

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.2498 of 2011

***State Bank of India
Employees Union***

.... Petitioner
Mr. G. Tripathy, Advocate

-Versus-

***Deputy General Manager,
State Bank of India,
Bhubaneswar***

.... Opposite Party
Mr. A. Mishra, Senior Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIAK**

**ORDER
04.04.2022**

R.K. Pattanaik,J

1. Instant writ petition under Articles 226 and 227 of the Constitution of India 1950 is at the behest of the Petitioner challenging the legality of the impugned award dated 22nd October, 2010 (Annexure-1) passed in I.D. Case No.371 of 2001 by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (in short 'the Labour Court') on the grounds *inter alia* that it is not sustainable in law and is, therefore, liable to be quashed.

2. In fact, Petitioner has questioned the correctness of Annexure-1 whereby the Labour Court declined to regularize the services of the

disputant workman. As per the pleadings, the Bank and the All India State Bank of India Staff Federation (hence called as 'the Federation') under settlements agreed upon to consider permanent appointments on regular basis of the temporary employees engaged as on 9th June 1989 and as the workman had joined prior to the stipulated date, he was eligible for permanent absorption by the Opposite Party (in short 'the Management'), but when it did not materialize, an industrial dispute was raised which was then referred to the Labour Court for adjudication for a decision and the term of reference was, whether, the action of the Management, while not regularizing the services of the workman in the Bank to be justified? If not, what relief is entitled?

3. The Labour Court received pleadings and evidence from the respective parties and finally, passed the impugned award under Annexure-1 with a conclusion that the workman is not entitled to any such relief of regularization his services. According to the Petitioner, the above decision of the Labour Court is wholly illegal, arbitrary, perverse and contrary to the facts and law and therefore, it is not sustainable and thus, liable to be set aside entitling the workman to be regularized in service.

4. Heard Mr. G. Tripathy, learned counsel for the Petitioner and Mr. A. Mishra, Senior Advocate along with Mr. P.V. Balakrishna appearing for the Management.

5. The Government of India referred the above dispute between the parties in terms of Section 10(2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') and accordingly, the Labour Court answered the reference and concluded that the services of the workman cannot be regularized by taking into account the bipartite agreement/settlement entered into between the Bank and the Federation.

6. The stand of the Management as detailed in the courier affidavit is to the effect that in order to maintain industrial harmony in the Bank, a settlement was arrived at by it with the Federation on 17th November, 1987 under the provisions of the I.D. Act to provide an opportunity for permanent absorption to the temporary workers engaged in different branches of the Bank in the country. It is further apprised that as per the above settlement, the temporary/ex-temporary employees were divided into three categories, namely, 'A', 'B' and 'C' depending on the number of days worked in a given block period for being permanently absorbed in the Bank against vacancies which were to arise between 1987 and 1991. The Bank and the Federation thereafter modified said settlement of 1987 and included vacancies which were to arrive up to 1991 with a stipulation that the temporary employees and regularization of their services to be considered, who have worked during the period from 1st July, 1972 to 31st July 1988. It is further pleaded that couple more settlements were brought into existence between the Bank and

the Federation to include employees engaged for casual and in adhoc nature of work for them being empanelled as per the categories and last of the settlements was of the year 1996 which was in force till March, 1997 for filling up vacancies existed as on 31st December, 1994. According to the Management, interviews were conducted twice and some temporary employees and casual/daily wagers belonging to 'A', 'B' and 'C' categories were observed permanently in the Bank and as such, the panels lapsed on 31st March, 1997 and in so far as the workman is concerned, he was called for interview in 1993, however, could not qualify.

7. The workman was appointed as a cook in the zonal office canteen of the Bank at Bhubaneswar. It is claimed that the workman was selected for the above post after an interview held on 2nd March, 1988. It is made to understand that the workman was temporarily engaged and his appointment was extended from time to time which has been continuing till date. However, the services of the workman were not regularized. It was contended before the Labour Court that the case of the workman was recommended by the Chief Manager (OA) under Annexure-7. The Labour Court however held that it was not a recommendation so to say but a request to make necessary arrangements to fill up the vacancies of canteen staff by appointing regular employees. As revealed from Annexure-1, the workman had earlier approached this Court in OJC No.4929 of 1997 which was disposed of along with batch of cases

by a common judgment dated 15th May, 1998 passed in OJC No.2787 of 1997 upholding the action of the Management in offering regular appointments from both the panels against which an SLP was carried to the Supreme Court which was also dismissed.

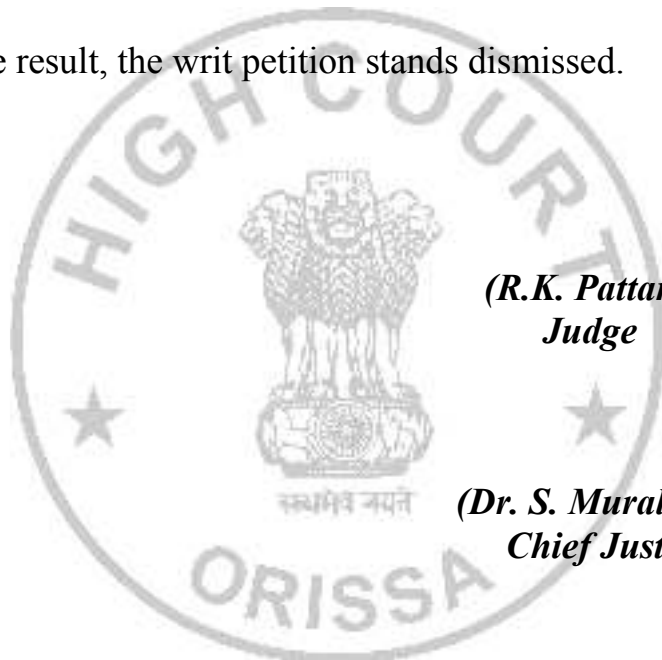
8. Mr. Tripathy, learned counsel for the Petitioner contends that the Labour Court without any adjudication was totally swayed away by the decision in the OJC No.2787 of 1997 and thereafter, dismissal of SLP by the Supreme Court and with that in mind, passed the impugned award under Annexure-1. Mr. Mishra, the learned Senior Advocate, on the other hand, contended that when the appointments from the panels were upheld by this Court and SLP filed by one of the aggrieved workman was dismissed by the Supreme Court, the Labour Court could not have answered the reference in favour of the Petitioner. In fact, the Labour Court referred to a decision of Supreme Court in the case of ***Secretary, State of Karnataka and others v. Uma Devi and others AIR 2006 SC 1806*** while denying the relief to the workman. The decision (supra), in fact, discouraged absorption of temporary/adhoc employees appointed without following the relevant rules. As far as the present case is concerned, no doubt, the workman was engaged in the Bank canteen on a temporary basis and continuing till date but then his services could not be regularized despite a process initiated pursuant to the agreements. The regularization of the services of some of the

temporary employees of the Bank was made in accordance with the settlements reached at between the Bank and the Federation. The Petitioner though was called for but could not qualify in the interview for the year 1993 out of the empanelled candidates. In OJC No.2787 of 1997, this Court stated to have upheld the selection of candidates from among the panels which was decided along with other cases including OJC No.4929 of 1997 filed by the workman. A distinction was sought to be made before the Labour Court that the above judgment of this Court dated 15th May, 1998 did not cover temporary canteen staff of the Bank. But according to the Court, the Labour Court rightly concluded that temporary employees included all workmen engaged temporarily in any capacity or post either as the casual workers or daily wagers. In the present case, when the workman after being empanelled was called for the interview which was held for absorption of temporary employees against regular vacancies in pursuance of agreements, it cannot be claimed that the judgment of this Court which was meant for all such employees irrespective of the nature of posts would be inapplicable to him. In that view of the matter, when the workman was called for the interview with other candidates by an initiative which was pursuant to the agreements between the Bank and the Federation but he could not succeed cannot be allowed to turn around and claim for regularization on account of his long service in the Bank's canteen since the year 1988. As a matter of fact, the Court does not find any legal error in the impugned award under

Annexure-1 and therefore, no any ground really exist to interfere with it. In other words, the Labour Court can be said to have rightly appreciated the materials on record and correctly reached at a decision, while answering the reference to the effect that after the panel expired on 31st March, 1997, there remained no course open for regularization of services of the workman.

9. Accordingly, it is ordered.

10. In the result, the writ petition stands dismissed.



(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

TUDU