

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2237 of 2001

State Bank of India through its Assistant General Manager (Personnel), Local Head Office, Judges Court Road, At & P.O. Patna District Patna.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour, Shram Bhawan, New Delhi.
2. The Presiding Officer, Industrial Tribunal, Bailey Road, Patna.
3. Sri Ashok Kumar resident of New Sidhwali PS. Dalmianagar, District Rohtas, Through SBI Employees Union (Bihar State) 215, Ashoka Place, Exhibition Road, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Sr. Adv.
Mr S.D.Sanjay, Sr. Adv.
Mr. Abhishekh Kumar, Adv.
Mr. Shama Sinha, Adv.
For the Respondent/s : Mr. Abdul Hakim, Adv.
Mr. Arbind Kumar, Adv.
Mr. Rakesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-04-2015

Heard counsel for the petitioner, for the workman and for the State.

In this case, petitioner is challenging the award dated 8th September 2000 passed in Reference Case No. 2© of 1998 whereby and whereunder the Industrial Tribunal has passed the award giving direction to the State Bank of India to regularize the services of the petitioner in subordinate cadre of Bank from retrospective date i.e. 24th May 1991 and has also held that the petitioner is entitled to back wages from that date (i.e. 24th May 1991) subtracting the wages what has been paid by the Bank.

As per the claim of Ashok Kumar, Respondent no.3, he joined the service of the Bank at Dalmianagar Branch, SBI on 1st July 1981 in the post of Messenger cum-water-man after a formal interview by the then Branch

Manager Sri S.P.Bose. Prior to July 1981 Sri Ashok Kumar had worked in the aforesaid Branch intermittently since 1975. At the time of appointment he possessed the requisite appointment criteria for sub-ordinate staff. He has been working regularly in the sub-ordinate cadre till now since the date of his appointment i.e. 1st July 1981. The Bank used to take full-time work from him but was denied the wages and other benefits of regular employees. At that time he was being paid monthly salary of Rs.700/- only in the name of canteen but was employed against the permanent vacancy.

Relying on the Bank Circular No. 247 of 1966 Sri Ashok Kumar ought to have been confirmed in the Bank's permanent service with effect from completion of nine months from the date of his initial appointment. When repeated request of workman for payment of full salary of regular subordinate staff cadre, fell on deaf ears of the Management, the State Bank of India Employees' Union, Patna raised an industrial dispute on 8th June 1998 demanding from the Management for the absorption of the workman in the permanent service of the Bank.

After the dispute was raised, the concerned workman was asked to appear in interview at Patna Zonal Office of the Bank on 17th August 1993 for empanelling him for permanent employment against probable vacancies for the year 1995-96 whereupon the workman addressed a letter dated 13th August 1993 to the authority claiming that his case stood on different footing as he was already in the service of the Bank and expressed his willingness to face an interview for permanent absorption but wanted to know the date from which he would be absorbed in permanent service. The Management did not reply to the letter of the workman, consequently he did not appear in the interview. Claim has been made by the workman that the Management devised this method to get rid of such temporary employees who



were entitled for regularization on account of length of service. He further claimed that excepting few blue eyes boys, large number of such employees were not regularized in service. Further claim has been made that the aforesaid interview was held on the basis of the Bank's Circular No. PEP/IB/11 of 1991 was not binding on the concerned workman as it was based on a bipartite agreement made otherwise than in course of conciliation proceeding. Neither the workman nor the sponsoring union was party to the said agreement. It has been claimed that before the conciliation Officer the Management contended that Sri Ashok Kumar worked only for 174 days during July 1981 and March 1982 which was disputed by the workman claimed to have worked in the Bank, paid wages, showing conveyance charges for performing out door duty. As the matter could not settle during conciliation proceeding, the Management did not agree with the demand of the workman on the basis of report of the Conciliation Officer in exercise of power under Section 10(1)(d) of the I.D.Act the Govt. of India referred the following dispute:

“Whether the action of the Management State Bank of India in not regularizing Sri Ashok Kumar in the post of sub-ordinate staff is justified and legal ? If not to what relief the workman is entitled to ?”

The Management appeared and filed his written statement where a plea has been taken, the dispute that was referred is not an industrial dispute as the concerned workman is neither an employee of the Bank nor member of the Union of India and, as such, the State Bank of India Employees' Union does not have jurisdiction to raise the dispute for the concerned workman. It has further been claimed that the State Bank of India is a body corporate engaged in Banking industry, makes recruitments of staff and regularize the service in terms of rule, regulation and Circulars issued

from time to time, engaged itself in the welfare of the employees of the Bank in different manners.

The hand book of the Bank deals with the welfare measures for the staff provides promotion of canteen facility through local implementation Committee constituted in viable branch. The Committee was also engaged in other welfare activity of its staff and the Bank provides subsidy to local implementation Committee for running canteen for its staff. It has been claimed that in Dalmianagar there is a local implementation Committee through which the canteen was being run and it has been provided that a Branch having `100 employees or more, canteen is run by the establishment of the Bank itself.

The Bank has taken a plea that Ashok Kumar, the workman concerned was employed by the local Implementation Committee of the Bank. Further claim of the Management is that the concerned workman not being an employee of the bank is engaged in other business, including providing electric generator to the Dalmianagar Branch on rental basis As per the Shastri award, which was modified as Desai award, person employed in the Bank cannot be allowed to engage in a separate business as the same has been treated as gross misconduct. As Ashok Kumar was not an employee of the Bank as such, he indulged in his business and cannot claim to be an employee of SBI, Dalmianagar Branch.

It has been accepted by the Bank that Ashok Kumar had worked already for 102 days from July 1981 to December 1981 and 72 days from January 1982 to March 1982 and on that basis he was asked to appear before the Interview Board but he himself did not appear and did not avail the chance for the purpose of regularization of his service. The Respondent workman filed his written statement claiming to have been employed by Bank

after interview worked for 240 days, entitled for regularization in terms of Circular of 22nd August 1966, and Circulate of 6/4/1991 is not applicable.

The Tribunal has formulated two issues for the purpose of adjudication which are as follows:

i) Is the present reference case not maintainable on being espoused by the SBI Employees' Union of which the concerned workman Ashok Kumar is not a member,

ii) Is the action of the Management of the SBI in not regularizing Sri Ashok Kumar in the post of sub-ordinate staff justified or legal and if not, to what relief or reliefs the workman is entitled to ?

The Tribunal has answered both the issues in favour of the Workman. Counsel for the Bank has submitted that the Tribunal has committed error of law in applying Section 2A of the Act in holding that even though he was not a member of the employees' Union in view of Section 2A of the I.D.Act, the dispute raised by him or on his behalf will be an industrial dispute and the Tribunal has wrongly usurped the jurisdiction which was not vested to him to adjudicate the dispute. The tribunal while deciding the issue of maintainability of reference has mentioned in its finding that the Union has not produced any material to show that Ashok Kumar was a member of the Union but wrongly decided that the dispute is an industrial dispute and decided the case on its merit.

Counsel for the workman has fairly accepted that Section 2A of the I.D.Act does not apply in the matter of regularization of service but placed reliance on Section 36 (1) (c) of the I.D. Act which provides that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the I.D.Act where the worker is not a member of any Trade Union by any member of the Executive or other office bearer of any Trade

Union connected with, or by any other workman employed in the Industry in which the worker is employed and otherwise in such a manner as may be prescribed. Counsel for the workman has put emphasis 'an office bearer of the Union can raise the industrial dispute for a workman who was employed in that industry'.

The Industrial Disputes Act is a welfare legislation will be interpreted liberally and extensively.

This Court subscribes the view of the workman even if the workman is not a member of any union, any Union working in that industry can take up the case and raise the dispute since Section 36 (c) postulate representation by Union "in any proceeding under this Act" will be industrial dispute within the meaning of Section 2 (k) of the I.D.Act, the contention of the Management that the dispute that was raised is not an industrial dispute is not sustainable in view of facts as stated above, though Section 2A I.D. Act does not apply in a case of regularization of service.

Now the question would arise for consideration about entitlement of regularization in service. Even if it may be accepted that the workman was employed and worked in the Branch of the State Bank of India, Dalmianagar for 240 days or more in certain wages for few months or years will not make the workman entitled for regularization in service in view of fact that the workman has not produced any interview letter to suggest that he was called for interview and after that, was appointed. From the records it is an admitted fact, the Respondent No. 3 was asked to face interview which the workman refused to participate on flimsy ground. A workman is appointed without following the due procedure of law i.e., without advertisement, interview, works for certain days, months and years will not make him entitled to regularization in service.



The workman placed reliance on 1994(2) PLJR 249 (Para-7) (Mithilesh Kumar Singh vs. State of Bihar) where this Court has said that in the industrial dispute question of illegal and invalid appointment does not arise for the purpose of application under Section 25 (F) of the I.D. Act as definition of “Workman” does not make such distinction as words are couched in widest term. Even if certain persons have been irregularly appointed he will be treated to be workman of Section 2 (s) of the I.D. Act. In case of sudden termination from service, the compensation amount works as protective umbrella and gives breathing space so that he may search another employment. In whole of the Industrial Disputes Act there is no provision dealing with regularization of service of workman. Only certain protection has been given to the workman who worked for 240 days preceding 12 months from the date of termination of service, he will get protection one month notice pay and compensation to be calculated 15 days wages for each completed year of service or part thereof. In case of illegal retrenchment from the service, workman may get the benefit of reinstatement of service does not make him entitled for regularization in service.

The Tribunal in the award has placed reliance on 1966 Circular made sole basis for giving direction for regularization in service. It will be appropriate to deal with aforesaid Circular. Clause (a) provides that a temporary sub-ordinate employees who has put in more than 9 months’ aggregate service in the Bank. Agent will submit list to the Bank by 31st August 1966, a statement showing the names of such candidates who are willing to take up permanent employment, in the Bank along with recommendation as regard their suitability. It was decided in principle that temporary sub-ordinate employees who had put more than nine month’s aggregate service in the Bank are found suitable, should be offered permanent

appointment in the Bank. Agents will, therefore, submit list by 31st August 1966 showing the names of such candidates who are willing to take up the permanent employment in the bank along with their recommendations as regards their suitability. During 1966 the Bank used to utilize the service of agent in Bank but these days agents are not available.

Now a days employees are recruited in the manner provided in the Service Rule, Circular issued from time to time. So 1966 Circular for permanency in service is not applicable to the present days. On perusal of 1988 Bipartite settlement it appears that employees on temporary basis have been divided into three categories, category-A, category-B and category-C and different classes of employees have been mentioned. In Clause-6 it has been provided that the candidates will be appointed in permanent service only if they fulfil the eligibility criteria and are found medically fit, as per the Bank's Circular. Clause-7 provides interviews to be conducted by the Selection Committee to determine suitability/unsuitability of temporary employees for permanent appointment in the Bank. After completion of interviews, Interview Committee will finalize panels for full time and part-time appointments of suitable candidates for messengerial and non-messengerial positions. Names of suitable candidates will be waitlisted in order of their respective categories. Clause-11 prescribes that temporary employees will not be given a chance for permanent appointment in the Bank's service:

i) Those who did not fulfill the prescribed eligibility criteria on the date of their initial temporary appointment.

ii) Those who have put in less than 30 days' aggregate temporary service in any calendar year after 1st July 1975 or less than 70 days aggregate temporary service in any block of 36 continuous calendar

months after 1st July 1975 and those who were engaged by the Bank on casual basis. Work on casual basis would mean that the employment was for work of ad hoc nature and persons were engaged on ad hoc/fixed remuneration but not on regular scale pay as per the bipartite agreement.

iii) Those who had worked temporarily in the Bank before 1st July 1975, his temporary service put in before 1st July 1975 shall not be reckoned.

iv) Those, who are already gainfully employed elsewhere on a regular basis or have a regular source of income.

v) Those who fail to apply for permanent appointment within the period specified by the Bank in terms of the settlement arrived with the Federation. The Bank will release advertisement in 2 leading dailies in each Circle (one of which will be in a local language) advising eligible candidates to apply for permanent appointment within 30 days of the publication thereof; applications received after the last date will not be entertained.

vi) Those, who had concealed material facts regarding their employment, age or educational qualification etc. from the Bank or seek appointment in more than one name or have unsatisfactory past record in the Bank or in law.

In pursuance of that settlement, the Bank has issued circular dated 6/4/91 provides manner and method for regularization mandates to face interview Board and those who are found suitable will be empanelled will be absorbed in terms of availability of vacancies.

As this Court has already held that 1966 Circular was one time measure and is not applicable for subsequent period, cannot be basis for claiming regularization in service. Secretary of Karnataka Vs. Uma Devi case

(2006) 4 SCC 1 has considered all previous judgments, it has been held that in a case of illegal appointment, a person does not have right for his regularization. In case of irregular appointment worked for ten years or more without the intervention of Court, such case will be considered for regularization by way of one time measure.

In the present case the petitioner was asked to appear before the Interview Board, but did not avail, now he cannot make complaint of having not been regularized in service.

This Court in Full Bench, Ram Sevak Yadav vs. State of Bihar, 2013 (1) PLJR 964 held that the persons who have been appointed on oral basis their appointment is illegal and the Court has gone to the extent if the persons have entered in service through back door, he should be pushed out from the same door.

In such view of the matter, the view taken by the Tribunal cannot be approved as Uma Devi case (supra) law and policy for regularization in service has changed as the Hon'ble Supreme Court has held that any person having not entered into service in a proper manner does not have any right for consideration for regularization.

Counsel for the workman has relied on the judgment reported in 1979 FLR 178 does not apply to the present case as Presiding Officer misconstrued the 1966 Circular wrongly applied a 1966 Circular for regularization in service.

Counsel for the workman has also relied on the order passed in CWJC No. 13529 of 2006 where this Court has directed for regularization of service of daily wage employees but it has been informed that the judgment is under consideration before this Court in LPA No.1902 of 2010 and stay has been granted. Before parting with the judgment, this Court is of the view that

Ashok Kumar, in the name of his wife provided generator to Branch with a view to compensate him on account of receipt of meager amount of salary of Rs. 700/-, which cannot be sufficient for sustenance in the material world.

In course of argument, counsel for the workman has submitted that Ashok Kumar is still in service and gets Rs.1,250/- but materials are not available before this Court to consider this plea. However, he is still in service, in case the State Bank of India comes with a Circular providing benefit of regularization of service, that benefit should also be extended to the petitioner granting exemption in age.

In view of the aforesaid discussion, this Court finds that the order of the Tribunal giving direction for regularization of service is not sustainable and the same is quashed.

Accordingly, this petition is allowed.

The original record of the Tribunal was called for. Office is directed to return back the same.

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(Shivaji Pandey, J)