

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

I.D. NO. 11/2015

**Sh. Balram, S/o Sh. Late Sri Shankar,
R/o-109, New Basti, Chander Road, Dalanwala,
Dehradun, U.K.**

Versus

The Branch Manager,
State Bank of India,
Vasant Vihar Branch,
Dist.- Dehradun.

Present: Sh. Prabhat Kumar Rai along with Smt. Smriti, Ld.
AR's for the claimant.
Sh. Rajiv B. Samaiyar, Ld. AR for the management.

AWARD

1. In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour and Employment, vide its Order No. **L-12012/62/2014-IR(B-I)** dated 31.12.2014 has been pleased to refer the following dispute between the employer, that is the Management of State Bank of India and their workman for adjudication by this Tribunal, terms of which are as under:

“Whether the management of SBI is wrong in denying the continuation of Sri Balram’s service and done against the provisions of law? If so, what remedies lies with the workman and what specific steps should be taken by the SBI management to reinstate him with specific benefits?”

After receiving the said reference, notices were issued to both the parties. Both the management and the claimant had appeared. Claimant had filed the claim statement stating that he did the work with the respondent from 01.01.1999 till 04.06.2014 at the temporary work of cleaning at the rate of Rs. 135/- per day. He did the work with diligently and honestly and did not give any chance to the management for any complaint. On 04.06.2014, respondent had terminated the services of the workman without any cause. Correspondents have been made on different date but, respondent had not given any satisfactory answer nor was he reinstated. Hence, he filed this claim.

2. Respondent had appeared and filed the written statement. Respondent submits that claimant is a temporary sweeper for sweeping and cleaning the toilets in the branch premises. The initial entry of engagement of claimant was unauthorized and was not against any sanctioned vacancy. Considering the economic situation in the country and the work to be got done, government make temporary engagement/engages workers on daily wages. Claimant accepted his engagement as daily wager/temporary employee at his own violation with open eyes. Claimant never worked for 240 days in any year. No cause of action accrued to him. Claim of the regularization has not been espoused by the substantial number of workmen of the Bank. He submits that claim of the claimant be dismissed.

3. Rejoinder has been filed by the claimant, denying the averment made by management in his written statement and affirmed the facts made in his claim statement.

4. It is also important to mention here that vide order dated 09.01.2023, this Tribunal had passed the award in favour of the claimant directing the management to reinstate the claimant as a part time Sweeper of the bank and pay daily wage as per the government notification and pay Rs. 2,00,000/- as compensation. However, on the application of the management, the award was set-aside and management was given an opportunity to lead its evidence.

5. After completion of the pleadings vide order dated 07.12.2015, following issues have been framed:

- (i) Whether the management of SBI is wrong in denying the continuation of Sh. Balram's service and done against the provision of law? If so its effect?
- (ii) If so what relief the workman is entitled to and from which date and what steps should be taken by the SBI management to reinstate him with specific benefits?

6. In order to substantiate his claim, claimant has filed the affidavit affirming the averment made in the claim statement. He has relied upon the thirteen documents which are marked as Ex. WW1/1 to WW1/16:

- (I) **Ex. WW1/1** is the application filed by the claimant before Assistant Labour Commissioner(C), Dehradun.
- (II) **Ex. WW1/2** is the copy of the affidavit of evidence of filed by the claimant before Assistant Labour Commissioner(C), Dehradun.

- (III) **Ex. WW1/3** shows that the claimant Balram was engaged as a Safaikaramchari on daily wage basis w.e.f. 01.04.1999.
- (IV) **Ex. WW1/4** is the paper cutting of an advertisement published on behalf of SBI advertising the posts for the safaikaramcharis on daily wage basis.
- (V) **Ex. WW1/5** is a correspondence made by the Branch Manager of Basant Vihar Branch to the regional manager.
- (VI) **Ex. WW1/6, Ex. WW1/7, Ex. WW1/8 & Ex. WW1/9** are the documents relating to regularization of the service of part time sweepers working in the bank.
- (VII) **Ex. WW1/10** is the copy of letter sent by Rajya Safai Karamchari Aayog to the Bank regarding regularization of the claimant.
- (VIII) **Ex. WW1/11** is the letter sent by claimant to the bank.
- (IX) **Ex. WW1/12** is the letter sent by the claimant to Chief Secretary, Safai Karamchari Aayog, Dehradun.
- (X) **Ex. WW1/13** is the letter sent by the Advocate Sh. Rajesh Devliyal to the Bank along with documents (Colly.-31 pages)
- (XI) **Ex. WW1/14** is the copy of conciliation proceeding dated 25.08.2014.
- (XII) **Ex. WW1/15** is the copy of letter dated 23.06.2014 (Colly.- 2 pages).
- (XIII) **Ex. WW1/16** is the photocopy of letter sent by the workman to the Bank regarding payment for 25 days for the month of January.

7. In rebuttal, management has also examined one witness affirming the averment made in the W.S. Management witness has stated that the claimant was engaged intermittently as a Sweeper according to exigency as a temporary Sweeper for sweeping and cleaning of the toilets in the Bank premises. He was never

appointed as permanent part time messenger or against permanent and regular vacancy. Therefore, there is no question of his regularization arises. He had relied upon the copy of the detail of the wages paid of the daily basis to the workman.

8. Counsel of the workman has argued, stating that management witness in cross-examination has admitted that **Ex. WW1/7** i.e. letter written by the Branch Manager to the Assistant General Manager, Dehradun wherein the recommendation was made for regularization of the claimant along with two other persons and he submitted that workman has been continuously working since 1999 up to 2014. He further submitted that in **Ex. WW1/5** where the Branch Manager has also written a letter addressed to the Regional Manager wherein he has stated that the branch was opened on 29.01.1999 and there was no subordinate staff posted at the branch since its inception and there are three boys working as fulltime daily wages since inception of the branch who are used to do for messenger work. He further submitted that he has also placed on record, details of the payment through cheques made to Balram from 2009 to March 2014. He submitted that all the evidences are un rebutted and uncontroverted. Respondent had not denied that the claimant had never worked.

9. Per contra, respondent argument revolves around the fact that the claimant is a daily wager as it has been admitted by him in the claim statement as well as his evidence and no right has been accrued in favour of the claimant being a daily wager. As and when, the service of the workman is required, he was called and accordingly wages were paid.

10. The management further relied on the judgment Of Hon'ble Supreme Court of India dated 10.04.2006 in **State of Karnataka vs.**

Uma Devi and Ors., Civil Appeal Nos. 3595-3612 of 1999, wherein back door entry into public employment was specifically barred.

11. I have heard the argument by both the parties, perused the record and analyzed the evidence. Argument of the counsel for the management that the judgment of *Uma Devi* passed by Hon'ble Supreme Court of India on 10.04.2006 is applicable in the present case wherein the backdoor entry into public employment was specifically barred is not tenable because firstly, it has not been given in the context of the industrial law. Secondly, in the recent judgment delivered by the Hon'ble Supreme Court of India in the case of ***Shripal & Anr. vs. Nagar Nigam, Ghaziabad (Civil Appeal No. 8157 of 2024)***, the court explicitly held that:

The principle of 'equal pay for equal work' cannot be disregarded when workers have performed perennial duties under the direct supervision of the employer... Uma Devi cannot be used as a shield to justify exploitative employment practices that persist for years without legitimate recruitment processes.

12. Now, come to the issue no. 1, "whether the management of SBI is wrong and denying the continuation of Sh. Balram's service and done against the provisions of law". Workman has relied upon the documents as Ex. WW1/5, WW1/6, WW1/7, WW1/8 and WW1/9 in order to prove that he was the employee since 1999. The contents of documents Ex. WW1/5, WW1/6 & WW1/7 are required to be produced and pasted herein:

भारतीय स्टेट बैंक
STATE BANK OF INDIA 4207
वसन्त विहार (इन्दिरा नगर), देहरादून
Vasant Vihar (Indira Nagar), Dehradun
Tel.: 0135-2761697, 2763334

State Bank of India,
Vasant Vihar Branch,
Dehradun

The Regional Manager,
State Bank of India,
Region -1
Zonal Office
Dehradun

Br/2007-08/ 1576

Dated: 21/08/2007

Dear Sir,

STAFF : MISC
PROTECTED EMPLOYEES

With reference to your letter no. Reg1/ DDN/1312 dated 20.07.07, we have to bring to your notice following facts:

1. The Branch was opened on 29.01.1992 as PBB branch and there is no subordinate staff posted at the branch since its inception.
2. There are three boys working as fulltime daily wages since inception of the branch who are used for messengerial work, canteen and sweeping of the Branch.
3. These facts have been brought to the notice of Zonal Office through various communications and were also pointed out in I & A Report dated 07.02.2007 and 18.07.2005.
4. These boys are paid as daily wages worker. Initially the bills were paid in their own names and after I & A Report dated 18.07.2005, their bills are being paid in different names. Even though their bills are being paid in different names, they may claim to be protected employees in future as they have been working in the branch since such a long period.
5. As there is no subordinate staff posted in the branch, services of these boys are essential for smooth functioning of the Branch.

We therefore, recommend that either these boys are absorbed in Banks permanent roll or some kind of mechanism be devised wherein they are taken as contract worker for two three years and their contract reviewed periodically.

Yours faithfully,

Branch Manager
OL/45



The Chief Manager/Branch Manager,
State Bank of India,
All the branches of Region-I

No. R1/DDN/ 3545

Date: 06/09/2010

Dear Sir,

ANC MEETING HELD ON 12.08.2010 AT MUSSOORIE WITH
THE MEMBERS OF SBISA
W/O/11 IN STAFF SALARY REVISION
9th IIIrd QUARTER SETTLEMENT

The captioned ANC meeting was held with SBISA members on 12.08.2010 at Mussoorie. A point regarding payment of one third scale wages to part time employees who are member of the subordinate staff on consolidated wages was raised in this meeting. In this regard we reproduce para No. 21 relating to part time employee of a circular CDO/P&HRD-IR/16/2010-11 dated 23.06.2010, the contents of which are self explanatory -

21. Part-Time Employees

In pursuance of Clause 21 of the Basic Settlement dated 2nd June 2005 with effect from 1st November 2007, Part-Time employees who are members of the subordinate staff on consolidated wages and whose normal working hours per week are upto 3 hours and more than 3 hours but less than 6 hours shall be paid one third scale wages w.e.f. 1st May 2010. From 1st November 2007 to 30th April 2010, they shall be paid consolidated wages as under -

- | | |
|--|--|
| a. Upto 3 hours | at bank's discretion with a minimum of Rs 1,030/- p.m |
| b. More than 3 hours but less than 6 hours | at bank's discretion with a minimum of minimum of Rs 1,440/- p.m |

The employee recruited on or after 1st May 2010 in part-time scale wages shall be at minimum of one-third scale wages.

2. Please, therefore, ensure meticulous compliance of instructions contained in the letter under reference.

Yours faithfully,

Regional Manager

भारतीय स्टेट बैंक
इन्दिरा नगर परामर्शक कार्यालय
मंडल-1
देहरादून

Contd. 16
21/08/2007



13. The document Ex. WW1/5 stated that the branch was opened on 29.01.1999 as PBB branch and there was no subordinate staff posted at the branch. There were three boys working as fulltime daily wages since inception of the branch who used for messengerial work, canteen and sweeping of the branch. The above said letter has been addressed to the Regional Manager by the concerned Branch Manager. The document Ex. WW1/6 supports the fact that there were three employees working there. The document Ex. WW1/7 states the name of the three workers including the workman who was working since long as daily wager employee. Even, Ex. WW1/9 also mentioned the name of the claimant working as Sweeper at the rate of Rs. 135/- per day from 01.04.1999.

Therefore, the contention of the management that the workman has not been working there since 01.04.1999 is wrong.

14. Management denied that the workman has not been working in the bank since 01.04.1999. It does not mean that he did not work in the bank. From the preponderance of various documents placed on record reveals that the workman has been doing the work since 1999 which was perennial in nature. Continuously employing the workman on casual basis amount to an unfair labour practice and it cannot be allowed.

15. In these circumstances discussed above, it has been held that the management of the SBI is wrong in denying the continuation of Sh. Balram's service and done against the condition prescribed U/s 25-F of the I.D Act while discontinuing his services as it has not given one month notice or in lieu of the notice pay and retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service. Hence, issue no. 1 goes in favor of the workman and against the management.

16. Now, come to the issue no. 2, "If so what relief the workman is entitled to and from which date and what steps should be taken by the SBI management to reinstate him with specific benefits". As a general rule when his termination is declared illegal, the appropriate relief is **reinstatement with full back wages**.

17. In the present case, workman did the job of sweeper/messenger for 15 years. Therefore, the reinstatement with full back wages is only option available to be followed. Hence, management is directed to reinstate the workman in class 4th service of the bank as Sweeper or whatsoever name it would have to be given. So far so, the regard of the back wages is concerned instead of computing the

back wages and retrenchment compensation, management bank is directed to pay the consolidated amount of Rs. 3,00,000/- in lieu of the back wages and retrenchment compensation. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification as required under section 17 of the I.D Act, 1947.

Date: 30.06.2025

ATUL KUMAR GARG
Presiding Officer.
CGIT-cum- Labour Court-II