

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8681 of 2017

United Bank Of India, Regional Office, 2nd Floor, Abhay Bhawan, Frazer Road, Patna-800001, through Ashwini Kumar Jha, the Chief Regional Manager.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Labour Department, New Delhi.
2. Sri Prem Kishore, Son of Sri Ramanand Singh, Village Post-Purushottampur, District-Muzaffarpur-842002 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Advocate Mr. Binod Bihari Sinha, Advocate Mr. Amarjeet Choudhary, Advocate
For the Union of India	:	Mrs. Nivedita Nirvikar, CGC
For Respondent No.2	:	Mr. Y.C. Verma, Sr. Advocate Mr. L.K. Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 20-06-2019

Heard the parties.

In this case, the petitioner, which is management, is challenging the Award dated 19.07.2016 in Reference Case No. 3 © of 2014/59 of 2012 by which the Tribunal has directed the management to regularize the service of the respondent no.2-workman against the vacant permanent post of sub Staff immediately, since the workman was also operating generator so back wages has not been given to him.

This Court in the present case is not giving any opinion on the merit of the case, but only examining as to whether the



Tribunal has acted in right manner, as to whether has recorded a finding in favour of workman with respect to the rendering of service of 240 days in preceding 12 months as well as the relief which has been granted to the workman is a proper and legal?

It appears from the records that the workman has claimed that he was working in the management-Bank and was assigned the job of Generator Operator. He was not only operating the generator but also discharging another incidental work connected with the work of the Bank. He was terminated from service on 20.01.2009 and, thereafter, he was not allowed to work on the said post of generator operator. Being aggrieved by the action of the Management-Bank, the respondent no.2-workman raised the industrial dispute and the same was referred by the Union of India vide Notification No.L-12012/19/2012-IR (B-II), New Delhi dated 30.08.2012 (Annexure-1) and the following terms were referred for adjudication. The terms were as follows :-

“Whether the action of the management of United Bank of India in terminating the services of Sh. Prem Kishore S/O- Sri Ramanand Singh w.e.f. 20.01.2009 without adhering the provision of ID Act, 1947, is legal and justified? Whether the demand of Sh. Prem Kishore for regularization and payment of due wages is just and proper? What relief the workman is entitled to?”



On notice, both sides had appeared. Written statement was filed by the workman wherein he has claimed that he had worked for 240 days, wrongly been terminated from service, entitled to the relief of reinstatement along with regularization in service in view of the provision of the Bank, whereas, the Management-Bank appeared and filed its written statement wherein a plea has been taken that Prem Kishore- respondent no.2 was not a workman under the Industrial Disputes Act and not competent to raise the instant dispute as he was never employed by the Bank. He had deployed his diesel generator set on rent for the purpose of emergency power supply to the Bank in case of power failure. The Bank never offered any employment to Prem Kishore at any point of time and the question of his retrenchment does not arise. The Bank never issued any appointment letter. No recruitment/appointment could be made *de hors* to the recruitment rules. It has further been stated that the Bank had made full and final payment to Prem Kishore for the occasional work of sanitation if any, or any other work of similar nature done by him in case of exigencies of the said Branch, accordingly, payment was made to the work done. The Bank has denied his engagement for 240 days continuously in a calendar year inasmuch as the workman had moved before this Court in writ jurisdiction, which



was dismissed and, as such, the workman is not entitled to any relief.

The parties filed their respective documents. One witness was examined from the side of Management and two witnesses were examined on behalf of the workman. Number of documents have been exhibited as documentary evidence from the side of workman.

M.W. 1, Arun Kumar Sinha, who was posted as Chief Manager, Patna Regional office, Patna has stated that Prem Kishore was never been employed by the Bank and, as such, there was no relationship with the master and servant and this fact was communicated vide letter dated 18.02.2009. He has further deposed that Prem Kishore had deployed his diesel generator set on rent for the purpose of emergency power supply to the bank in Purushottampur Branch in case of power failure as per the terms and conditions of the agreement reached between the parties. Prem Kishore was working as lessor. Agreement was renewed from time to time and rent was duly paid in terms and conditions of agreement. Under no circumstances, a person can sign lease agreement with bank if he is indeed under permanent/temporary employment of nationalized bank which would in violation of service conditions as applicable on its workmen. The Bank never



offered any employment to him. In absence of relationship of master and servant, the question of reinstatement does not arise.

Two documents were exhibited on behalf of the Management as Exhibits M and M/1. One letter has been issued by the Public Information Officer of Regional Office of the bank and another letter has been issued by Assistant General Manager of the Bank.

In his cross-examination, he has taken a plea that he was not working in Purushottampur Branch where he was running generator in the bank and occasionally he did some repair work as labourer and payment was used to be made to him for the work done by him. At the relevant time, payment was made @ Rs.50-60 per day. This witness has stated that he does not know whether daftari was posted in the year 2007 in Purushottampur Branch or not, but sub staff was posted there. He denied that at that time sub staff was not posted there. He also denied that when sub staff was not posted then Prem Kishore worked as sub staff. This witness identified vouchers which were filed by the workman large in number showing the documents of the bank.

Prem Kishore himself has examined as WW.1 and he has claimed that he was working as daily wager and he stated that he used to be paid Rs.25 per day, which increased up to Rs.70/-per



day. When Upendra Mishra went to Kolkata for training due to his promotion then this witness had worked as Daftari from 01.07.2007 to 01.08.2007. He also used to do other works regularly in the branch. Upendra Mishra was relieved Purushottampur Branch w.e.f. 01.08.2007 to join in Mohali Branch. On 20.01.2009 when he went branch then the Branch Manager Sri Ashok Kumar Jha orally informed that he was not required to work there and also communicated that he was not required to come bank again for the work. He has not filed any appointment letter nor call letter was given for interview though he has claimed that interview was conducted by the Branch Manager and other official. He was appointed orally.

Ram Sawarath Rai was also examined as WW.2 and he has supported the claim of the workman. The workman has also examined large number of documents which were marked as Exhibits W to W/12.

The Industrial Tribunal after discussion has granted the relief of regularization in service having held that he is not entitled to back wages as he was working as generator operator.

Counsel for the Bank has submitted that the Tribunal has committed an error of law in shifting the onus upon the management of proving the fact with regard to the number of days



of 240 days worked by the workman, though primarily onus is upon the workman to assert and prove the working 240 days in preceding 12 months from the date of termination, which is condition precedent in holding any termination illegal and void. He has further submitted that the workman would have been right had he demanded for production of the documents, failure of management to produce the record relating to his working as there could not have been any access to document of management and, in that event, the statement made in the dock would have been sufficient to record a finding in favour of the workman for completion of work of 240 days. Further he has raised that as no finding has been recorded of his working for 240 days, in the event of positive finding of his working even then the question of grant regularization does not arise, at best, the Tribunal in the event of recording a finding of illegal termination could have directed for reinstatement in service. In the event of proper manner of appointment of workman, only then he could have right to claim regularization, but the Tribunal nowhere recorded a finding of illegal termination and its consequence no relief of reinstatement could be granted and, as such, the grant of relief straightway regularization does not arise. In support of his submission, he has placed reliance on the two judgments of the Hon'ble Supreme



Court, one in the case of *Management of the Barara Cooperative Marketing cum [Processing Society Ltd. v. Workman Pratap Singh](#) reported in 2019 (1) PLJR (S.C.) 353* and another reported in *2015(2) PLJR (SC) 6 (Oshiar Prasad & ors. v. the Employees in relation to Management of Sudamdih Coal Washery of M/s BCCL, Dhanbad)* to assert that the Hon'ble Supreme Court has said that reinstatement and regularization are two different matters and regularization can be granted only to those who are working on the day of passing of the order.

Counsel for the workman has submitted that he had come to the dock and asserted his claim about number of days he has worked and illegally he has been terminated. He has also submitted that not only he was discharging the duty of generator operator, but also he used to discharge other works of the management including as Daftari. He has also asserted that he used to be paid the salary by way of voucher and the claim of the petitioner bank that he was not working continuously is misdirected and not sustainable in the eye of law.

Having considered the rival contention of the parties, the proving of number of days of 240 days is basically and primarily onus is upon the workman to assert and prove that he had worked 240 days in preceding twelve months from the date of



termination order and the management has failed to comply the provision of Section 25 (F) of the Industrial Disputes Act, which is condition precedent and in absence of the compliance, the order is void, but on going through the award of the Tribunal, what the Tribunal has committed an error in shifting onus upon the management and there is no finding recorded that the management has failed to produce the records for the work done by the workman inasmuch as he could have easily recorded a finding of his working on the basis of material either documentary or oral about the number of days discharged by him, but he has failed to do so. Further, from the order of Tribunal, it appears that he has not granted the relief of reinstatement, straightway directed for regularization without relief of reinstatement, the question of granting regularization does not arise, so in this view of the matter, the Tribunal has committed an error of law and misdirected himself in shifting the onus upon the management inasmuch as finding has been recorded about the number of days of work done by him in preceding 12 months from the date of termination.

In such view of the matter, the order of Tribunal is quashed. The matter is remanded back to the Tribunal and the Tribunal is directed to decide the case on its own merit.



This Court is not giving any opinion either in favour of the petitioner or in favour of workman. If any observation is given, it will not be a basis for consideration by the Tribunal. The Tribunal is obliged to apply his independent mind on the facts and law and decide the case preferably within a period of two months from the date of receipt/production of a copy of this order.

With this observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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