

Reserved on : 12.09.2024
Pronounced on : 25.10.2024

1.1 With the consent of learned counsel representing the parties, two connected cases i.e. LPA-65-2017 and COCP-1507-2017, shall stand disposed of by this common order.

1.2 By filing this intra Court appeal, the Punjab National Bank prays for setting aside learned Single Judge's judgment passed on 04.10.2016, which in turn has set aside the award passed on 28.03.2011 by the Central Government Industrial-cum-Labour Court-I, Chandigarh.

1.3 On the application of the respondent-workman, the following question was referred to the Labour Court for adjudication:-

“Whether the action of the management of Punjab National Bank, Saha in terminating the services of Sh. Ajit Kumar S/o Sh. Lali Ram, Ex- part time Sweeper w.e.f. 2.3.2005 without complying with the provisions of Section 25-F, G & H of the I.D. Act, 1947 is justified and legal? If not, to what relief the workman is entitled?”

1.4 The claimant submitted that he was employed on 05.07.2004 as part time Sweeper in the Bank; whereas, after completion of more than 240 days his services were retrenched on 02.03.2005, without compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The appellant/Management contested on the ground that the respondent has not worked for 240 days and rather he has only worked for the month of February, 2005, for which he was paid Rs. 400/-. It was stated that a new Branch of the Bank was opened at Saha and the Branch Manager vide communication dated 07.07.2004 informed the Regional Office, Chandigarh about employment of respondent as part time Sweeper, who is 5th pass. Immediately, the Branch Manager was informed that as per Bank's laid guidelines, no person who has studied beyond 4th Class can be engaged as a part time Sweeper in the Bank. Hence, the respondent was not engaged as a part time Sweeper. In August 2004,

new Branch Manager was posted. On 01.02.2005, the respondent came to the Branch with an application seeking employment while claiming that he has studied upto 3rd Standard and belongs to Scheduled Caste Category. The Branch Manager forwarded the respondent's request, which was processed and it was found that the workman claimed to have studied up to 3rd Grade, but in reality, he had studied upto 6th Grade. Hence, he was not eligible. During this time, the respondent worked for the month of February 2005 and he was paid Rs. 400/- as Labour Charges. Hence, it was claimed that the respondent has not worked for 240 days during the period of last 12 months before the date of alleged termination.

1.5 Upon appreciation of evidence, the Labour Court declined to answer reference in favour of the workman. The writ petition filed by the workman has been allowed by the learned Single Judge on 04.10.2016, while drawing inference on the ground that the workman has worked from 05.07.2004 till 05.03.2005.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

2.2 The appellant's counsel while filing synopsis containing the gist of his arguments has drawn the attention of the Court to the findings arrived at by the Labour Court. He submits that the learned Single Judge has erred in presuming that the workman continued to work from 05.07.2004 till 05.03.2005. He submits that on 01.02.2005, the workman filed an application

written in *Devnagri* (Hindi) claiming that he was unemployed and wants to work as a part time Sweeper in the Bank. This document is sufficient to prove that the workman was never in service prior to 01.02.2005. He further submitted that workman failed to produce any evidence to prove that he was appointed on 05.07.2004 and he was paid any salary except payment in the month of February 2005. While contending that the primary onus is on the workman to prove that he has worked for a period of 240 days, he submits that in this case the workman has miserably failed to discharge the onus. He also draws attention of the Court to two different educational certificates dated 10.10.1998 and 27.07.2004 produced by the workman while submitting that the workman is also guilty of playing foul with Management as he provided two different educational qualification certificates for getting the job.

2.3 *Per contra*, the respondent's counsel has supported the finding of the learned Single Judge and submitted that no interference with the finding of fact is appropriate. He submits that on 05.07.2004, the Manager had informed the Regional Manager that he has employed workman as part time Sweeper. There is no evidence to prove that his services were dispensed with at any point in time. He submits that the writing stated 02.12.2004 and 05.11.2004 have been inserted in order to create false evidence.

3. **Analysis and Discussion:-**

3.1 Having heard learned counsel representing the parties, this Court now proceeds to analyze the submissions.

I. **Discrepancy in Education Qualifications: Conflicting certificates submitted by respondent:-**

3.2 It is clear from the facts of the case that when a new Branch at Saha was opened, the respondent applied for the post of part time Sweeper. The Branch Manager sought permission from the Zonal Office. It appears from the reading of the letter that the respondent was allowed to work for some time but he was not eligible. The Zonal Office immediately informed the Manager, which resulted in immediate discontinuance. At that time, the respondent claimed that he has studied upto 6th Class. In August, 2004, new Bank Manager joined. On 01.02.2005, the workman submitted an application again to the Bank for employment as a part time Sweeper. This time he claimed that he is unemployed and has passed only 3rd Class. He supplied School Leaving Certificate dated 23.07.2005 to the new Bank Manager, who was oblivious of the fact that the case of the respondent was previously rejected being ineligible by the competent Authority. He recommended but was turned down on 25.02.2005 by the competent authority on the ground that the workman has studied upto 6th Class and not 3rd Class. The appellant-Bank admits that the workman was paid Rs.400/- as Labour Charges for the month of February 2005. In his deposition, the workman stated as under:-

“I joined the bank on 05/07/2004 as sweeper. No appointment letter was given by the bank. No attendance was ever marked in the branch of the bank. No Salary was paid to me on the assurance that on my approval of appointment entire salary will be paid”.

3.3 Thus, it is evident that there is neither any appointment letter nor any evidence of attendance of the workman. He has categorically stated that he

was not paid any salary during all this period. He never filed any representation complaining non-payment of monthly salary. Keeping in view the aforesaid facts, the workman failed to discharge onus.

3.4 Moreover, it is evident that the respondent-workman has produced two certificates to prove his educational qualification. Hence, the Labour Court came to conclusion that the respondent-workman was trying to secure employment by using foul means. Learned Single Judge has overlooked this finding of the Labour Court. While exercising writ jurisdiction, the Court is not expected to re-examine the matter like an appellate authority but to exercise jurisdiction of judicial review. In absence of perversity, manifest error or jurisdictional error, the writ Court is not expected to interfere.

II. **Employment Status at the time of Application:-**

3.5 Moreover, it is evident that the learned Single Judge has erred in assuming that the application dated 01.02.2005, is written in English. It was the categorical stand of the applicant's counsel that application dated 01.02.2005 is written in Hindi by the workman in his own handwriting. This position was not controverted by learned counsel representing the workman. In such situation, it is evident that on 01.02.2005, the workman claimed that he was unemployed and wanted to work as a part time Sweeper in the Branch. Thus, it is proved that on 01.02.2005, the respondent was not working. Additionally, the appellant is nationalized Bank. If the respondent continued to work until July 2004, there has to be some record of his attendance or payment of salary. The respondent could have examined any co-employee to prove his continuous employment for a period of more than 240 days as required.

III. **Inclusion of weekly offs in 240 days calculation without evidence of Fixed Monthly Salary:-**

3.6 The best case of the workman is that he worked from 05.07.2004 to 02.03.2005. However, while calculating 240 days during the previous 12 calendar months, weekly offs on Sundays have been included. A Full Bench judgment in “**Executing Engineer, Public Health Division No.1, Panipat v. Sanjay Rana and another**”, 2014 (2) SCT, 548 decided on 03.12.2010 has held that in case of a daily wager, Sundays and other holidays are not to be counted because he is not paid any salary for that day. The workman has only been paid Rs. 400/- for the work he performed in the month of February. On the other hand, the Supreme Court in ‘**Workman of American Express International Banking Corporation vs. Management of American Express International Banking Corporation**’, 1985(4) SCC 71 and in ‘**Standard Motor Products of India Ltd. Vs. A. Parthasarathy**’, 1986(1) LLJ 34 has held that only the paid holidays are required to be included. This Bench finds that it will not be appropriate to decide the case on this aspect because there is lack of evidence. The only material available is the appellant-Bank’s admission that the workman was paid Rs.400/- for the work he performed in the month of February. There is no evidence to prove that Rs. 400/- was calculated on the basis of actual working days excluding Sundays. On the other hand, there is also no evidence to prove that the workman was employed on fixed monthly salary irrespective of working days. Keeping in view aforesaid facts, this Court does not find it appropriate to further adjudicate this issue.

IV **Learned Single Judge’s decision purely based on inference:-**

3.7 Furthermore, it is evident that the learned Single Judge interfered with the award in exercise of its power of judicial review. The finding of learned Single Judge is based upon an inference, which is not at all supported by the record, particularly, when the application dated 01.02.2005 (MW-4/1), filed by workman proves that he has claimed to be unemployed while seeking another chance of employment.

4. **Decision:-**

4.1 Keeping in view of aforesaid discussion, the judgment of learned Single Judge is set aside and that of the Labour Court is restored.

4.2 Accordingly, LPA-65-2017 stands allowed.

5. **COCP-1507-2017**

5.1 In COCP-1507-2017, the workman claims infringement in the implementation of the judgment passed by the learned Single Judge. The aforesaid judgment has been reversed, hence, the cause claimed in this petition ceases to exist.

5.2 Hence, COCP-1507-2017, is disposed of having been rendered infructuous.

5.3 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

25.10.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No