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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 20.02.2022

Pronounced on: 02.05.2023

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W.P.(C) 8865/2005 and C.M. No. 6677/2005

BANK OF BARODA

..... Petitioner

Through: Mr. Rajat Arora and Mr. Niraj
Kumar, Advocates.

versus

NASEEM AHMED

..... Respondent

Through: Mr. Bijay Kumar, Advocate.

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W.P.(C) 11357/2005

NASEEM AHMAD

..... Petitioner

Through: Mr. Bijay Kumar, Advocate.

versus

GEN. MANAGER VIJAYA BANK

..... Respondent

Through: Mr. Rajat Arora and Mr. Niraj
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. This Court, proposes to dispose of the present writ petitions, vide this common Judgment:

- (i) In these Writ petitions, the respective petitioners are impugning the award dated 1.3.2005 (*"impugned award"*), passed by the Central Government Industrial Tribunal cum Labour Court-II Rajendra Bhawan, Ground Floor, Rajendra Place New Delhi in I.D. No. 15/97.

- (ii) Vide the impugned Award, the learned Labour Court was pleased to hold that the Respondent/Workman is entitled for absorption as peon within one month from the date of publication of the impugned Award at the basic pay and other benefits as existing. In case the Petitioner do not appoint the Workman within one month after the publication of the Award, he will get interest @ 12% per annum over his back wages which will accrue from the date of appointment. Learned Labour Court further clarified that the Workman will not be entitled for the benefit of continuity of service.
- (iii) Being aggrieved by the direction of the learned Labour Court to absorb the Respondent/Workman within one month after the publication of the impugned Award, the Petitioner/Management preferred W.P(C) No. 8865/2005. Since the learned Labour Court denied the benefit of backwages and continuity of service, the Respondent/Workman preferred W.P(C) No.11357/2005.
2. For the sake of convenience, this Court refers the facts and other relevant orders from W.P(C) No.8865/2005.
3. The workman, Shri Naseem Ahmed (***“Respondent/ Workman”***) was engaged by the Vijaya Bank (***“Petitioner/Management”***) as a peon on 08.05.1986. His services were terminated by the Petitioner/Management on 21.04.1988. A settlement was signed between the Union representing the employees and the Petitioner

management in 1988 (***“1988 settlement”***) pertaining to the absorption of the temporary workmen in the Bank. Terms of settlement is reproduced herein below:

“1. ELIGIBILITY

- (a) *All temporary workmen who worked as peons for aggregate period of 60 days or more in the Bank during the period between 1-1-1983 and 30-6-1988 are eligible to apply to the bank for continuation for regular employment as peons in the Bank. However, in respect of those temporary workmen who were working as temporary peons on 1-1-1983 or 2-1-1983, if 1-1-1983 happened to be a holiday, temporary service put in by them prior to 1/21-1983, as the case may be, shall be reckoned for the purpose of computing total number of days of temporary service put in by the temporary peons. For the purpose of computation of number of days on which a temporary peon has actually worked in the Bank shall include the intervening weekly holidays and holidays declared under the Negotiable instruments Act.*
- (b) *All the eligible candidates shall submit an application to the Bank as per proforma in Annexure-I, to this Settlement, so as to reach the Bank not later than 60 days from the date of this Settlement...”*

4. In pursuance of the aforesaid 1988 settlement, circular no.166/88 dated 19.08.1988 was issued by the Petitioner management regarding the absorption of the temporary peons.

Contents of the circular is reproduced below:

“With a view opportunity to such of these temporary employees who have worked as temporary peons in the bank for a period of 90 days or more in the past and also with a view to have a cordial and harmonious industrial relations in the bank, an arrangement has been evolved as a one time measure, after fruitful discussions with the two

recognized workman unions, viz., Vijaya Bank Workers Organization and Vijaya Bank Employees Association. Accordingly, a settlement has been signed with the representatives of the said unions on 19th August, 1988 in this regard.

The terms of the Settlement is enclosed to this Circular as ANNEXURE A. One copy of the Annexure A should be displayed in the branch/office Notice Board.

In this regard the branches/offices are advised as under :

- 1. All temporary employees who have worked during the period from 1-1-1983 to 30-6-1988 should be advised in writing by the concerned branch/office by Registered Post Ack Due as per Annexure B advising them to submit an application if they so desire, to the branch/office in which they last worked. The process of sending this letter should be done within 10 days from the date of receipt of this Circular.*
- 2. Records of intimation sent in terms of para 1 above, should be maintained at the branch/offices.*
- 3. If the registered Post Ack Due intimation as communicated in para 1 above, is returned undelivered, the cover should be kept intact, i.e. without opening the envelope at the branch/office.*
- 4. Such of those temporary employees who have worked in the past during the period from 1-1-1983 to 30-6-1988 are to submit an application with all the enclosures to the branch/office last worked within 60 days from the date of settlement dated 19-8-1988. The applications thus received should be retained at the branch/office till further instructions from the Personnel Deptt (PA & IR), Head Office.*
- 5. It should be made clear to all the temporary employees who may call on at the branch/office that by calling for application, the bank would not assume any responsibility/guarantee to absorb them in the permanent service.*
- 6. Application seeking absorption for permanent appointment as peons, in terms of the Settlement should be*

acknowledged by the branches/offices as per the specimen enclosed in Annexure C.”

5. The Respondent/Workman being aggrieved by his non-absorption in view of the 1988 settlement and termination, initiated conciliation proceedings. On 03.01.1997, the dispute was referred to the learned Labour Court under the provisions of the Industrial Disputes Act, 1947 (“**I.D. Act**”) with the following terms of reference:

“Whether the action of the management of Vijaya Bank in not giving the preference for re-employment as per the provision of section 25 of the LD. Act to Sh Naseem Ahmed is just, fair and legal. If not, to what relief he is entitled and from what date.”

6. The Respondent/Workman filed his statement of claim wherein he averred that the Petitioner/Management failed to take him back in employment in terms of 1988 settlement despite several representations made to the Management. Respondent/workman also alleged violation of Section 25G and H of the I.D. Act and prayed for reinstatement along with full back wages. The Petitioner/Management to controvert the written statement stating that the Respondent/workman was a temporary peon and he was terminated automatically in terms of the temporary appointment. It is also stated in written statement that since Respondent/workman did not dispense his service for more than 240 days in 12 calendar months, he is not entitled for the benefits under Chapter V-A and V-B of the I.D. Act. Further, that the

Respondent/workman failed to submit his application in accordance with the 1988 settlement, therefore, he is not entitled for the absorption and back wages.

7. Upon hearing both the parties, the learned Labour Court passed the impugned award wherein the term of reference was answered in favour of the Respondent/workman. The relevant extract of the impugned award dated 01.03.2005 has been reproduced below:

“The action of the management of Vijaya Bank in not giving preference for reemployment as per the provisions of Section 25 of Industrial Dispute Act, 1947 to Shri Naseem Ahmad is neither absolutely just nor fair and nor legal. The workman applicant is entitled to be absorbed as peon within one month from the date of the publication of the Award at the Basic Pay and other benefits existing at present. In case the respondents do not appoint the workman applicant within one month after publication of the Award he will get interest of 12% over his back wages which will accrue from the date of appointment as has been directed. He will get no benefit of continuity of service.”

8. Aggrieved by the abovementioned award passed by the learned Labour Court, the Petitioner/Management and the Respondent/Workman filed the **W.P. (C) No. 8865/2005** and **W.P. (C) No. 11357/2005** respectively impugning the award dated 01.03.2005.
9. During the pendency of the present proceedings, Vijaya Bank got amalgamated with Bank of Baroda vide Notification dated 02.01.2019. Hence this Court vide orders dated 05.09.2022 in **W.P(C) No.8865/2005 & 16.11.2022 in W.P(C) No.11357/2005**
W.P.(C) 8865/2005 & W.P. (C) No. 11357/2005

permitted the parties to change the name of the Petitioner/Management from Vijaya Bank to Bank of Baroda.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER/MANAGEMENT

10. Mr. Rajat Arora, learned counsel appearing for the Petitioner management has vehemently opposed the validity of the impugned award by submitting that the learned Labour Court has travelled beyond the term of reference. The term of reference was limited to whether any violation of Section 25 of the I.D. Act was committed by the Petitioner/management. However, by ordering the absorption of the workman into regular employment, the learned Labour Court has clearly gone beyond the scope of the reference.

11. Learned counsel further submitted that the learned Labour Court erred in presuming that the absorption in service is an automatic process under the 1988 Settlement entered between the Management and the Employees Union. It is a matter of fact that the eligible candidates were required to apply for the absorption. Such candidates who applied for the absorption were required to undergo an interview for which marks were to be awarded. The scheme of the interview and the selection procedure as envisaged in the 1988 Settlement is as under:

“2. SELECTION:

(a) All the eligible temporary peons will be interviewed by an interview committee appointed by the Bank. Total marks in the interview shall be as under:-

W.P.(C) 8865/2005 & W.P. (C) No. 11357/2005

Page 7 of 19

Ability to Read : 10 marks

Ability to Write : 10 marks

*General Knowledge & Personality : 10 marks
30 marks*

(b) Weightage for temporary service shall be one mark for every 5 days of temporary service put in by the candidates subject to a maximum of 70 marks.

(c) All the temporary Peons who secured aggregate marks of 30 and above in the interview with weightage for temporary service as mentioned in clause 2(b), will be empanelled for regular absorption in the subordinate cadre in the Bank as Peons. In the case of ST/SC candidates, minimum of aggregate marks shall be 25.

3. RANKING LIST OF EMPANELLED CANDIDATES

(a) List of those candidates who secured aggregate of 30 or 25 marks, as the case may be, shall be empanelled in the order of their aggregate marks secured in the interview with weightage for temporary service. From the panel so prepared. Division-wise list of empanelled candidates will be drawn for Divisions in Andhra Pradesh, Maharashtra, and Kerala, taking into account the last branch/office at which temporary workman had worked as Peon.

...

4. ABSORPTION OF EMPANELLED

(a) The candidates so empanelled shall be absorbed in the regular service of the Bank as Peons, subject to availability of permanent vacancy in each year in the respective offices, divisions. States, Union Territories, where they are empanelled up to 75% of the total vacancies.

(b) Appointment of empanelled candidates is subject to medical fitness as per the Bank guidelines.

(c) The panel shall be in force till the same is exhausted or for 3 years from the date of the Settlement, whichever is earlier. Thereafter in the event of non-exhaustion of panel, the same shall be reviewed.

(d) The appointment of eligible temporary employees from the panel in regular service of the bank as Peons is subject to the guidelines regarding reservation of vacancy for SC/ST, ex-servicemen, physically handicapped.

(e) Those selected for appointment from the empanelled list will be put on probation for six months with starting salary applicable to peons in subordinate cadre. The appointment shall be effective from the date they take up their appointment in the Bank..."

12.Mr. Arora, learned counsel for the Petitioner/Management highlighted the scheme of the selection as mentioned above and has submitted that the candidate is required to undergo an elaborate process for getting absorbed into the service. There was no guarantee that empanelment would ensure employment. Learned Labour Court misread the provisions of the settlement and erroneously directed the Petitioner/ Management to absorb the workman into service without considering that such absorption is conditional. Such order is prejudicial to the already empanelled candidates who qualified the parameters provided in the settlement.

13.The stance taken by the counsel is that the workman failed to apply for the absorption in a prescribed format to the concerned Bank. The terms of settlement required an eligible candidate to apply through an application to the Bank within the stipulated period of 60 days from the date of settlement. However, since the workman himself failed to avail the benefits of the settlement and slept over his right, he cannot be allowed to enjoy the benefits at

this stage. The learned Labour Court has exercised misplaced sympathy in favour of the workman.

14. Furthermore, it is submitted that the absorption of a person or reinstatement is not to be given automatically once a statutory violation of Section 25- F of the I.D. Act is established. It is an established law that even if a casual employee has worked for a few years and his services are terminated in violation of Section 25 F of the Act, then relief of reinstatement is not to be given automatically. The relief of absorption taking shelter of Section 25 H of the I.D. Act is illegal/unjustified.
15. Learned counsel has further submitted that the reference itself was barred on the grounds of delay and laches and being stale. The dispute was raised in the year 1995, though the illegal termination in claim is of the year 1988. Therefore, there exists no justification for entertaining such a belated and stale claim.
16. Learned counsel has relied upon the judgments delivered in *Nedungadi Bank Ltd. v. K.P. Madhavankutty*, reported as (2000) 2 SCC 455; *Parry & Co. Ltd. v. P.C. Pal*, reported as (1969) 2 SCR 976; *State Bank of Bikaner & Jaipur v. Om Prakash Sharma*, reported as (2006) 5 SCC 123; *Hochtief Gammon v. Industrial Tribunal*, reported as (1964) 7 SCR 596; *Rajinder Kumar Kindra v. Delhi Admn.*, reported as (1984) 4 SCC 635; *Kerala Solvent Extractions Ltd. v. A. Unnikrishnan*, reported as (2006) 13 SCC 619; *Haryana State Coop. Land Development Bank v. Neelam*, reported as (2005) 5 SCC 91.

17. With these submissions, learned counsel for the Petitioner/ Management prayed for setting aside of the impugned Award qua the direction with respect to the absorption of the Respondent/Management.

SUBMISSIONS MADE ON BEHALF OF THE WORKMAN

18. Mr. Bijay Kumar, learned counsel for the workman has submitted that the learned Labour Court *vide* the impugned award has erred in not granting any reasonable compensation to the workman, if not backwages.

19. Learned counsel has submitted that the workman was not intimated by the Bank branch regarding the 1988 settlement. The management was under obligation to inform the candidate through a written communication, however, management failed to do so in workman's case. Learned counsel relied upon the circular no. 166/88 issued by the Petitioner/Management. He further relied upon paragraphs 1 and 2 of the aforesaid circular which reads as:

"In this regard the branches/offices are advised as under :

- 1. All temporary employees who have worked during the period from 1-1-1983 to 30-6-1988 should be advised in writing by the concerned branch/office by Registered Post Ack Due as per Annexure B advising them to submit an application if they so desire, to the branch/office in which they last worked. The process of sending this letter should be done within 10 days from the date of receipt of this Circular.*
- 2. Records of intimation sent in terms of para 1 above, should be maintained at the branch/offices."*

20. Reliance has been placed upon judgements delivered in *Govt. of N.C.T. of Delhi v. Hospital Employees Union, Delhi*, reported as (1997) 2 LLJ 516 (Del); *B.S. Minhas v. Indian Statistical Institute*, reported as (1983) 4 SCC 582; *Estralla Rubber v. Dass Estate (P) Ltd.*, reported as (2001) 8 SCC 97; *Bhagwati Prasad v. Delhi State Mineral Development Corpn.*, reported as (1990) 1 SCC 36.

21. With this submission the counsel is seeking quashing of the impugned award and appropriate order directing the Petitioner management to pay reasonable compensation or back wages to the workman.

LEGAL ANALYSIS

22. This Court has heard the arguments advanced by the learned counsel for both the parties and have perused the relevant documents and judgments being relied upon by the respective counsels.

23. It is the submission of the Petitioner/Management that the learned Labour Court has transverse the limits of the term of reference framed by the appropriate government. In such a case, it becomes obligatory upon this Court to examine the term of reference.

“Whether the action of the management of Vijaya Bank in not giving the preference for re-employment as per the provision of section 25 of the LD. Act to Sh Naseem Ahmed is just, fair and legal. If not, to what relief he is entitled and from what date.”

24. On a bare reading of the reference, it is evident that the term of reference was specifically limited to the question of violation of Section 25 of the I.D. Act. However, the learned Labour Court adjudicated the matter and concluded that the workman is entitled to absorption in service as a peon. In answering the reference, the learned Labour Court appears to have digressed from the arena of reference and may have been influenced by the 1988 Settlement entered between the Bank and the employee union. As per the term of reference, the issue was only and only limited to the violation of Section 25 of the I.D. Act by the Petitioner/Management. The reference did not contain any mention of violation of terms of 1988 Settlement. As held by Hon'ble Supreme Court in *Mukand Limited Vs Mukand Staff & Officers* reported as **2004 (10) SCC 460**, '*the Industrial Tribunal is a creature of reference, it cannot adjudicate the matters which are not within the purview of the dispute actually referred to it by the order of reference*'. The Tribunal cannot deviate from the area of the reference and cannot get influenced by the other issues not explicitly forming the subject matter of the term of reference.

25. It is profitable to visit the observations made by the Co-ordinate Bench of this Hon'ble Court in *Vinod Singh Yadav v. Securitans India Pvt. Ltd.*, reported as **2018 SCC OnLine Del 7463**

"7. To appreciate the rival contentions of the parties it would be profitable to refer to Sub Section (1) of Section

10 and Sub Section 5 of Section 12 of the I.D. Act which reads as under:

10. Reference of disputes to Boards, Courts or Tribunals.-

(1) where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing-

(a) refer the dispute to a Board for promoting a settlement thereof, or refer any matter appearing to be connected with or relevant to the dispute to a Court for Inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication;

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

Provided also that where the dispute in the relation to which the Central Government is the appropriate

Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

12. Duties of Conciliation Officers.-

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

8. A conjoint reading of sub section (5) of Section 12 read with sub section (1) of Section 10 of the I.D. Act reflects that these provisions confer the power on the appropriate government which after formation of an opinion about the existence/apprehension of industrial dispute between the parties to make a reference to a Board for promoting a settlement thereof or to the Labour Court, Tribunal or Industrial Tribunal.

9. Here it would be relevant to refer to sub section (4) of Section 10 of the I.D. Act which is a mandate to the Labour Court/Tribunal or National Tribunal that it shall confine its adjudication to those points and matters incidental thereto which have been specified in the Reference. Sub section (4) of Section 10 reads as under:—

10. Reference of disputes to Boards, Courts or Tribunals.-

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the

National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

10. It is clear as crystal from a reading of Section 10 (4) of I.D. Act, that the Labour Court/Tribunal/National Tribunal cannot go beyond the points of reference and is mandatorily required to confine its adjudication to the points of reference and matters incidental thereto.”

26. In the present case, the terms of reference was with respect to not giving preference to the Respondent/Workman for re-employment in the violation of Section 25 of the I.D. Act, whereas the learned Labour Court was analyzing the entitlement of the Respondent/Workman in pursuance of 1988 Settlement. In the light of the abovementioned legal position, this Court is of the opinion that the learned Labour Court has transgressed the scope of reference under the Section 10 of the I.D. Act. The learned Labour Court should not have entertained any plea of absorption in service in pursuance to 1988 settlement, nor should have admitted any evidence regarding the same.

27. Now as far as the question of re-employment of the workman in accordance with Section 25 of the I.D. Act is concerned, it is expedient to examine Section 25-G and H of the I.D. Act for the same.

“25G-Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this

behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H- Re- employment of retrenched workmen. - *Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re- employment and such retrenched workman] who offer themselves for re- employment shall have preference over other persons.”*

28.The learned Labour Court *vide* the impugned award has concluded that the provisions of Section 25 of the I.D. Act was violated by not giving preference to the workman for re-employment. Dealing with the Section 25-F of the I.D. Act first, it is cogent that the said provision is not applicable in the present matter. Section 25-F of the I.D. Act requires a workman to be in ‘continuous service’ for claiming benefits of the provision. Since, the workman in the present matter, has admittedly worked for mere 135 days, Section 25-F of the I.D. Act cannot be invoked in such circumstance.

29.*Secondly*, it is also imperative to scrutinize if any violation of Section 25-G and H of the I.D. Act has been made. Upon exhaustive perusal of the impugned award, it is evident that the learned tribunal failed to appreciate whether there exists evidence which indicated towards violation of Section 25-G and H of the act. No evidence was brought on record to show that the Petitioner/Management retained any junior of the workman or

engaged any other person after termination of the workman on the same post without offering the employment to the workman first. No such names of individuals who were employed in violation of Section 25-G and H of the I.D. Act have been furnished by the workman. In such a case, there exists no *prima facie* case of violation of principle of 'First come Last go' and re-employment of retrenched workman.

30. This Court is of the considered view that the Industrial Tribunal without any reasoning concluded that violation of Section 25 of the I.D. Act is made. In view of the settled position of law, the impugned award being non-speaking and perverse, demands interference of this Court under Article 226 of the Constitution of India.

31. The award dated 1.3.2005 passed by the Central Government Industrial Tribunal cum Labour Court-II Rajendra Bhawan, Ground Floor, Rajendra Place New Delhi in I.D. No. 15/97 is hereby set aside.

32. While examining the records of the present case, this Court noticed that on reconsideration of the claim of the Respondent/Workman the Petitioner/Management filed an Affidavit dated 16.11.2001 before the learned Labour Court. The Petitioner/Management stated in the said Affidavit, *inter alia*, as follows:

“1. If the Workman is agreeable, the Bank is agreeable to include the name of the Workman Naseem Ahmed in the panel of temporary peons and he will be

absorbed as and when a vacancy of peon arises in any one of the branches in Lucknow region.

2. *The Workman will however not be eligible for any back wages or continuity of service.”*

33.Hence, in view of the aforesaid Affidavit filed by the Petitioner/Management, this Court deems it appropriate to direct the Petitioner/Management to include the name of the Respondent/Workman in the panel of temporary peons and consider his case for absorption in terms of the Affidavit dated 16.01.2001. It is clarified that in case the Respondent/Workman is absorbed, he will not be entitled for the back wages/continuity of service. If the Respondent/Workman has already attained the age of superannuation, he will not be entitled for this benefit.

34.In view of the detailed discussions hereinabove, **W.P. (C) 8865/2005** titled as ***Bank of Baroda Vs. Naseem Ahmed*** is hereby allowed and **W.P.(C) 11357/2005** titled as ***Naseem Ahmad Vs. Gen. Manager Vijaya Bank*** is hereby partly allowed. Pending application also stands disposed of. No order as to the cost.

GAURANG KANTH, J.

MAY 02, 2023
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