

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 30.04.2019

CWP No.32350 of 2018

State Bank of India ...Petitioner

Vs.

Lalit Joshi & others ...Respondents

CWP No.33424 of 2018

State Bank of India ...Petitioner

Vs.

Som Nath & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Chatrath and Ms. Jasleen Kaur, Advocates,
for the petitioner.

Mr. Ashok Sharma Nabhewala, Advocate,
for respondent No.1.

RAJIV NARAIN RAINA, J.

1. This order will dispose of the aforementioned two writ petitions i.e. CWP No.32350 of 2018 and CWP No.33424 of 2018 filed under Article 226, as common questions of law and fact are involved in them, which can conveniently be decided by a common order. Though the files are thick and facts aplenty, but many of them need not be re-traversed since the award deals with those.

2. These two connected petitions can be determined on the vital question identified by the Presiding Officer, Central Government Industrial Tribunal -cum- Labour Court-I, Chandigarh in the identical

awards dated 13.08.2018 in ID No.94 of 2012 (CWP No.32350 of 2018) and ID No.95 of 2012 (CWP No.33424 of 2018).

3. The issue is this; these two workmen (respondent No.1 in both the petitions) were engaged as Canteen Waiters in the Zonal Office of the State Bank of India, Sector 17, Chandigarh in January, 1990 along with five other Canteen Waiters, who were junior to them from the date of engagement, namely, Tula Ram, Ashok Kumar, S.K.Mishra, Saroop Singh and Arvind Sharma. They were appointed by the Chief Manager, who doubled up as ex officio Manager of the Canteen run by the Bank for its employees. No qualifications were prescribed for the job of Waiter and several of them were appointed at a salary of Rs.350/- per month to serve from 9.30 AM to 5.30 PM i.e. during banking hours. Their job was to provide tea, lunch etc to all the employees of the Zonal Office comprising a large contingent. There were 18 canteen workers working shoulder to shoulder at the relevant time. A Local Implementation Committee was constituted to control, supervise and manage the subsidized canteen on behalf of the management of SBI.

4. Years ago, the petitioner and other canteen workers filed a joint application under Section 20 of the Minimum Wages Act, 1948 bearing Application No.6 of 1993 before the Authority under the Minimum Wages Act claiming that they were being paid only Rs.350/- per month, whereas they should have been paid wages specified under the Act of 1948 for the job. On the other hand, Management asserted that they did not work for the whole day and were part-time. The Authority appointed a Local Commission to verify the facts and on spot checking it was found that these workers were working for the whole day and all 11

of them were entitled to minimum wages fixed for the same job description. On a consideration of the cause, the Authority under the Minimum Wages Act allowed the claim of all the workers including the present petitioners and granted them minimum wages and directed the management to pay compensation to the extent of four times of the amount actually payable by way of penalty. The order was pronounced on 23.05.1995.

5. Aggrieved by this, the management carried CWP No.9240 of 1995 to this Court, which was dismissed on 15.11.1995 by the Division Bench by passing a scathing order against the Bank. The Bench observed that it was a case where litigation was forced by an unscrupulous administration of public institutions like State Bank of India for ulterior reasons or just to satisfy their personal egos. The Bench further observed:

“...Instead of extending a helping hand to the uneducated poor employees, the attitude of the authorities appears to be heartless, callous and totally unexpected or premier bank whose other regular employees are getting the best emoluments in the country as compared to their colleagues in other corporations/departments. It appears that attitude of the petitioner-bank is to suck the blood of poor uneducated labour by exploiting them by paying them a sum of Rs.350/- per month in this era of high cost of living. In our considered view, the penalty imposed is rather on the light side. In such type of cases, the authorities are expected to impose exemplary penalties. Even this penalty, the petitioner State Bank of India has not taken supportingly and has come to this Court to invoke Court's extraordinary writ jurisdiction to challenge the rate of penalty.

In view of the observations made above, we find no force in the writ petition which is only a callous attempt to harass the workers with a view to extract monetary concession from them.

We are further of the view that the authorities must ensure appropriate steps to be taken against the officers, who have failed to make payment of Minimum Wages to the Bank workers. The writ petition is dismissed with costs of Rs.1000/- to be paid to each respondent worker.”

6. It may be mentioned that on 30.11.1994, the State Bank of India circulated a note for the General Manager (Operations), Zonal Office Punjab, Staff Canteen, advising that with the shifting of Local Head Office on 01.07.1989, the staff canteen being run by the Bank also must shift to the existing new building in Sector 17, Bank Square, Chandigarh. As a result, the staff canteen was required immediately for this office while also for the old canteen existing in old office in Bank Square Chandigarh. The Local Implementation Committee (LIC) had engaged 10 employees and it was advised that the canteen be taken over by the Bank and 6 employees including cooks, bearers and dish cleaners be appointed in it. These 10 employees then engaged by LIC would be interviewed by a Selection Committee constituted for considering 6 of them for permanent appointment in the Bank subject to their fulfilling the eligibility criteria. If approval was granted, the process of taking over the Canteen would start. Against the 6 vacancies of Canteen boys, approved for being made permanent, interviews of the workers were conducted on 21.07.1995 by an Interview Committee nominated by the Deputy General Manager (Establishment) comprising of four Officers of the Bank. The result of the interview process as per letter dated 25.07.1995 is at pp.91 of the paper-book. A merit list was prepared and 6 names were approved, namely, Arvind Kumar, Anand Kumar Sharma, Shatrughana Kumar Mishra, Tula Ram, Ashok Kumar and Sarup Singh. The names of both the workmen herein did not find mention in the select list.

7. In the course of trial, WW-1 Lalit Joshi appearing for self in the witness-box deposed during his cross-examination that he was interviewed on 21.07.1995 along with other canteen workers, but no result was declared after the interview. As a fall out of the interview and appointment of 6 workmen, the respondents were disengaged from service and form subject matter of industrial reference before the Labour Court. The basis of selection became subject matter of the dispute referred for determination of the Labour Court. It is not disputed that procedure for retrenchment was not followed by the Bank at the time of termination even though both the workmen had put in around 5½ years of continuous service.

8. To return to the vital question identified by the Labour Court and dealt with in paragraph 12 of the award and answered is such that the petitions must fail. The management was unable to produce the record of Interview Committee before the Labour Court despite specific calling for. Therefore, there is no material available from where rights under Section 25-G and 25-H can be judicially determined apart the lacuna resulting from violation of Section 25-F of the ID Act. In the affidavit Ex.W-1, it was the specific stand of the claimant/workman that on 21.07.1995 the Bank absorbed junior persons, namely, Tula Ram, Ashok Kumar, S.K.Mishra, Saroop Singh and Arvind Sharma, at the cost of workmen, who were senior to them by an eye-wash interview for making 6 workers permanent.

9. MW-1 V.K.Maurya in his cross-examination as management witness admitted that workmen remained in service of SBI from 01.01.1990 to 27.07.1995. The Labour Court observed in

paragraph 13 of the award that the testimony of the workmen on Section 25-G and 25-H of the Act had gone unchallenged. Section 25-G could only be satisfied on production of tangible record of selection to depart from and justify the rule of 'last come, first go' by reason of inter se merit. If the merit positions were not known, it would be impossible to hold, who was more meritorious, even if the principles were to be applied to fill 6 vacancies. Termination of services of workmen in derogation of the provisions of Sections 25-F and 25-G of the Act will render the entire action of the management illegal, null, void and untrustworthy and I find no earthly reason to differ with this finding recorded by the court.

10. When these matters came up for the first time, respondent/workmen were on caveat. Upon hearing Mr. Chatrath, the Court issued its first interim order on 31.01.2019 giving yet another chance to the management/SBI to produce the original record of selection conducted in the year 1995 while posting the matter to 05.02.2019. On the next day fixed, further time was sought by the SBI and thereafter on 13.02.2019, this Court passed the following order:

“Petitioner-State Bank of India to file an additional affidavit disclosing number of canteen workers in the State Bank of India, Punjab Zonal Office, Sector 17-B, Chandigarh during the period 1994-95 and the status of canteen in the Local Head Office (LHO), Sector 17, which is nearby to the Punjab Zonal Office in a new building. Bank would also disclose the date when the new building of LHO was occupied. The number of canteen workers in LHO in 1994-95 and today be also disclosed. They should also disclose the current strength of canteen workers in the Punjab Zonal Office. When the six canteen workers were selected and absorbed after interviews, were they transferred

from the Punjab Zonal office to LHO. Those orders be placed on record, if any, with the additional affidavit to know the method adopted to transport them from Punjab Zonal Office to LHO.

List again on 22.02.2019.

Compendium of judgments supplied by both the counsel be kept in the Tablaq.

A photocopy of this order be placed on the connected file.”

11. Thereafter, an affidavit has been filed, which does not promote the case of the management over and above the adjudication by the Tribunal to vary its dispensation and discretion in moulding the relief in a fair and just manner. Relief may not be left to imagination while passing a judicial award. Presumptions may have no place as substitute of best evidence which has been withheld.

12. Mr. Vikas Chatrath appearing for the management/Bank, has been at pains to explain his case in the absence of record of selection to justify departure from Section 25-G of the Act or to circumvent the provisions of Section 25-F (a), (b) & (c) which are mandatory conditions precedent to termination. The SBI was expected to have preserved and retained the record of selection especially in the face of litigation, past and present. The best evidence does not exist on file to justify retrenchment of the respondents and their exclusion from the merit list. The management's defence was that the petitioners were not found suitable, but how this opinion was formed remains a mystery. Therefore, the findings and reasons in the award are unassailable and liable to be upheld.

13. As to what transpired between 1995 and 2012 is explained by litigation in CWP No.11143 of 1995 filed by Som Dutt & others on the same subject matter contending that the action of the Bank in terminating their services on 27.07.1995 was in violation of Section 25-G of the Act. There is no evidence to explain breach of seniority/priority principle. This litigation took 17 years in this Court for the preliminary objection of the SBI to be accepted that when ground taken was that the termination is in violation of Section 25-G of the Act, the petitioners should be relegated to their remedy before the Industrial Tribunal.

14. Accordingly, by an order dated 25.11.2012, the learned Single Judge relegated the petitioners to avail their alternative remedy under the ID Act with a direction that in case a claim petition is filed the same be disposed of expeditiously. By the time the order was passed, amendment in Section 2-A of the ID Act had come into force permitting workmen to approach Labour Court directly after following the procedure in the newly enacted sub-section of the Act. From this, it can be inferred that the Bank was well aware of the dispute since 1995 and should have had the wisdom to retain its original record and produce it when required in respect of the moot selection based on interviews and not preceded by any written examination.

15. For the reasons assigned in the impugned awards and what has been said hereinabove to fortify them, I find no valid legal ground to disturb the awards of the Labour Court granting the relief of reinstatement etc, as they do not appear to suffer from any illegal or infirmity in law or on fact or an error apparent on the face of the record and materials collected. The view taken by the learned Labour Court is

sound in law based on evidence and the lack of it. It is not for this Court to re-appreciate the evidence and come to a different conclusion on the same material in the absence of original record for which another opportunity was given, but the bank threw its hands up.

16. With the discussion above, the verdict is that both the petitions fail and are dismissed. The awards are maintained and the same be implemented without any delay.

30.04.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>