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**In the Central Government Industrial Tribunal-cum-Labour Court-II,  
Chandigarh.**

**Present: Sh. Kamal Kant, Presiding Officer.**

ID No.111/2014

Registered on:-02.03.2015

Sh. Tarun Kumar S/o Sh. Suresh Chander Bansal, R/o Village Gurwadi,  
Tehsil & Distt. Palwal, Haryana.

.....Workman

Versus

1. The Chairman, Serve Haryana Gramin Bank, H.O.-Near Bajrang Bhawan, Delhi Road, Rohtak(HR)-124001.
2. The Nodal/Regional Officer, Serve Haryana Gramin Bank, Pargati Bhawan, Sector-44, Gurgaon(HR).
3. The Sr. Manager, Serve Haryana Gramin Bank, Sikri, Palwal(Haryana).  
.....Respondents/Management

**Award**

**Passed on:-23.01.2024**

Central Government vide Notification No. L-12012/03/2015-IR(B-I) Dated 22.01.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

**“Whether the action of the management of Serve Haryana Gramin Bank(Formerly known as Gurgaon Gramin Bank), Gurgaon in terminating the services of Sh. Tarun Kumar S/o ShSuresh Chander w.e.f. 05.12.2013 is valid, just and legal? If not to what relief the concerned workman is entitled to and from which date?”**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as Peon by the respondents/management on 17.05.2009 at the payment of Rs.280/- per day with respondent no.3. Respondents/management had not provided any appointment letter, PF, ESI Card or any other documents by using unfair labour practice. The respondent/management has obtained workman's signature on some printed documents by stating that it shall be used as a record of service. The record of the workman relating to his salary is reserved in the contingency account section of respondent which is available with the

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management. The workman rendered his services with utmost honesty without any complaint but in spite of that, management began to harass the workman when the name of Gurgaon Gramin Bank is changed as Serve Haryana Gramin Bank. Ultimately, against the provision of Section 25-F of the Industrial Dispute Act, management retrenched the services of the workman on 05.12.2013 without any enquiry or without giving any retrenchment compensation while he had worked more than 240 days on each calendar year before his retrenchment. Claimant/workman worked from 17.05.2009 in Dudhola Branch upto 07.11.2011 under the Manager Vijay Kumar Gupta. The workman moved an application before the Assistant Labour Commissioner for conciliation but of no result. The workman is unemployed from the date of retrenchment till date. It is therefore, prayed that workman be ordered to be reappointed with all benefits with continuous service.

2. The management has filed its written statement, alleging therein that petition moved by claimant/workman is not maintainable because there is no Industrial Dispute between the parties. The workman was a daily wager and engaged for a day and the services of the workman starts from morning and come to an end in the evening. The claimant/workman was never engaged as daily worker for regular work. The engagement of the workman was not under any recruitment process. The workman was engaged as daily wager by erstwhile Gurgaon Gramin Bank. The Gurgaon Gramin Bank with its Head Office at Gurgaon and erstwhile Haryana Gramin Bank with its Head Office at Rohtak have been amalgamated and a new entity has come into being know as Sarva Haryana Gramin Bank vide Notification dated 29.11.2013 of Govt. of India, Ministry of Finance, Department of Financial Services, New Delhi. After the alleged amalgamation, respondent-management of Sarva Haryana Gramin Bank did not engage the applicant/workman because his hiring as daily wager not under the prescribed lawful recruitment process as provided in the Regional Rural Banks(Appointment and Promotion of Officers and Employees) Rules, 2010. In view of the facts and circumstances mentioned above, it is therefore, respectfully prayed that the case of the workman may kindly be dismissed with heavy costs, being devoid of merits in the interest of justice.

3. Parties were given opportunity to lead evidence.

4. The workman has examined himself as WW1 and filed his affidavit in evidence as Ex.WW1/A along with payment vouchers bearing page no.1 to 80 and has been cross-examined by the learned counsel of management.

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5. The management has filed affidavit of Vijay Kumar Sharma, Senior Manager, Sarva Haryana Gramin Bank, who filed his affidavit in evidence as Ex MW1/A and has been cross-examined by the learned counsel of workman.

6. The workman has also moved an application dated 25.02.2016/23.02.2021 for production of attendance record, salary record, provident fund details and ESI details of the workman but the management did not file any record. The said application was dismissed by my Ld. Predecessor on 22.03.2021

7. Both the parties have not filed any written arguments.

8. I have heard learned counsels for the parties and have gone through the entire evidence placed on file by the parties.

9. There is no dispute about the proposition of law that onus to prove that workman was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary of wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.

10. In his affidavit Ex.WW1/A the workman has retreated his case that he was appointed as Peon on 17.5.2009 in the office of Manager of Sarv Haryana Gramin Bank, previously known as Gurgaon Gramin Bank, Dudhola Branch, Palwal for the whole day. He was drawing salary @Rs.280/- per day from the management. He had completed more than 240 days in the management without any break and his services were terminated orally on 05.12.2013. During his cross-examination, the workman has admitted that few times payments were made by voucher and sometime through bank and amount is deposited in his bank account.

11. It was incumbent upon the workman to prove that he had worked for 240 days preceding the year of his alleged termination on 05.12.2013. Except his bald statement, there is nothing on the record to prove that he had worked for 240 days with the respondent-bank. Even in his cross-examination, the workman the workman has admitted that a few times payments were made by vouchers and sometime through bank and amount is deposited in his bank account. When he was being paid through vouchers and sometime through bank and the amount is deposited in his bank-account then the

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same might have reflected in his bank-account but surprisingly the workman has not placed on record his bank account statement to prove that he was drawing salary from the respondent-bank. Thus, his bald statement maintaining that he worked from 17.5.2009 to 05.12.2013 is not proved when the workman was having best evidence in his possession. So far as vouchers placed on record by the workman are concerned, these vouchers were never proved by calling official of the bank. Moreover, from these vouchers it cannot be said conclusively that workman worked 240 days prior to the year of his retrenchment.

12. It is added here that workman had moved an application on 25.2.2016 for issuing direction to the respondent-bank to place on record the following documents i.e. attendance record, salary record, provident fund details and ESI details of the workman. In reply thereto, it is maintained by the management that since the workman was only daily wager so the above said record of the workman is not with the respondent as the workman was paid through debit voucher. Even in the affidavit of the management witness Vijay Kumar filed as Ex.MW1/A, the management has stated that the workman was engaged for a day and was called for a day from morning and his services ends in the evening on the same day and engagement of the workman was for a day. There was no provision of maintaining record or ACR of the workman because his engagement was on daily basis as and when necessary. He has not worked continuously for 240 days in a calendar year. This witness in his cross-examination has also stated that no attendance was marked of the workman for the respective day he was paid through voucher and vouchers are weeded out. Further, application dated 25.02.2016/23.02.2021 for production of record was dismissed by my Ld. Predecessor on 22.03.2021.

13. In this case, non-production of the above said record by the respondent-bank as asked by the workman was not necessary as there was no record of the workman with the bank. Moreover, workman is having best evidence with him in the shape of his bank account where his salary was deposited by the bank which he has not produced in the Court. Thus, rather adverse inference can be drawn against the workman.

14. It is entirely for workman to prove the completion of 240 days of his service with the respondent-bank prior to his retrenchment and onus to prove this fact is always on the workman which the workman has failed to prove it. Thus, protection of Section 25-F of the Act is not available to the workman.

15. In view of my findings on the above discussed issues as discussed in the preceding paragraphs, this reference is decided against the workman.

Part 100  
23/11/2024

16. Let copy of this award be sent to Central Government for publication as required under Section 17 of ID Act, 1947.

  
(Kamal Kant)

Typed By:-  
Dhirendra Keer  
P.A., CGIT-II, Chd.  
23.01.2024

Presiding Officer,  
Central Government Industrial  
Tribunal-cum-Labour Court-II,  
Chandigarh.

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