

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23246 of 2012

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UCO Bank, a body corporate constituted under the Banking Companies Acquisition & Transfer of Undertaking Act, 1970 and Having its Head Office At 10, Brabourne Road, Kolkata and Zonal Office at 4th Floor, Maurya Lok Complex, New Dak Bunglow Road, Patna through its Zonal Manager, Shah Mohmood Ahmad, son of Shah Shakil Ahmad, Resident of Jeetpur Hare Country Club, Patliputra Colony, P.S. Patliputra, District Patna.

... .. Petitioner

Versus

1. The Union Of India through the Secretary, Government of India, Ministry of Labour, Shastri Bhawan, New Delhi.
 2. The Under Secretary, Government of India, Ministry of Labour, Shastri Bhawan, New Delhi.
 3. The Regional Labour Commissioner (Central), Ministry of Labour, 6/16, Block-A, 2nd Floor, Maurya Lok Complex, Patna.
 4. The Assistant Labour Commissioner (Central), Ministry Of Labour, 6/16, Block-A, 2nd Floor, Maurya Lok Complex, Patna.
 5. The Presiding Officer, Central Government, Industrial Tribunal No.-1, Dhanbad.
 6. The Secretary, Central Government Industrial Tribunal No. - 1, Dhanbad
 7. The UCO Bank Employees Association having its Office Situated At UCO Bank, Exhibition Road, Patna through its State Secretary.
 8. Dashrath Mandal, S/O Sri Kailash Mandal, Resident of Village - Mahaddipur, P.S. - Kasim Bazar, District – Munger.
- Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar Pandey, Advocate
For the Union of India	:	Smt. Kanak Verma, C.G.C.
	:	Mr. V. N. Sahay, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 21-01-2019

Heard learned counsel for the parties.

2. In this case, the petitioner-Bank is challenging the



award dated 06.06.2012 passed in Reference No.94 of 2006.

3. As per the workman, he was orally appointed by the management of UCO Bank, Munger, to discharge the duty as a Peon with effect from 23.05.1981 and after appointment, he started working as Peon from 10:00 am. to 06:00 pm. and from 10:00 am. to 3:00 pm. on certain days. The duties of workman included taking out ledger, registers from almirah, placing the same on tables, counters and vice-versa, carrying token book and scroll book, posting mails, distribution of bank's dak, serving water/tea to the officers and staff. He was being paid wages Rs.5/- per day initially, which was subsequently raised to Rs.35/- per day. The payment was made through vouchers. When he was working with the Bank, a settlement was arrived at between the representative of the workmen Union and the management of the UCO Bank at the apex level on 12.10.1989 for permanent absorption of the services of all daily wages workmen performing the works of peon, working for 240 days during the period 12.10.1986 to 12.10.1989. Following that settlement, the petitioner filed an application for permanent absorption in the services of the Bank as a Peon, but all of a sudden, the management instructed the petitioner on 1.12.1997 to stop his work and not to attend the office, thereby the services



of the petitioners were terminated with effect from 01.12.1997.

4. Against the action of the management, the petitioner approached before the management for his reinstatement and regularization as the management started regularizing the service of other workmen. When the petitioner was not reinstated and regularized, he approached the Union for redressal of grievance, accordingly, the Union raised an industrial dispute, but the conciliation proceeding ended in failure and the matter was referred to the Tribunal. In the proceeding, the management filed written statement, having stated the petitioner was working as casual worker/part time sweeper, the persons who are employed to work less than six hours a week was to be engaged with certain terms and condition. It has also been stated that the present petitioner was hired on casual basis for bringing water and sometimes to clean the branch premises. The Branch Manager, who engaged the petitioner on casual basis is not authorized to do so. So, his engagement is illegal. It has further been stated that the UCO bank employees association raised the dispute and the agreement was signed on 12.10.1989 and the management agreed at the apex level that those who have already worked for 240 days or more, will be regularised in service, but there were



other terms and conditions mentioned in the agreement. A panel of 460 persons have been prepared and till date only 60 casual employees have been absorbed against permanent vacancies.

5. From the award, it appears that both the sides have produced their respective oral and documentary evidence in support of their respective cases and the Court has recorded that the termination of workmen is illegal and straight-way directed for regularization of service.

6. Learned counsel for the Bank has submitted that the petitioner was only a part time workman, cannot be treated to an employee under Section 2(S) of the Industrial Disputes Act as his job was only to serve the water and to clean the bank premises as and when required he used to be engaged as well as he has stated that his entry was illegal as the Branch Manager did not have any right to get an engagement of the workman. In support of the submission, he has placed reliance on the decision of the Full Bench reported in **2009 (2) P.L.J.R. 1017**, having stated that if the appointment itself is illegal, the question of grant of benefit of reinstatement to a workman under Section 25(F) does not arise.

7. In contra, learned counsel for the workman has



submitted that the person, who is working and discharging the duty even as part time, cannot be excluded from the definition of workman as the person who is working as casual employee or part time are also a workman as stipulated under Section 2(S) of the Industrial Disputes Act and equally the provisions of Section 25(F) and 2(OO) will apply, he cannot be deprived of right and protection as provided under the Industrial Disputes Act. In support of his submissions, he has placed reliance on the decision rendered in the case of ***Devinder Singh v. Municipal Council, Sanaur***, reported in ***2011 LAB. I.C. 2799*** and having stated that the petitioner has worked from the year 1986 to 1997 and the payment was always made through vouchers. It has further been submitted that there is no such Rule and Regulations in the Bank, which precludes that the Branch Manager does not have jurisdiction to employ the casual employee for the necessary work to be discharged by the Bank.

8. It has further been submitted that the petitioner was not only a water boy but he was discharging different duties from 10:30 to 6:00 pm., which he has narrated in the written statement and submitted that this Court may not interfere with the award.

9. Having considered the rival contentions of the



parties, this Court has gone through the award, which does not show that the Tribunal has dealt with the issue raised by the parties and nowhere it has been decided the points raised by the management about the applicability of 1989 Circular, which stipulates for regularization, will be applicable in the case of the petitioner nor the Tribunal has dealt with anywhere the number of days which he has worked. A person is entitled to benefit and protection under Section 25(F) of the Industrial Disputes Act, in the event the workman has worked for 240 days preceding 12 months in terms of Section 25(B) of the Industrial Disputes Act. Merely, a person has stated, without proper consideration, ipso facto, he cannot be regularized, he can only be regularized in a situation when he is covered by the settlement or by any statutory provision, but nowhere any discussion has been made in the award.

10. In such view of the matter, the award dated 06.06.2012 passed by the Central Government Industrial Tribunal No.1, Dhanbad, in Reference No.94 of 2006, is set aside. The matter is remanded back for deciding the issues raised by the parties in accordance with law.

11. Office is directed to return the file to the Tribunal and on receipt of the file the Tribunal will try to conclude the



proceeding within a period of six months from the date of receipt/production of a copy of this order but subject to cooperation extended by both the parties.

12. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	01.02.2019
Transmission Date	

