

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17478 of 2011

Date of Decision:- 04.10.2016.

Ajit Kumar

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Chandigarh and
another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Naveen Daryal, Advocate for the petitioner.

Mr. R.S. Bhatia, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has assailed the Award dated 28.3.2011 passed by the CGIT-cum-Labour Court, Chandigarh.

2.) The second respondent commenced a new Branch at Saha. Before operation/function of new Branch, the petitioner was engaged for some labour work by the Branch Manager of Punjab National Bank, Saha who was supposed to work as a Manager after commencement of the new Punjab National Bank branch at Saha. For the purpose of engaging the services of the petitioner on permanent basis or temporary, the Branch Manager sought necessary clarification from his superiors on 9.7.2004.

Before Superior Officers considering the proposal sent by the Branch

Manager, the Branch Manager noticed that the petitioner do not fulfill the necessary qualification. Therefore, petitioner's services have been stated to be discontinued from 5.11.2004. In the meanwhile, in the month of August, 2004, there was a correspondence between the Branch Manager and Superiors relating to the appointment of the petitioner when a new Manager was posted. The petitioner is stated to have submitted an application for appointing him vide Annexure M-4 dated 1.2.2005. At this juncture, the Branch Manager noticed that the petitioner had produced two certificates dated 10.10.1998 and 23.7.2004 passed in 6th and 4th class which were marked as Annexures M2 and M4/3. The respondent-Bank after noticing the suppression of facts by the petitioner discontinued the services of the petitioner w.e.f. 5.11.2004. Arising out of these facts and circumstances, the petitioner approached CGIT-cum-Labour Court, Chandigarh. The said Court declined to grant relief to the petitioner. Thus, the present petition has been presented.

3.) Learned counsel for the petitioner submitted that the Labour Court has failed to appreciate that the petitioner was appointed prior to 5.7.2004 i.e. before operation of new branch of Punjab National Bank at Saha. Thereafter, he was continued till 5.3.2005. The Labour Court failed to appreciate Annexure M-4 dated 1.2.2005 application made by the petitioner for employment in which he has stated that he is unemployed. The letter is in English which is stated to be written by the staff of the Bank. In the letter wrongly, they have mentioned that the petitioner is unemployed. On the contrary, it was pointed out by learned counsel for the petitioner that in the reply statement filed before the CGIT, the respondent-Bank have admitted that the petitioner has been paid salary for the month of February,

2005 which is evident that as on 1.2.2005, the petitioner was very much in service. Therefore, the contents of Annexure M-4 dated 1.2.2005 that the petitioner was unemployed is contrary to the facts and records of the respondent-Bank. Thus, the petitioner counsel submitted that the petitioner has completed 241 days from 5.7.2004 to 5.3.2005. Hence, the finding given by the CGIT-cum-Labour Court, Chandigarh is contrary to documents as well as facts.

4.) On the other hand, learned counsel for the respondent-Bank submitted that the petitioner was appointed orally. No payment has been made. No documentary evidence is there to show that attendance register was signed by the petitioner which has been admitted by the petitioner in his cross-examination. Further it was submitted that in his application for appointment dated 1.2.2005, the petitioner has submitted that he is unemployed. Therefore, it is evident that petitioner has not worked in the month of February, 2005. Thus inference can be drawn that he has not completed 240 days. Hence, there is no error committed by the CGIT-cum-Labour Court. It was further contended that the reasons for discontinuing the petitioner from temporary employment is that petitioner had produced two certificates for the purpose of employment. Thus, the petitioner intends to hoodwink the Bank by producing two certificates in order to gain employment in the respondent Bank. In view of these facts and circumstances, there is no error committed by the CGIT-cum-Labour Court.

5.) Heard learned counsel for the parties.

6.) For the purpose of deciding the present writ petition, two issues are involved. (i) Whether the petitioner has worked from 5.7.2004 to

services can be dispensed or not? Perusal of the records, it is evident that the petitioner worked from 5.7.2004 to 5.3.2005 for the reasons that in the month of February, 2005, the respondent Bank have paid the salary for the month of February, 2005. Therefore, as on 1.2.2005, petitioner was very much in service. Hence, the respondent-Bank's contention that in the letter dated 1.2.2005, vide Annexure M-4 that petitioner was unemployed as on 1.2.2005, cannot be accepted. The respondent-Bank in their reply statement they have admitted relating to payment of salary for the month of February, 2005. Thus, the petitioner has completed 240 days from 5.7.2004 to 5.3.2005. In fact, new Branch of Punjab National Bank, Saha commenced its operation on 5.7.2004. Prior to that only petitioner's services were engaged as a Labourer i.e. for the purpose of infrastructure of the newly opened Bank. If these facts are taken into consideration, it is evident that the petitioner has worked for more than 240 days.

7.) In respect of production of two certificates i.e. 6th class dated 10.10.1998 and 4th class dated 23.7.2004 is concerned, the respondent-Bank never advertised for the post and pursuant to any advertisement the petitioner has not submitted his application so as to contend that the petitioner has produced 6th class and 4th class certificate for employment. Therefore, the respondent-Bank's contention that petitioner has suppressed facts relating to educational qualification, therefore, his services have been dispensed is incorrect. Even assuming that if the petitioner had produced two certificates for the purpose of employment to the post of Sweeper even for temporary employees in a public office like Bank some preliminary inquiry is necessary before discontinuing such persons services. The

entitled to know the reasons on their termination. In view of the facts and circumstances, the CGIT-cum-Labour Court order dated 28.3.2011 (Annexure P-4) is set aside. The respondents are directed to reinstate petitioner into service with continuity of service and petitioner is entitled to 50% back wages.

8.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

October 04, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.