

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9161 of 2014

=====

Lalan Kumar Jha S/o Sri Bhudeo Jha, resident of village - Giriyawan, P.O. -
Jhagruchak, P.S. - Falka, District - Katihar.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance (Department of Economic Affairs), Banking Division, Jeevan Deep Building, Sansad Marg, New Delhi.
2. The Chief Labour Commissioner (Central), 4th Floor Akashdeep Building, New Delhi.
3. State Bank of India through the Chief General Manager, Local Head Office, Bihar Range, Anta Ghat, Patna.
4. The Deputy General Manager, State Bank of India, Zonal Office, Purnea.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv.
For the Respondent/s : Mr. Anshuman Singh, CGC
Mr. Ashok Kumar Gupta, Adv.
Mr. Binod Bihari Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

8 29-10-2015 Heard Sri Subodh Kumar Jha, learned counsel for the petitioner, learned counsel for the Union of India as well as Sri Ashok Kumar Gupta, learned counsel, who was assisted by Sri Binod Bihari Sinha, learned counsel appearing on behalf of Respondent nos. 3 and 4/ State Bank of India.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an award dated 9th July, 2010 passed by the Central Government Industrial Tribunal no.1, Dhanbad in Reference Case no.265 of 2001 (Annexure-11 to the writ petition). It appears that



the petitioner had earlier participated in the selection process in the State Bank of India for employment as Class-IV employee. It has been pleaded that the petitioner's name was included in the list, which was prepared for interview of such candidates. A list of 234 candidates was prepared, in which the petitioner's name had figured at serial no.234, however he was not selected. It has been claimed that out of 234 candidates, except the petitioner all were selected. Earlier, due to non-inclusion of name of the petitioner in the selected list of candidates, the petitioner approached this Court by filing a writ petition vide C.W.J.C.No.70 of 1998. However, on 08.12.1998 the said writ petition was permitted to withdraw with liberty to raise industrial dispute with respect to the grievance raised by the petitioner. Thereafter, the petitioner approached under the Industrial Disputes Act. Since conciliation failed, the matter was referred to the Government and finally the Central Government by an order dated 26.11.2001 in exercise of power under Section 10(1) (d) (2A) of the Industrial Dispute Act, 1947 referred the dispute to the Central Government Industrial Tribunal, Dhanbad. The term of reference was as follows:

“Whether Sri Lalan Kumar Jha, workman had been appointed by the Branch Manager, State Bank of India, Morsanda Branch, Katihar vide letter dated 04-10-86 and worked upto 21.9.1997 on various

capacity including canteen boy, if so, whether the action of the management in terminating the services of workman on 22-9-1997 without regularizing him is justified? If not, what relief the workman is entitled?”

Thereafter, a reference case vide Reference Case no.265 of 2001 was initiated, in which written statements were filed both on behalf of the petitioner as well as the management of the Bank. The petitioner claimed that he was appointed by the then Branch Manager of Morsanda Branch, Katihar as canteen boy. Finally, in the year 1997 the Bank intended to absorb / regularise. It has been argued that in terms of bipartite agreement, the bank took a decision to absorb the workman/employee, who had worked for 90 days and, as such, steps were taken and petitioner's name was included in the list of candidates to be interviewed, in which 234 candidates were included. The petitioner's name was included at Serial no.234. Before the Tribunal, the Bank also filed written statement and took a categorical stand that canteen employees/boys were not the employees of the Bank, particularly for the Bank, where there were less than 100 employees. A further stand was taken that the petitioner, off and on, had worked in the Bank as per casual requirement and totally he had worked for 95 days, not in continuity. Before the Tribunal, besides filing written

statement from both sides evidence was laid and finally, the Tribunal prepared the Award and held that the petitioner was not entitled to any relief. The said award has been assailed in the present writ petition.

Sri Jha, learned counsel for the petitioner assailing the award has argued that from time to time the Bank has changed its stand. He submits that vide Annexure-2 to the writ petition, which is a communication, whereby the petitioner was intimated that he was not suitable for absorption, no reason was assigned. In the written statement before the Tribunal besides raising other points, it was never indicated that the petitioner was indulged in unfair practice, however in the proceeding before the Tribunal, at the time of evidence, certain materials were brought on record to substantiate that the petitioner was not entitled to be absorbed in the Bank. Learned counsel for the petitioner tried to persuade the Court that the learned Tribunal has traveled beyond its jurisdiction and has incorrectly passed the Award.

Learned counsel for the Bank opposing the prayer of the petitioner, at the very outset, argued that the conduct of the petitioner was sufficient to substantiate that he was not entitled to be employed in the Bank. He submits that the petitioner, while working as canteen boy, was indulged in acting as a middleman in



between the Branch Manager and the borrower and he was taking illegal gratification. On such allegation, the petitioner was made accused in the F.I.R. and after investigation the petitioner was charge sheeted and put on trial, However, subsequently he was acquitted. It was argued by learned counsel for the Bank that at least on the date of selection, the material shows that the petitioner had committed misconduct and acted as middleman in between the then Branch Manager and borrower and used to accept illegal gratification. He submits that this was the main reason for non-selection of the petitioner. He further submits that the claim of the petitioner that he being a canteen boy was entitled to be employed is not sustainable in the eye of law. By referring to averments made in paragraph-5 of the written statement filed before the Tribunal, he submits that in the said branch the staff strength was less than even five and, as such, there was no question for engaging a canteen boy. He further submits that under the agreement in between the management of the Bank and the Federation, in only those Banks canteen facility was to be provided, where there were more than 100 employees. According to him, since in the said Bank, there were less than five employees, the claim of the petitioner to be appointed in the Bank being a canteen boy is not sustainable in the eye of law and the



same fact was noticed by the Tribunal. In support of the aforesaid submission, learned counsel for the Bank has placed reliance on a Judgment of the Apex Court reported in **(2000)5 SCC 531; State Bank of India & Ors. Vs. State Bank of India Canteen Employees' Union (Bengal Circle) & Ors.** On the basis of the aforesaid Judgment, he has made a prayer for rejection of the writ petition.

Besides hearing learned counsel for the Parties, I have also perused the materials available on record. Fact remains that the petitioner had mainly claimed that he had worked as canteen boy. Of course, off and on, he had also worked as messenger of the Bank, but as per the written statement filed by the Bank, which has not been controverted, the petitioner had worked in such capacity about 95 days that, too, not in continuity. Moreover, vide order dated 27.11.1997, the petitioner was intimated regarding the fact that he was not suitable for absorption in the Bank service. It was an order simplicitor and, as such, at the time of such communication, the Bank was not obliged to record about the conduct of the petitioner. Since the dispute was raised by the petitioner before the Tribunal, the Bank actually took the stand that the petitioner had committed misconduct and he had worked as middleman in between the then Manager of the Bank and

Borrowers. This fact has been noticed by the Tribunal.

In the aforesaid facts and circumstances, the Court is of the opinion that the Bank has rightly refused the claim of the petitioner for being appointed. From the materials available on record, it appears that along with petitioner other four candidates were also not included. On perusal of the Award, I do not find any defect.

The writ petition stands dismissed.

(Rakesh Kumar, J)

NKS/-

U			
---	--	--	--