

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1339 of 2014

IN

Civil Writ Jurisdiction Case No. 9373 of 2007

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The Management of Punjab National Bank Zonal Office, Pankaj Market, Saraiyaganj, Muzaffarpur, through Shri Shailendra Kumar Jha, Manager, HRD, Punjab National Bank, Regional Officer, Darbhanga, Now its Officer S.P. Kataria, Chief Manager, Circle Office, Ramchandrapur, Bihar.

Petitioner/Appellant

Versus

1. Mintu Kumar son of Late Shri Naresh Jha, resident of village-Tetri, P.S.-Naugachhia, District-Bhagalpur, Bihar.
2. The Presiding Officer, Industrial Tribunal, Bailey Road, Sharm Bhawan, Patna, Bihar.

.... Respondents

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Appearance :

For the Appellant : Mr. Raj Nandan Prasad, Adv.

For the Respondents : Mr. Purushottam Kumar, Jha, Adv.

: Mr. Avanindra Kumar Jha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 29-03-2018

Challenging the judgment and order dated

29.08.2012, passed in C.W.J.C. No. 9373 of 2007 by the



learned Writ Court the management of Punjab National Bank is in the intra court appeal before us.

2. It appears from perusal of the impugned order of the learned writ court that the management of Punjab National Bank had challenged the Award dated 3rd April, 2007, rendered in Reference Case no. 6 (C) of 2005, in favour of the workmen directing the management of the Bank to regularize the services of workmen Mintu Kumar (Respondent no. 1) with effect from 1st January, 1999 on the ground that he had put in more than 240 days service in the year 1998. The reference case has been allowed in favour of the workmen with the aforesaid direction for regularization as also to pay all benefits including pay etc. which a regular fourth grade employee is entitled to minus the amount already paid to him by the bank. Learned writ court refused to interfere with the award holding that the Industrial Tribunal had committed no error in answering the reference in favour of the workmen.

3. Learned counsel representing the petitioner-appellant has assailed the impugned award as well as the



order passed by the learned Writ Court on the ground inter-alia that the learned Industrial Tribunal has gone beyond the scope of reference and thereby a direction has been issued to regularize the private respondent in service as a Sub-Staff in class-IV category with effect from 1st January, 1999 with all consequential benefits.

4. Our attention has been drawn towards the specific terms of reference which is quoted here under for a ready reference:-

“ Whether the claim of Sri Mintu Kumar that he was engaged from the year 1993 to September 2001 as a sub staff on regular basis by the management of Punjab National Bank is correct? If so, whether the action of the management in terminating him from service is legal and justified and to what relief Shri Mintu Kumar is entitled?”

5. Learned counsel submits that upon perusal of the evidences which were brought before the Industrial Tribunal the following issues were framed in paragraph 4 of the impugned award which read as under:-

(i) Whether the dispute raised is



an industrial dispute as defined u/s 2(K) of the Industrial Dispute Act, 1947.

(ii) Whether the claim of Shri Mintu Kumar that he was engaged from the year 1993 to Sept. 2001 as a sub-staff on regular basis by the management of Punjab National Bank is correct?

(iii) Whether the action of the management in terminating him from service is legal and justified?.

(iv) To what relief Shri Mintu Kumar is entitled?.

6. The Tribunal decided issues no. 1 and 2 together and upon appreciation of the materials by way of evidence available on record the Tribunal came to a conclusion that the claim of Mintu Kumar that he was engaged by management as sub-staff on regular basis from 1998-2001 is correct.



7. As regards the issue no. 3, the Tribunal rejected the contention of the management that Mintu Kumar not being an appointee on permanent basis through regular process of appointment can not claim regularization in service. This contention of the management was rejected by the Tribunal by relying upon a judgment of the Hon'ble Supreme Court in the case of **State of Haryana and Ors etc. Vs. Piara Sing and others reported in AIR 1992 SCC 2130**. The Tribunal held that because Mintu Kumar was engaged by the management as a sub-staff on regular basis from 1998-2001, i.e., for more than 3 years, therefore, the question as to whether Mintu Kumar was initially appointed regularly or irregularly becomes immaterial. The Tribunal, therefore, held that because Mintu Kumar had worked for more than 240 days in a year, after more than 3 years the action of the management in terminating his service, that too, without compliance of the directions under Section 25(F) of Industrial Dispute Act, 1947 can not be held to be justified and legal, therefore, in aforesaid view of the matter the Tribunal passed the impugned award in specific terms stated



at the top hereinabove.

8. It is the submission of learned counsel representing the appellant-Bank that once the Tribunal was of the view that in this case there was non-compliance of the provisions of Sections 25(F) of the Industrial Dispute Act, 1947, the Tribunal could have at best only directed for reinstatement of the workmen putting him in the same position/status from where he was retrenched but, in no case, the Tribunal may be allowed to exceed the scope of reference made by the Central Government and in that view of the matter directions to regularize the respondent no. 1 in the service of the Bank and to pay him pay and other benefits of the post of sub-staff in class IV category can not be sustained.

9. Learned Counsel also submits that the reliance placed by learned Tribunal on the judgment of the Hon'ble Apex Court in the case of **Piara Singh (Supra)** is misplaced as the learned Tribunal could not appreciate that after the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi others reported in (2006) 4 SCC**



page 1, the judgment in the case of **Piara Singh (Supra)** can not be said to be laying down the correct law on the subject as existing today. It is also submitted that the direction of the Tribunal to reinstate the private respondent as a regular employee in Class IV with effect from January 1999, and to grant pay of the regular IVth grade employee is required to be set aside.

10. On the other hand learned counsel representing the workmen and private respondent no. 1 has opposed the submission of learned counsel representing appellant-Bank. Relying upon judgment of the Hon'ble Apex Court in the case of **ONGC Limited Vs. Petroleum Coal Labour Union & Ors. Reported in 2015 (6) SCC 494** as also a judgment of the Hon'ble Division Bench of this Court dated 14.09.2017, passed in Letters Patent Appeal 431 of 2011 (**Sandeo Hari Vs. Prasar Bharti Broadcasting Corporation of India, & Ors**). it is the submission of learned counsel for the private respondent no. 1 that the Tribunal is a competent forum to confer rights and privileges on either party which it may consider reasonable and proper,



though there can not be any deviation in the conditions in the terms and existing agreement. Learned counsel submits that the Hon'ble Division Bench of this Court in the case of Sandeo Hari (Supra) had taken a view and in a case where the termination of a workmen working in a casual/temporary capacity was found illegal, the order of the learned Writ Court was modified by granting the appellant reinstatement with full back-wages till the date of reinstatement.

11. While replying the submission of learned counsel for the private respondent no. 1, learned counsel representing the appellant-bank submits that in the case of ONGC Limited the terms of reference was diametrically opposite inasmuch as in the said case the reference was as to whether the management of ONGC is justified in not regularizing the workmen in the instant dispute, and, if not, to what relief the workmen are entitled to? The second question was whether the management of ONGC is justified in not paying equal wages to the workmen in the instant dispute at par with that of the regular workmen and, if not, to what relief, the workmen are entitled to? Thus it is his submission



that the ratio of the judgment of the Hon'ble Apex Court in the case of ONGC limited (Supra) would not be applicable in the facts and circumstances of the present case.

12. Again while distinguishing the case of Sandeo Hari (supra) learned counsel for the appellant-Bank submits that in the said case the appellant was engaged as a 'Safai Karamchari' in the office of All India Radio, Bhagalpur. His name was called for the purpose of his selection from the District Labour Employment Exchange, Bhagalpur and interview letter was issued to the appellant asking him to appear for interview and undergoing a selection process which was to be held some time in September, 1985. It was found that he had participated in the selection process and after appointment, he had continued to work for a period of 14 years when his service was terminated without assigning any reason and without following due process of law. It is in the said circumstance the Tribunal had awarded reinstatement with backwages which was interfered with by the learned writ court but in the Letters Patent Appeal, the Hon'ble Division Bench modified the order of the learned writ court. It is his



submission that the facts and circumstances of the case of Sandeo Hari (supra) were totally different and are distinguishable, and in the present case the view taken by the learned Tribunal as well as the learned Writ Court are required to be interfered with.

13. Having heard learned counsel for the parties and on perusal of the record we find that admittedly the private respondent was not selected as sub-staff on a class IV post by following the selection process. Learned counsel appearing for private respondent admits this position in course of hearing also that private respondent was not a permanent employee appointed on regular basis. We find that the private respondent having been retrenched from service without following the mandatory requirement under Section 25(F) of the Industrial Dispute Act, 1947, on the reference made to the Industrial Tribunal, the Tribunal was required to answer the reference only within the scope and ambit of the reference and not by exceeding upon the terms of reference.

14. On perusal of the award rendered by the Industrial Tribunal we have no hesitation in recording that



while answering Issue no. 3 the Tribunal has gone in a different direction taking a case as if the Tribunal has to consider the issue of regularization of the private respondent no. 1. The appointment on regular basis in terms of reference is only synonyms to the word 'continuous' and according to the reference the Tribunal was required to find out whether the private respondent had been engaged from the year 1993 to September, 2001 as a sub-staff continuously by the management of the Bank. Thus the reference can not read so as to mean and understand that the Tribunal was called upon to examine whether the private respondent was a regular/permanent employee and is required to be regularized as a sub-staff in class IV category.

15. In our opinion once the tribunal found that the private respondent had continuously been engaged from 1998-2001 but was removed with effect from 01.10.2001 without following the provisions of Section 25(F) of the Industrial Dispute Act, 1947, the Tribunal would have been fully justified in reinstating the private respondent in the same status and position from where he was removed but the



Tribunal proceeded to consider an entirely different issue of regularization and for that purpose relied upon the judgment of the Hon'ble Apex Court in the case of **Piara Singh (Supra)** we are unable to sustain the direction of the Industrial Tribunal to the extent indicated in paragraph 11 and 12 of the impugned award.

16. We agree with submission of learned counsel representing the bank that the issue of regularization was not within the scope and ambit of the reference made to the Tribunal and the reliance placed by the Tribunal on the judgment of the Hon'ble Apex Court in the case of **Piara Singh (Supra)** is wholly misconceived and misplaced. The law governing the issue of regularization has been settled by the Hon'ble Constitution Bench of the Apex Court in the case of **Uma devi (Supra)**. It is not in dispute that in the case of private respondent no selection process was followed and, therefore, the issue of regularization which has been taken up by the Tribunal for consideration was neither the dispute raised nor was required to be taken while considering the reference by the Tribunal.



17. The reliance placed by learned counsel for the private respondent on the judgment of the Hon'ble Apex Court in the case of ONGC (Supra) and on the judgment of this court in **Sandeo Hari (Supra)** would not be helping the private-respondent because both the judgments have been rendered in a totally different facts situation. We have noticed the distinguishing feature of those judgments in the preceding paragraphs.

18. In result we are of the considered opinion that the private respondent having been removed without following the established procedure of law as contained in Section 25(F) of the Industrial Disputes Act, 1947 would be entitled to reinstatement in the same status, where he was at the time of his termination and shall be entitled to the full back wages. The impugned award in so far as it directs reinstatement of private respondent by regularizing him as a sub-staff against a class IV post with effect from 1.1.1999 and payment of pay etc of the said post are hereby set-aside.

19. Directions issued by the Industrial Tribunal and the learned writ court are modified to the extent indicated



hereinabove.

20. The appeal is partly allowed and disposed off accordingly.

(Rajendra Menon, CJ)

siddharth/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	
CAV DATE	
Uploading Date	02.04.2018
Transmissio n Date	

