

Supreme Court of India

H.D. Singh vs Reserve Bank Of India & Ors on 10 September, 1985

Equivalent citations: 1986 AIR 132, 1985 SCR Supl. (2) 842

Author: V Khalid

Bench: Khalid, V. (J)

PETITIONER:

H.D. SINGH

Vs.

RESPONDENT:

RESERVE BANK OF INDIA & ORS.

DATE OF JUDGMENT 10/09/1985

BENCH:

KHALID, V. (J)

BENCH:

KHALID, V. (J)

REDDY, O. CHINNAPPA (J)

CITATION:

1986 AIR 132 1985 SCR Supl. (2) 842

1985 SCC (4) 201 1985 SCALE (2) 607

ACT:

Industrial Disputes Act 1947, sections 2 (oo), 25 F, Schedule V, Item 10.

Reserve Bank of India - Employment of Tikka Mazdoor - Persons helping examiner of coins and notes - Daily rated workers - Name of worker struck off the rolls after passing matriculation examination - Whether amounts to 'retrenchment' - Confidential circular of Bank instructing officers to give work on rotational basis - Whether an 'unfair labour practice'.

HEADNOTE:

The appellant was a tikka mazdoor-person who helps the Examiners of Coins and notes in the Reserve Bank of India, the 1st Respondent. He was selected in 1974 on daily wages basis and he had to report to the bank regularly in the morning to ascertain whether he could get work every-day. On days when no work was given he had to wait till noon to be told by the authorities concerned that no work was available. Thus, he had work only for four days in 1974, and one hundred and fifty four days in 1975, and one hundred and five days in 1976. At the time he was selected for employment, he was not a matriculate. He passed the matriculate examination in 1975. His name was struck off the

list of Tikka Mazdoors as the confidential circular issued by the bank indicated that persons who passed the matriculation examination could not be retained in the list.

As the appellant was not given any work after July 1976 and as there were no written order terminating his service and as attempts to get his grievances redressed by correspondence having failed he moved for conciliation. The Assistant Labour Commissioner though impressed with the genuineness of the claim of the appellant, could not persuade the bank. Thereupon, the Central Government referred the dispute for adjudication to the Central Government Industrial Tribunal.

The appellant in his claim statement before the Tribunal, pleaded that he had presented himself for duty daily but was not

843

offered jobs on the days when he reported for duty for reasons best known to the bank, that he was employed for 4 days in 1974, 154 days in 1975 and 105 days in 1976, that he was not told at the time when he accepted the job that his name would be struck off from the rolls if he passed the matriculate examination and that he had worked continuously for 240 days if the Sundays and Holidays were taken into account, and that the action of the bank in striking out his name from the list amounted to retrenchment.

The claim of the appellant was resisted by the Bank contending that the reference was had since the dispute was not sponsored by any representative trade union, that Section 2-A of the Industrial Disputes Act 1947 was not attracted, and also that the dispute in question was not an industrial dispute, that the appellant failed to inform the bank that he had passed the matriculation examination after getting selected and that he had not worked for 240 days in any year.

The Tribunal held that the action of the Reserve Bank, in not giving regular appointment to the appellant was legal and proper and that his name could be struck off from the list of approved Tikka Mazdoors in terms of a proper and justifiable policy followed by the management of the Bank;

Allowing the appeal,

^

HELD: 1. Striking off the name of the appellant is clearly termination of his service and the dispute squarely comes within Section 2A of the Industrial Disputes Act, 1947. The Tribunal grossly erred in upholding the preliminary objection raised by the Bank. [852 C]

2. Striking off the name of a workman from the rolls by the employer amounts to 'termination of service' and such termination is 'retrenchment' within the meaning of Sec. 2(oo) of the Industrial Disputes Act, 1947 if effected in violation of the mandatory provision contained in Sec. 25-F and is invalid. [850 F, 853 F-G]

Delhi Cloth & General Mills Ltd. v. Shambhu Nath

Mukherjee & Ors. [1978] 1 S.C.R. 591., State Bank of India v. Shri N. Sundra Money, [1976] 3 S.C.R. 160., referred to.

In the instant case, the pleadings, documents and the confidential circular indicate that the Bank was determined to adopt methods to terminate the services of employees like the

844

appellant. The appellant was not told that he would be struck off the rolls if he passed matriculation. He was not given any order in writing either refusing work or informing him that his name would be struck off the rolls. The appellant's name had been struck off the list contrary to the mandate contained in Section 25F. [850 E,G]

3. The 5th Schedule to the Industrial Disputes Act contains a list of unfair labour practices as defined in sec. 2(ra), and to employ workmen as 'badlis casual or temporaries and to continue them as such for years, with the object of depriving them of the statue and privileges of permanent workmen' is one of them as indicated in Item 10. [852 F-G]

4. The Bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the Industrial Law. It is disturbing to find that the appellant was denied job because he had become better qualified. [853 B-C]

In the instant case, the confidential circular directed the officers that workmen like the appellant should not be engaged continuously but should as far possible, be offered work on rotation basis and the case that the appellant is a 'badli' worker, have to be characterised as an unfair labour practice. [852 H]

5. Industrial adjudication in bona fide claims have been dragged on by employers for years by raising technical and hyper technical pleas. It would always be desirable for employers to meet the case of the employees squarely on merits and get them adjudicated quickly. It is too late in the day for this Court to alert the employers that their attempt should be to evolve a contended labour. [853 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6417 of 1983.

From the Award dated the 5th April, 1983 of the Central Government Industrial Tribunal, New Delhi in I.D. No. 54 of 1979.

O.P. Malhotra, N.S. Das Bahl, Pawan K. Bahl and Miss Indu Malhotra for the Appellant.

Dr. Y.S. Chitale and H.S. Parthar for the respondents. The Judgment of the Court was delivered by KHALID, J. The appellant was a Tikka Mazdoor with the first respondent, the Reserve Bank of India. A Tikka mazdoor is a person who helps the Examiners of Coins/notes. He was so selected on daily wages of Rs. 3 as per appointment letter dated 30/4/1974. As per the appointment order he used to report to the bank regularly at 9.30 A.M. to ascertain whether he could get work on every-day. On days when no work was given to him he had to wait till noon to be told by the authorities concerned that no work was available on such days. Thus he was given work only for four days in 1974, One Hundred and Fifty Four days in 1975 and One Hundred and Five days in 1976. At the time he was selected for employment, he was not a matriculate. He passed the matriculate examination in 1975. At the time he was selected he was not told that his name would be struck off the list of Tikka Mazdoors if he passed the matriculate examination. On 23/7/1976, he received a letter from the bank asking him to state within a week (latest by 29/7/1976) as to what his educational qualification was. He was also informed that his name would be struck off since he had concealed his educational qualification and that his services would be terminated without any notice and compensation from the bank. It appears that Tikka Mazdoors are placed in List II maintained by the bank. A confidential circular seems to have been issued by the bank on 27/6/1976 to the effect that matriculates would not be retained in this list. The appellant sent a reply stating that he was not a matriculate in 1974 when he was selected and that he passed the examination only in 1975. He enclosed the certificate and the marks-sheet to prove that he passed the examination only subsequent to his selection as Tikka Mazdoor.

2. The appellant was not given any work after July 1976. There is no written order terminating his services. The representative of the first respondent admitted, while he was cross-examined, that no formal order intimating the appellant that his name was struck off the list was issued. His father was also an employee of the bank. He knew that the appellant's name had been removed permanently from the list of Tikka Mazdoors. Thereupon, both his father and the appellant made representations to the bank against the action taken. No reply was given to these representations. When his attempt to get his grievances redressed by correspondence failed, he moved for conciliation. The Assistant Labour Commissioner appeared to be impressed with the genuineness of his case, but his persuasion did not move the bank in his favour. Thereupon, the Central Government made a reference by Notification dated 19/9/1979, for adjudication of the following dispute to Central Government Industrial Tribunal, New Delhi.

"Whether the action of the Management of Reserve Bank of India, Kanpur, in striking off the name of Shri H.D. Singh from the list of approved Tikka Mazdoors from July, 1976, is Justified and legal? If not, to what relief the workman in question is entitled?"

3. The appellant in his claim statement pleaded as follows:

(i) He had presented himself for duty daily, but was not offered jobs on the days when he reported for duty for reasons best known to the bank;

(ii) He was employed only for four days in the year 1974, 154 days in 1975 and 105 days in 1976;

(iii) He was not told at the time when he accepted the job that his name would be struck off from the rolls if he passed the matriculate examination.

(iv) He pleaded mala fides, in that persons similarly placed like him who had become matriculates after selection had been retained in service and that he alone was discriminated against;

(v) He stated that acquisition of high qualification should never have been used against him to deny him his job;

(vi) He had worked continuously for 240 days if the Sundays and holidays are taken into account;

(vii) The action of the bank in striking out his name from the list amounted to retrenchment.

4. The claim of the appellant was resisted by the bank raising both preliminary legal objections and factual objections. It was contended that the reference was bad since the dispute was not sponsored by any representative trade union, that Section 2-A was not attracted and also that the dispute in question was not an industrial dispute. On merits, the claim was resisted with the plea that the appellant failed to inform the bank that he had passed matriculation examination after getting selected and secondly that he had not worked for 240 days in any year.

These rival contentions were considered by the Tribunal and it was held as follows:

"..... The action of the Reserve Bank of India, Kanpur, in not giving regular appointment to Shri H.D.Singh is held to be legal and proper and his name could be struck off from the list of approved Tikka Mazdoors in terms of a proper and justifiable policy followed by the management of the Reserve Bank of India, Kanpur. Mr. H.D. Singh is held not entitled to any relief."

It is against this award that the appellant has come up to this Court by special leave.

5. Before considering the questions involved in this appeal, it would be appropriate to extract in full the Memorandum issued by the Reserve Bank of India, Kanpur, which lays down the terms and conditions of service of a Tikka Mazdoor.

M E M O R A N D U M No. 6602 Dated: 30th April, 1974.

From: Reserve Bank of India To: Shri Harindra dhvaj Kanpur Singh C/o Shri B.D.

Singh, C/N Examiner Gr.

II., R.B.I Kanpur.

With reference to his application dated 31/7/73, Shri Harendra Dhvaj Singh is informed that the Bank is prepared to offer him the post of a Tikka Mazdoor on the following terms and conditions:

- (i) He should call at the office of the bank by 9.30 A.M. on every working day to ascertain whether he would be offered employment on that day and he should leave only if he is advised that he will not be offered any employment on that day.
- (ii) For each day he is employed by the bank, he will be paid a consolidated daily wage of Rs. 3 and will not be entitled to any allowance or other remuneration.
- (iii) His hours of duty, if employed, on any day would, for the present, be from 9.30 A.M. to 5.15 P.M. which hours of duty are liable to be altered without notice.
- (iv) In case he does not present himself for employment on five consecutive working days without first having obtained prior permission his appointment will be liable to be terminated without any notice.
- (v) His appointment is subject to his being found medically fit for service in the bank by the bank's medical officer.
- (vi) He will be required to comply with and obey all orders and directions which may from time to time be given to him by any person or persons under whose jurisdiction, superintendence or control he may for the time being be placed.
- (vii) He should maintain the strictest secrecy regarding the bank's affairs and serve the bank honestly and loyally.
- (viii) He should produce at the time of reporting for duty satisfactory evidence of having obtained a proper release from his present appointment, if any.
- (ix) He should produce at the time of reporting for duty a letter of introduction from a respectable person.
- (x) He should produce at the time of reporting for duty sufficient proof of his age and educational qualifications and also bring with him the original certificates. Copies of which were attached to his application.
- (xi) The appointment will be subject to his furnishing such information as the bank may require from time to time and subject to his service being acceptable in the light of the information furnished.

(xii) If any declaration, statement or information given by him is at any time found to be false or incorrect or if any material particular is omitted, his appointment will be liable to be terminated forthwith without any notice.

(xiii) The present appointment will not confer on him any right for a temporary post or permanent post in the bank's service.

2. If he is agreeable to opt for casual appointment on daily wages on the above terms and conditions, he should report to the Manager's Section on or before the 4th May, 1974.

Sd/- B.N. Rohatgi P. Manager.

A mere reading of this Memorandum shows how rigorous and one-sided the conditions are for a job that fetches a 'handsome' sum of Rs. 3 per day. It is useful to note that this Memorandum does not contain any terms that a Tikka Mazdoor will be struck off the rolls once he passed the matriculate examination.

6. During the course of the submissions made by the appellant's Counsel, he referred to a confidential communication issued by the Bank to its officers to deal with Tikka Mazdoor. We think to it appropriate to extract the relevant portion therefrom, so that the facts of the case can be understood in the proper setting.

RESERVE BANK OF INDIA CENTRAL OFFICE Department of Administration & Personnel
Bombay - 400 001.

Ref. No. 4953/23H/75-76. 26th June, 1976. Confidential.

The Manager, Reserve Bank of India, Ahmedabad/Bhubaneshwar/Bangalore/
Bombay/Vyculla/Bombay-8/Calcutta/ Gauhati/Hyderabad/Jaipur/Kanpur/ Madras/Nagpur/New
Delhi/Patna.

Dear Sir, Recruitment-Class IV-Mazdoors and Tikka Mazdoors.

.....

.....

"5. As regards Tikka Mazdoors other than those referred to in paragraph 4 above, born on the lapsed list i.e. those who have not worked at all or who have worked for a lesser period than 240 days during the preceeding 12 calender months, the non-matriculates among them only may be considered for inclusion in List II allowing them appropriate relaxation in age having regard to the period of service, if any, rendered by them and their past record, if their number is not considered adequate to meet the requirements of your office, additional fresh candidates may be wait-listed in the usual manner. In order to keep the candidates so wait-listed outside the scope of Section 2(oo)

of the Industrial Disputes Act, they should not hereafter be engaged continuously but should, as far as possible, be offered work on a rotation basis. The latest position regarding their qualification and when any of them is found to have passed the matriculation or equivalent examination, his name should be struck off the list.

6. Please let us know in due course the action taken by you in the matter along with particulars of Tikka Mazdoors wait- listed in Lists I and II."

7. It is clear from the pleadings and from the documents noted above how the respondent-bank managed to get rid of the appellant. The disclosures made in the confidential circular make our task easy in holding that the Bank was determined to adopt methods to terminate the services of the employees like the appellant. The appellant was not told that he would be struck off the rolls if he passed the matriculation. He was not given any order in writing either refusing work or informing him that his name would be struck off the rolls. The case of the bank is that he was orally informed that his name has been struck off. Striking off the name of a workman from the rolls by the employer amounts to 'termination of service and such termination is retrenchment within the meaning of Section 2(oo) of the Act if effected in violation of the mandatory provision contained in Section 25-F, and is invalid. In this case the facts need only to be stated to hold that the petitioner's name had been struck off the list contrary to the mandate contained in Section 25-F. This Court has held in *Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee & Ors.* [1978] 1 S.C.R. 591, that striking off the name from the rolls by the management is retrenchment within the meaning of Section 2(oo) of the Act. While reading Section 25-F, 25-B and Section 2(oo), Krishna Iyer, J. in *State Bank of India v. Shri N. Sundara Money*, [1976] 3 S.C.R. 160, has observed that the words 'for any reason whatsoever' occurring in Section 2(oo) are very wide and almost admitting of no exception. It was made clear that a comprehensive definition has to be effectuated to protect the weak against the strong in construing the ambit of the words contained in Section 2(oo). Pithily he observed that 'without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25-F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Sec. 25-B(2)."

8. That takes us to the question whether the appellant had qualified himself to sustain his claim to the benefits of Section 25-F. The appellant, as we will presently see, has given the number of days on which he worked, in his claim statement. The first respondent-bank arranged posting Tikka Mazdoors, like the appellant, in such a manner that they were denied the benefits of the Industrial Disputes Act. Since the first respondent-bank disputed the fact that the appellant had worked for sufficient number of days to entitle him to claim remedies under the Act, we think it necessary to refer to the facts as disclosed in the records. The Advocate who appeared for the appellant before the Tribunal, Shri R.N. Srivastava, has filed an affidavit in this Court stating that he had filed written arguments before the Tribunal explaining the mistake committed by the Bank in the computation made by it of the number of working days of the appellant. From this affidavit, it is seen that the first respondent-bank put forward a case that the attendance register for the month of July, 1976 had been destroyed and that Sundays and other holidays were not taken into account in computing the number of days that the appellant worked. We have also a supplementary affidavit filed by the appellant himself which throws further light about the number of days that he worked. In this

affidavit, it is seen that he worked for 4 days in 1974, 154 days from January 1975 to December 1975 and 105 days from January 1976 to July 1976. The appellant was denied work from July 1976. His affidavit shows that he had worked for 202 days from July 1975 to July 1976. According to him, if we add 52 Sundays and 17 holidays, the total number of days on which he worked comes to 271 days. The appellant charged the Bank with having tampered with the records. To contradict the appellant's case, the first respondent bank did not produce its records. The appellant wanted the relevant records to be filed but they were not produced. Grounds 18 to 20 of the special leave petition make mention of this plea of the appellant. These grounds are met by the first respondent bank in their counter affidavit filed in this Court by stating that "when the matter was before the Industrial Tribunal, the registers in question were filed in another case before the Industrial Tribunal-cum-Labour Court and produced in that Court. However, I submit that now the attendance register has been destroyed but the payment registers are available with the respondent-bank as proof of the number of days on which the appellant worked." In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked for more than 240 days from July, 1975 to July, 1976, is true.

Striking off the name of the appellant under these circumstances is clearly termination of his service and the dispute in this case therefore squarely comes within Section 2-A of the Industrial Disputes Act. The Tribunal grossly erred in upholding the preliminary objection raised by the bank that the dispute did not come within Section 2-A.

9. Not being satisfied with the pleas noted above the respondent-bank had also a case that the appellant was only a badli workman who could be deemed to have worked only on days when the permanent workman or probationer was not employed. The bank did not make available before the Tribunal any documentary evidence to show as to how the appellant could be treated as a badli worker and as to whose place he occupied during the days he worked.

The confidential circular directing the officers that workmen like the appellant should not be engaged continuously but should as far as possible, be offered work on rotation basis and the case that the appellant is a badli worker, have to be characterised as unfair labour practice. The 5th Schedule to the Industrial Disputes Act contains a list of unfair labour practices as defined in Section 2(ra). Item 10 reads as follows:

"To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

We have no option but to observe that the bank, in this case, has indulged in methods amounting to unfair labour practice. The plea that the appellant was a badli worker also has to fail.

10. We thought it necessary to refer to the factual details in the case only to show our concern at the manner in which the employer in this case, the Reserve Bank of India, who should set a model for other employers being a prestigious institution, behaved towards its employees. It must have been his helpless condition and abject poverty that forced the appellant to accept a job on Rs. 3 per day.

Still see how he has been treated. We will not be far from truth if we say that the Bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the Industrial Law. It has disturbed us to find that the appellant was denied job because he had become better qualified. Perhaps the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep our roads and post-graduates in hundreds, if not in thousands, apply for the posts of peons. It has been our sad experience to find employers trying to stifle the efforts of employees in their legitimate claims seeking benefits under the Industrial Law by tiring them out in adjudication proceedings raising technical and hyper technical pleas. Industrial adjudication in bona fide claims have been dragged on by employers for years together on such pleas. It would always be desirable for employers to meet the case of the employees squarely on merits and get them adjudicated quickly. This would help industrial peace. It is too late in the day for this Court to alert the employers that their attempt should be to evolve a contented labour. We do not forget at the same time the fact that it is necessary for the labour also to reciprocate to prevent industrial unrest. In this case, for example, the Bank should have treated the appellant as a regular hand in List II. Instead, the Bank has, by adopting dubious methods invited from us, remarks which we would have normally avoided.

11. We hold that the appellant is entitled to succeed. We set aside the order of the Industrial Tribunal and hold that the striking off the name of the appellant from List II amounted to retrenchment under Section 2(oo) of the Act and was in violation of Section 25-F. We direct the first respondent-bank to enlist the appellant as a regular employee, as Tikka Mazdoor, to reinstate him and pay him his back wages up-to-date. The appeal is allowed with costs quantified at Rs. 3,000.

N.V.K. Appeal allowed.