

\$~77

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 10th February, 2023*

+ W.P.(C) 6637/2020

SHRI RAKESH KUMAR Petitioner
Through: Mr. Manjeet Singh, Advocate.

versus

INDIAN OVERSEAS BANK AND
OTHERS Respondents
Through: Mr. Krishan Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking following reliefs:-

"i. issue writ of certiorari or any other appropriate writ, order or direction and declare the verbal order of 23.09.2019 passed by the respondents and stopping the pay of the Petitioner, as illegal and arbitrary.

ii. Issue a writ of mandamus to the respondent to reinstate him back in service with all consequential benefits and to consider the case of the petitioner to the post of "Permanent Messenger" in terms of Clause 3 (b) of Policy letter dated 23.3.2011 and regularized his service in terms of law laid down by the Hon'ble Supreme Court and this Hon'ble Court.

iii. Without prejudice to the above, the Hon'ble High Court may graciously be pleased to direct the respondents to grant the full wages for the period 03.03.2010 to 23.9.2019 and in continuation thereafter from 24.09.2019 to 22.03.2020 (from next day, Delhi was put under complete lockdown) to the petitioner at par with similarly placed permanent employees for that period interms of Hon'ble Supreme Court judgment in the case of State of Punjab & Ors Vs. Jagjit Singh & Others reported in 2007 (1) SCC 148.

iv. Without prejudice to the above reliefs, this Hon'ble High Court may graciously be pleased to direct the respondents not to displace the petitioner to appoint any another contractual employee for the post of Messenger."

2. It is the case of the Petitioner that Petitioner was engaged as 'Temporary Messenger' with effect from 03.03.2010 with the Respondents and since then till 23.09.2019 he has rendered continuous, unblemished and dedicated service to the Bank.

3. On 23.03.2011, Respondents issued a Circular whereby it was decided that Casual/Temporary Messengers/Sweepers who had completed 240 or more days continuously in a calendar year and were engaged by Branches/Offices in permanent vacancies for less than 3 years as on 15.11.2010 and were still working, shall be absorbed in Phase-III once the absorption in Phase-II was completed, subject to their submitting the required information and certificates.

4. It is averred that on completion of 401 days of continuous and satisfactory service as Temporary Messenger, the details of the Petitioner were submitted by the Branch of the Bank along with undertaking of the Petitioner dated 09.04.2011, Certificate from Head of Branch as well as originals of his Result Card, school leaving Certificate, SC Certificate etc. for consideration of his case for absorption. The Branch Manager *vide* his letter dated 30.08.2016 certified that Petitioner had been engaged as Temporary Messenger since 03.03.2010 and this was reconfirmed by a letter dated 09.01.2018.

5. The grievance of the Petitioner is that despite fulfilling all the criteria required under the Circular dated 23.03.2011 for absorption, while other persons were absorbed the case of the Petitioner was not considered. Petitioner also sent a legal notice on 30.09.2019, followed by a representation dated 24.08.2020, in which he also sought minimum wages of the post in terms of the judgment of the Supreme Court in *State of Punjab & Ors. v. Jagjit Singh & Ors., (2007) 1 SCC 148*. Petitioner was, however, verbally communicated on 23.09.2020

that he is ineligible for absorption as he did not have the requisite number of days required under the Circular having been engaged only in April, 2011. Having no other option, the Petitioner has approached this Court and seeks the relief of consideration of his case for absorption as per the Circular dated 23.03.2011, with all consequential benefits.

6. Reply has been filed on behalf of the Respondents.

7. Counsel for the Respondents opposes the writ petition on the ground that the Circular dated 23.03.2011 was only a one-time measure and benefit of the Circular cannot accrue to the Petitioner at this stage. Counsel also submits that even otherwise, Petitioner is ineligible for absorption under the criteria laid down in the Circular as he did not have 240 days continuous service in a calendar year on the cut-off date being engaged only with effect from 05.04.2011. In a nutshell, the submission is that the Petitioner fulfils none of the three conditions required to be met for absorption and his claim has been rightly rejected.

8. Responding to the contentions of the Respondents, counsel for the Petitioner submits that the stand of the Respondents that the policy decision was a one time measure is incorrect as absorptions were to continue in phases over a period of time. The stand of the Respondents that Petitioner was engaged by the Respondents after the issue of the Circular is totally false and is belied by the Certificate dated 09.04.2011, duly signed by the Branch Manager, certifying that the Petitioner was working as Temporary Messenger since 03.03.2010. Attention of the Court is drawn to the said Certificate, which is appended as Annexure P-2 to the writ petition. In response to the said Certificate, counsel for the Respondents, though subtly argues that the said Branch Manager was not authorized to issue and sign the

Certificate and therefore, the Petitioner cannot place any reliance on the said document. On a pointed query by the Court as to whether the document was objected to or treated as cancelled/rescinded or whether any action was taken against the Branch Manager for issuing a Certificate unauthorizedly, the answer is in the negative.

9. I have heard the counsels for the parties and examined their contentions.

10. It is undisputed that a Circular was issued by the Respondents on 23.03.2011 for absorption of casual/temporary messengers/sweepers who were already engaged in the Branches/offices of the Bank, subject to their confirming to the recruitment norms. The absorption in phase III required the temporary messenger to have completed 240 or more days continuously in a calendar year and having been engaged in permanent vacancies for less than three years as on 15.11.2010 and also were working on the date the Circular was issued. The absorption in phase III was to commence once the same was complete in phase II.

11. The case of the Respondents in rejecting the case of Petitioner for absorption as brought forth by the counsel is that the Petitioner was engaged on 05.04.2011 and therefore did not meet the requisite criteria under the Circular/Policy. Be it mentioned that the date of 05.04.2011 from which the Petitioner was allegedly engaged does not find mention in the affidavit filed by the Respondents and it is only during the course of hearing that it is so stated by the counsel, on instructions. In any event, this stand of the Respondents is falsified and belied from the Certificate dated 09.04.2011, which clearly reflects that Petitioner was working as a Temporary Messenger from 03.03.2010 with the Bank and had completed 401 days as on 09.04.2011. Certificate is signed by the Bank Manager and as

aforementioned, it is not the case of the Respondents that the certificate is forged or fabricated. The only stand is that the Officer was not authorized to issue the said Certificate. Respondents have not been able to show any document or even a pleading pointing out that any action was taken against the said Branch Manager for issuing the Certificate, without any authority as now alleged or that over the years any action was taken to cancel/rescinded the documents. In the absence of any material to the contrary, this Court finds no reasons to disbelieve the stand of the Petitioner that the certificate is genuine and was issued by an authorized Officer.

12. Since the Petitioner has been on rolls of the Respondents since 03.03.2010 and had completed continuous service of 401 days till 09.04.2011, the ground of his ineligibility is not made out and it is held that the Petitioner is entitled for consideration for absorption as Temporary Messenger.

13. It is accordingly directed that the Respondents shall consider the case of the Petitioner for absorption in terms of the Circular dated 23.03.2011. Needless to state that the consideration will be as per the terms and conditions of the Circular, save and except, the condition of alleged ineligibility, as aforementioned and subject to the Petitioner providing all other documents. In case the Petitioner is absorbed all consequential benefits shall be granted to the Petitioner accruing from the absorption. The entire exercise shall be completed by the Respondents within a period of eight weeks from today.

14. At this stage, counsel for the Petitioner candidly submits that since the Petitioner has been directed to be considered for absorption upon which he will be entitled to regular Pay-Scales, he gives up his claim for minimum wages in terms of the judgment of the Supreme Court in *State of Punjab & Ors. (supra)*.

15. Writ petition is allowed and disposed of in the aforesaid terms.

JYOTI SINGH, J

FEBRUARY 10, 2023/shivam

