

Court No. - 39

Case :- SPECIAL APPEAL No. - 1295 of 2002

Appellant :- Shiv Kumar Awasthi And Others

Respondent :- The P.N.B. And Others

Counsel for Appellant :- Kshetresh Ch. Shukla,D.K. Srivastava

Counsel for Respondent :- C.S.C.,K.L. Grover,Sanjai Singh,Santosh Kr. Tiwari

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri D.K. Srivastava, learned counsel for the appellants and Sri J.S. Pandey, Advocate, holding brief of Sri Sanjay Singh, learned counsel for the respondent-Bank.

2. The preset intra-court appeal has been filed against the order of the learned Single Judge dated 01.11.2002 in Civil Misc. Writ Petition No. 31406 of 1994 (Shiv Kumar Awasthi and others vs. The Punjab National Bank and others). By the impugned judgment, the learned Single Judge has dismissed the writ petition filed by the petitioner-appellants seeking a mandamus/direction upon the respondent-bank to reinstate the petitioner-appellants in service and to pay their backwages.

3. Having heard counsel for the parties and having perused the record, we find no good ground to offer any interference in the present intra-court appeal. It is an undisputed fact between the parties that the petitioners claim inclusion of their names in the select list prepared on the basis of interview held on 19.11.1981 in which 158 candidates were declared successful in that select list. Another list of 55 selected candidates was published by the Bank based on the interview held on 25.07.1982. Both lists were prepared and published by Hindustan Commercial Bank Limited that later merged with the Punjab National Bank vide notification dated 18.12.1986.

4. As to the issuance of appointment letter, there arose disputes between the candidates included in the two select lists mentioned above. Arising therefrom, an Industrial Dispute Case No. 134 of 1986 came to be adjudicated by the Central Government Industrial Tribunal cum Labour Court, Kanpur vide its award dated 22.08.1988. It was observed as below:

"9. After hearing the two sides, I am not impressed by the arguments advanced by Sri Joshi authorized representative for the management. The authorised representative for the Association has rightly described the circular as arbitrary and discriminatory. It cannot take away the right which has come to vest in the candidates of the first list.

10. I, therefore, hold that the action of the management of the erstwhile Hindustan Commercial Bank in superseding the candidates mentioned at serial no.74 to 158 in the merit list by the candidates of the second list is unjustified."

5. As to the relief, the Central Government Industrial Tribunal cum Labour Court, Kanpur granted the following relief:

"In view of the above provisions of the scheme only such candidates of the first list who got employment in the erstwhile Hindustan Commercial Bank by 24.5.86 can be granted the relief to which they are entitled i.e. the relief of their being senior to those candidates of second list who got employment by 24.4.86. During the course of argument, it has been submitted by the authorised representative on behalf of the candidates of the first list that he wants nothing but seniority over candidates of the second list. Accordingly, candidates named at serial no.74 onwards who got employment in the erstwhile Hindustan Commercial Bank by 24.5.1986 shall be deemed senior to those of the second list who got employment in the Hindustan Commercial Bank Ltd. by 24.5.1986. The rest of the candidates of the first list are not entitled to any relief. They may seek, if so advised, their remedy through proper forum."

6. The writ petition filed against that award by the All India Hindustan Commercial Bank Employees Association being Writ Petition No. 24586 of 1988 was disposed of on the statement made by counsel for the Punjab National Bank that it had acted in accordance with the award of Central Government Industrial Tribunal cum Labour Court dated 22.8.1986

7. As to implementation of the award, the Regional Labour Commissioner (Central) issued notice to the Punjab National Bank. In turn, the Bank issued a circular No.50 dated 15.9.1983 proposing to fill up the remaining posts in the ratio of 1:1 with reference to the two select lists arising from the interviews held on 19.11.1981 and 25.7.1982. It was further informed that as for inter se seniority, the candidates who were engaged prior to 24.5.1986 would be treated to be senior to those engaged later.

8. Upon such statement, proceedings for execution of the award were closed by the Regional Labour Commissioner (Central), Kanpur vide his letter dated 11.8.1994 stating that the issue regarding seniority stood settled and that in absence of any award of reinstatement made by the Central Government Industrial

Tribunal cum Labour Court, no further execution was required to be made.

9. It is in such factual background that the petitioner-appellants set up a case that they have been appointed prior to 24.5.1986. Therefore, they prayed for a mandamus to the Writ Court to ensure their re-engagement and payment of backwages as also future wages.

10. Upon consideration of the entire material and submissions advanced by the rival parties, learned Single Judge found that though some of the petitioner-appellants may have worked for some duration against engagement offered by the Hindustan Commercial Bank Limited, none of the petitioners could establish appointment granted to them against any appointment letter that may have been issued, at the relevant time.

11. Only such permanent employees whose engagement may have arisen with the erstwhile bank namely Hindustan Commercial Bank Limited against firm appointment letters may have been offered continuance of service by the transferee bank namely the Punjab National Bank. On that reasoning, the learned Single Judge further repelled the submissions of the petitioner-appellants as to violation of section 6-E of the U.P. Industrial Disputes Act, 1947.

12. Last, the learned Single Judge found that the award of the Central Government Industrial Tribunal cum Labour Court dated 22.8.1988 in Industrial Disputes Case No. 134 of 1986 did not grant any relief to candidates who may not have been issued appointment letters, at the relevant time.

13. Such being the findings of learned Single Judge based on due consideration of material on record, we do not find any error committed by the learned Single Judge as may commend to us to offer any interference. The intra-court appeal remains an appeal on principle.

14. In the present case, learned Single Judge has found that the petitioner-appellants had no pre-existing right to appointment either with Hindustan Commercial Bank Limited or the Punjab National Bank. There is no error of law or fact committed by the learned Single Judge in reaching that conclusion on the reasoning that neither that relief was granted to the petitioner-appellants by the Central Government Industrial Tribunal cum Labour Court nor the petitioners have been able to establish before the Writ Court existence of any appointment letter.

15. Once no appointment was seen to have arisen on a permanent post against a firm appointment letter and in face of relief denied by the Central Government Industrial Tribunal cum Labour Court for the petitioner-appellants and other similarly situated persons, the writ of mandamus prayed for was rightly declined.

16. It is a *sine qua non* for a writ of mandamus to be issued that the petitioner claiming that writ must disclose and establish before the Writ Court pre-existing statutory duty or right. Unless the pre-existing right of employment against a permanent post had been shown to be existing, the Writ Court may not ever exercised its jurisdiction to provide for reinstatement of the petitioner-appellants less so for payment of backwages.

17. For reasons noted above, we see no merit in the present appeal. The same is **dismissed**. No order as to costs.

Order Date :- 1.11.2023

Madhurima

(Shiv Shanker Prasad,J.) (S.D. Singh, J.)