

**BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM –
LABOUR COURT NO. II, NEW DELHI**

I.D. No. 72/2020

Sh. Shyoraj Sharma Vs. Union Bank

Counsels:

For Applicant/ Claimant:

Sh. Anurag Sharma, Ld. AR.

For Management/ Respondent:

Sh. RajatArora, Ld. AR.

Award

Appropriate Government vide reference no. ND.96(40)2019-ID-FOC-DY.CLC has sent the reference to this tribunal in the following terms:

***“Whether the services of Sh. Shyoraj Sharma S/o Sh. K.P. Sharma have been terminated illegally and/or unjustifiable by the Union Bank of India, and if so, to what relief is he entitled and what directions are necessary in this respect.*”**

In pursuance of the above said reference, the claimant had appeared and filed the claim. claimant in his statement averred that he has been working at the post of helper with the respondent since 17.04.2012 at salary of Rs. 12,000/- per month. He did his work with sincerity and honesty. His job

profile was to take files and documents from one table to another, bringing water to staff and cleaning. Management has not provided any legal facilities since beginning i.e. appointment letter, attendance register, casual leaves, yearly leave etc. He as usual was present on 11.03.2018 for resuming his duty but his services were terminated illegally by management without assigning any reason. He had sent the demand letter through registered post on 20.03.2018 but management did not reply. He submits that he is entitled for reinstatement with full back wages.

2. Respondent had appeared and filed the written statement. He had taken the preliminary objection that there was no employer-employee relationship between the claimant and the management; question of termination doesn't arise. No proof such as appointment letter, identity card, proof of payment of salary, termination letter etc. has been placed on record. He submits that the bank is required to follow the provision of article 14 and 16 of constitution of India in the matter of recruitment of the employees into the bank services and recruitment rules have been framed keeping in view of the constitutional mandate; claimant sought backdoor entry. The respondent has denied each and every averment made by the claimant.

3. The claimant had filed the rejoinder denying the objection taken by the management in the written statement and affirmed the averment made by him in the claim statement.

4. After completion of the pleadings, following issues were framed:

1. Whether the proceeding is maintainable.
2. Whether there exist employer and employee relationship between the management bank and the claimant.
3. Whether the claimant's service was terminated illegally, if so to what relief the claimant is entitled to.

5. Claimant in order to prove his case, had examined himself and come into witness box. He has reiterated the averment in his affidavit as mentioned in the claim statement. He has relied upon the following documents i.e. Demand notice, registry receipts, the copy of claim statement filed before the conciliation officer and copy of his pass-book. Claimant was cross-examined by the management where he stated that he was called by Sh. Vinod Sharma, manager of the bank. He had gone to the bank for opening his account in June or July 2011, on being asked by Branch Manager, he told that he was unemployed, phone numbers had been exchanged. He admitted that he had not been given any appointment letter. He was aware about the appointment process of the bank but he had been told that till he was in the bank, he will remain there. No advertisement had been issued by the bank. His age was 42 years at the time of his alleged appointment. He admitted that no entry of amount of Rs. 12,000/- was reflected in the copy of the pass-book produced by him.

6. In rebuttal, respondent had examined one Dinesh Purbey. He also reiterated the averment made in the written

statement/reply. He relied upon the two documents i.e. copy of the offer letter issued to an employee in the subordinate cadre as mark A and specimen copy of the recruitment notification as mark B. Nothing substantial has been asked from the witness.

7. Counsel of the claimant had forcedly argued that there is enough entry of receiving cash in his pass-book from the site of management therefore he is able to establish the relationship of employee and employer between him and the management. He further said that management had not replied of his demand notice sent through registered post courier and the conciliation had been failed there.

8. Per contra, counsel for respondent Sh. Rajat Arora has forcedly argued that none of the documents filed or produced by the workman has established any relationship of employee and employer between the claimant and the management. Further he argued that there is a rule and regulation of appointment as mandated by the constitution of India. The management relied upon the two documents i.e. copy of the offer letter issued to an employee in the subordinate cadre and specimen copy of the recruitment notification. He submitted that in absence of any evidence produced by the claimant, no relationship of employee and employer exists. Moreover, claimant himself admitted that he had been engaged by Sh. Vinod Sharma who had no authority to appoint him. Even there is no entry of Rs. 12,000/- reflected in claimant's pass-book indicating that he had been appointed at the salary of Rs. 12,000/- per month as asserted by him.

9. In the light of above said evidence and argument discussed above, my findings on the issue are as follows:

Issue no. 1 and 2 have the bearing upon each other. If the management is able to prove that there is no relationship of employee and employer between claimant and him, naturally, the claim is not maintainable. Section 2(s) defines the workman. It reads as under:

2 [(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding 3 [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

10. Now the workman claims that he is employed with the management, however, he is not able to produce any oral or documentary evidence suggesting that he had ever been employed by the management as a helper. He is not in possession of any appointment letter, termination letter, leave record etc. nor had he asked for these from the management. These documents are basically required to prove the relationship of employee and employer. However, in the absence of these documents, the workman can prove by direct or indirect evidence that he had been employed with the respondent but he has not produced any evidence herein so far from any person to prove that he had been seen there as an employee working with the management. Reflecting entry of some payment in cash in the pass-book does not create any relationship of employee and employer between them.

Order

In view of the above discussion, the claimant has failed to prove that he has ever been employed with the bank. Thereof,

the proceeding is not maintainable, claim of the claimant is dismissed, award is accordingly passed. Copy of this award be sent to the appropriate government for notification U/S 17 of the I.D Act. File is consigned to record room.

Dated 25.07.2024.

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II