

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 10 OF 2005

PARTIES: Biswajit Ghosh
Vs.
Management of United Bank of India, Bidhannagar Branch
(Now merged with the Punjab National Bank)

REPRESENTATIVES:

For the Union/Workman : Mr. Saradindu Kumar Panda, Advocate.
Ms. Saswati Thakur, Advocate.

For the Management of Bank : Mr. Tara Sankar Mallick, Advocate.

INDUSTRY: Banking.

STATE: West Bengal.

Dated: 07.06.2024

A W A R D

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, vide its Order **No. L-12012/159/2004-IR(B-II)** dated 02.12.2004 has been pleased to refer the following dispute between the employer, that is the Management of United Bank of India, Bidhannagar Branch (Now merged with the Punjab National Bank) and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of United Bank of India, Bidhan Nagar Branch in terminating Mr. Biswajit Ghosh, workman from service w.e.f. 29th November, 2003 is legal and justified? If not, what relief the workman is entitled to? ”

1. On receiving Order **No. L-12012/159/2004-IR(B-II)** dated 02.12.2004 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 10 of 2005** was registered on 12.01.2005 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. The aggrieved workman filed his written statement on 18.03.2005. The management of the United Bank of India (hereinafter referred to as UBI) contested their case by filing their written statement on 08.12.2006. A brief profile of the workman's case disclosed in his written statement is that, he was employed as a

casual worker at UBI, Bidhannagar Branch, Durgapur, Burdwan (WB) in April 2001 and was paid Rs. 40/- (rupees forty only) per day as his remuneration, which was credited to his Bank Account bearing No. 107603 on monthly basis. The workman performed the work of maintaining records of various Account Books and discharged his duties as sub-staff of the Bank in an unblemished manner till November 2003.

3. A Circular No. PD/DIR/31/OM-370/2003 dated 29.10.2003 was issued by the Head Office of UBI, Kolkata for the purpose of appointment of Subordinate Employees from the eligible Canteen Boys and Casual Labourers of the Bank as one time measure. Biswajit Ghosh, the casual workman submitted an application along with his Biodata and requested the Branch Manager of UBI, Bidhannagar for forwarding the application as a casual worker of the Bank as per Circular issued by the Head Office. The Branch Manager did not forward his application after several requests. The workman having rendered service for nine hundred and sixty days during the past three years submitted an application before the Branch Manager, UBI, Bidhannagar Branch, Durgapur, the Regional Manager, Burdwan Regional Office, Red Cross Road, Durgapur, and the Chief Manager P.A. (AS), UBI, 7th Floor, Kolkata through registered post on 25.11.2003. The Deputy Manager (Administration), UBI, Burdwan Regional Office, City Centre, Durgapur replied to the letter, informing the petitioner that his application be forwarded directly to the Chief Manager P.A. (AS) Kolkata. Once again, the workman submitted his application along with biodata addressed to the Branch Manager of UBI, Bidhannagar Branch for forwarding his application to the Chief Manager P.A. (AS) Kolkata but his application was not forwarded.

4. On 04.11.2003 the service of Biswajit Ghosh was illegally and arbitrarily terminated by the Branch Manager of UBI without following the rules applicable to the Bank. The workman thereafter raised an Industrial Dispute which has been referred for adjudication. The aggrieved workman in his written statement has

prayed for passing an award by setting aside the order of dismissal and directing the Bank authority to reinstate him in service with full back wages and also direct the Bank authority to act according to Circular No. PD/DIR/29/OM-362/2003 dated 27.10.2003 issued by the General Manager (Personnel), Kolkata.

5. The management of UBI contested the referred dispute by filing their written statement wherein it is contended that the proceeding is not maintainable in law and it is beyond the scope and ambit of Industrial Disputes Act, 1947. The case of the petitioner is based upon frivolous statements which is liable to be dismissed. The specific case of the Bank is that the petitioner was never a workman of the Bank. He was engaged temporarily on payment of Rs. 40/- per day whenever his service was required by the Bank/opposite party. The petitioner never rendered continuous service and he was not engaged against any vacancy of any person. According to the management of the Bank statements made by Biswajit Ghosh are false and imaginary. The petitioner was engaged for serving drinking water, tea and to perform sanitation work like cleaning and moping of the office on verbal request. No appointment letter was ever issued to him containing any terms of service. the opposite party / Bank denied the claim that the workman discharged continuous service from 04.04.2001 to 04.11.2003. According to the management petitioner never served beyond ninety days and on various occasions the service of petitioner was terminated verbally on request.

6. With reference to the Circular issued by the Head Office for filling up of the post of subordinate employees from Canteen Boys and Casual Labourers, it is pleaded in the written statement that the same is a prerogative of the Head Office. It is the case of the management that the petitioner served drinking water, tea and rendered sanitation work. During his engagement he performed work for one hundred and three days in the year 2001, two hundred and eighty-seven days in the year 2002 and two hundred and sixty-one days in 2003 and his service was never continuous in any of the three years. It is claimed that the petitioner was

verbally terminated and used to be called again when service was required. It has been asserted that Biswajit Ghosh did not fulfill the criteria for submitting his application for employment as sub-staff as he had appeared in the Madhyamik Examination and he had a higher qualification than the required maximum i.e. the candidate should not have passed the Class-IX examination. The management of the Bank contended that there is no merit in the dispute raised and the petitioner is not entitled to any relief of reinstatement or back wages as there was no master and servant relationship.

7. Biswajit Ghosh, aggrieved workman filed his affidavit-in-chief reiterating his case disclosed in his written statement. He has further stated that he was treated as a casual worker by the Bank and he discharged duty for three years continuously until his termination on 04.11.2003. He has claimed that the termination of his service is nothing but retrenchment and the same is illegal, void and bad in law. In course of cross-examination by the Bank the workman witness deposed that he worked for about three years but not continuously. The Bank Manager and the Deputy Manager passed his bills on the basis of application submitted by him. It transpires from his cross-examination that the work done by him, was on verbal instruction of the Bank Manager and the Deputy Manager and whatever amount was deposited in his Bank Account was on the basis of the Vouchers issued by the Bank. The workman failed to state the number of days he performed work in the Bank in the year 2001, 2002 and 2003. During evidence the workman produced the following documents in support of his case :

- (i) A copy of the Circular dated 27.10.2003 issued by the General Manager (Personnel), UBI, Head Office, Kolkata inviting application for absorbing enlisted casual labourers and empanelled canteen boys as Subordinate employees of the Bank has been marked as Exhibit W-1.
- (ii) Copy of the Circular dated 29.10.2003 issued by the General Manager

(Personnel), UBI, Head Office, Kolkata, laying down educational qualification for the casual labourers and canteen boys and the process of selection, as Exhibit W-2.

- (iii) Copy of the letter dated 28.11.2003 issued by the Deputy Regional Manager (Admin) to Biswajit Ghosh, as Exhibit W-3.
- (iv) Copy of the letter on the basis of which payment for May, 2003 was made in favour of Biswajit Ghosh, as Exhibit W-4.
- (v) Copy of the letter dated 23.07.2004 issued by the Manager, UBI, Bidhannagar Branch, as Exhibit W-5.
- (vi) Copy of the Admit Card of Biswajit Ghosh for appearing in Madhyamik Examination, as Exhibit W-6.

8. Ashim Kumar Mondal, Deputy Manager of UBI, Bidhannagar Branch filed his affidavit-in-chief and faced cross-examination. The witness has been examined as Management Witness – I. It is stated by him that the service of the petitioner was absolutely temporary and contractual and his payment was made on daily basis according to the services rendered by the petitioner for a few days. he didn't render any continuous service and he was never engaged against any vacancy of any person. The witness denied that the petitioner continuously served the bank from 04.04.2001 to 04.11.2003. It is stated that the service of petitioner was terminated on several occasions on verbal instruction by the opposite party. It is stated by him that the petitioner did not fulfil the criteria for applying as a Canteen Boy, as his educational qualification was higher than maximum as he appeared in the Madhyamik Examination, which is contrary to the condition in the Circular that he should not pass his Class-IX examination. The management witness also denied that the petitioner had ever been treated as Sub-staff by any officer of the bank or that he used to receive his salary through his Bank Account. It has been averred that the petitioner was never appointed by the Branch Manager of Bidhannagar Branch as a casual worker as such there is no question of his termination from service and the case is liable to be dismissed.

9. In his cross-examination the management witness denied that Biswajit Ghosh was appointed as a casual worker in the Bank and that he was in continuous service of the Bank from April 2001 to 04.11.2003. He stated that Biswajit Ghosh submitted application before the Bank authority for his permanent service

10. The point for consideration is whether the termination of Biswajit Ghosh from the service of UBI, Bidhannagar Branch was legal and justified and what relief the workman is entitled to?

11. Mr. Saradindu Kumar Panda, learned advocate arguing the case for the petitioner submitted that Biswajit Ghosh was appointed as a casual worker at UBI, Bidhannagar Branch on 04.04.2001 at a daily wage of Rs. 45/- per day on a no work no pay basis and perform work of an unskilled labour like serving water and tea to the officials and staff members of the Branch. He rendered continuous service for three years but was illegally terminated in November 2003.

12. It is submitted that a Circular dated 27.10.2003 was issued by the Head Office of UBI, Kolkata for absorption of enlisted casual labourers and empanelled canteen boys as Subordinate employees of the Bank. Referring to the Circular (Ext. W-1) learned advocate for the petitioner submitted that Biswajit Ghosh fulfilled the eligibility conditions for his appointment as a regular staff under the Bank and submitted his application along with Biodata, requesting the Branch Manager of UBI, Bidhannagar Branch to forward the application to the Head Office of UBI at Kolkata but his request was turned down. Biswajit Ghosh thereafter addressed a letter to the Deputy Regional Manager of UBI at Durgapur, informing him that his application for the post of Subordinate staff should be sent to the Head Office through the concerned Branch. Copy of the letter has been exhibited as W-3. It is argued that instead of forwarding the application of Biswajit

Ghosh to the Head Office, the Manager of Bidhannagar Branch wrongfully terminated the service of Biswajit Ghosh by stopping him from his work without issuing any termination letter. Learned advocate prayed for declaring the dismissal of the petitioner as unjust and illegal and prayed for his reinstatement in service with full back wages.

13. Mr. Tara Sankar Mallick, learned advocate appearing for the Bank, in reply, argued that the aggrieved person was never engaged as a casual employee of the Bank and was not engaged against any sanctioned post in the Bank. The petitioner was engaged as a daily wage labourer on no work no pay basis for fulfilling menial work. No appointment letter was ever issued for his engagement and he did not fill up any muster roll of the Bank. It is strongly contended that he is not a regular employee of the Bank and the provision of Section 25(F) of Industrial Disputes Act, 1947 would not be attracted as he was not engaged in continuous service. Learned advocate further argued that no payment of wages was made to him except some money against vouchers periodically. Therefore, there is no question of terminating the petitioner from service and he is not entitled to any benefit or any amount as Retrenchment compensation.

14. I have heard the rival contentions of the parties and considered the materials available in record. It is undisputed that Biswajit Ghosh was engaged as a daily wage worker for performing the work of serving drinking water, tea to Bank official and staff and performing sanitation work by cleaning and moping. In the written statement management of the Bank has admitted that petitioner used to get remuneration of Rs. 40/- per day as and when his service was required by the Bank. No document has been produced to signify that Biswajit Ghosh was engaged by the bank for any specified period or to perform any particular nature of work. However, in paragraph eleven of the written statement the management of the Bank has admitted that the petitioner performed work for one hundred and

three days in the year 2001, two hundred and eighty-seven days in the year 2002 and two hundred and sixty-one days in 2003. This admission establishes the fact that the petitioner had rendered continuous service for two hundred forty days under the Bank during the year 2002 and 2003. From the pleading of the Bank, it is established that the petitioner was assigned the work of serving water and tea to the Bank employees and also to perform sanitation and cleaning work during that period. He received payment of wages through vouchers issued by Bank. The evidence on record establish that the workman was engaged to work for the Bank on payment of wages and the claim has not been controverted. A workman is said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Therefore, any workman who has been in continuous service for not less than one year under the employer should not be retrenched from his employment without giving one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. According to Section 25F (b) of Industrial Disputes Act, 1947 he should also be paid Retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

15. It is true that the petitioner was never engaged against any sanctioned vacant post nor any formal letter of appointment was issued. Therefore, no legal right has accrued in favour of the petitioner for his reinstatement to the work of a casual labourer under the Bank. In respect of the petitioner's claim for forwarding his application to the Head Office of UBI at Kolkata for filling up the post of Subordinate Employees from the eligible Canteen Boys and Casual Labourers of the Bank it has been brought to my notice that the maximum

educational qualification of the candidate should be up to Class-IX, which has been further elaborated by specifying that the candidate should not have passed the Class-IX examination. In the instant case the petitioner has appeared in the Madhyamik examination and his Madhyamik examination Admit Card of the year 97-98 has been produced as Exhibit W-6. His registration for appearing in the Madhyamik examination signifies that the petitioner has passed his Class-IX examination and therefore is not eligible for being considered for the post of Subordinate Employee. Therefore, the grievance of the petitioner that his application was not forwarded by the Branch Manager to the Head Office does not hold good.

16. For the purpose of adjudicating this dispute it is worthwhile to refer to that the definition of "Retrenchment" in Section 2(oo) of Industrial Disputes Act, 1947, which lays down that the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include voluntary retirement or retirement of the workman on reaching the age of superannuation or termination of the service of the workman as a result of the non-renewal of the contract of employment or termination of the service of a workman on the ground of continued ill-health. In the instant case under discussion the petitioner was never engaged by the Bank by issuance of any formal letter of appointment. His work was casual in nature on no work no pay basis. Accordingly, no letter of termination was issued to him but stoppage of his work amounted to cessation of his employment. The workman admittedly had rendered continuous service during the year 2002 and 2003 by working for more than two hundred and forty days a year. In the year 2001 he served for one hundred and three days only. There was no complaint against him regarding unsatisfactory service. Therefore, in exercise of the power vested in Section 11A of Industrial Disputes Act, 1947, I am of the considered view that the petitioner is entitled to Retrenchment Compensation available under Section 25F

of Industrial Disputes Act, 1947. Due to his effective termination from his engagement without Notice, he shall be entitled to his daily wages for a period of one month under Section 25F(a) of Industrial Disputes Act, 1947 and the employer Bank shall also pay his retrenchment compensation under Section 25F(b) which shall be equivalent to fifteen days' average pay for every complete year of continuous service or any part thereof in excess of six months i.e. $15 \times 2 = 30 \times (\text{daily minimum wages during 2002 and 2003})$. The employer Bank is therefore liable to pay his wages for a period of sixty days (30+30) at the rate of prevailing minimum wages per day and a compensation of Rs. 5,000/- (Rupees five thousand only) for not following the rules. Being a casual worker on no work no pay basis of engagement he is not entitled to reinstatement. The Industrial Dispute is accordingly allowed in part on contest against the employer Bank.

Hence,

ORDERED

that the Industrial Dispute is allowed in part on contest against the employer Bank (UBI, Bidhannagar Branch, Durgapur). The employer Bank is directed to pay the Retrenchment compensation to the retrenched petitioner for a period of sixty days (30+30) at the rate of the prevailing minimum wages of an unskilled labour during 2002 and 2003. The employer Bank shall also pay a compensation of Rs. 5,000/- (Rupees five thousand only) for not following the statutory rules. The said amount shall be paid to the petitioner within one (1) month from the date of communication of the Award. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)
Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.