GAHC010123222014

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1331/2014

BINOY KUMAR SINHA

VERSUS

THE STATE BANK OF INDIA and 4 ORS.
REPRESENTED BY THE CHIEF ZONAL MANAGER, STATE BANK OF INDIA, ZONAL OFFICER, JORHAT, ASSAM

2:THE ASSTT. GENERAL MANAGER
ADMIN.
STATE BANK OF INDIA
ZONAL OFFICE
DIST- JORHAT ASSAM

3:THE BRANCH MANAGER
STATE BANK OF INDIA
DINJAN BRANCH
P.O. DINJAN
DIST- DIBRUGARH
ASSAMPIN-786189

4:THE PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT
ULUBARI NEAR RAMKRISHNA MISSION
GUWAHATI

5:AJAY SHAH
C/O THE BRANCH MANAGER
STATE BANK OF INDIA
DINJAN BRANCH P.O. DINJAN
DIST- DIBRUGARH
ASSAM PIN-78618

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the petitioner : Mr. N. J. Khataniar

Advocate for the respondents : Mr. H. Buragohain

Date of hearing : **23.04.2024**

Date of Judgment : **26.04.2024**

JUDGMENT AND ORDER (CAV)

Mr. N.J. Khataniar, learned counsel appears for the petitioner, while Mr. H. Buragohain, learned counsel appears for the State Bank of India.

2. The petitioner who served as a Sweeper in Dinjan Branch of the SBI challenges the Award dated 30.09.2013 passed by the Industrial Tribunal, Guwahati, whereby the termination of the petitioner's service as a daily wager w.e.f. 16.09.2008 was upheld and the reference was answered against the disengaged workman.

3. The petitioner's counsel submits that the petitioner was appointed verbally as a Sweeper on 29.03.2004 and worked in the SBI Dinjan Branch. The petitioner was given Rs.50/- per day as a Sweeper, which was enhanced to Rs.60/- per day. He was also paid Rs.30/- per day since January, 2008 for cleaning the ATM. Later he was also given allowance when asked to clean the bank premises, i.e., cutting grass etc. The petitioner was also sometimes asked to work as a messenger for

the bank, for which he was given TA/DA.

4. The petitioner's counsel submits that the petitioner's service as a daily wager worker amounted to the petitioner being a workman and as he had been terminated from service on 16.09.2008, without any prior notice, the same had to be set aside in view of Section 25-F of the Industrial Disputes Act, 1947.

5. The petitioner's counsel submits that being aggrieved with the termination of his service, the reference brought to the notice of the Central Government Tribunal, Labour Court, Guwahati was as follows:-

> "*Whether the action for the management of State Bank of India, Djnjan Branch in terminating the service of Sri Binoy Kumar Sinha w.e.f. September, 2008 was legal and justified ? If no, what relief the workman was entitled ?"*

6. The Award dated 30.09.2013 passed by the learned Industrial Tribunal in Reference Case No.7/2010 was answered against the petitioner, on the ground that the petitioner was a daily wage worker and not a workman. Further, the petitioner had not been able to prove that he worked under the SBI, Dinjan Branch regularly, as he was paid Rs.60/- per day. Further, the petitioner had failed to prove that he had worked for 240 days continuously in the 12 consecutive months preceding his termination from service.

7. The petitioner's counsel submits that the impugned Award has to be set

aside, as a daily wage earner is also a workman. Further he worked in the SBI for 4 years. In support of his submissions, the learned counsel for the petitioner has relied upon the judgments of the Supreme Court in the case of ***Hari Nandan Prasad & Another vs. Employer I/R to Management of Food Corporation of India & Another,*** reported in ***(2014) 7 SCC 190*** (paragraph 2, 5, 34, 43). The petitioner has also relied upon the judgment of the Supreme Court in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal,*** reported in ***(2013) 14 SCC 543*** (paragraph 20 & 21) and in the case of ***U.P. State Road Transport Corporation vs. Man Singh,*** reported in ***(2006) 7 SCC 752***.

8. The learned counsel for the SBI submits that no appointment order was given to the petitioner as a workman against any permanent vacancy. No advertisement was made and neither was any selection process resorted to, on the basis of which the petitioner was sometimes given manual work by the SBI, as a daily wage worker. The petitioner was on separate occasions asked to do some sweeping work etc and was paid for his work, which was not continuous.

9. Mr. H. Buragohain, learned counsel for the respondents submits that in the case of ***U.P. State Road Transport Corporation vs. Man Sing*** reported in ***(2006) 7 SCC 752***, the respondents therein had been appointed on temporary basis, while the workmen in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota vs. Mohan Lal*** reported in ***(2013) 14 SCC 543,*** was engaged on muster roll basis.

10. In the case of ***Hari Nandan Prasad and another vs. Employer I/R to***

Management of Food Corporation of India and another reported in ***(2014) 7 SCC 190,*** the appellants were engaged on daily wage basis as labourer -cum- workman and the prayer for regularization was based on a circular issued by the FCI, wherein any temporary worker employed for more than 90 days was entitled to be regularized.

11. The respondent's counsel submits that in the present case, there is no scheme for regularization of the petitioner and as the petitioner was a daily wager, there was no question of regularizing the petitioner's service or allowing him to continue in service beyond the period he was required by the authorities.

12. The respondent's counsel further submits that in terms of the judgment of the Supreme Court in the case of ***Secretary to the Government, School Education Department, Chennai & others*** reported in ***2014 Legal Eagle (SC) 13)***, the Supreme Court has held that the High Court in exercising power under Article 226 of the Constitution should not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant Rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and the Courts should not issue a direction for regularisation of services of an employee, which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection, which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of

ineligible candidates cannot be regularised.

13. Learned counsel for the respondents further submits that long period of work cannot be the basis for directing continuance of service of the petitioner or regularizing the service. In this regard, he has relied upon the case of ***Nand Kumar vs. State of Bihar and others*** reported in ***(2014) 5 SCC 300.***

14. I have heard the learned counsels for the parties.

15. In the case of ***Hari Nandan Prasad & Another (supra)***, wherein the appellant, who was engaged on a daily wage basis, has been terminated from service, the industrial dispute was referred to the Central Government -cum-Industrial Tribunal (CGIT). The proceedings in the CGIT culminated in the termination of appellants being held to be illegal and they were directed to be reinstated and the service being regularized, in terms of a circular issued by the FCI, wherein any temporary worker employed for more than 90 days was entitled to be regularized.

16. In the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal (supra)***, the respondent was engaged as a Mistri on muster roll basis, whose services were terminated. The workman was neither given one month’s notice nor one month’s salary was given in lieu of that notice, prior to termination of his service and he was also not paid retrenchment compensation. The industrial dispute, which was referred to the Labour Court culminated with the award made by the Labour

Court, holding that as the workman had completed more than 240 days in a calendar year and his services were being terminated in violation of Section 25-F of the Industrial Dispute Act, 1947, the workman was entitled to be reinstated with continuity in service.

The Single Judge of the High Court set aside the award and the Division Bench reinstated the award passed by the Labour Court. The Hon'ble Supreme Court observed that the workman had worked for 286 days from 01.11.1984 to 17.02.1986 and though the service of the workman was terminated w.e.f. 18.02.1986, the industrial dispute was raised by the workman after six years. The Supreme Court thus held that the judicial discretion exercised by the Labour Court was flawed and unsustainable, in view of the delay of six years in raising the industrial dispute. However, the Supreme Court held that the interest of justice would be sub-served, if in lieu of reinstatement, compensation @ Rs.1 Lakh was paid to the workman.

17. In the case of ***U.P. State Road Transport Corporation vs. Man Singh (supra),*** the service of the respondent, who was appointed on temporary basis, was terminated. The industrial dispute referred to the Labour Court culminated with the termination of the workman being set aside, in view of Section 25-F of the Industrial Dispute Act, 1947, not being complied with. However, the workman was granted only back wages. The Supreme Court, on considering the fact that there was nothing to show that the workman had been appointed in accordance with the Recruitment Rules for filling up a vacancy, in terms of Article 14 and 16 of the Constitution, besides the fact that the dispute was raised after 12 years, the Supreme Court held that the interest of justice would be sub-served, if the

Corporation was made to pay a sum of Rs. 50,000/- to the workman.

18. In the case of ***Nand Kumar vs. State of Bihar and others (supra)***, the Supreme Court considered the judgment of the Constitution Bench in the case of ***State of Karnataka vs. Uma Devi*** reported in ***(2006) 4 SCC 1,*** where it had held that while directing the appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the concerned person had worked for some time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it would be creating another mode of public appointment which is not permissible.

19. In the case of ***State of Orissa vs. Mamata Mohanty*** reported in ***(2011) 3 SCC 436***, the Supreme Court has held that the appointment made without advertisement was in violation of Article 14 and 16 of the Constitution. Para 35 and 36 of the said judgment is reproduced below as follows:-

> "*35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some*

appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Anr. v. Mohd. Ibrahim, (2009) 15 SCC 214).

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the

said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

20. The learned Tribunal vide the impugned award came to a finding that there was nothing to show that the petitioner was engaged against any permanent vacancy after making advertisement or collecting the name from the Employment Exchange. Further, the petitioner had failed to prove that he worked for more than 240 days continuously in 12 consecutive months to enable him to get the benefit of Section 25-F of the Industrial Disputes Act. Further, the petitioner was not able to prove that he worked as a workman on a regular basis with the respondent. Para 12 of the impugned award is reproduced hereinbelow as follows:-

"*12. In Range Forest Officer-vs-S.T.Hadimani, (2002) SCC 25: Rajasthan State Ganganagar Sugar Miss Ltd. -vrs-State of Rajasthan and another (2004) 8 SCC 246; and in Batala Coop. Sugar Mills Ltd. -vs-Sowaran Singh (2005) 8 SCC 481, wherein, Hon'be Supreme Court has been pleased to hold that where the workman's claimed that he had worked for more than 240 days in the year preceding termination it is for the workman to adduce evidence apart from examining himself or filing Affidavit, to prove the said factum and such evidence may be in the form of salary or wages for 240 days or record of his appointment or engagement for that year to show that he had worked with the employer for 240 days. In the instant case from the evidence of both the sides it is found well established that the workman was engaged by the SBI, Dinjan Branch as daily wager in need for cleaning of bank premises, grass cutting, and also cleaning of ATM premises: and in certain occasion the workman was engaged as messenger and other miscellaneous works and the payment was made on the basis of the*

works performed by the workman. There is also nothing on record to show that the workman was engaged against any permanent vacancy holding any interview after making advertisement or collecting the names of the candidates sponsored by the Employment Exchange nor any appointment letter or discharge/dismissal letter was issued to the workman. Further the workman has also failed to prove that he had worked 240 days continuously in 12 consecutive months preceding to his dis-engagement. Thus it is crystal clear that the workman has not been able to fulfil the criteria for regularization.

In his pleading the workman categorically mentioned that he was paid daily basis @R.50/- per day and thereafter it was increased to Rs.60/-. He also averred that for cleaning ATM premises he was paid @ Rs.30/- but the Petty Cash Vouchers, the Petty Cash Registers, the Bills raised by the workman and the Debit Pay-in-Slip which were relied upon, as the basis of his regular engagement but in none of the documents marked as Exhibit-4 to Exhibit-194 as discussed above there is mention of payment of daily wage @ Rs.60/- for cleaning and sweeping the bank premises and @ Rs.30/- for cleaning ATM premises of the Bank. As such, the workman has not been able to prove his contention that he worked under the SBI, Dinjan Branch regularly and was paid @ Rs.60/- at any point of time. From the Bills raised by the workman vide Exhibit-176 to Exhibit-181 it appears that the workman performed the cleaning of ATM for 24 days with effect from 1.11.2007 to 24.1.2008 and in the month of March, April and May,2008 he submitted Bills for cleaning the ATM premises @ Rs.300/- per month each. As such, the engagement of the workman is irregular and he was entrusted to perform different nature of works by the Bank on different dates in need of the Bank, and the payment was also made on the basis of the work done by the workman as it reveals from the Petty Cash Vouchers, Petty cash Registers, Debit Pay-in-Slip as well as the bills raised by the workman as mentioned above. The petty cash Register also shows that some other workers were engaged by

the Management for cleaning, grass cutting etc. in the bank premises on daily basis. Under the above circumstances, it can safely be held that the workman is not entitled to reinstatement and also to get any benefit u/s 25F of the I.D.Act."

21. In view of the finding of the learned Tribunal made in the impugned award that the petitioner could not prove that he worked for 240 days continuously in 12 consecutive months preceding the disengagement of the petitioner's service and the fact that there is no procedural irregularity found in discontinuing the engagement of the petitioner, which was occasional and on daily wage basis, this Court is of the view that Section 25-F of the Industrial Disputes Act, 1947 has not been violated. Further, the respondent bank, being a State under Article 12 of the Constitution, it would have to make appointments through advertisement and a proper selection process, in terms of Article 14 and 16 of the Constitution. No advertisement was issued and neither was any selection process followed, prior to engaging the petitioner as a daily wager occasionally. Thus, keeping in view the judgments of the Hon'ble Supreme Court, as stated above, this Court is of the view that no grounds have been made out to interfere with the award dated 30.09.2013 passed by the Industrial Tribunal, Guwahati.

22. The writ petition is accordingly dismissed.

23. Send back the records.

JUDGE

Comparing Assistant