

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. 30/2013

Date of Passing Award- 15.03.2022

Between:

Smt. Geeta Kirtania,
W/o Govind Kirtania,
R/o Gali No.1, Adarsh-Indira Bangali Colony,
Rudrapur, Udham Singh Nagar, Uttrakhand

Workman

Versus

1. The Regional Manager,
Allahabad Bank, 1 Gandhi Road,
Dehradun

2. The Branch Manager,
Allahabad Bank, Rudrapur
U.S Nagar, (U.K)
Uttrakhand.

Management

Appearances:-

Shri K.M Tripathi
(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 Allahabad Bank, 1 Gandhi Road, Dehradun, 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-12012/92/2012 (IR(B-II)) dated 01/03/2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Allahabad Bank, Rudrapur Branch, Udham Singh Nagar, terminating the services of Smt. Geeta Kirtania, workman in violation of provisions of section 25F, of Industrial Dispute Act, 1947 is unjustified? What relief the workman is entitled to?”

As per the claim statement the claimant Geeta Kirtania was appointed in the erstwhile Allahabad Bank (now Indian Bank) in the Branch at Rudrapur in the district of Udham Singh Nagar in the year 1983 on the post of Waterman and her appointment was routed through proper channel. Since then she was discharging her duty efficiently without any complaint. On 01.07.2005 the Branch Manager of the Bank by an oral order terminated his service. Even though she had worked in the Bank for more than 22 years with an unblemished track record the manager abruptly terminated her service in utter violation of the provisions of ID Act. The claimant was not served with the notice of termination, notice pay, or termination compensation in clear violation of the provisions of section 25F of the Id Act. The claimant for her unlawful termination served a demand notice on the Bank on 16.09.2005 and also raised a dispute before the Assistant Labour Commissioner Udham Singh Nagar. Though a conciliation proceeding was initiated no fruitful purpose could be served and the conciliation officer referred the matter to the tribunal cum labour court at Haldwani for adjudication which was registered as ADJ Case no. 48 of 2008. During the process of hearing the tribunal came to hold that the proceeding is not maintainable in that forum and permitted her to file the application before the Appropriate Tribunal. The ministry of Labour being approached by the claimant a reference was made to this tribunal to adjudicate if the termination of the claimant is illegal and in violation of the provisions of section 25F and to what relief she is entitled to. The claimant has further stated that since the date of termination she is unemployed. At the time of appointment no letter of appointment was given to her. Similarly her service was terminated orally.

On being noticed the management Bank filed written statement denying the stand of the claimant. The specific stand taken by the management Bank is that their never existed employer and employee relationship between the Bank and the claimant. The claimant was never appointed against the post of Class4 employee and as such the dispute raised by her is not an industrial dispute. It has also been stated that there being no appointment the question of termination doesn't arise. The respondent being a public sector Bank has its own rules and procedure for appointment of the Class IV employees and no appointment can be made without following that procedure. Moreover, the management has stated that the claimant was engaged for supply of water by the management Bank at its Rudrapur Branch. She was only the water supplier and getting the charges for the water supplied by her through voucher. The management has further stated that as per the claim statement the alleged termination was made in the year 2003 and the claimant has approached the tribunal 10 years thereafter i.e 2013 which makes the claim barred by limitation.

The claimant filed rejoinder stating that she had worked in the Rudrapur Branch of the Bank for 22 years and during this period besides supplying water she was discharging all other duties of a Class IV employee

such as binding the voucher, attending to the officers of the Bank etc. her appointment was in the year 1983 as a daily wage Class IV employee and had worked as such till June 2005. During this period she had worked for 240 days or more in a calendar year and thereby acquired temporary status. the action of the management in terminating her service without following the procedure of section 25F of the Id Act is illegal and the same need to be set aside and she be reinstated in service.

On the rival pleading the following issues are framed for adjudication.

ISSUES

1. Whether the action of the management of Allahabad Bank, Rudrapur Branch, Udham Singh Nagar terminating the services of Smt. Gita Kirtania, Waterman in violation of provisions of section 25F of Industrial Dispute Act, 1947 is unjustified? If so its effect?
2. Whether workman is entitled to any relief? If so its effects?

During the course of the hearing the claimant filed an application invoking the provisions of section 11(3) of the Id Act for a direction to the management to produce documents evidencing for an employment and copies of all the vouchers through which payment was made to her. But the management did not file all the documents. However, few vouchers for the year 2001, 2002, 2003, were produced by the witness for the management. During course of argument the LD. A/R for the claimant submitted that the claimant was working in the post of Class IV employee and being illiterate she is not in possession of the secondary evidence. For the non production of the vouchers adverse inference may be drawn against the management. He also argued that the claimant had worked for 22 years in the Bank continuously and despite that the bank never took steps for regularization of his service which amounts to unfair labour practice. Having completed 240 days in a calendar year she had acquired the status of temporary employee and the management since had not complied the provisions of section 25F, the termination is illegal. On the other hand the LD. A/R for the bank submitted that the claimant who is claiming to be an employee of the Bank the burden lies on him to prove the employer and employee relationship. In this case the claimant has miserably failed to discharge the burden and accept her oral statement there is no evidence at all that she had worked for the management continuously for more than 240 days in the calendar year preceding to the date of termination. That having not been proved there was no necessity for complying the provisions of section 25F of the ID Act.

FINDING

ISSUE No.1

In her oral testimony the claimant has stated that she was working in the bank as Class IV employee and besides providing water she was also doing other work of the peon. The length of her tenure in the Bank was almost 22 years and she had worked uninterruptedly till 01.07.2005 when

her service was terminated. As stated above no document has been filed as stated in the previous paragraph. During cross examination the claimant has admitted that her initial appointment was casual labour but no appointment letter was issued. She was getting the remuneration through vouchers only. On this evidence the Ld. Counsel for the management argued that the management Bank is a nationalized bank having its own rule and procedure for recruitment of peon no backdoor entry is permissible. Thereby the bank has denied the employer and employee relationship.

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. 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 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 1983 to 01.07.2005 and had completed 240 days of work in the calendar year preceding to the date of her termination. Once the employer and employee relationship is not established it is not proved that the claimants 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.

ISSUE 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 her service was not illegally terminated it is held that the claimant is not entitled to the relief sought for. 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.
15th March, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
15th March, 2022.