

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6340 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 Eknath Ghanaji Pote,
Age- 55 years, having authority to file the petition. **PETITIONER**
[Original Party No. 1]

VERSUS

Yeshwant Rangnath Fund
Age- 40 years, Occ- Nil,
R/o. Parner, Dist. Ahmednagar. **RESPONDENT**
[Original Party No. 2]

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Mr. Sunil A. Kulkarni, for Petitioner in both matters.
Mr. Sandeep Munde h/f. Mr. R.R. Karpe 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. 26 of 2001.

2. Said reference was initiated at the instance of the respondent. The respondent, by filing statement of claim in the reference, contended that he was initially appointed as part time sweeper cum watchman in the year 1987. Since then he was in continuous service. He has rendered unblemished service. Sometimes full time job as sweeper cum peon was given to him. He has completed more than 240 days of service. The petitioner issued advertisement and called applications from part time employees for filling up permanent post. Though the respondent applied, the petitioner did not select him. The petitioner appointed 27 watchman cum sweeper as permanent employees. Service of the respondent was terminated on 28th September, 1996, without following the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter for short “the said Act”). Hence, he challenged the oral termination order and sought the relief of reinstatement with continuity of service and back wages.

3. The Petitioner opposed the reference by filing written statement. The petitioner contended that the respondent was working as temporary casual labour between 1993-

1996 in Parner branch, on the scale offered from time to time. Though, he was selected in messenger category and his name appeared at serial no. 4 in the list prepared in the year 1992, he could not be absorbed and the select list expired on 31.03.1997. Since he was temporary employee he has not been retrenched or dismissed. He was being called for work from time to time in exigency and as and when work was available. He has never completed 240 days of service, as per Section 25(b) of the said Act, therefore, it is not necessary to follow the procedure before termination of his service.

4. The Labour Court partly allowed the reference. The petitioner was directed to reinstate the respondent as part time sweeper, with continuity of service from the date of his termination, without back wages. Hence, the present writ petition.

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 the respondent 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 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 after lapse of almost 13 years, it would not be appropriate to grant reinstatement to the respondent.

6. The learned advocate appearing for the respondent supported the impugned award and submitted that the respondent worked for almost 10 years as sweeper cum watchman. There is clear violation of Section 25(F) of the said Act and therefore, the Labour

Court was justified in partly allowing the complaint of the respondent.

7. Heard Mr. S.A. Kulkarni, the learned advocate for the petitioner, Mr. Sandeep Munde holding for Mr. R.R. Karpe for the respondent at length. Perused the record.

8. Admittedly, the respondent has worked with the petitioner as a temporary, casual daily wages 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. 6. Before expiry of the select list, as there were no vacancies available with the petitioner, the respondent could not be absorbed.

9. In *Assistant Engineer Rajasthan Development Corporation and another V/s Gitam Singh 2013 (5) Mh.L.J. 1*, the Hon'ble Supreme Court held: "*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 the above ruling to the present case it is clear that the initial appointment of the respondent was not in consonance with the statutory regulations and articles 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. According to the respondent, he was orally terminated from service from 28th September, 1996 and he has belatedly raised the dispute only in the year 2001.

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 been 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. Coming to the facts of the present case, though the respondent has worked with the petitioner 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.

13. 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.

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

15. While granting reinstatement and continuity of service 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, passed by the labour court is unsustainable, instead, in the facts of the present case award of monetary compensation would be appropriate. 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 cannot be sustained.

16. 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. 26/2001 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. 2,00,000/- 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, which is already deposited by the petitioner in this court.

**[NITIN B. SURYAWANSHI]
JUDGE**