and it was circulated to all Branches/Offices in the Orissa Zone of the Bank. The last date of receiving the applications was fixed to 04.03.1995. The respondent having satisfied the requirement of eligibility criteria mentioned in the notification, submitted his application for selection of driver and accordingly, after following the due procedure of selection, the respondent was selected for the post of driver. The Zonal Manager vide letter dated 20.03.1995 intimated the Head Office that they notified the vacancy by inviting applications from the eligible persons being working in the subordinate carder and since no other applications except that of the respondent was received and he fulfilled the eligibility criteria and was the senior most among the existing personal drivers, his name was recommended. The restrictions imposed as per circular dated 28.01.1991 was indicated in the aforesaid letter dated 20.03.1995 and a statement containing the biodata of the respondent was enclosed and request was made to sanction the appointment of the driver for Dhera Branch. Subsequently, another letter dated 23.02.1996 was issued by the Zonal Manager to the Head Office making reference to the earlier letter dated 20.03.1995 requesting to authorise to engage the respondent as driver on daily wage basis. The Head Office in its letter dated

01.07.1996 addressed to the Zonal Manager passed order for engaging the respondent as casual driver on daily wage basis to drive the cash van of

Dhera Branch at the rates applicable to the empanelled casual workers and for payment of pro rata allowances payable to a driver and accordingly,

the Zonal Manager issued letter dated 10.07.1996 engaging the respondent as casual driver on daily wage basis to drive the cash van of the Branch. It

is not in dispute that since the date of his initial appointment, the respondent is discharging his duties on daily wage basis against the substantive vacant

post of driver and in the meantime twenty three years have passed. It is also not dispute that services of some personal drivers have been regularised

in the meantime those who are juniors to the respondent by absorbing them as Peon-cum-Farash in the Bank service. The contention of the learned

counsel for the appellants that the respondent should have approached the Tribunal to get the relief cannot be a ground to deny such relief to him

particularly when there is availability of regular posts of driver and the petitioner was selected for the post in pursuance to the advertisement for such

posts way back in 1995 and he is discharging his duties in the said post and there is any blemish record against him.

Though it is contended by the learned counsel for the appellants that the advertisement was illegal as it was issued in the notice board but there is no

material in that respect rather the notification relating to filling up the post of Bank's driver at Dhera Branch seems to have communicated to all

the Branches/Offices in the Orissa Zone. It is not the case of the appellants that there was no requirement for engaging a driver at the relevant point

of time, on the other hand the Head Office being satisfied about such requirement authorised the Zonal Manager in its letter dated 01.07.1996 to

engage the respondent as casual driver. Even though there was restriction imposed on regular appointment but since there was necessity for such

appointment and after due notification and selection, the Head Office authorised the Zonal Manager for the appointment of the respondent as casual

driver, it cannot be said that there is any illegality in the initial appointment as contended by the learned counsel for the appellants. Though the learned

counsel for the appellants contended that due procedure was not followed in the appointment of the respondent but such type of submission is vague

inasmuch as it is not clarified as to which specific procedure was not followed in the appointment more particularly when the notification issued by the

authorities for filling up the post of driver not only indicated the age, qualification of the applicant but also other guidelines. It is also the case of the

respondent that since he fulfilled all the eligibility criteria, taking into account his past experience as a personal driver of the Zonal Manager, he got

selected and accordingly his name was recommended for appointment which was accepted by the Head Office.

In the case of Umadevi (supra), the Honâ??ble Supreme Court passed the order that the claim acquired by a person in the post in which he is

temporarily employed or the interest in that post cannot be considered to be of such a magnitude so as to enable the giving up of the procedure

established, for making regular appointments to available posts in the services of the State. In our humble view, the learned Single Judge was justified

in holding that the ratio laid down in the case of Umadevi (supra) is very much applicable to the present case as there was a clear cut vacancy at

Dhera Branch for which an advertisement was issued on 17.02.1995 fixing criteria mentioned therein, pursuant to which the respondent submitted his

application and having been selected, he got appointed as driver and discharged his duty since July 1996 and therefore, he cannot be denied

regularization of his service.

In the case of Amarkant Rai (supra), the Honâ??ble Supreme Court held as follows:

Â â??15. Considering the facts and circumstances of the case that the Appellant has served the University for more than 29 years on the post of

Night Guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the

Appellant retrospectively w.e.f. 03.01.2002 (the date on which he rejoined the post as per direction of Registrar).â??

In the case of Narendra Kumar Tiwari (supra), the Honâ??ble Supreme Court held as follows:

â??11. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the Appellants, if they

have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by

them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct

etc.

12. The impugned judgment and order passed by the High Court is set aside in view of our conclusions. The State should take a decision within four

months from today on regularization of the status of the Appellants.â??

9. The learned counsel for the appellants contended that the respondent has not made specific prayer in the writ petition for regularization of his

services in the post of driver and therefore, it was not proper on the part of the learned Single Judge to grant him such relief. He placed reliance in the

case of National Board of Examination -Vrs.- G. Ananda Ramamurti reported in (2006) 5 Supreme Court cases 515 wherein it is held that the High

Court was not justified in granting a relief not sought for by the respondents in the writ petition.

In the writ petition, the prayer of the respondent

who was the petitioner in the said case is as follows:-

â??Under the above stated facts, the petitioner most respectfully prays that Your Lordship may graciously be pleased to issue a Rule of NISI calling

upon the Opp. party Bank to regularise him in the Bank forthwith giving the benefit of past service for the purpose of retirement benefits, at least from

2007, i.e. the date of regularization of his juniors so that he can live retirement period peacefully by making use of the benefits at his dotage and

quashing Order dtd.17.07.2015 (Annexure-14) and oblige.

And/or may pass such order/orders, as this Honâ??ble Court may deem fit and proper.

And for this act of your kindness the petitioner as in duty bound ever pray.â??

The impugned order dated 17.07.2015 under Annexure-14 which was challenged in the said writ petition relates to consideration of the representation

dated 08.12.2014 of the respondent, casual driver, Dhera Branch, Angul, Odisha towards his regularization in bank services. In the entire body of the

writ petition, the respondent has indicated as to how he was initially engaged as personal driver by the Zonal Manager and how he applied for the post

of driver as per the notification dated 17.02.1995 and how he got selected on account of fulfilling all the eligibility criteria and accordingly appointed on

the daily wages basis by the Zonal Manager, Bhubaneswar on being authorised by the competent authority of the Head office of Bank, how he was

discharging the duty of the driver since then and how the juniors were regularised ignoring his case. The respondent has specifically mentioned that he was continuing in the permanent vacancy and therefore, his services be regularised. In the prayer portion of the writ petition, since it is mentioned

“And/or may pass order/orders, as this Hon’ble Court may deem fit and proper”, even though it is not specifically mentioned in the prayer

portion to direct the appellants to regularise the services of the respondent in the post of driver but in view of the settled principle of law that a writ

Court has ample power to modify reliefs to make that reliefs available which would meet the ends of justice (Ref:- State of Orissa -Vrs.-Janamohan

Das, A.I.R. 1993 Orissa 180), the contentions raised by the learned counsel for the appellants is not acceptable.

10. In view of the foregoing discussions, we are of the humble view that the view taken by the learned Single Judge is reasonable and logical and

there is no patent error on the face of the impugned judgment or any perversity therein and therefore, we are not inclined to interfere with the same.

Accordingly, the writ appeal stands dismissed.