

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. 118/2012

Date of Passing Award- 10th January, 2022.

Between:

Shri Suresh Kumar,
S/o Shri Banwari Lal,
R/o. A-217, Karampura, Delhi-110015.

Claimant

Through:- The President,
Delhi Mazdoor Sangathan (Regd.),
G-10, Shivlok,
New Delhi-110015.

Versus

The Branch Manager,
Union Bank of India,
46, Local Shopping Centre,
LU Block, Pritampura,
Delhi-88.

Management

Appearances:-

Shri D.M Sharma
(A/R)

For the claimant.

Shri Rajat Arora
(A/R)

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 M/s Union Bank of India, 46, Local Shopping Centre, 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-12011/83/2011 (IR(B-II) dated 31/05/2012 to this tribunal for adjudication to the following effect.

“Whether the Union, Delhi Mazdoor Sangh is empowered to espouse Industrial Dispute of workman working in the bank? 2. Whether the action of the management of Union Bank of India in terminating the services of Shri Suresh Kumar w.e.f 05.03.2010 is legal and justified? What relief the workman is entitled to?”

The contention of the claimant is that he was appointed as a peon in the management Bank, Branch at Pritampura Delhi w.e.f August 2001 for doing the day to day official work. He was discharging the duty being directed by the Branch Manager and other staff under their supervision and control. He was drawing remuneration from the branch as a peon and his last drawn remuneration per month was Rs. 2000/-. He had worked continuously from August 2001 to 05.03.2010. The work of the peon discharged by him included cleaning of the branch, visiting other branches for clearing of cheques, and doing other related works of dispatch, etc. For all these works done he was getting remuneration through vouchers. In the process he was working continuously for more than 240 days in a calendar year. As a result of which the employer and employee relationship between the claimant and bank was clearly established. But on 05.03.2010 his service was illegally terminated by the management orally and at the time of termination no notice for termination, notice pay, or retrenchment compensation was paid to the claimant in terms of the provisions of the ID Act which amounts to unfair labour practice. On 26.07.2010 he served a demand notice on the management and no action being taken. Thereon he approached the conciliation officer and raised a dispute. The management Bank though appeared did not cooperate and as a result thereof no settlement could be arrived at. Thus, the Appropriate Government referred the matter to this tribunal for adjudication. In the light of the above facts the claimant has prayed for an award to be passed directing his reinstatement in service w.e.f 05.03.2010 and payment of full back wages alongwith all consequential benefits from the date of termination and till the reinstatement.

Being noticed the management Bank appeared and filed WS refuting the allegation of the workman. The specific plea of the management is that the workman was never their employee and never existed any employer employee relationship between them. He was intermittently working in the branch for cleaning and was being paid wage for the work done. No appointment letter, employee Id or Pf Number was issued to him by the Bank as occasionally he was being engaged for discharging some work like delivering the dispatch or collecting the cheques etc and for the specific work assigned to him he was only paid labour charges through voucher. While denying that the claimant was working as a peon the management has taken a stand that the occasional engagement of the claimant for a specific work and the reimbursement of the labour charges will not confer any right on the claimant to claim regular employment of the respondent bank. It has also been pleaded that the respondent is a nationalized bank having its rule and regulation through which employment to different categories are made. The claimant taking advantage of the labour work assigned to him is trying to make a back door entry and the claim advanced by him is misconceived and liable to be dismissed. The further stand of the management is that the Delhi Mazdoor Sangh is not competent to espouse the cause of the claimant. It has also been pleaded that in absence of appointment letter or payment of

monthly salary or documents to that effect the claim of the claimant is misconceived and liable to be rejected.

On this rival pleading the following points emerged for adjudication.

POINTS

1. Whether there exists employer and employee relationship between the management and the claimant and the service of the claimant was illegally terminated without following the procedures of section 25-F of the Id Act.
2. Whether the claimant is entitled to the relief of reinstatement into service with other consequential benefits as prayed by him.
3. Whether Delhi Mazdoor Sangh is competent to espouse the cause of the claimant.

The claimant examined himself as WW1 and produced a series of documents marked as WW1/1 to WW1/06. These documents include the different payment vouchers showing payment to the claimant on different dates, copy of the endorsement made by the internet provider describing the claimant as a consumer etc. He has also filed the photocopies of the demand notice sent to the Branch Manager. On behalf of the management one of its Branch Manager testified as MW1 and deposed exactly in the line of the written statement. The copy of the attendance register has been filed and marked as MW1/1 to prove that had the claimant been an employee of the bank his name would have certainly appeared in the attendance register.

During course of argument the Ld. A/R for the management submitted that the basis of the claim advanced by the claimant rests upon the employer and employee relationship of the parties. The burden always lies on the claimant to establish the same. In the instant case the claimant has miserably failed to establish the said relationship. Unless the same is established, it cannot be held that the service of the claimant was illegally terminated and he is entitled to the relief of reinstatement with back wages. The Ld. A/R for the claimant counter argued that the bank is the mighty employer and in possession of all the documents which could have thrown light on the challenged employer employee relationship. Since the Bank failed to produce the documents an adverse inference is bound to be drawn against the management.

FINDINGS

Point No.1

This is the most important issue for adjudication in this proceeding. In order to decide whether the service of the workman was terminated illegally by the management, it is to be decided at the first instance if the workman was working as a peon in the management Bank from August 2001 to 05.03.2010 i.e. for a period of 09 years and there exists an employer employee relationship between them. The workman has pleaded and laid

evidence that he was working as peon and attending the works assign to him by the manager and other staff of the bank. He has specified the nature of the duty discharged by him. To support the same he has filed photocopies of several cash credit memos and the slip issued by the branch manager showing payment to the claimant. The management took a stand that the workman had never worked in the capacity of the peon. From the evidence adduced by both the parties the admitted facts are that no appointment letter or termination letter was issued to the workman by the management which has been admitted by the claimant during his cross examination. The claimant has also admitted that no interview was taken before his engagement and when a new Branch was opened at Pritampura, he was working in a nearby temple and on the request of the priest of the temple the manager called him to the Bank and engaged as a peon. He has also admitted during cross examination that in absence of the regular PTS of the Bank he was being called and the payment was made to him against the PTS. Thus, from the evidence on facts, it is to be ascertained if at all the workman was working as a peon in the Bank. The workman as WW1 has fully supported the averments of the claim statement and added that from August 2001 to 05.03.2010 he was working for almost 09 years as a peon in the bank without break. During cross examination the claimant has admitted that no advertisement was issued prior to his engagement nor any appointment letter was handed over to him. On this evidence the Ld. Counsel for the management argued that the management is a nationalized Bank having its own rules and procedure for recruitment of peon. The management has pleaded and argued that bank follows the procedure for appointment of the peons and any engagement if at all was made in respect of the claimant without following that procedure, cannot confer any kind of right on him. Thus, from the evidence it is clearly evident that the claimant was never given any appointment letter nor was his appointment through due process of recruitment of the Bank.

Now it is to be seen if the claimant has succeeded in proving his relationship with the management as the employee of the later. The law is well settled that the burden of proving employer and employee relationship always rests on the person ascertaining the same. In the case of **Ram Singh and others vs. Union territory of Chandigarh and others reported in (2004)1SCC page 126** it has been held that for determination of employer and employee relationship the factors to be considered inter alia are (i) control (ii) integration (iii) power of appointment and dismissal (iv) liability to pay remuneration (v) liability to organize the work (vi) nature of mutual obligation etc. the factual matrix of the present dispute as evident from the oral and documentary evidence is that no advertisement was issued for the appointment of the claimant nor any appointment letter was issued. Similarly there is no document available on record to presume that the management bank was exercising control for integration of the work allegedly done by the claimant. There is also no material on record that the claimant was getting monthly remuneration like other employees of the Bank and he was

signing the attendance register in acknowledgment of his daily attendance of duty. The mutual obligation in the nature of deducting PF subscription and extension of other benefits is no way evident from documents filed by the parties. Production of the photocopies of the cash vouchers for payment to the claimant only proves that he was occasionally carrying out some work assigned to him by the Branch Manager for which as stated by the management witness the Branch Manager is authorized to make payment towards labour charge in the capacity of the branch manager. This intermittent discharge of duty cannot confer the status of the employee on the claimant as claimed by him. There is absolutely no material on record that he was working continuously for the bank from August 2001 to 05.03.2010 and had completed 240 days of work in the calendar year preceding to the date of his termination. Once the employer and employee relationship is not established it is not proved that the claimant's service was terminated and that too illegally without following the provisions of section 25F of the ID Act by the management. This point is accordingly decided against the claimant workman.

Point No.2

In view of the finding arrived in respect of point no.1 holding that the claimant was not the employee of the management Bank and his service was not illegally terminated it is held that the claimant is not entitled to the relief sought for.

Point No.3

Both the parties to the proceeding during the hearing did not press this issue. Hence, this issue is answered in favour of the claimant. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest and the reference is accordingly answered against the workman. Copy be supplied to the parties and the record be consigned in the record room.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
10th January, 2022

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CGIT-cum-Labour Court.
10th January, 2022.