

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

Present:

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

INDUSTRIAL DISPUTE CASE NO. 289/2018

Date of Passing Award- 08/08/2022

Between:

Shri Raman Kumar Thakur,
S/o Shri Ashok Thakur, vill & PO: Prem Nagar,
Tole Bahori, Dist. Sitamari,
Bihar.

Workman

Versus

The Branch Manager,
Andhra Bank,
Aggarwal Plaza, LSC-1, MIG Housing Scheme,
Mayur Vihar-III,
Delhi-110096.

Management

Appearances:-

Claimant in person
(A/R)
None for the management
(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 Andhra 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-12012/36/2018 -IR(B-II) dated 05/11/2018 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Andhra Bank in denying duty to Shri Raman Kumar Thakur S/o Ashok Thakur amounts to illegal and/or unjustified termination and whether the workman is entitled to reinstatement in the services of Bank as permanent workman with effect from 25/11/2013 to 14/11/201. If yes, what directions are necessary in this respect and what other relief the workman is entitled to?”

As per the narratives in the claim statement, the claimant Raman Kumar Thakur started working as a peon in the branch of Andhra Bank, the respondent of this proceeding situated at Mayur Vihar Phase III, New Delhi i.e. 25/11/2013. His appointment was made as a peon by the then Branch Manager. His initial salary was Rs

2000/- per month. But after one year it was increased to Rs 9000/- per month i.e @ Rs 300/- per day. During the course of such employment the claimant was discharging his duties with utmost sincerity, leaving no scope for complain by anybody. His activity as a peon was recorded in different register and documents maintained in course of business by the Bank. He was getting his monthly remuneration in cash from the Branch of the Bank. But suddenly on 14/11/2013, and without giving any notice, his service was terminated by the manager of the Bank .being aggrieved the workman raised a dispute before the conciliation officer. The Bank management appeared and took contradictory stand on the employment of the claimant. Since no conciliation could be arrived the Appropriate Government referred the matter to this Tribunal for adjudication.

Notice when served, the management Bank did not appear and no written statement denying the claim of the workman was filed. Thus the claimant was called upon to adduce evidence substantiating it's stand.

The claimant examined himself as ww3 and produced a no of documents which have been marked in a series of Ext ww3/1 to ww3/8. Besides examining himself the claimant has examined two account holders of the Bank who are having shops in front of the Bank to prove that the claimant was working in the Branch of the Bank at Mayur Vihar Phase –III from 2013 to 2015.

The claimant as ww3 has stated that on 25//11/2013, he was appointed as the peon by the then Manager Shilpa Awasthi on monthly remuneration of Rs 2000/- considering his devotion towards work and sincerity, his remuneration after one year was increased to 9000/- i.e @ Rs 300/- per day. This statement of the claimant shows that he was working as a daily wager. He has further stated that the remuneration he was getting by cash. No document evidencing payment made by the Bank has been placed on record. But the claimant in his statement explained that all the documents are in the possession of the Bank and his effort for getting the same by RTI application failed. On behalf of the claimant the WS filed by the Bank before the labour commissioner during conciliation has been filed as Ext ww3/4. This document shows that the Bank before the commissioner had taken two contradictory statements. Whereas at one point the employee status of the claimant has been denied, at other point it has been admitted that he was working in the Bank for specific purpose. This proves that the claimant was working in the Bank for the period as claimed by the claimant as the said averment has not been denied or rebutted by the Bank. This claim of the claimant also finds support from the oral evidence adduced by WW1 and WW2, who are maintaining accounts with the respondent Bank's branch at Mayur Vihar and having shops in front of the Bank there by having the occasion of seeing the claimant working there as a peon. This evidence also stands un rebutted. Hence from the oral and documentary evidence adduced by the claimant it is proved that the claimant was working in the Bank from 25/11/2013 to 14/11/2015 as a daily wager and getting Rs 9000/- per month @ Rs 300/- per day.

Now it is to be considered whether his service was terminated without notice of termination and without following the procedure laid down u/s 25 F of the ID Act. The oral evidence adduced by the claimant reveals that no notice of termination or notice pay or termination compensation was paid to him. He was discharging a perennial nature of work and after his termination, one Pankaj has been engaged. This oral statement of the claimant again stands uncontroverted and unrebutted. The record and chronologically maintained order sheet reveals that that the Management being served with the notice had entered appearance through it's AR, advocate Shri Mehraj Tyagi and took time to file Written Statement. On the next date of adjournment again the Management Bank appeared through the AR and sought time for filing WS. But there after the management abandoned the proceeding without filing WS and thus, the pleading and evidence of the claimant stands unchallenged and uncontroverted.

The claimant has prayed for a direction to the respondent for reinstating him into service with back wages and other benefits. The admitted facts are that the claimant was not a regular and permanent employee of the Bank, but a daily wager. The uncontroverted evidence of the claimant shows that he had worked continuously for more than 240 days in a calendar year. In such a situation, the Bank before terminating his engagement should have complied the provisions of sec 25F of the ID Act.

The law is well settled that the management who is the mighty employer can not avail the privilege of utilizing the service of a workman by giving him whatever name as daily wager, casual, Badli etc and would disengage him at the sweet will forcing without complying the provisions of sec 25F of the ID Act and thereby forcing him to a litigation. The said action of the management no doubt amounts to unfair labour practice.

But the law is also well settled that for every act of unfair labour practice, the order for reinstatement should be the Rule. The Tribunal has to take into consideration the nature of employment and the period of employment and in appropriate cases can direct for payment of compensation. In this case the claimant had worked for only two years on daily wage basis. There is no material evidence to believe that there is still a vacancy in the position in which the claimant was working. Since the management had not complied the provisions of sec 25F of the ID Act at the termination, it would be proper to direct the management to pay compensation to the claimant as against his prayer for reinstatement. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The management for not complying the provision of sec 25F of ID Act and for subjecting the claimant to unfair labour practice after availing two years service rendered by the claimant is directed to

compensate him with 15 days remuneration for each year of service amounting to Rs 9000/-, one month salary i.e 9000/- in lieu of notice or notice pay and Rs 2,00,000/- as compensation and litigation expenses for forcing him to this litigation and later abandoning the same. The total amount of Rs 2,18,000/- shall be paid to the claimant by the management within two months from the date of publication of the award without interest failing which the amount as directed would carry interest @ 9% per annum from the date of filing of the claim statement and till the 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.
08th August, 2022

Presiding Officer.
CGIT-cum-Labour Court.
08th August, 2022