(2006) 11 JH CK 0004

Jharkhand High Court

Case No: L.P.A. No. 397 of 2006

Ashok Kumar Das and Others		APPELLANT
	Vs	
State Bank of Bikaner and Jaipur and Others		RESPONDENT

Date of Decision: Nov. 2, 2006

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Industrial Disputes Act, 1947 - Section 25F, 25G, 25H

Citation: (2007) 2 BLJR 879 : (2007) 1 JCR 201

Hon'ble Judges: M. Karpagavinayagam, C.J; Permod Kohli, J

Bench: Division Bench

Advocate: P.K. Samarendra and Mukesh Kumar, for the Appellant; J.P. Gupta and Rajesh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Permod Kohli, C.J.
The employees of the Bank approached the Tribunal for direction to the Bank to offer them employment: After enquiry the industrial award was passed by the Tribunal giving the relief sought for by the employees. The respondent-Bank filed the writ application seeking for the quashing of the industrial award. The learned single Judge after hearing the counsel for the parties quashed the industrial award and set aside the same holding that the appellants-employees are not entitled for employment and that is the subject matter of challenge before this Court in L.P.A.

2. Learned Counsel appearing for the appellants-employees mainly contends that the evidence has been properly appreciated by the Tribunal and a correct conclusion has been arrived at by the Tribunal stating that the retrenchment is made not In accordance with law. As such the learned single Judge has not given correct

reasoning for setting aside the award. According to the counsel the learned single Judge has not taken into consideration Sections 25G and 25H of the Industrial Disputes Act, 1947. It is also brought to the notice of the Court that subsequently amongst the retrenched employees some persons have been (sic) detained and fresh appointments have also been made. On the other hand, counsel for the respondents while supporting the order of the learned single Judge submits that the employees-appellants were working only for 80-90 days in the years 1980-1984 and as such Section 25G will not apply. The employees-appellants were appointed only on temporary basis and as such the award passed by the Tribunal in favour of the employees is illegal as correctly pointed out by the learned single Judge.

3. We have carefully considered the rival contention of the parties. In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Supreme Court in paragraph 48 held as follows:

48. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected In terms of the relevant recruitment rules.

4. On going through the observations made by the Supreme Court (SIC) there is no difficulty in coming to the conclusion that the appellants-employees cannot claim re-employment as of right in the absence of any material to show that they were regularly appointed. Further it is clear from the reading of Section 25F of the Industrial Disputes Act that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until it fulfills the various procedures laid down In that Section.

5. In this case, admittedly, the employees (appellants herein) were working only for a period of 80-90 days in the year 1980-84. Therefore, in our view, the points raised by the counsel for the appellants-employees on the basis of Sections 25G and 25H of

the Industrial Disputes Act cannot be considered as a valid ground. Further the learned single Judge has given so many reasonings which, in our opinion, are valid to hold that the award is not justified. Therefore, we do not find any merit in this appeal.

6. The appeal is accordingly dismissed.