

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. 73/2007

Date of Passing Award- 12/04/2022

Between:

Shri Mohd. Tasleem,
S/o Late Shri Ali Mohd.
R/o Village Gunoni, Post-Dharkot,
Tehri Garhwal (Uttaranchal)

Workman

Versus

The Regional Manager,
Union Bank of India,
Dehradun Branch, Radha Place,
78, Rajpur Road,
Dehradun-248001.

Management

Appearances:-

Shri Puneet Kumar
(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 Union Bank of India, 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-12012/86/2007 (IR(B-II) dated 07/12/2007 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Union Bank of India in terminating/disengaging Shri Mohd. Tasleem, from the service of the Bank (Chamba Branch) w.e.f. 15.12.2004 without any notice and compensation under section 25F, G and H of the Id Act, 1947 is legal and justified? If not, to what relief the concerned workman is entitled?”

As per the claim statement the claimant was working as a peon/messenger since 02/01/1998 in the management Bank in its branch at Chamba in the district of Tehri on daily wage basis. When he was working as such to the utmost satisfaction of the management leaving no scope for any complain, on 15/12/2004, suddenly the Bank management terminated his service. At the time of such termination, no notice, notice pay or termination compensation was paid to him.

The action of the Bank was in complete violation of the provisions of sec 25F of the ID Act as he had worked continuously for the bank and had also worked for 240 days or more in the calendar year preceding to his termination. His deceased father was a permanent employee of the Management Bank. But for the work done by the claimant he was being paid his remuneration by vouchers on putting his signature on the same. The effort made by the claimant by requesting the management for his reinstatement turned out futile. Hence, he raised an industrial dispute before the conciliation officer. But the conciliation failed too and the appropriate Govt. referred the matter to this Tribunal for adjudication.

The Management Bank appeared and filed written statement disputing the claim of the workman .While denying employer and employee relationship between them, the management has explained that in order to provide better customer service the Bank sometimes engages casual worker for short terms and make payment of wage to those persons working intermittently through payment vouchers. The management Bank being a nationalized Bank has it's own rules and procedure of employment. The vacancies are properly notified and the sub staffs of the Bank are appointed from among the names sponsored by the Employment Exchange subject to fulfillment of the requisite criterion. While denying the claim that the claimant had worked continuously for the Bank from 1998 to 2004, it has been stated that the claimant was working for the Bank for the period March 2003 to December 2004. The total no of the days he worked was only 84. Stating the details of the days he had worked in a month in the WS, the management has pleaded that the claimant was not an employee of the Bank appointed following due procedure and as such the question of his termination does not arise at all. Thus the stand taken is that the claim is not maintainable as there never existed any industrial dispute and the same is liable to be rejected.

In the replication filed the claimant has stated that at one point the Bank is admitting him as a casual employee and again denying the employer employee relationship. By filing a certificate issued to him by the then manager in 1998, he has taken a stand that in the certificate he has been described as a part time worker of the Bank and the management is guilty of suppressing the truth.

On the basis of the pleadings the Tribunal by order dated 10/01/2011 held that no other issue than under the reference be made. At this juncture the claimant moved an application for a direction to the management for production of documents like the original cash voucher, the cash payment register for the period January 1998 to December 2004. But the management expressed inability to produce the documents on the ground that the said documents are not in the possession of the Bank and whatever document is available have been placed on record. Thus the Tribunal gave liberty to the claimant for filing secondary evidence and in compliance thereto, the claimant has filed the photocopies of several payment vouchers and petty cash memos for the period 2003 to 2004.

The claimant testified as WW 1 and besides his oral evidence, proved the photocopies of the cash payment vouchers, petty cash receipts and one certificate issued by the then manager of the bank in the year 1998 describing him as a part time employee. On behalf of the Bank one of the Manager testified as MW 1 and deposed exactly in the line of the stand taken in the written statement.

At the outset of the argument the learned AR for the Management submitted that when the management has denied the employer employee relationship the burden is on the claimant to prove the same by oral and documentary evidence. But in this case the documents filed by the claimant do not prove the same. Mere filing of some cash payment vouchers will not prove his claim it when it is specifically pleaded that between March 2003 to December 2004, the claimant had worked intermittently for 84 days as a casual worker. No evidence has been placed on record to prove that he was working for the Bank from 1998 to 2003. In his reply the learned AR for the claimant argued that the management in this case is the mighty employer and in possession of all the relevant documents, which could have thrown light on the points of controversy. But the management managed to suppress the documents and adverse inference should be drawn for the same. He also argued about the certificate issued in the year 1998 by the Manager evidencing that he was a part time worker of the Bank since 1998.

FINDINGS

The most important point for adjudication in this proceeding is about the alleged illegal termination of the claimant by the management Bank. For the same it is to be decided first if the workman was working as a peon/messenger on daily wage basis for the Bank for the period 02.01.1998 to 15.12.2004. The workman has pleaded and laid evidence that he was working as such for the aforesaid period. The management took a stand that the workman had never worked as a daily wage peon or messenger. He was working intermittently to carry out the work as a casual worker during the period between March 2003 to December 2004. The admitted facts are that no appointment letter or termination letter was issued by the management to the claimant. Thus, from the evidence on fact it is to be ascertained if at all the workman was working for the Bank during the relevant period. The workman as WW1 has fully supported the averments of the claim statement and produced a series of documents which are in the nature of cash vouchers and petty cash memos. These are all photocopies filed by the claimant as liberty was granted for adducing secondary evidence. It is worth mentioning here that the claimant had demanded the management to file the documents like attendance register cash voucher register etc for the relevant period. Though the management has admitted that the claimant was working from March 2003 to December 2004 and not from 1998 continuously, no document was produced. The management took a stand that whatever document is available have already been placed on record. But surprisingly not a single document has been placed on record by the management nor the witness of the management produced the same while testifying. The circumstances lead to a conclusion that the

management has suppressed the documents which could have thrown light on the point of controversy.

Now the documents filed by the claimant are to be scrutinized. On scrutiny it is found that the documents filed by the claimant includes one certificate issued to him by the manager of the Bank on 27.01.1998 describing him as the PTS and Peon working on daily wage basis. The claimant has filed photocopies of several cash vouchers issued on different dates spanning from 2003 to 2004. These documents also include two cash vouchers dated 20.02.1998 and 04.03.1998 which contain the signature of the claimant and the seal and signature of the Bank official having its Branch at Chamba. The claimant has also filed a series of petty cash memo issued during the period between 2003 to 2004. Basing on these documents the Ld. A/R for the bank management submitted that the claimant was working intermittently for the bank 2003 to 2004. But there are also petty cash memos issued on 03.03.1998, 02.07.1998, 07.02.1998, 13.02.1998 etc. There are several such petty cash memos of the year 1998 which contains the signature of the bank official with seal and signature of the claimant and these documents are in the nature of the evidence to prove that the claimant was working for the bank during the period 1998 to 2004. The claimant has filed the copy of the police complaint lodged at the PS on 03.01.2016 alleging loss of documents during travel. This copy of the FIR has been marked as WW1/1 and the same has not been disputed from the side of the management. Thus, the oral and documentary evidence adduced by the claimant proves that he was working in the management Bank having its branch at Chamba as a casual worker on daily wage basis from 1998 to 2004 and whatever document was available with him has been placed on record. He could not produce complete documents as some were lost in the year 2016. At the cost of repetition be its stated here that the bank management in this case when called upon to produce the documents failed to do so on the pretext that whatever document is available has been placed on record. But surprisingly no document has been placed on record by the management and it is a clear case of suppression of documents by the management for which adverse inference is bound to be drawn against the management.

Mr. Arora the LD. A/R for the Bank submitted that the primary burden is on the workman to show that he was working as a daily wager in the Bank and had completed 240 days of work during the period of 12 months preceding to his alleged termination. He also pointed out that in the written statement the bank has given a detail account of the days of work done by the claimant and the amount paid to him between March 2003 to December 2004. Hence, the claimant has to adduce cogent evidence to prove that he had worked for 240 days in the preceding calendar year before his termination. He also argued that the claimant since was working as a daily wager there was no necessity of complying the provisions of section 25F of the ID Act.

In the case of **Delhi Cantonment Board vs. CGIT 129(2006)DLT 610**, the Hon'ble High Court of Delhi have held that there is no distinction between permanent employee or a temporary employee and termination of service without complying the provisions of section 25F is illegal. In the case of **Jasmer Singh vs. State of Haryana 2015(1)SCALE 360** the Hon'ble Supreme Court have held that none compliance of the provisions of section 25F at the time of termination when the workman was working as a daily paid worker is illegal. But the Ld. A/R for the respondent strenuously argued that when there was no employer and employee relationship between the claimant and the management the question of compliance of 25F was not at all required. He thereby argued that heavy burden lies on the claimant to prove the employer and employee relationship and in this case the claimant has miserably failed to do so. He also submitted that there being no employment, there was no occasion for the management to issue the termination order.

The law is well settled that once the claimant acquires the status of workman within the meaning of section 2(S) of the ID Act and completes 240 days of continuous service in a calendar year preceding his termination, the same would be valid only after compliance of the due procedure laid down in section 25F of the ID Act. The law is again well settled that the burden lies on the claimant to prove that he had worked for 240 days or more in the calendar year. In this case the management has only furnished a list of the days in which the claimant was engaged by the Bank. The management is a nationalized bank and supposed to maintain all relevant documents relating to employment of persons and payment made to them. Though, the management has claimed that the claimant had all together worked for only 84 days between March 2003 to December 2004 not a single piece of paper or document has been placed on record. On the other hand the documents though not complete as filed by the claimant clearly shows that he was working from 1998 to 2004 and payment were made to him through cash voucher and petty cash memos. This is a typical case of an illiterate low paid workman advancing the claim against the mighty employer who is in possession of all relevant documents. Non production of the documents by the management has no doubt influenced the merit of the case advanced by the claimant but that will not wipe out the rights of the claimant. Thus, from oral and documentary evidence adduced by the claimant it is clearly proved that he was engaged as a daily wager in the Bank from 02.01.1998 to 15.12.2004 when his service was illegally terminated by the Bank without comply of the provisions of section 25F of the Id Act. And the bank has intentionally suppressed the material documents relating to the claim of the claimant.

The Hon'ble Supreme court way back in the year 1968 in the case of **Gopal Krishna Ji Kedkar vs. Mohhamad Haji Latif and others reported in AIR 1968 SCC 1413** came to hold that the burden of proving a fact lies with the party which possesses the best evidence. A similar view was taken by the Hon'ble Division Bench of the

Supreme Court in the case of **Bal Kishan vs. Presiding Officer reported in 1996(3)SCT 548**. Recently the Hon'ble High Court of Punjab and Haryana in the case of **Ramesh Kumar vs. P.O. IT Panipat reported in 2018 LLR 1229** have held that when documents were called but not produced the management is guilty of withholding the documents which could have thrown light on the dispute.

The factual position of this proceeding is that the materials available on record being placed by the claimant lead to a conclusion that the management had employed the claimant on daily wage basis from 1998 to 2004, made payment to him through cash vouchers and one of the manager had also issued a certificate of merit to him. The witness examined on behalf of the management when confronted with the said certificate admitted that the documents appears to be a letter of the Bank but he cannot certify its authenticity. Thus, in view of the facts and the principles decided by the Hon'ble Supreme Court in the case of **Director of Fisheries Termianl Division vs. Bhikubhai Meghajibhai Chabda (2010)ILLJ 3SC** the none compliance of the conditions specified in section 25F of the Id Act makes the termination of the claimant illegal. Since the claimant has successfully proved through oral and documentary evidence about the work done for 240 days preceding to his termination the burden shifts to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. The management in this case has inexplicably failed to produce the complete records and muster rolls for the relevant period and infact there was practically no challenge to the deposition of the claimant except putting suggestions of the denial. Thus, it is held that the service of the claimant was terminated without complying the provisions of section 25F of the Industrial Dispute Act. The action of the management in terminating the service of the claimant ignoring the period of work rendered by him amounts to unfair labour practice and the management is guilty of suppressing material documents which could have clarified the issue under dispute. Accordingly it is held that the claimant for the unfair labour practice meted to him and for his illegal termination is entitled to the relief sought for. Hence, ordered.

ORDER

The reference be and the same is accordingly answered in favour of the claimant workman. Since the alleged termination took place in the year 2004 and more than 18 years have passed in the meantime and it is not known whether the claimant is still eligible to be employed, it is felt proper to direct the bank to pay a lumpsum amount of compensation to the claimant instead of reinstating him into service. Accordingly the bank is directed to pay Rs. 500,000/- to the claimant as a lumpsum compensation for the illegal termination of his service in the month of December 2004. This amount shall be paid to the claimant within 3 months from the date when the award would become enforceable failing which the amount shall carry interest @ 6% per annum from the date of accrual and till the final 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.
12th April, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
12th April, 2022.