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(2007) 115 FLR 622 : (2007) **25 LCD 1172** : (2008) 1 LLJ 358

ALLAHABAD HIGH COURT

SINGLE BENCH

BANK OF BARODA — Appellant

Vs.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AND ANOTHER — Respondent**

(Before : Narayan Shukla, J)

Decided on : 08-01-2007

- Industrial Disputes Act, 1947 - Section 25

A. Industrial Disputes Act, 1947 — Section 25-F and 25-B(2) — Termination of service — Retrenchment — Casual Labour — Continuous service — Calculation of 240 days — For the purpose of calculating 240 days of continuous service under Section 25-F and 25-B(2), the expression "actually worked under the employer" includes Sundays and other holidays. (Para 4)

B. Labour Law — Termination of Service — Over-qualification of Workman — An individual's over-qualification for a position, such as a waterman, does not disqualify them from holding that post. A highly qualified person can offer better services. (Para 5)

C. Social Justice — Role of Courts — Courts should prioritize social justice, even if it means overlooking technicalities of law. Social justice aims for the greater good of a larger number of people, without depriving anyone's accrued legal rights. (Paras 6, 7)

D. Industrial Disputes Act, 1947 — Section 25-F — Non-compliance with procedure — If an employer fails to follow the procedure outlined in Section 25-F of the Act before disengaging a workman who has completed more than

240 days of service in a calendar year, the termination of such workman is unlawful. (Para 4)

Cases Referred

- [Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation](#), AIR 1986 SC 458 : (1985) 51 FLR 481 : (1985) 2 LLJ 539 : (1985) 2 SCALE 1393 : (1985) 4 SCC 71 : (1986) 1 UJ 228
- [Sadhuram Bansal Vs. Pulin Behari Sarkar and Others](#), AIR 1984 SC 1471 : (1984) 1 SCALE 997 : (1984) 3 SCC 410 : (1984) 3 SCR 582

Final Result : Dismissed

JUDGMENT

Narayan Shukla, J.—Through the present writ petition the petitioner has assailed the award dated January 17, 1996 passed by the Presiding Officer, Central Government Industrial Tribunal, Kanpur in Industrial Dispute No. 188 /1989, whereby the claim of the opposite party No. 2 has been allowed and the concerned workman has been directed to be reinstated in service.

The petitioner has challenged the same, inter alia, on the ground that the workman having been engaged on casual basis at different intervals does not get any right for absorption on regular basis and the Tribunal has committed a manifest error in recording the contrary finding because a direction issued by the Tribunal is contrary to the spirit of Recruitment Rules.

2. Briefly relevant facts of the case are that one Ayaz Ahmad was engaged by the petitioner on August 16, 1985 as a casual labour on daily wage basis. His services as casual labour were utilized by the Bank at its Rastamau Branch of: Lucknow region. According to the petitioner, the nature of work performed by the said workman was only casual as he was serving water etc. to the staff and the customers and he was engaged at different intervals without any appointment letter. Since his services were not required in the office, he was disengaged with effect from November 5, 1986. The opposite party No. 2 challenged the same before the. Tribunal on the ground that his services were terminated in breach of Section 25 of the Industrial Disputes Act (hereinafter referred to as the 'Act') as well as also in violation of several terms and conditions of Bipartite settlement. It was also submitted that neither any notice nor any retrenchment compensation was given to the workman and further juniors to him were retained in service, while his services have been terminated.

3. The petitioner submitted written statement before the Tribunal, through which it has been submitted that the workman had not completed 240 days in a calendar year, therefore, there was no question of violation of Section 25-F of the Act. The question was also raised

before the Tribunal that the workman was over qualified for the job of peon. The validity of reference was challenged before the Tribunal, which was negated. The question before the Tribunal for consideration was as to how many days the workman had actually worked in the bank as Peon. The Management of the bank had filed a list dated July 1, 1991 mentioning therein that the concerned workman worked for 204 days from November, 1985 upto November, 1986. However, on behalf of the workman an authorized representative submitted that in this national holidays and Sundays have not been included. The manager of the bank conceded this fact.

4. In the case of [Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation](#), in which the Hon'ble Supreme Court has explained that the expression "Actually worked under the employer" as given in Sections 25-F and 25-B (2) would include Sundays and other holidays. In view of the aforesaid judgment by counting 52 Sundays and National Holidays, the Tribunal arrived at conclusion that it was more than 240 days in a calendar year and accordingly, it found that since the workman worked more than 240 days before disengagement, the petitioner's Bank was under obligation to follow the procedure of 25-F of the Act. Since it was not followed, the Tribunal arrived at conclusion that the termination of the workman was bad in law.

5. Since through the writ petition the petitioner has also raised a question that the workman was over qualified as per the circular, accordingly, he was not eligible for the job of waterman, in reply to which learned Counsel for opposite parties submits that the over qualification of the workman does not disqualify the workman for the post of waterman. In support of his contention he has relied upon a judgment rendered in the case of *Man Phool v. Union of India* 1994 (69) FLR 419 (All). In this case this Court has held that if the petitioner was over qualified, the respondents would not be handicapped rather they would receive better services from a highly qualified person.

6. In the aforesaid matter this Court has taken into consideration the judgment of Hon'ble Supreme Court rendered in the case of [Sadhuram Bansal Vs. Pulin Behari Sarkar and Others](#), in which it has been held that social justice is the recognition of greater good to larger number without deprivation of accrued legal rights of anybody. If such a thing can be done then social justice must prevail over any technical rule.

7. In view of the aforesaid analogy. Hon'ble Supreme Court has observed as under:

The Division Bench, however, was of the view that the offer made on behalf of respondents 1 to 4 should be accepted as there was no concluded contract of sale in favour of the appellant and hence there was no complete sale yet. The Division Bench further noted thus.

On the other hand, we find that 38 families have been residing in the disputed land. It is submitted by Bhabra that these persons are all trespassers without any vestige of title. It is,

however, the case of the petitioners that they have been residing in the disputed land by making certain structures under the leave and licence of two of the owners of the said premises although one of the owners, Smt. Malati Das, who is alleged to have granted the licence, has denied granting of such licence. If the disputed land is sold to respondent 2, then 38 families who have been residing therein would be evicted with police help. In our opinion, the Court should do social justice and in doing such justice any technicality of law will not stand in its way. Social justice requires that the disputed land should be sold to the petitioners and others residing on the disputed land. Moreover, the petitioners have offered to pay price of Rs. 5,00,000, that is to say Rs. 1,00,000 (sic) more than the offer of respondent 2.

8. A counter affidavit has been filed on behalf of the opposite party No. 2 i.e. Workman, through which the case of the workman has been supported and has been submitted that in view of the law laid down by the Hon'ble Supreme Court as here-in-referred above since the workman completed more than 240 days, his services cannot be terminated without any notice or compensation in lieu of notice as provided u/s 25-F of the Act.

9. The petitioner has filed rejoinder affidavit on the same stand as he has taken in the writ petition.

10. After hearing the learned Counsel for the opposite parties and from perusal of the record I am of the view that the petitioner has not pleaded his case successfully and accordingly, I do not find any error in the award dated January 17, 1996 passed by opposite party No. 1.

Under the circumstances, the writ petition is hereby dismissed.