22.11.2023
Sl. No.35
srm

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

W.P.A. No. 2536 of 2023

Bijay Basfore

Versus

The General Manager, HR, Human Resources Division,
Punjab National Bank & Ors.

Mr. Pappu Adhikary,
Mr. Debajit Kundu

….for the Petitioner.

Mr. Utpal Saha

…..for the PNB.

The writ petition has been filed challenging an order dated August 30, 2023 passed by the DGM & Circle Head, Punjab National Bank. By the order impugned, the prayer for regularization of the petitioner in the regular establishment of the Punjab National Bank was rejected.

The authority passed such order on the following grounds:-

a) Regularization was not a matter of right.

b) The petitioner was engaged on daily basis by the United Bank of India. The circular of the United Bank of India dated July 2, 2010 would not be applicable in the present situation as three banks, including the United Bank of India had amalgamated with the Punjab National Bank. The circular dated July 2, 2010 had lost its force.

c) In the State of Karnataka & Ors. vs. Uma Devi (3) reported in AIR 2006 SC 1806, the Hon'ble Apex Court had held that unless an appointment was made in terms of the rules and through proper and open competition amongst qualified persons, the persons so appointed could not pray for regularization as no vested right was conferred upon the appointees. Courts did not have any jurisdiction to direct absorption, regularization or allow permanency of such staff.

d) The bank might have, engaged persons on daily wages to meet the needs of the situation, but such fact could not be used as a weapon to defeat the very scheme of the public employment.

e) The Punjab National Bank was a nationalized bank and recruitments were to be made on proper guidelines and through a well defined procedure or on the basis of Sastry Award, Desai Award and bipartite agreement between the stakeholders. The rule of equality in public employment was the sole factor guiding such appointments.

f) The petitioner was not working against any sanctioned post and was not a part time employee of United Bank of India. He was working on daily wages. The petitioner did not have any right to claim regularization in service.

g) The circular being HRMD Circular No.494/2020 dated March 26, 2020 is the present master circular relating to workmen and staff. Engagement of one part time sweeper is permitted in accordance with the said scheme and circular.

Consideration of the case of the petitioner arose on account of a direction of the Hon'ble Division Bench in MAT 41 of 2023 dated July 13, 2023. The Hon'ble Division Bench directed that the representation of the petitioner seeking absorption should be disposed of on the basis of the circular dated July 2, 2010 upon giving a reasonable opportunity of hearing to the petitioner. The Hon'ble Division Bench observed that the circular dated July 2, 2010 was not considered by the learned Single Judge, which was binding on the United Bank of India. It appears that the order of the Hon'ble Division Bench was passed after the United Bank of India had amalgamated with the Punjab National Bank and did not have a separate identity or existence.

The Punjab National Bank published an advertisement inviting applications for appointment to the post of part time and full time sweepers. The petitioner was allowed to respond to the advertisement for engagement of sweepers, but the petitioner was found to be over age.

However, as the Division Bench directed the Punjab National Bank to decide the issue in the light of the circular dated July 2, 2010 in accordance with law, the decision was taken by the authority.

Mr. Adikary, learned Advocate for the petitioner submits that once the Hon'ble Division Bench had directed the case of the petitioner should be considered in the light of the circular of 2010, the authority ought to have allowed regularization/absorption, on the basis thereof. Mr. Adhikary further submits that the Memorandum of Understanding (MoU) entered into between the banks indicated that the staff of UBI could neither be terminated nor replaced. Learned Advocate submits that the post of sweepers sought to be engaged in the recruitment process which had been advertised, should be filled up from the existing part time sweepers in terms of the circular of 2010 and also the MoU. It is further contended that the circular of 2010 clearly provided that a panel of *badli* sweepers should be maintained and vacancies of part time sweepers in all offices and branches of UBI should be considered from the existing *badli* sweepers. Thus, the petitioner, who was engaged as a *badli* sweeper, should have been given a preference for being engaged as part time and/or a full time sweeper, upon consideration of the age bar.

The learned Advocate for the PNB submits that the circular of 2010 does not have any relevance in the matter of public employment. Recruitment should be made as per the rules and procedure of the Bank. There should be open competition and qualified persons should be allowed to participate. Moreover, the petitioner had crossed the age bar even after grant of age relaxation as a scheduled caste candidate.

Having heard the learned Advocates for the respective parties, the issue to be decided is whether the petitioner is entitled to be absorbed as a part time or full time sweeper in any branch of the PNB, upon condonation of the age bar.

From the records, it is not clear in which capacity the petitioner was originally engaged. The letter of engagement cannot be produced by the petitioner, but the document at page 17 indicates that the petitioner was treated as a badli sweeper since 2015.

The circular dated July 2, 2010 of UBI deals with the policy for recruitment and posting of part time and full time sweepers in UBI. For filling up the vacancy of part time and full time sweepers in newly opened branches/offices, requisition was to be sent to the local employment exchange detailing therein the nature of vacancy, remuneration to be paid to the selected candidates as well as the eligibility criteria of the candidates for the post. Other sources could be tapped when the employment exchanges failed to supply suitable candidates for recruitment to the post of sweepers. In such an event, a notice was to be put up in the notice board in the respective branches or offices inviting applications from the local candidates fulfilling the eligibility criteria. In doing so, care was to be taken as far as possible for recruitment from the SC/ST community.

The eligibility criteria and the qualifications have been mentioned in the said circular. One composite panel was to be prepared station-wise, of the existing *badli* sweepers, by the respective regional offices. For filling up the vacancy of part time sweepers in branches or offices within the jurisdiction of the regional offices, the cases of the existing *badli* sweepers were to be considered. For filling up the vacancy of full time sweepers, preference was to be given to the senior most part time sweeper of the station.

The petitioner's case is that he was engaged as a badli sweeper. The terms and conditions of engagement of the petitioner are not available. On the other hand, the petitioner has himself stated in paragraph 3 that he had been engaged by the United Bank of India on daily wages of Rs.150/- per day. The money was paid either in cash or through bank transfer. Thus, the petitioner has made a statement that he was engaged on daily wages as a badly worker.

Upon amalgamation of the United Bank of India with the Punjab National Bank, a MoU was entered into with regard to posting and fixation of wages of part time employees/sweepers. It was clarified that the sub-ordinate staff working as housekeeper-cum-sub-staff in UBI and peon-cum-housekeeper in OBC would continue to have their existing designation and job profile in the amalgamated entity, till further change in the policy existing. This clause does not talk about either regularization or absorption. The MoU also provides the special procedure for engagement of part time and full time sweepers. The *badli* workers and *badli* sweepers had not been designated as subordinate staff in the MoU. Only part time employees (sweepers) were treated to be in the same cadre of the subordinate staff, insofar as, the wages were concerned. The right of the petitioner to be considered under the July 2, 2010 circular ceased when the bank amalgamated with the Punjab National Bank. Even during the tenure of the petitioner for long 8 years under the UBI, the petitioner was not considered for recruitment to the post of part time sweeper. The question of engagement as full time sweeper would not arise as the vacancy of full time sweeper was to be filled in from part time sweepers.

Under such circumstances, the law is clear that the petitioner's engagement on daily wages, even if as a *badli* sweeper, would not confer any right of regularization or appointment to the post of part time sweeper or a full time sweeper. The petitioner had already been granted liberty to apply in the recruitment process to be conducted by the Punjab National Bank, but the petitioner was ineligible on account of overage. The circular of 2010, also does not vest any right of regularization or absorption in the erstwhile UBI.

Under such circumstances, the writ petition does not call for any interference. The Hon'ble Division Bench had directed the authorities of Punjab National Bank to take into consideration the circular dated July 2, 2010, in deciding the grievance of the petitioner. Such decision was to be taken by the Bank upon a comprehensive consideration of the circular and in accordance with law. The authority found that the 2010 circular would not apply in the present situation as the UBI had amalgamated with the PNB. The details as to why the petitioner does not have any claim on the basis of the 2010 circular for regularization, has been enumerated with reference to specific decisions of the Hon'ble Apex Court.

Regularization is not a method of public employment. The petitioner was not employed through any recruitment process and the circular of 2010 also does not deal with regularization. It is not a onetime measure for regularization of the *badli* workers engaged in the UBI. The said circular deals with the procedure for engagement of part time and full time sweepers. The *badli* sweepers were engaged on daily wage basis and not against any sanctioned post. The law does not permit regularization of the petitioner as he was not recruited through a selection process against any sanctioned post.

In the decision of Vibhuti Shankar Pandey vs. The State of Madhya Pradesh reported in **(2023) 3 SCC 639,** the Hon'ble Apex Court held as follows:

> "**4.** The learned Single Judge while allowing the writ petition gave directions for regularisation of the appellant from the date on which his juniors were regularised. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in *State of Karnataka* v. *Umadevi (3)* [*State of Karnataka* v. *Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily-rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench [*State of M.P.* v. *Vibhuti Shankar Pandey*, 2020 SCC OnLine MP 4645] of the High Court therefore has to our mind rightly allowed the appeal and set aside the order dated 27-6-2019."

In Union of India & Ors. vs. Ilmo Devi & Ors. reported in 2021 SCC OnLine SC 899, it was held as follows:

> "**26.** Even the regularization policy to regularize the services of the employees working on temporary

status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so. In the case of *R.S. Bhonde* (supra), it is observed and held by this Court that the status of permanency cannot be granted when there is no post. It is further observed that mere continuance every year of seasonal work during the period when work was available does not constitute a permanent status unless there exists a post and regularization is done.

27**.** In the case of *Daya Lal* (supra) in paragraph 12, it was observed and held as under:—

"**12.** We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(*i*) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(*ii*) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(*iii*) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(*iv*) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(*v.*) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.

28. Thus, as per the law laid down by this Court in the aforesaid decisions part-time employees are not entitled to seek regularization as they are not working against any sanctioned post and there cannot be any permanent continuance of part-time temporary employees as held. Part-time temporary employees in a Government run institution cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work."

In Ganesh Digamber Jambhrunkar & Ors. vs. State of Maharashtra & Ors. reported in 2023 SCC OnLine SC 1417, the Hon'ble Apex Court held as follows:

> "**3.** The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.
>
> **4.** <u>We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for</u> appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken."

This court does not find any arbitrariness or illegality in the action of the Punjab National Bank.

The writ petition is dismissed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)