

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3844 of 2016

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UCO Bank a body Corporate Constituted under the banking Companies Acquisition and transfer of Undertaking Act 1970 and having its Head Office at Kolkata and one of the Zonal office in Bhagalpur through its Zonal Manager namely Ashwani Kumar Garg, son of Sri Amar Nath Garg UCO Bank Zonal office Sk Tarafdar Road Adampur Chowk P.s Adampur District Bhagalpur.

.... Petitioner/s

Versus

1. The Union of India through the Secretary , Ministry of Labour Shastri Bhawan New Delhi.
2. The Regional Labour Commissioner (Central), Ministry of Labour & Employment Block -A Second Floor, Maurya Lok Complex, Patna.
3. The Assistant Labour Commissioner Central, Ministry of Labour & Employment Block -A Second Floor, Maurya Lok Complex, Patna.
4. Sri Pramod kumar Mishra son of late Bal Krishna Mishra Resident of Jaipur PO Jaipur District Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Adv.
For Union of India : Mr. Nivedita Nirvikar, Adv.
For the Respondent No.4 : Mrs. Sanjay Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2018

Heard learned counsel for the petitioner and learned counsel for the respondent no.4.

2. This writ petition has been filed by the petitioner for quashing the award dated 08.09.2015 passed by the Central Government Industrial Tribunal No.1, Dhanbad (for short 'Tribunal') in Reference Case No. 03 of 2013 whereby and whereunder the Tribunal has directed the management of UCO Bank (for short 'bank') to take the workman at once as casual employee and further directed to comply the award within a month from the publication of the award.



3. The facts of the case, in brief, are that the respondent no.4 Pramod Kumar Mishra raised an industrial dispute vide an application dated 23.08.2011 before the Regional Labour Commission (Central), Patna wherein he claimed that he was employed by the UCO Bank, Jaipur Branch, Banka on 27.01.2006 as computer operator on daily wages at the rate of Rs.100/- per day and besides working as a computer operator he also did other different jobs of the bank and he worked continuously without break in service for five years but on 19.02.2011 the bank verbally terminated his services without assigning any reason or without alleging any charge of misconduct and without any prior notice or show cause or any retrenchment compensation.

4. The bank filed its written statement before the Assistant Labour Commissioner (Central), Patna on 16.12.2011 wherein it took a stand that the claim of the respondent no.4 was baseless. He was not an employee of the bank. Thus, he was not entitled to get any relief. It pleaded that the respondent no.4 was engaged by the bank time to time as an outsourcer for helping in extra work of the branch and in this regard the branch had paid him remuneration as per the work purely on daily basis. The work was being taken from the respondent no.4 only in extreme exigencies for non-banking works and he left working from 19.02.2011 willfully because the bank did not agree to pay as per his demand. Therefore, there was no question of his



termination from the bank.

5. In view of the stand of the parties conciliation took place. However, as the matter could not be resolved in the conciliation proceedings, the conciliation failed and the matter was referred to the Ministry of Labour and Employment, Government of India, New Delhi by the Assistant Labour Commissioner (Central), Patna vide reference no. 5/47/2011/ALC-II dated 20/24.07.2012. Thereafter, the Central Government, in exercise of its power conferred by clause (d) of sub-section (1) and (2A) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), referred the following dispute for adjudication to the Tribunal :

“Whether the management of UCO Bank has obtained the service of the workman on regular basis for the period between 2006 to 2011 and if so whether the action of the management of UCO Bank in terminating the service of Shri Promod Kumar w.e.f. 19-02-2011 is legal and justified? What relief the disputant workman is entitled to?”

6. After receipt of reference, the Tribunal noticed the parties whereafter the respondent no.4 filed his written statement on 04.03.2013 and a written statement-cum-rejoinder was filed by the petitioner on 16.01.2014.

7. After hearing both the parties, the Tribunal passed the impugned award on 08.09.2015 whereby it has directed the



management bank to take respondent no. 4 at once as casual employee.

8. Learned counsel for the petitioner submitted that the Tribunal has failed to appreciate the fact that the petitioner was neither appointed by the competent authority nor procedure for appointment was followed and in fact no appointment letter was issued in his favour. He contended that the Tribunal also failed to appreciate that the respondent no.4 had left the work with effect from 09.02.2011 and as such question of his termination from bank service did not arise. He argued that the impugned award passed by the Tribunal is cryptic and the issue referred by the Central Government has neither been answered nor any reason has been assigned for granting relief to the respondent no.4.

9. Per contra, learned counsel appearing for the respondent no.4 submitted that the respondent no.4 was appointed on the post of computer operator on daily wages in Jaipur Branch on payment of Rs.100/- per day on verbal instruction of the authority on 27.01.2006. During the tenure of his service, he gave a request letter to the petitioner to increase his daily wage from Rs.100/- to Rs.200/- following excess work and the Branch Manager forwarded his letter to the appropriate authority of the bank on 17.05.2006 for seeking permission to increase his daily wage. He contended that inspite of continuous service for more than five years, the respondent no.4 was



verbally terminated from services from 19.02.2011 without giving any previous notice which is mandatory requirement under Section 25(F) read with Section 2(OO) of the Act in utter violation of the provisions of the Act.

10. I have heard learned counsel for the parties and carefully perused the record.

11. From perusal of the reference made by the Central Government, it would appear that the first issue, which was to be decided by the Tribunal, was whether the management of the bank had taken the services of the respondent no.4 on regular basis between the period 2006 and 2011. In case, the first issue would have been decided in affirmative that the respondent no.4 had actually served the bank on regular basis then the next issue, which was to be examined, was that whether the action of the management of the bank was legal and justified in terminating his services. In case, the second issue would also have been decided in favour of respondent no.4 that his termination was not legal then only the Tribunal could have passed an award granting relief to respondent no.4.

12. However, when I look to the award passed by the Tribunal, I find that the same has been passed in a most perfunctory manner.

13. Para-1 of the award simply incorporates the reference made by the Central Government. In para-2, it is stated that after



receipt of reference both parties were noticed and the workman filed his written statement whereas the management filed their written statement-cum-rejoinder and one witness was examined on behalf of the workman but no witness was examined on behalf of the bank and certain documents were produced by the bank. Para-3 contains pleadings of the workman whereas para 4 contains the pleadings of the management. Again para 5 and 6 contain pleadings made by the workman and the description of documents filed on behalf of the bank. In para 7 and 8 the findings recorded by the Tribunal have been incorporated which read as under :-

“7. The matter is finally referred to this Tribunal. After hearing it is settled and decided that the bank management to take the workman at once as casual employee. It is also pertinent here to mention that the workman files voluminous documents that bank paid the workman wages and even acknowledge him casual computer assistant.

8. Considering the facts and circumstances that take the workman as casual employee on prevalent wages, management is directed to comply this award within a month from the date of publication of award.

This is my award.”

14. The award is not only perfunctory but cryptic too. It is difficult to comprehend the impugned award passed by the Tribunal. The reference made by the Central Government has not been



answered at all by the Tribunal. There is no finding that the management of the bank had taken the services of the workman on regular basis; that the respondent no.4 had rendered his services between 2006 and 2011 in the bank; and that the action of the bank in terminating the services of the workman was illegal and unjustified. None of the issues referred by the Central Government to the Tribunal was decided or answered by the Tribunal.

15. According to Section 2(b) of the Act award means an interim or a final determination of any industrial dispute or any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A. A reference made to the Tribunal is required to be answered and the Tribunal is bound to proceed and decide the matter on merits on the issues of dispute between the parties referred to by the government. A complete failure of the Tribunal in deciding the disputes referred by the government to it has made the impugned award legally unsustainable.

16. In view of the foregoing discussion, the impugned award dated 08.09.2015 passed by the learned Presiding Officer, Central Government Industrial Tribunal No.1, Dhanbad in Reference Case No. 03 of 2013 is set aside and the case is remanded back to the Tribunal.

17. The Tribunal will now pass the award after giving an



opportunity of hearing to the parties in accordance with law in the light of the observations made above. Since the case is quite old, the Tribunal shall dispose of the case as early as possible preferably within six months from the date of receipt of a copy of the order.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.08.2018
Transmission Date	

