

(2005) 05 AHC CK 0283

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 12801 of 1986

The Regional Manager-I,
Regional Office, State Bank of
India

APPELLANT

Vs

Sri Dayal Singh and Presiding
Officer, Central Government
Industrial Tribunal-cum-Labour
Court

RESPONDENT

Date of Decision: May 9, 2005

Acts Referred:

- Industrial Disputes (Central) Rules, 1957 - Rule 77, 78
- Industrial Disputes Act, 1947 - Section 25F, 25G, 25H

Citation: (2005) 6 AWC 5310

Hon'ble Judges: V.C. Misra, J

Bench: Single Bench

Advocate: S.N. Varma, A.C. Tripathi and Navin Sinha, for the Appellant; Shashi Nandan and M.P. Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

V.C. Misra, J.

Learned counsel for the parties are present.

2. This writ petition has been filed challenging the impugned award dated 13.3.1986 made in favour of respondent No. 1 (Annexure No. 5 to the writ petition) passed by respondent No. 2- the Presiding Officer of Central Government Industrial Tribunal-cum-Labour Court, Kanpur (hereinafter referred to as the Tribunal) by which the termination of service of the workman-respondent No. 1 dated 14.6.1982 was declared as an illegal and not justified, reinstating the workman with full back wages.

3. The undisputed facts of the case in brief are that the petitioner-bank at its Kirwali Branch, Agra had engaged respondent No. I- Sri Dayal Singh from time to time as a Badli Guard w.e.f. 14.5.1980, and he had worked continuously till 14.6.1982, for the specific total 254 days in 2 years, as mentioned in paragraph 2 of the writ petition. The services of respondent No. I were dispensed with w.e.f. 14.6.1982 and he was not engaged any further, since his services were not required anymore. Being aggrieved, respondent No. I.raised an Industrial Dispute, which was referred to respondent No. 2.

4. Respondent No. 2 after hearing the learned counsel for the parties to the dispute, found that the workman had acquired the status of a temporary employee and his services could not be terminated and he should have been given 14 days notice or pay in lieu of notice as required under para 522 (4) of the Sastri Award. From the evidence on record it appeared that the workman did not work for 240 days in span of one year so he could not be entitled to retrenchment compensation as required u/s 25F but he was entitled to pay in lieu of notice and termination was void on that count and also since his claim for reappointment was ignored while appointing others the provisions of Section 25H of the Industrial Dispute Act, 1947 were violated. It was further held that the workman having acquired temporary status having worked for 254 days from June, 1980 to June 1982 was entitled to notice or, pay in lieu of notice and reemployment and for violation of the above said provisions i.e. 522 (4) of Sastri Award, Rule 77 of the Industrial Dispute Rules, (Central), 25-D of the Industrial Dispute Act as well as 25H of the Act, the workman was entitled to be reinstated in service with full back wages as the termination of the workman was illegal and void ab initio on the above counts and that the action of the management of SBI in relation to its Kirawali Branch under control of the Regional Manager-I, Agra in terminating the service of workman was not justified w.e.f. 14.6.1982. As regards permanent absorption of the workman, workman could not be employed permanently unless it was specifically proved that the post on which workman was engaged was a permanent post and this could not have been proved in the instant case, hence he could be absorbed permanently. Respondent No. 2 on the basis of the said findings, held the termination of the services of respondent No. I w.e.f. 14.6.1982 to be illegal and unjustified and directed his reinstatement with full back wages.

5. Learned counsel for the petitioner has relied upon the decisions in the case of Management of State Bank of India, Agra Vs. Presiding Officer Central Govt. Industrial Tribunal, Kanpur and another, in the case of Etawah Kshetriay Gramin Bank v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur and Anr., reported in 2004 (1) CLR 282 (All), in the case of Manager State Bank of Indore v. Presiding Officer, reported in , in the case of Etawah Kshetriya Gramin Bank Vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and Another, and in the case of State of U.P. Vs. Labour Court, Haldwani and another,

6. I have looked into the record and heard learned counsel for the parties at length and find that respondent No. 2 has wrongly arrived at a conclusion that respondent No. I should be treated as a temporary employee of the State Bank of India, merely on the basis that he had been engaged for few days in each month as a Badli guard. No other valid and cogent reasons, whatsoever, have been assigned, as to how and why respondent No. I is being treated as a temporary employee inspite of fact that the appointment of a temporary employee in the State Bank of India is to be made as per State Bank of India Staff Matters Volume II Award Staff and in terms of Shastri Award. The services of subordinate staff of the bank including the post of guard/messengers are governed in terms of the Shastri award which is being enforced and is in operation, except to the extent it was modified by the Desai award. The Shastri award in its paragraph 505 has specified the category of the employee and is not applicable to the class of causal worker/Badali guard, which is conspicuous by its non-inclusion. The prescribed procedure and method of appointment and termination of paragraph 495 of the Shastri award, clearly speaks that the appointment of a employee is to be made only through-an appointment letter, issued in writing specifying the kind of appointment and the pay and allowances to which he would be entitled. It is an admitted case that the appointment of the workman had not been made for any fixed or a specified period, but he was engaged on day to day basis. The finding of temporary appointment of the workman by the Tribunal is based on surmises and conjectures.

7. I also find that the Tribunal did not apply its mind while deciding the question of back wages. The reference made to respondent No. 2 was only to the extent that whether the action of the employer Bank in not absorbing the workman and, which was in respect with the termination his service w.e.f. 14.6.1982 was justified or not but it acted in excess of the scope of reference, by holding that the petitioner-bank had failed to comply with the provision of Section 25H of the Act, and the Tribunal Traveled out side its jurisdiction as held by Hon"ble Supreme Court in the Case of Firestone Tyre and Rubbers Co of India Pvt. Ltd, reported in 1981 Supreme Court II L.L.J 218. Respondent No. 2 erred in applying provisions of Section 25F to H of the Act and Rules 77 to 78 of the Rules framed under the Act, which applied only on the condition of termination of surplus staff in the permanent role of an establishment and not to a causal workman, more so, when no specific names had been disclosed regarding fresh hands to be taken in, on the same post or category, and that one temporary employee had been relieved by another. It was not justified in making the same, as basis of the award, as there was no question of respondent No. I being absorbed or retained in the employment of bank against the Rules. In the case of Himansu Kumar Viddhyarthi v. State of Bihar, reported in 1997 FLR 2045 , the Hon"ble Supreme Court has held that the termination of service of daily wage employee, engaged for the common work cannot be construed as retrenchment under the provisions of Section 25F. Respondent No. I was only engaged as a Badali guard/daily worker in the exigency of work by the bank and he was not working on

being appointed on any post. The tribunal-respondent No. 2 has committed an error of law in awarding the reinstatement with full back wages instead of compensation and such finding of respondent No. 2 being perverse cannot be sustained. It is settled law that reinstatement with full back wages, is not the natural consequence in setting aside the dismissal order by the labour court and no straight-Jacket formula could be evolved. In the present case, respondent No. I could not have been awarded full back wages merely on the basis of setting aside of the discharge of respondent No. I and on direction of his reinstatement as has been held by the Apex Court in the case of M.P. State Electricity Board Vs. Smt. Jarina Bee, and in the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, Thus, the impugned award dated 11.8.1986 (Annexure No. 3 to the writ petition) is liable to be quashed. However, in view of the long drawn litigation and the delay it would serve the ends of justice, if the amount which has already been paid as wages to respondent No. 1 and wages paid till date after filing of the writ petition and the amount so deposited by the petitioner in terms of the interim stay order dated 4.8.1986 modified by order dated 19.7.1989 to be paid to respondent No. I, shall not be recovered or withdrawn by the bank.

8. With these observations, the impugned award dated 13.3.1986 (Annexure- No. 3 to the writ petition) is hereby quashed. The writ petition is allowed. No order as to costs.