

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 20/2009

Date of Passing Award- 25.03.2022

Between:

Shri Shyam Lal Gohar,
(Represented by Legal Heirs)
S/o Shri Ram Kishan,
R/o C-2/417, Janta Flats,
Hastsal, New Delhi-110059.

Workman

Versus

Punjab National Bank,
Through its Branch Manager,
I.C.D Tughlakabad,
New Delhi

Management

Appearances:-

Ms. Ritu Rastogi
(A/R)
Shri Rajat Arora
(A/R)

For the claimant.

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Punjab National Bank, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/133/2008 (IR(B-II) dated 18/02/2009 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Punjab National Bank in terminating the services of the workman Shri Shyam Lal Gohar, sweeper w.e.f 30.01.2003 is just, fair and legal? What relief the workman concerned is entitled to and from which date?”

As per the claim statement the deceased workman Shyam Lal Gohar was appointed as a sweeper/peon on 04/09/1993 by the respondent Bank on a basic monthly salary of Rs. 740/- in its Branch at ICD Tuglaqbad New Delhi. At the time of employment no appointment letter was issued to him. The nature of the work done by him was perennial as he was sweeping and

cleaning the bank premises and also discharging the duty as a peon by visiting the other branches of the Bank for clearance of the cheques etc. For that purpose he was also being paid TA. His usual working hour was from 10:00AM to 6:00PM everyday with weekly holidays. He was getting his salary deposited by the bank in his account maintained with PNB. Alongwith him his wife Madhu Gohar was also working in the Bank as a sweeper. Since, both of them were part time sweeper and meeting the criteria for appointment as full time sweepers the Branch Manager had recommended their candidature to the higher management of the Bank indicating the days of work done by them in the preceding years. This correspondence was made in the year 2004 regarding the seniority of the temporary sweepers with full wage. On 14.09.2001 the respondent issued a letter to the claimant leveling some false allegations about his irregularities and lapses in duty. The claimant workman on 10.10.2001 replied the same denying the allegation. Though the claimant had worked for the Bank from 04.09.1993 to 23.10.2006 efficiently, to his utter surprise his salary for the period from 01.02.2003 to 23.10.2006 was illegally withheld by the bank inspite of several request made by the claimant for release of the same. In September 2006 he was orally informed that his service has been terminated w.e.f 30.01.2003 and in his place his wife Madhu Gohar has been appointed. The claimant raised objection and pointed out that when he was allowed to do his duty regularly upto 23.10.2006, how can his service be terminated w.e.f. 30.01.2003 and salary shall not be paid. The respondent Bank did not pay any heed and finding no other way the claimant wrote a letter to the National Commission of Safaikaramchari at New Delhi. Correspondence being made with the Bank by the said national Commission, the former intimated that the service of the claimant as well as his wife has been terminated and in their place the permanent sweeper has been appointed. Since the service of the claimant was terminated illegally he raised a dispute before the Conciliation Officer where the conciliation taken up failed and the Appropriate Government referred the matter for adjudication as per the terms of the reference. Before that the claimant had approached the Hon'ble High Court of Delhi by filing WPC NO. 04161 of 2007 but the Hon'ble Court dismissed the application giving liberty to the claimant to approach the appropriate forum hence, this proceeding.

Being noticed the management Bank appeared and filed written statement denying the stand taken by the claimant. The specific stand of the respondent Bank is that it being a public sector bank has its own rules for recruitment. The service condition of the employee is guided by the Shashtri Award, Desai Award and various Bipartite Settlement. The recruitment in the bank in subordinate cadre is usually done through the Employment Exchange and the candidates go through the selection process. In terms of the provisions of the conciliation settlement dated 07.05.1984 with All India PNB Employees Federation the vacancies of full time sweeper shall be filled up from the part time sweepers working in $\frac{1}{2}$, $\frac{3}{4}$ or full wage, on the basis of seniority determined by converting the service put in at $\frac{1}{3}$, $\frac{1}{2}$ or $\frac{3}{4}$ of the

scale wage into full time service. This is again subject to fulfillment of the eligibility criteria. With regard to the claimant Shyam Lal Gohar it has been stated that he was never appointed by the Bank through regular process of appointment. He was engaged on adhoc basis as a stop gap arrangement as and when required on account of the regular sweeper proceeding on leave. While denying that the claimant was working as a peon and getting TA for visiting the outside branches it has been stated that the stand taken by the claimant is wrong. The management has also denied about the appointment of the claimants wife in the bank as a part time sweeper. The further stand of the management is that the claimant was getting remuneration for the intermittent work done by him on need basis and nothing is due to be paid by the Bank to him. Since there never existed any employer and employee relationship between them the claim about illegal termination and the relief sought is not tenable.

The claimant filed replication maintaining the stand taken in the claim petition.

On the rival pleadings the following issues were framed for adjudication.

ISSUES

1. Whether the alleged date of termination mentioned in the reference order can be corrected by this tribunal on the basis of pleadings of the parties, which gives different dates of termination?
2. As in terms of reference.

The claimant Shyam Lal Gohar testified as WW1 and proved several documents marked in the series of WW1/1 to WW1/14. He was cross examined at length by the management. Similarly one Jawahar Singh the Senior Branch Manager testified as WW1 and proved only one document marked as WW1/1. During the pendency of the proceeding the claimant Shyam Lal Gohar died and his LRs were substituted in the proceeding.

FINDING

ISSUE No. 1

The main controversy relating to this proceeding is that the claimant's service was terminated illegally without following the procedure of Law. The stand of the claimant is that he was a part time sweeper working in the bank w.e.f 04.09.1993 on a monthly basic salary of Rs. 740/-. Though he worked till 23.10.2006 the bank management illegally held up his salary from 31.10.2003 to 23.10.2006. Repeated demands made by him remained unattended. In September 2006 he was orally informed that his service has been terminated w.e.f 30.01.2003 and in his place. His wife Madhu Gohar has been appointed. Since, his request for release of his withheld salary and

continuation in service was not considered he wrote a letter to the National Commission of Safaikaramchari. In the evidence the claimant has stated that the National commission of Safaikaramchari made correspondence with the Bank and the later informed that the service of the claimant as well as his wife has been terminated as a regular sweeper has been appointed.

The management took a clear stand that the claimant was never appointed as a part time sweeper though he was being engaged on need basis for casual works and payments were made according to the work done. The witness examined by the management as MW1 has stated that the claimant was never in the payroll of the Bank and thus, the question of termination of his service doesn't arise.

In order to decide if the claimant is a victim of unfair labour practice due to illegal termination of his service, at the first instance the evidence and pleading need to be examined to find out if the claimant was a part time sweeper of the bank. The claimant had filed an application for production of documents like the attendance register, wage register, etc from the custody of the Bank. But the same were not produced and the claimant was given liberty of adducing secondary evidence. Accordingly the claimant has filed photocopies of the documents like attendance register, internal correspondence of the bank, vouchers showing payment to the claimant etc. The law is well settled that the burden lies on the person who asserts employer and employee relationship between the parties.

The Hon'ble Supreme court way back in the year 1968 in the case of Gopal Krishna Ji Kedkar vs. Mohhamad Haji Latif and others reported in AIR 1968 SCC 1413 came to hold that the burden of proving a fact lies with the party which possesses the best evidence. A similar view was taken by the Hon'ble Division Bench of the Supreme Court in the case of Bal Kishan vs. Presiding Officer reported in 1996(3)SCT 548. Recently the Hon'ble High Court of Punjab and Haryana in the case of Ramesh Kumar vs. P.O. IT Panipat reported in 2018 LLR 1229 have held that when documents were called but not produced the management is guilty of withholding the documents which could have thrown light on the dispute. In this case the workman though filed a petition for production of attendance register, wage register etc. the same were not produced on the plea that no such records are maintained for persons engaged casually. Thus, the claimant has filed photocopies of the attendance register of the bank which was confronted to the management witness examined as MW1. In this proceeding the workman has all along maintained that he was working as a part time sweeper and getting the salary deposited in his bank account. The copy of the bank passbook has been filed which has been disputed by the management on the ground that the passbooks only prove the customer relationship of the individual with the Bank. But the claimant has proved the photocopies of the cash credit voucher, copy of the Dak Book showing entrustment of work to the claimant by the bank. Not only that the claimant has also filed a document which has been marked as C for being a photocopy. This is a letter

written by the chief manager of PNB to the Regional Office of the Bank having the caption reminder one. In this letter the Chief Manager has clearly mentioned that in the Branch Shri Shyam Lal Gohar and Madhu Gohar are working as temporary sweepers and the total no. of days worked by them are 2336 and 306 respectively. This contains the admission of the Bank and falsifies the stand of the Bank that the claimant was being engaged on need basis as a casual worker. This also falsifies the stand of the Bank that the claimant though was engaged on casual basis from 04.09.1993 to 30.01.2003, his service was terminated on account of irregularities and in his place his wife was engaged. The document marked C is a correspondence made on 14.02.2004 which indicates the seniority list of Shyam Lal Gohar as well as Madhu Gohar in the year 2004 which means in the year 2004 both Shyam Lal and his wife Madhu were in the employment of the management Bank as part time sweeper. Another document filed by the claimant and marked as 'D' carries importance in this regard. This is a correspondence made to the claimant by the Chief Manager on 14.09.2001. This is an explanation called by the Chief Manager as the disciplinary authority from the claimant wherein he has been described as a part time sweeper. In that letter he was asked to clarify as to why action shall not be taken on the charges leveled against him. This document was again confronted to the management witness during cross examination. Thus, from this document it clearly appears that for the period 1993 to 23.10.2006 he was working as a part time sweeper of the Bank and his candidature for appointment as a full time sweeper was duly recommended. The correspondence marked D also proves that the claimant was working under the supervision and control of the Branch Manager who had called for a showcause describing him as a part time sweeper as to why a disciplinary action shall not be taken against him.

In the case of **workmen of Food Corporation of India vs. food Corporation of India AIR 1985(SC) 670** the Hon'ble Apex Court have pronounced that the contract of employment always discloses a relationship of command and obedience between the employer and the employee. In the case of **Ram Singh and Others vs. Union Territory Chandigarh and Others (2004)1 SCC 126** the Hon'ble Apex Court have elaborately discussed the factors to be considered for determining the employer employee relationship and the factors include control, integration power of appointment, liability to pay, liability to organize work etc. Thus, from the above analysis of the Principle of Law, it emerges that the effective control is a test to determine the employer employee relationship between the parties. In this proceeding the workman has all along maintained that he was working under the supervision and control of the management and while testifying as WW1 he fortified the said fact. The document marked D alone indicates the effective supervision and control of the management on the work of the claimant which is also evident from the oral evidence. Hence, it is concluded that the workman was the employee of the management Bank as a part time sweeper for the period from 04.09.1993 to 23.10.2006.

It is now to be seen if the termination of the workman was made following the procedure of law or illegal for non compliance of the provisions of section 25F of the Id Act. This provision precisely speaks that no workman who has been in continuous service for not less than 1 year under an employer shall be retrenched until the workman has been given one month notice in writing or has been made retrenchment compensation. In this case in the written statement the management has taken a plea that no such notice was served as the workman was not an employee of the management. Thereby the management Bank has admitted none compliance of the provision of section 25F of the Id Act. It is a case where the mandatory provisions of section 25F should have been complied before the termination and the non compliance makes the termination of the workman in the hands of the management illegal.

Way back in the year 1980 the Hon'ble Apex Court of India in the case of Surendra Kumar Verma and Others vs. CGIT Delhi had observed that

“Plain commonsense dictates that the removal order terminating the service of the workman must ordinarily lead to the reinstatement in the service of the workman. It is as if the order was never been made and so it must ordinarily lead to back wages. But there may be exceptional circumstance which makes it impossible for the employer to direct reinstatement with full back wages.”

In such cases the Hon'ble Apex Court held that the appropriate order would be for payment of compensation in lieu of reinstatement. This is a peculiar case since the claimant died during the pendency of the proceeding. The oral and documentary evidence on record clearly proves that he was in the employment of the Bank till 23.10.2006. It was the claim of the claimant that from 30.01.2003 to 23.10.2006 his salary was not paid though he was made to work in the Bank. The only stand taken by the bank is that after 30.01.2003 the engagement of the claimant came to an end and in his place his wife was engaged. At the cost of repetition be its stated here that the document marked C clearly proves that both the claimant and his wife Madhu Gohar were working for the Bank for the same time and the stand of the Bank in this regard is not acceptable. Hence, the Bank is liable to pay the back wages to the claimant alongwith compensation for illegal termination as the claimant cannot be reinstated to service at present.

ISSUE NO.2

In view of the finding arrived in respect of issue no.1 it is held that the claimant is entitled to payment of the back wages for the period 31.01.2003 to 23.10.2006 at the rate of his last drawn salary alongwith interest @ 6% per annum from the date of accrual and till the date of actual payment. In addition to that the claimant shall be paid compensation of Rs. 2,00,000/- for the illegal termination in lieu of reinstatement. Hence, ordered.

ORDER

The claim be and the same is allowed and the reference is accordingly answered in favour of the claimant. The management is directed to release the arrear wage of the claimant for the period 31.01.2003 to 23.10.2006 at the rate of his last drawn salary alongwith interest @ 6% per annum from the date of accrual

and till the date of actual payment. In addition to that the bank shall pay compensation of Rs. 2,00,000/- for the illegal termination in lieu of reinstatement to the legal heirs of the claimant within 3 months from the date of publication of the award failing which the arrear salary shall carry interest @ 7% per annum and the compensation amount ordered shall carry interest @ 6% per annum from the date of publication of the award and till the actual payment is made. . Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
25th March, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
25th March, 2022.