

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. 02/2013

Date of Passing Award- 28.02.2022

Between:

Zonal Secretary,
Bank of Baroda Employees Union,
Bank of Baroda, Krishna Nagar Chowk Branch,
Dehradun, Uttaranchal.

workman

Versus

Asst. General Manager
Bank of Baroda, Regional Office,
Agra Region, 60/3, 3rd Floor, FCI Building ,
Sanjay Place, Agra U.P

Management

Appearances:-

Shri Gopi Chand
(A/R)

For the claimant.

Shri B. S Chauchan
(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 Bank of Baroda, Regional Office, 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-12011/30/2012(IR(B-II) dated 02/01/2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Bank of Baroda, Agra Region in not implementing the clause 2 of the settlement recorded on 18.03.2008 before Dy. CLC (C), Bombay between the Union All India Bank of Baroda Employees Federation and management of Bank of Baroda is justified? What relief workmen are entitled to?

As per the claim statement a tripartite settlement dated 18.03.2008 was signed by the management of the Bank, the employees union and the federation to which the claimant union is affiliated in a meeting held under the chairmanship of Central Labour Commissioner Government of India Bombay. As per this settlement the management Bank is under contractual

obligation to regularized the services of all temporary and part time sweepers on the basis of specified cleanable area yardstick in phased manner. Pursuant thereto the management Bank i.e Bank of Baroda Agra Region regularize the service of 2 employees out of four. The persons left out are Pankaj Kumar and Smt. Shanti Devi. Whereas Pankaj Kumar was appointed on 01.12.2000 in the Budh Vihar Muradabad branch of the management Bank as sweeper cum peon on the half scale wage and continuing as such has been denied the benefit under the settlement referred supra. Similarly Smt. Shanti Devi was initially working in the erstwhile EBSBL since 1976 and she continued to work with the management Bank after merger of the EBSBL with Bank of Baroda. She had worked from 09.07.2002 to 16.10.2007 in the premises of old Kamla Nagar Branch and accomplishing the work of Cleaning more than 2100sqft. which renders her eligible for half salary as wage as per the rules and policy of the bank. After shifting of the branch from the old premises to the new premises she is continuing in the new branch as a sweeper where the cleanable area is more than 3050sqft. and she is entitled to 3/4 of the salary of the sweepers as wage as per the bank norms. The bank management taking advantage of the illiteracy of the Shanti Devi has denied the appropriate wage to her and made her to work and clean more than the specified area which amounts to exploitation. While the matter stood thus, the tripartite settlement dated 18.03.2008 was brought into force but the management Bank omitted to regularize the service of Pankaj Kumar and Shanti Devi. Being aggrieved they approached the union and the union in turn raised an industrial dispute before the conciliation officer. As the management was contemplating to make direct appointment of sweepers, in violation of the tripartite settlement dated 18.03.2008, notice was issued by the conciliation officer to the bank management who appeared and took a stand that the claimants Pankaj and Shanti Devi are not eligible for the absorption as per the tripartite settlement since they are working on consolidated wage. The management also expressed its reservation in applying the settlement dated 18.03.2008 to the cases of Pankaj Kumar and Shanti Devi. Since the conciliation failed the matter was referred to this tribunal for adjudication. The claimant has prayed that a direction be issued to the management Bank to regularize the service of Smt. Shanti and Pankaj kumar in the regular pay scale as applicable to such category of employees as was decided in the tripartite settlement.

The management bank filed WS denying the stand taken by the claimants. While disputing the authority of the claimant union to espouse the cause of individual workman a prayer has been made for dismissal of the claim. The other stand taken is that the claimant workmen were never employed with the management at any point of time and there exists no employer employee relationship between them. It has also been stated that the management is governed by certain statutory rules and guideline issued by the bank for employment of persons. According to this the employment of sub staff should be done through Employment Exchange only once the vacancies are notified. If no suitable candidate would be sponsored by the

employment exchange, other sources of recruitment are to be considered. Other than this there is no other method for recruitment of casual/temporary peons and sweepers. While denying that Pankaj Kumar has been working as sweeper cum peon on ½ scale wage and continuing as such the management has stated that the letter dated 01.12.2000 filed by the claimant Pankaj Kumar is not an appointment letter but a letter to engage Pankaj kumar on consolidated wage. Similarly Shanti Devi has been engaged for sweeping purposes on consolidated wage. Hence, both Pankaj kumar and Shanti Devi were not found eligible for absorption under tripartite settlement as they were getting consolidated wage only. While denying all other claims advanced by the claimants the management has stated that the claimants are not entitled to the relief sought for and no direction can be given to the bank for their absorption.

The claimants filed replication denying the stand of the management and reiterating the stand in the claim petition.

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

ISSUES

1. Whether the action of management of BOB, Agra region in not implementing the clause 2 of the settlement recorded on 18.03.2008 before Dy. CLC (C), Bombay between the Union All India Bank of Baroda Employees Federation and management of Bank of Baroda is unjustified? if so its effect?
2. To what relief the workmen/claimants is entitled to and from what date?

The secretary of the claimant union filed affidavit as WW1 and filed some documents which have been marked in a series of WW1/1 to WW1/26. The witness was cross examined at length by the management. The documents include the claim petition filed before conciliation officer the copy of the tripartite settlement, the circular letter issued by the General Manager of the Bank to all Branches and offices of the Bank All Over India for implementation of the tripartite settlement for absorption of casual/temporary peons/sweepers etc. In addition to this a documents has been filed and marked as WW1/8, a letter issued to the claimant Pankaj Kumar by the Regional Manager appointing him as a temporary sweeper w.e.f 01.12.2000. The other document filed by the claimant is the letter issued to the Chief Manager by the AGM of the Bank of Agra Region wherein the service of the claimant Pankaj Kumar has been acknowledged w.e.f 18.12.2000. This document has been marked as WW1/10. Another important document is WW1/24 which is a correspondence between the Assistant General Manager of the Agra Region to the General Manager at the zonal Office Lucknow wherein after verification of the bank records and in reply to the letter dated 29.04.2010 issued by the Assistant General Manager information was furnished with regard to the tenure of work and

the amount of wage paid to the Smt. Shanti Devi. This document reveals that Shanti Devi was working for EBSBL since 1976 and continued to work in the Kamla Nagar Branch of the Bank after merger of EBSBL with BOB. The said letter reveals the Square feet area of the Branch cleaned by Shanti Devi and the rate of the wage paid to her. This letter further reveals that from 19.07.2002 to 16.10.2007 she was working in the old branch and presently working in the new Branch. In the said letter it has been mentioned that the case of Shanti for absorption under phase III as per the tripartite settlement could not be recommended only for the reason that she was working on a consolidated wage.

On behalf of the management no oral and documentary evidence has been adduced.

During course of argument on behalf of the claimants it was argued that as per the tripartite settlement dated 18.03.2008 the management bank had agreed to regularize the service of all the temporary and part time sweepers on the basis of specified cleanable area/yardstick. The upper management of the Bank by its letter dated 24th March 2008 i.e soon after the signature of the tripartite settlement issued a circular to all its branches and offices in India directing implementation of the said settlement. As per the terms of the settlement the said casual and temporary employees are to be regularized in 3 phases. The candidature of the present applicants i.e Pankaj kumar and Shanti Devi were fitting to the criteria for regularization under Phase-III. The bank management of Agra Region in a discriminatory manner out of 4 only regularized 2 persons and omitted to do so in respect of Pankaj kumar and Shanti Devi. The stand taken by the management before the conciliation officer and in the WS filed in this proceeding is baseless and vague. It is wrong that these two claimants since where working on consolidated wage basis are not eligible for regularization.

The Ld. A/R for the management Bank on the contrary argued that the bank is not under any kind of obligation to regularize the services of all the part time and temporary sweepers. It has its own reservation.

In the WS the management has stated that it is not bound by the tripartite settlement as it is a public sector bank having its own regulations for recruitment. But while cross examining the claimant witness the management has put questions to the witness admitting that the case of Shanti Devi was rejected by AGM. Similarly in respect of Pankaj Kumar though he was appointed in the year 2002, his candidature was refused on the ground that the appointment being on consolidated salary, he doesn't fit to the conditions for absorption in the third phase. The counter argument of the claimant is that the bank management with an ulterior intention was paying consolidated wage to the claimant's i.e ½ of the wage though, they were entitled to ½ and 3/4th wage. For no fault on the part of the workman they have been victimized by the management. On behalf of the claimant reliance has been placed in the case of **Malathi Das and others vs. Suresh**

and others 2014 (141)FLR605 SC wherein it has been held that discrimination cannot be made in respect of persons in similar footings while granting benefit. the claimants have also placed reliance in the case of **Amar Kant RAI vs. State of Bihar and others 2015 (146)FLR75**, wherein the Hon'ble Supreme Court have observed that a person's cannot be denied regularization solely on the ground that he was working on the daily wage basis.

FINDINGS

ISSUENO.1

The admitted facts are that tripartite settlement was signed among the stakeholders on 18.03.2008 and higher management of the Bank by letter dated 24th March 2008 issued a circular for implementation of the same containing guidelines for absorption of part time sweepers in III phases. It is the case of the claimants that the workmen Pankaj and Shanti Devi working as part time sweepers were entitled to be regularized under phase III. But the management denied the benefit to them on some vague ground. So far as the case of the workman Pankaj is concerned a document has been placed on record and proved as WW1/8. This document reveals that said Pankaj had appeared for an interview on 03.11.2000 and was given the appointment letter on 01.12.2000 pursuant to which he is working as a part time sweeper till date.

The management while filing WS has denied this document as an appointment letter. But at a later stage the management took the stand that Pankaj having been engaged on consolidated wage was not a part time sweeper and his candidature could not be considered. A plain reading of the document WW1/8 shows that the same was the appointment letter issued to the claimant Pankaj kumar as a temporary sweeper. Not only that the letter reveals that the same was issued after a proper interview of the workman taken and he was instructed to produce his credentials for verifications before joining. Nowhere the management has denied the authenticity of this document. The other document filed for the workman Pankaj is the letter written by AGM Agra Region to the Chief Manager BOB marked as exhibit WW1/25 wherein it has been mentioned that Pankaj Kumar is working in the Bank pursuant to appointment letter issued on 18.12.2000 in the post of sweeper and the Branch where he is working is having the floor area between 751sqft. and 1500sqft. On behalf of the claimant certificates have been filed which appear to have been issued to Pankaj Kumar by the manager of the Branch acknowledging him as a part time sweeper and the wage paid to him.

So far as the candidature of Shanti Devi is concerned on behalf of the workman a document has been filed and marked as WW1/24. This is a correspondence made by the Assistant General Manager to the General Manager BOB U.P and Uttarakhand zone, Zonal office Lucknow wherein while replying to a query dated 29.04.2010 made by the General Manager

the AGM has stated that Shanti Devi was working with EBSBL since 1976 and after merger of the EBSBL with BOB she continued to work in the Old branch premises of the Bank at Kamla Nagar and again shifted to the new branch premises at Kamla Nagar and continuing as such till the date of order i.e 11.05.2010. The said letter further reveals that the cleanable area of Kamla Nagar Branch was 2658sqft. Though the claimant Shanti is entitled to ½ salary as wages he is being paid only 1050 per month. A similar document has also been filed in respect of the workman Pankaj Kumar marked as WW1/25. Thus, these documents clearly show that much prior to the tripartite settlement, during the tripartite settlement and thereafter these two workmen were working as the part time sweepers in the branch of the bank having cleanable area entitling them to a much higher wage but they were being paid much less wage in order to deprive them of their legitimate rights. The bank first of all denied them their due wages and later took a stand that for the consolidated wage paid to them they are not entitled to the absorption as per the tripartite settlement dated 18.03.2008.

The terms of the settlement which has been filed and marked as WW1/7 clearly provides that subject to clause 3 casual/temporary peons and sweepers shall be observed in Bank service in phased manner. Under clause 3 the causal/temporary peons sweepers should fulfill the eligibility criteria i.e the age and qualification as on the date of their first engagement in the bank. Clause 2 provides that under phase 3 all casual/temporary peons/ sweepers who have worked for 240 days or more in consecutive 12months between 01.03.1996 and 28.07.2007 and still working will be observed in phase 3 during the financial year 2009-2010.

So far as the case of Pankaj kumar is concerned the appointment letter dated 01.12.2000 marked as WW1/8 shows that he is working in the bank since that date and continuing as such. His date of birth as per WW1/25 which is a Bank document is 08.02.78 which means that he was within the prescribed age limit at the time of his initial appointment and full filing the criteria for absorption. Similarly as seen from the document WW1/24 which is again a document of the bank Smt. Shanti was 53 years old as on 01.01.2006 as noted in her voter id card issued by the Election Commission of India. This document again shows that Smt. Shanti initially started working in the branch of EBSBL in 1976 which means she was also within the prescribed age limit at the time of her initial engagement. The management since has not controverted the oral and documentary evidence adduced by the claimant it is held that both the claimants though were full filing all the criteria's for their absorption as mentioned in the tripartite settlement, the bank management subjected them to discrimination and unfair labour practice by not considering their case whereas two persons standing in the same footing were absorbed.

Unfair labour practice as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or Temporaries and to continue them as

such for years with the object of depriving him of the status and privilege of permanent workman amounts to unfair labour practice. In this case the document filed by the workman and marked as WW1/24 and WW1/25 clearly indicate that these claimants are working in the different branches of the bank for a pretty long period and qualify for consideration to the post of permanent PTS by virtue of their age and qualification. The Bank in utter disregard of law, deprived them of their legitimate right.

In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the Act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in settling the dispute between the employer and the workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case were as indicated above the workmen are victims of unfair labour practice by the Bank. The posts for which they are aspirants are to be filled up by way of regularization of the part time PTS. Hence, it is felt proper to issue a direction to the bank for absorption and regularization of the claimant Pankaj Kumar and Smt. Shanti which would meets the ends of justice.

ISSUE NO.2

In view of the finding rendered the issue no.1 the claimant Pankaj kumar and Shanti Devi are entitled to be absorbed in the post of PTS of the Bank in phase III during the financial year 2009,2010 i.e. on the date the other two PTS of that region were absorbed with the pay scale applicable to the post. The evidence reveals that smt. Shanti would have attained the age of superannuation in the mean time. Hence, it is directed that Smt. Shanti will be given the salary of the post in which she would be absorbed from the date of absorption till the date of her superannuation alongwith other consequential service benefits. Similarly Pankaj kumar shall be absorbed w.e.f the date the other two part time sweepers were absorbed and be allowed the salary applicable to the said post from the date of absorption alongwith all other admissible service benefits and the arrear salary shall be paid to him. Hence, ordered.

ORDER

The claim be and the same is allowed on contest. The management Bank is directed to absorb Pankaj Kumar and Smt. Shanti Devi in the post of permanent sweeper w.e.f from the date on which other two persons were absorbed in the third phase. The exercise shall be completed by the Bank within 3 months from the date of publication of the award and the arrear salary and other service benefits of Pankaj kumar and Smt. Shanti devi as directed in the preceding paragraph shall be paid to them within 2 months from the order of absorption passed failing which the amount accrued in their favour shall carry interest @ 9% 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.
28th February, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
28th February, 2022.