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(2008) 05 AHC CK 0220

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 4496 of 1997

Krishna Chandra Yadav @ Jhinku Yadav		APPELLANT
	Vs	
Regional Manager, Central Bank of India, Lucknow and another		RESPONDENT

Date of Decision: May 12, 2008

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25F

Citation: (2009) 120 FLR 12

Hon'ble Judges: Devi Prasad Singh, J

Bench: Single Bench

Advocate: Avdhesh Kumar Singh and Gopal Kumar Srivastava, for the Respondent

Final Decision: Allowed

Judgement

Devi Prasad Singh, J.
Heard Sri Avdhesh Kumar Singh and Sri Gopal Kumar Srivastava, the learned Counsel for the respondents.

The petition under Article 226 of the Constitution, has been preferred against the Labour Court award which was allowed in part directing the opposite parties to pay the compensation to the tune of Rs. 10,000/-.

The factual dispute in narrow compass, is summarized as under:

2. According to petitioner''s Counsel, the petitioner was engaged as Peon on 1.7.1987 and he continued in service upto 1993. On 6.2.1993, the petitioner''s services were dispensed with. The petitioner raised industrial dispute on the ground that he had worked for more than 240 days and his services were dispensed with without following the procedure contained in section 25-F of Industrial Disputes Act or section 6-N of U.P. Industrial Disputes Act.

3. The Presiding Officer, Labour Court by the impugned order dated 5.5.1994 decided the dispute and recorded a finding that the petitioner was recruited as Waterman. However, he has failed to prove that he has served for 240 days. The Presiding Officer further recorded a finding that the petitioner was entitled for payment of compensation to Rs. 10,000/-. It has been held by the Labour Court that in the Staffing Pattern of the Bank namely, the Central Bank of India, there is no sanctioned post of Waterman and the petitioner was engaged to meet out the exigencies of service for short period. Hence he was not entitled for protection of section 25-F of Industrial Disputes Act. The Labour Court has relied upon a letter dated 20.8.1992 sent by the Manager of the Bank to the Regional Manager. It is the main evidence on which the Labour Court has relied upon while recording a finding that the petitioner was engaged as Waterman. A perusal of the letter dated 20.8.1992 indicates that the Branch Manager has informed the Regional Manager that the petitioner worked for more than 390 days on the post of Waterman and was paid an amount of Rs. 5286/-. However, the finding has been recorded by the Labour Court that since the petitioner has failed to prove the actual number of days for which he discharged duties, the retrenchment cannot be held to be in breach of section 25-F of Industrial Disputes Act.

4. It has further been held by the Labour Court that since there is no sanctioned post of Waterman in the Bank, no order can be passed by the Labour Court for restoration of the petitioner in service. However, it has been noted by the Labour Court that after dispensing with the service of the petitioner, one Munna Lai was engaged to discharge duties as Waterman. The Labour Court recorded a finding that there is no breach of section 25-F of Industrial Disputes Act and accordingly, the petitioner was entitled for payment of compensation which was assessed to Rs. 10,000/-.

5. On the other hand, Sri Gopal Kumar Srivastava, learned Counsel for the respondents-Bank proceeded to submit that the petitioner was never engaged by the Bank. The petitioner was engaged by the Canteen and as an employee of the Canteen, he was directed to serve the Bank as Waterman. Since the petitioner was not engaged as an employee of the Bank and was an employee of the Canteen, he was not entitled for any compensation and reinstatement in service. Being not associated with the Bank, the petitioner cannot claim benefit of section 25-F of Industrial Disputes Act. He has relied on the judgments in Employers in Relation to the Management of Reserve Bank of India v. Workmen 1996 (73) FLR 965 (SC) , State Bank of India and Others Vs. State Bank of India Canteen Employees'' Union (Bengal Circle) and Others, State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, Canteen Mazdoor Sabha Vs. Metallurgical Engg. Consultants (I) Ltd. and Others, State of U.P. Vs. Desh Raj, Secretary State of Karnataka and others. v. Utrta Devi and others 2006 (109) FLR 826 (SC) : 2006 (42) AIC 935 (SC), New Okhla Industries Development Authority v. Kendriva Kartnchari Sahkari Grih Nirman Samiti 2006 (64) ALR 183 (SC) : 2006 (43) AIC 438 , Allahabad

Bank Vs. Shri Prem Singh,

6. It has also been submitted by the respondent''s Counsel that since the petitioner was not employee of the Bank, the relationship of Master and Servant does not exist and he has got no right to claim reinstatement in service or payment of compensation.

7. The learned Counsel for the respondents further submitted that in view of the judgment of Apex Court in State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, the disputed question of facts should not be gone into by the High Court under writ jurisdiction.

8. I have given by anxious consideration on the arguments advances by the parties Counsel.

9. So far as the disputed question of facts are concerned, the finding of fact has already been recorded by the Labour Court and it is settled law that power conferred to this Court under 226 of the Constitution, ordinarily does not confer power to re-appreciate the evidence but to see the decision making process. In case the substantial and factual right of parties hag not been considered, then this Court has got ample powers to see the illegality in the matter. So far as the respondents are concerned, they have not challenged the impugned order dated 5.2.1997 passed by the Labour Court hence, they have no right to assail the impugned order of Labour Court to the extent the finding recorded by the Labour Court and is binding on the respondents as it exists at the moment. Accordingly, the submission made by the respondents'' Counsel assailing the impugned award for one or the other reason with submission that the petitioner was an employee of the Canteen and not of the Bank, does not seem to be sustainable. The cases relied on by the learned Counsel for the respondents relate to the circumstances where the employees were undisputedly workmen of the Canteen. Accordingly the Hon''ble Supreme Court settled that the persons working in Canteen cannot claim right or title for protection u/s 25-F of the Industrial Disputes Act with the Bank.

10. In the present case, the findings of fact has been recorded by the Labour Court that the petitioner was engaged by the Bank as Waterman though the post of Waterman does not exist in the Staffing Pattern of the Bank but the petitioner was permitted to discharge duty on payment of certain amount. The letter dated 20.8.1992 relied upon by the Labour Court establishes that the petitioner worked minimum at least for more than 390 days on the post of Waterman. The letter also indicates that the payment of Rs. 5286/- was made to the petitioner by the Central Bank of India. However, the respondents'' Counsel submits that the wages were paid by the Canteen. It does not seem to be correct keeping in view the letter dated 20.8.1992 sent by the Branch Manager to the Regional Manager of the Bank. To that extent the finding of fact recorded by the Labour Court that the petitioner was employee of the Bank itself and discharged duties on the post of Waterman does

not seem to suffer from any illegality or impropriety. Since the respondents have not challenged the impugned award, may have no right to assail the finding of fact recorded by the Labour Court.

11. The next question cropped up for adjudication is, whether the petitioner should have been restored in service and what amount of compensation should have been paid to the petitioner. From the letter dated 20.8.1992 sent by the Branch Manager to the Regional Manager, it is established beyond doubt that the petitioner had worked at least for 390 days which is more than 240 days. The learned Counsel for the respondents failed to draw the attention of this Court towards any material which may indicate that after dispensing with petitioner''s services, Munna Lai was not engaged. The engagement of Munna Lai itself is indicative of the fact that the petitioner was removed from service arbitrarily. Though, a finding of fact has been recorded by the Labour Court that under the Staffing Pattern of Bank, there is no sanctioned post of Waterman existing but engagement of Munna Lai, in place of the petitioner is itself indicative of fact that the Bank is in need of Waterman to serve its Staff.

12. It is not justifiable on the part of the bank to replace the petitioner by new recruit. It is settled law that long back the Apex Court settled that ad hoc employees should not be replaced with ad hoc employees. The engagement of Munna Lai in place of petitioner, dees net seem justifiable. The submission of the learned Counsel for the respondents that Munna Lai was not engaged by the Bank but was engaged by the Canteen, does not seem to be correct keeping in view the letter dated 20.8.1992 sent by the Manager which has been relied upon by the Labour Court. However, no relief may be granted on this ground since Sri Munna Lai has been not impleaded as party.

13. Learned Counsel for the respondents has vehemently relied upon the judgment of Apex Court in the case of Allahabad Bank Vs. Shri Prem Singh, and proceeded to submit that even assuming that the petitioner was engaged on the post of Waterman his services shall be on day to day basis and shall be deemed to have been terminated at the end of the day. The case of Prem Singh (supra), does not seem to be applicable to the facts and circumstances of the present case. The Letter of the Branch Manager proves beyond doubt that the petitioner worked continuously for 390 days. Once a workman continuously discharges duty for more than 240 days, then statutory provisions contained in section 25-F of the Industrial Disputes Act, shall be attracted. The said provision is beneficial provision and the right flowing from such Act, cannot be withdrawn or curtailed indirectly.

14. In view of the above, it appears that the finding of fact recorded by the Labour Court that the petitioner failed to prove that he worked more than 240 days, does not seem to be correct. The petitioner discharged duties continuously for more than 390 days. However, since no sanctioned post exists and Munna Lai has been not impleaded as party, no relief can be granted by this Court. However, the opposite

parties are directed to provide the benefit of section 25-H of the Industrial Disputes Act as well as the benefit of other provisions of the Industrial Disputes Act for considering the petitioner for the re-employment against future vacancies treating the petitioner as retrenched employee of the Bank.

The writ petition is accordingly allowed in part.

No orders as to costs.