

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3177 OF 2008

State Bank of India,
a Body Corporate duly constituted
Under the provisions of State Bank of India
Act, 1955 and Having its Local Head Office
at Bandra Kurla Complex, Mumbai and
amongst other placed having it's Branch
Office at Ahmednagar Main Branch, Through
Its Branch Manager Bhausahab Dnyandeo Pawar,
Age- 55 years, having authority to file the petition. **PETITIONER**
[Original Party No. 1]

VERSUS

Rajkumar Baban Mahabade
Age- 40 years, Occ- Service,
R/o. 767, Maalgalli, Bhingar,
Ahmednagar. **RESPONDENT**
[Original Party No. 2]

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Mr. Sunil A. Kulkarni, for Petitioner in both matters.
Ms. Nandini Chittal h/f. Mr. Pratik Kothari for the Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 7th APRIL, 2022
PRONOUNCED ON: 6th JUNE, 2022.

JUDGMENT :

1. This petition, filed under Article 227 of the Constitution

of India, challenges the award passed by the Labour Court, Ahmednagar in Reference IDA No. 09 of 2003.

2. The respondent was appointed as water-man with the petitioner/bank on 01.06.1987. He served at Savedi branch, Burudgaon branch, MIDC branch and Karjat branch. He was discharging his duties as water-man, sweeper and peon between 9.00 am and 6.00 pm. He completed 240 days' service in each calender year. Though, he was eligible to be made permanent, he was continued as temporary. He was discharging the same duties like permanent employee. Since the respondent requested for making him permanent, his service was orally terminated on 25.11.1998. Before termination, one month's advance notice was not given, neither salary nor compensation was paid. Juniors to him were retained in service. After termination of service of the respondent, new appointments were made. He therefore, challenged his termination by approaching the competent authority. The competent authority referred the dispute to the Labour Court, which was numbered as Reference IDA No. 09/2003.

3. The petitioner, by filing written statement denied the

claim of the respondent by contending that he has never completed 240 days' service, in one year. Since he was working on daily wages, therefore, provisions of the Industrial Disputes Act, 1947 (herein after for short, "the said Act") are not applicable to his case. The respondent was casual temporary worker. Though as per the agreement entered with the federation/union it was agreed that the services of the temporary employees will be confirmed, accordingly the petitioner prepared a seniority list which was valid up to 31.03.1997. Since till that date no post was vacant with the petitioner's branch and the respondent was at serial no. 25 in the said list, he could not be absorbed. The select list expired on 01.04.1998, and therefore, the respondent could not be absorbed.

4. The Labour Court after recording the evidence and hearing the parties, partly allowed the reference and held that oral termination of the respondent is illegal. The petitioner was directed to reinstate the respondent in service as temporary employee with effect from 25th November, 1998 with continuity in service on 60% back wages with effect from 21st March, 2003 with consequential benefits. The petitioner is aggrieved by the said award.

5. The learned advocate for the petitioner assailed the impugned award by contending that the Labour Court has committed serious error in partly allowing the reference and directing reinstatement of the respondent. It is ignored that he was temporary employee and had no right to continue in service. By relying on Assistant Engineer Rajasthan Development Corporation and another vs. Gitam Singh (2013 (5) Mh.L.J. Page 1), he submits that since the respondent was engaged on daily wages on temporary basis, at the most compensation could have been awarded to him. The Labour Court has failed to take into consideration all the relevant factors including the mode and manner of appointment, nature of appointment, length of service and the ground on which termination has been set aside and the delay in raising the industrial dispute. According to him, since the respondent was not appointed by following due process of law, he does not have any right to the post, therefore, the impugned award is liable to be quashed and set aside. He further submits that the impugned award was stayed by this Court at the time of admission in the year 2009. Since 1998 the respondent is not in service and it would not be appropriate that after lapse of almost 13 years, to grant reinstatement to

the respondent.

6. The learned advocate appearing for the respondent submitted that the respondent was in service from 06.01.1986 to 25.11.1998 as sweeper cum peon. She submits that juniors to the respondent were taken in service subsequent to the termination of the respondent. By relying upon the cross examination of the witnesses examined by the petitioner, she submits that the respondent is entitled to be reinstated in service. In support of her contention she relied on Harjinder Singh Vs. Punjab State Warehousing Corporation (2010 3 SCC 192). She further submitted that the petitioner has failed to produce any document on record to show that the respondent did not work for 240 days in a year, therefore, adverse inference needs to be drawn against the petitioner. In support of her submission, she relied on State of U.P Vs. Parvez Akhtar (2015 (2) SCT816(SC)). By relying on the list maintained by the petitioner, she submits that the respondent's name appears at serial no. 25. She supported the impugned award by relying on B.S.N.L. Vs. Bhurumal (2014 7 SCC 177) and Assistant Engineer Rajasthan Development Corporation and another vs. Gitam Singh (2013 (5) Mh.L.J. Page 1).

7. Heard Mr. S.A. Kulkarni, the learned advocate for the petitioner and Ms. Nandini Chittal holding for Mr. Pratik Kothari for the respondent at length. Perused the record.

8. Admittedly, the respondent has worked with the petitioner for almost a period of 10 years, though as temporary casual worker. It is not in dispute that the respondent was engaged without following prescribed procedure. It is also admitted fact on record that in terms of agreement between the petitioner and the federation/union of employees, the petitioner agreed to absorb the temporary employees in service and select list for that purpose was prepared in which name of the respondent was at serial no. 25. Before expiry of the select list as there were no vacancies available with the petitioner, the respondent could not be absorbed in the service.

9. In *Assistant Engineer Rajasthan Development Corporation and another* (supra), the Hon'ble Supreme Court held that *"With regard to the wrongful termination of a daily wager, who had worked for a short period, the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would*

be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute. In the present case, the workman was engaged as daily wager on 1-3-1991 and he worked hardly for eight months from 1-3-1991 to 31-10-1991 and was directed by the Labour Court to be reinstated with continuity of service and 25% backwages. The judicial discretion exercised by the Labour Court suffers from serious infirmity and cannot be sustained and has to be set aside and is set aside. Compensation of Rs. 50,000/- by the appellant to the respondent shall meet the ends of justice.”

Applying the criterias laid down in above rulling to the facts of the present case that initial appointment of the respondent was not in consonance with the statutory regulations and article 14 and 16 of the Constitution of India. Admittedly, he was appointed as casual temporary employee on daily wages. Nothing has been brought on record by the respondent to show that his services were regularized

and/or he was being paid regular salary. The service rules and service conditions of the petitioner are not applicable to the casual employees working on daily wages. In this view of the matter, the Labour Court, in my considered view, was not justified in granting reinstatement to the respondent with continuity of service. The Labour Court ought to have awarded adequate compensation in lieu reinstatement in the facts of the present case. The Labour Court has failed to take into consideration the relevant factors like nature of service rendered by respondent, mode and manner of recruitment. As admittedly, the services of the respondent were engaged as purely on casual and temporary basis on daily wages, therefore, the Labour Court was not justified in granting reinstatement to the respondent. In that view of the matter, the reinstatement granted by the Labour Court cannot be said to be justified, instead in the facts of the present case monetary compensation would sub-serve the ends of justice.

10. The learned advocate for the respondent relied on para 27 of *Assistant Engineer Rajasthan Development Corporation and another* (supra) wherein after considering the ratio in *Harjinder Singh* (supra) and *Devinder Singh Vs. Municipal Council, Sanaur* (2011)6

SCC 584, the Apex Court held: *“However, on close scrutiny of facts it transpires that that was a case where a workman was initially employed by Punjab State Warehousing Corporation as work-charge motor mate but after few months he was appointed as work munshi in the regular pay-scale for three months. His service was extended from time to time and later on by one month’s notice given by the Managing Director of the Corporation his service was brought to an end on 5-7-1998.”* In the facts it is held that there was compliance of Section 25-F, but the termination was violative of Section 25-G of the said Act and the Labour Court passed award for reinstatement with 50% back wages. The High Court set aside the award of reinstatement and directed to pay compensation. The Supreme Court set aside the order of the High Court and restored the order of the Labour Court. In

Assistant Engineer Rajasthan Development Corporation and another (supra) therefore it was held that the facts in *Harjinder Singh* (supra) are quite distinct and that is not the case of daily rated worker. Hence it was held that Harjinder Singh’s case was decided on its own facts and same is not applicable to the facts of *Assistant Engineer Rajasthan Development Corporation and another* (supra). The Hon’ble Supreme

Court further held in Para 29 that “*Harjinder Singh (supra) and Devinder Singh (supra) do not lay down the proposition that in all cases of wrongful termination reinstatement must follow.*”

11. *B.S.N.L. vs. Man Singh* (2012) 1 SCC 558 has referred in para 30 of the judgment and paras 4 and 5 of the said judgment read thus:-

“4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as “daily wagers” and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.”

12. In the case of *Harjinder Singh (supra)*, on which strong reliance is placed by the learned advocate for the respondent, it is held that “*Moreover, it is settled law that for attracting the applicability of*

Section 25G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of 'last come first go' without any tangible reason."

The learned advocate for the respondent submits that an admission is given by the petitioner's witnesses in the cross examination that subsequent to the termination of the respondent, two persons were appointed on the post of peon, but they were initially appointed on temporary post and thereafter, they were made permanent. The submission, therefore, is, there is clear violation of Section 25-G of the said Act in the present case, and therefore, the Labour Court was justified in granting reinstatement.

13. As noted earlier, in terms of agreement between the petitioner and federation/union of employees, it was agreed to absorb the casual/temporary employees in service and select list was accordingly prepared. The respondent was at serial no. 25 in the said select list. However, the respondent could not be absorbed due to non availability of post till the validity of the select list is expired in the year

1998.

14. There is no evidence on record which clearly indicates that the as to when those two persons were appointed on the post of peon on temporary basis and when they were made permanent. In that view of the matter, it is not possible to accept the contention of the respondent that the petitioner committed unfair labour practice in violation of principle of last come first go. On this point, the learned advocate for the respondent has also relied on *State of U.P.* (supra) and *B.S.N.L.* (supra).

For the above stated reasons, the said ruling would not help the case of respondent.

15. The learned advocate for the respondent also relied on *Harjinder Singh* (supra) to contend that this Court may not exercise jurisdiction under article 227 of the Constitution of India to interfere with the findings of facts recorded by the Labour Court, which was reached on appreciation of evidence. Reliance is also placed on *Harjinder Singh* (supra), wherein principles laid down in *Surya Dev Rai v. Ram Cahnder Rai and Ors.* (2003 (6) SCC 675) are reiterated.

There cannot be any dispute about the said proposition of law laid down by the Apex Court. However, in the facts of the present case, since it is found that the Labour Court has erred in not considering the relevant factors i.e. nature of service, mode and manner of recruitment, length of service and that the respondent was working as temporary daily wager employee, the Labour Court has failed to take into consideration the settled legal position that even if order of retrenchment is passed in violation of Section 25-F of the said Act, but the award granting reinstatement should not be passed in the cases of daily rated employees.

16. Coming to the facts of the present case, though the respondent has worked for almost 10 years as casual temporary daily wager, he could not be absorbed because of non availability of posts in the year 1997-98. In my view, the Labour Court has committed an error in granting the respondent the relief of reinstatement on part time/temporary post. Considering the facts of the case, the Labour Court ought to have granted adequate compensation to the respondent.

17. Taking into consideration all these aspects, the labour court was not justified in granting the respondent reinstatement with continuity of service.

18. In the light of the above ratio and considering the facts of the present case, the labour court ought to have awarded adequate compensation to the respondent instead of granting reinstatement.

19. While granting reinstatement and continuity of service and 60% backwages, to the respondent, the labour court has failed to consider relevant factors like nature of service rendered by the respondent, mode and manner of recruitment, so also the admitted position on record that the services of the respondent were engaged purely on casual and temporary basis on daily wages. In that view of the matter, the impugned order of reinstatement with continuity of service and 60% back wages, passed by the labour court is unsustainable, instead, award of monetary compensation would be appropriate in the facts of the present case. In view of the fact that the respondent is not in service since last more than 23 years and the settled legal position that daily rated employee has no right to continue

in service, this Court is of the considered view that the impugned award passed by the labour court directing reinstatement of service as part time employee, with continuity of service and 60% back wages cannot be sustained.

20. In the facts of the present case, following order is passed to meet the ends of justice.

ORDER

1] The operative part of the award passed in Ref. IDA/No. 93/2003 stands modified in following terms:-

(i) The reference is answered in favour of the petitioner against the respondent.

(ii) The Petitioner/First Party is directed to pay compensation of Rs. 5,00,000/- to the Respondent/Second Party, within a period of six weeks from today.

2] Rule is made absolute with costs of Rs.25,000/- to be paid to the respondent within a period six weeks from today.

**[NITIN B. SURYAWANSHI]
JUDGE**