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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**WRIT PETITION NO.2108/2003**

STATE BANK OF INDIA,  
Region – III,  
Regional Office,  
Aurangabad.

...Petitioner...

**Versus**

Ravindra Ramrao Choudhari  
At. Post – Jamner (Pura),  
Tq. Jamner, Dist – Jalgaon.

...Respondent...

.....

Shri V. P. Golewar, Advocate h/f Shri A. R. Joshi,  
Advocate for petitioner.  
Shri R. M. Deshmukh, Advocate for respondent.

.....

**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 17.12.2015**

**ORAL JUDGMENT :**

1] Learned Advocates for the respective sides have  
no objection if this Court hears this matter.

2] This Court had admitted this petition on  
16.6.2003 and interim relief in terms of prayer clause

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[C] was granted. The prayer clause [C] reads as under:-

"[C] Pending hearing and final disposal of this writ petition, the effect and operation of the impugned judgment and order dated 5.3.2002 in Reference (ID) No.CGIT-2/123 of 1999 passed by Member, Central Government Industrial Tribunal No.11, Mumbai, (Exhibit V colly. to this petition) may be stayed."

3] The petitioner – bank challenges the award dated 5.3.2002 delivered by the Central Government Industrial Tribunal No.2 in Reference No.CGIT-2/123 of 1999 (hereinafter referred to as the Central Tribunal) by which the reference was allowed and the petitioner – bank was directed to absorb the respondent – workman in sub-staff cadre as and when permanent vacancy would arise.

4] Shri Golewar, learned Advocate for the petitioner, has strenuously criticized the impugned judgment. His submissions can be summarized in brief as follows:-

[a] The respondent had not passed his SSC examination when he was appointed as a Sweeper / Waterman on daily wages on 12.4.1992.

[b] Presently the respondent has improved his

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educational qualification and has also passed the Bachelor of Commerce examination.

[c] An advertisement was published on 20.8.1988 with the intention of causing recruitment to the post of sub-staff.

[d] The respondent applied on 1.9.1988, but was not held eligible.

[e] By settlement between All India SBI Staff Federation (hereinafter referred to as the 'Union') and the petitioner - bank on 17.11.1987, the eligibility criteria for appointment to the sub-staff cadre was resolved to be atleast SSC.

[f] On 20.8.1988, the petitioner again published an advertisement declaring vacancies in the sub-staff cadre.

[g] The respondent applied for the same and stated in his application that he had appeared for SSC and had passed his SSC examination in March, 1988. However, he was not selected.

[h] In between 1988-1991, the respondent became a graduate.

[i] The petitioner advertised in 1990-91 for

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causing recruitment in the sub-staff cadre.

[j] In between 1991-98, the respondent never claimed regularization.

[k] The respondent approached the Assistant Commissioner of Labour, Nagpur, by his letter dated 25.9.1998 seeking regularization in employment.

[l] The Assistant Commissioner of Labour by the failure report dated 21.1.1999 referred the matter to the Secretary, Government of India, Ministry of Labour.

[m] By order dated 14.5.1999, the Ministry of Labour, Government of India, referred the matter to the Central Tribunal at Mumbai.

[n] By judgment and award dated 5.3.2002, the Tribunal directed the petitioner to absorb the respondent in the sub-staff cadre as and when the vacancies arise.

[o] The respondent has raised a stale dispute.

[p] Delay was caused by the respondent in raising an industrial dispute.

[q] The date of birth of the respondent is

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20.2.1965 and hence he was 38 years when the Tribunal allowed the reference.

[r] Findings of the Central Tribunal are perverse.

[s] If stale disputes are entertained, it would open flood gates for several such litigants.

[t] He worked for about 136 days in 1982 and 1983.

[u] He is not in employment from 1984 for a period of about 32 years.

[v] Born on 20.2.1965, he is practically 51 years old today.

[w] Retirement age for the sub-staff cadre is 58 years.

[x] Recruitment procedure pursuant to advertisements has to be followed while recruiting people in the sub-staff cadre.

[y] He had applied for recruitment in the sub-staff cadre on two occasions pursuant to two advertisements and he was not selected.

[z] Even in 1982 and 1983 he used to work intermittently as a Sweeper.

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[aa] Impugned judgment and award is unsustainable.

5] Shri Deshmukh, learned Advocate appearing on behalf of the sole respondent has strenuously supported the impugned award. He does not dispute the facts as regards his age, his qualification and the number of days worked, as have been stated by the petitioner, recorded hereinabove. He submits, on instructions from the respondent who is present in the Court, that he had worked for 136 days in two calender years 1982-83, intermittently.

6] He further submits on instructions that he had applied twice to the petitioner for recruitment and was not selected. He raised an industrial dispute in 1999 and the same was referred to the Central Tribunal, as noted above. Under the Industrial Disputes Act, there is no limitation for raising an industrial dispute u/s 2(k) or u/s 2-A of the Industrial Disputes Act, 1947. Since there were positions available, he had raised an industrial dispute seeking direction to be recruited in the sub-staff cadre. He is not in employment for the last 32 years.

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7] I have considered the submissions of the learned Advocates, as have been recorded hereinabove.

8] It is not in dispute that the respondent is not in employment with the petitioner for the last 32 years. He worked intermittently as per his own admission for a period of 136 days in two years 1982 and 1983. He has not fulfilled the requirement u/s 25-B of the Industrial Disputes Act, 1947. It is also undisputed that he has neither sought permanency in the reference proceedings, nor has he challenged his discharge / dismissal / termination or otherwise removal from service u/s 2-A of the Industrial Disputes Act, 1947.

9] Both the learned Advocates have submitted that the respondent had applied for recruitment in the sub-staff cadre on two occasions pursuant to two advertisements. He was not selected in the said selection process. He has not raised any grievance about his non-selection.

10] The industrial dispute raised before the appropriate Government indicates that the Union demanded his regularization in the sub-staff cadre. This demand was made in 1998 when the respondent was not in

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employment for the last 14 years. As such, the appropriate Government forwarded the following industrial dispute for adjudication to the Central Tribunal :-

"Whether the action of the management of State Bank of India through its Assistant General Manager, Region-3, Aurangabad and Branch Manager, Jamner Dist.Jalgaon, in not regularizing the services of Shri Ravindra Ramrao Choudhary at par with permanent employee of the bank is legal and proper ? If not, to what relief the said workman is entitled ?"

11] It is conceded that on the date of the order dated 14.5.1999 passed by the appropriate Government referring the above dispute to the Central Tribunal, the respondent was not in employment for 15 years. In the backdrop of his non-selection on two occasions, I am a bit surprised by the order of reference. The dispute of not regularizing the services of the respondent was forwarded to the Central Tribunal in the backdrop of the respondent being out of employment for 15 years and having put in only 136 days in intermittent working in between 1982 to 1984.

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12] The respondent has relied upon a settlement between the Union and the petitioner - bank, which was signed on 17.11.1987 as a basis for seeking absorption in the permanent employment of the bank in the sub-staff cadre. Shri Deshmukh has pointed out paragraph no.1 and its three sub-clauses as also paragraph no.2 to support his contention that the respondent fell in category 1(iii) "C". Clause 1 and the three categories are reproduced as under:-

"1. The following category of temporary employees subordinate cadre will be given a chance for being for permanent appointment in the Bank's service against vacancies likely to arise in 1987 to 1991 :

[i] Category 'A' :

Those, who have completed 240 days temporary service in 12 months or less after 1.7.1975.

[ii] Category 'B' :

Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calender months after 1.7.1975.

[iii] Category 'C' :

Those, who have completed a minimum of 30 days aggregate temporary service in any calender year after 1.7.1975 or a minimum

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of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1.7.1975.

2. Permanent part-time employees will be given preference in filling up the full time vacancies, both in messangerial and non-messangerial subordinate categories and only after exhausting this group of employees, the resultant part time / full time vacancies will be filled up by the temporary employees.

3. It is, however, understood that vacancies will first be filled from unused panels of the temporary employees (having 90 days temporary service as on 31.10.1984) already interviewed and wait listed and thereafter remaining vacancies, if any, will be thrown open for the above category of temporary employees."

13] He, therefore, submits that since he had put in 136 days in between 1982 to 1984, he would fall in category "C". It cannot be ignored that Clause 2 of the said settlement obliges the bank to give preference to the permanent part-time employees while filling up the full time vacancies in the messangerial and non-messangerial subordinate categories and only after exhausting this group of employees, the resultant part-time / full time vacancies were to be filled up by

temporary employees.

14] It also cannot be ignored that Clause (3) of the settlement provides for filling up the vacancies from the unused panel of temporary employees, who have put in 90 days of temporary service as on 31.10.1984, who have been already interviewed and wait-listed. Once this panel of wait-listed candidates was exhausted, the remaining vacancies, if any, were to be thrown upon for the category of temporary employees.

15] In the above backdrop, the petitioner - bank had rejected the candidature of the respondent. He was not selected on two occasions since though he fell in a particular category, all the vacancies were to be filled in initially from the available lot of permanent part time employees and thereafter from the panel of wait-listed candidates.

16] I have considered the impugned award of the Central Tribunal in the above backdrop. I do not find that the Central Tribunal considered the said settlement especially Clauses (2) and (3) referred to above. Had these clauses been considered by the Tribunal, in my view, it would not have directed the petitioner - bank to

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absorb the respondent in the sub-staff cadre.

17] In the light of the above, I do not find that the conclusions of the Central Tribunal could be sustained. The respondent, who is not in employment for the last 32 years and is almost 51 years old today, cannot be foisted upon the petitioner - bank.

18] In the result, this petition is allowed. The impugned award dated 5.3.2002 delivered by the Central Tribunal, which was stayed by this Court on 16.6.2003, stands quashed and set aside. The said reference is answered in the negative.

19] Rule is made absolute in the above terms. There shall be no order as to costs.

**(RAVINDRA V. GHUGE, J.)**