

M/S Zila Sahekari Bank Ltd. Haridwar vs Additional Labour Commissioner & ... on 16 February, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (M/S) No.1858 of 2016

M/s Zila Sahekari Bank Ltd. Haridwar

.....Petitioner

Vs.

Additional Labour Commissioner & others

.....Respondents

Mrs. Seema Sah, Advocate, for the petitioner.

Mr. Arvind Kumar Sharma, Advocate, for the respondent.

Hon'ble Sharad Kumar Sharma, J (Oral)

Admit the writ petition. With the consent of the learned Counsels for the parties, the writ petition is being heard finally.

2. The petitioner to the present writ petition, who is an employer, has put a challenge to the order dated 17.05.2016, as it has been passed by the Appellate/Additional Labour Commissioner, Dehradun, as constituted under the Payment of Gratuity Act, 1972, by virtue of which, the appeal preferred by the petitioner which was preferred, being aggrieved as against the order dated 01.06.2015, passed by the Competent Authority, determining the payability of the gratuity amount to the petitioner had been decided concurrently by both the Authorities in favour of the respondent No.3/employee.

3. The brief facts of the case are that the respondent No.3, who was appointed into the services of the petitioner as a "Clerk" as back as on 08.04.1967. Owing to the service records, and the Rules as applicable governing the service conditions of the respondent No.3, he was considered for promotion, and was promoted as a Branch Manager on 01.09.1975. But owing to certain charges of theft, the services of the respondent No.3, were dismissed by an order dated 03.04.1989. Consequent to the order of dismissal dated 3rd April 1989, the respondent No.3, had approached before the Division Bench of the Allahabad High Court by filing a Writ Petition; being Writ Petition No.3690 of 1989, which was allowed by the Division Bench vide its judgment dated 24th July 2007, while allowing the writ petition, the order of dismissal dated 3rd April 1989, as it was passed by the Secretary/General Manager of the petitioner's bank, was quashed. However, the liberty was left

open to the employer to proceed afresh in accordance with law.

4. The admitted position is that as against the judgment of 24th July 2007, the petitioner had not proceeded to conduct a fresh enquiry or the proceedings against the respondent No.3, for taking any further or fresh action, on the same set of allegations, which was the basis of passing of the order of the dismissal dated 3rd April 1989, which was quashed by the Division Bench of the Allahabad High Court on 24th July 2007, where it was left open for the petitioner to re- conduct the enquiry though it was initiated, but it could not be concluded.

5. The second aspect which has also stands admitted between the parties is that as against the judgment of 24th July 2007, the employer/petitioner had preferred an SLP before the Honorable Apex Court, and the same was dismissed by the judgment dated 3rd March 2010, and the aforesaid judgment of 24th July 2007, and 3rd March 2010, has attained finality.

6. During the intervening period when the petitioner was having his recourse resorted to the judicial remedies during the period from 3rd April 1989, till he was reinstated into the services on 25th April 2009. The said period is being excluded to be considered for the purposes of determination of payment of gratuity under the Payment of Gratuity Act, 1972.

7. Learned counsel for the petitioner, submits that the services of the respondent No.3, would be governed by U.P. Cooperative Societies Employees Service Regulations 1975, and particularly the reference has been made by the learned counsel for the petitioner to Rule 12 of the Rules of 1975, which provides that the candidate for the purposes of direct recruitment in any of the posts, which is being provided in Category 1, 2 and 3, should have attained the age of 21 years, and must not have attained the upper age limit of 35 years as on the first date of year of recruitment.

8. This Court is not in agreement with the argument, as it has been extended by the learned counsel for the petitioner, in the light of the Rule 12 of the Rules of 1975, for the two reasons, firstly the reason being that the Regulation of 1975, on which the reliance has been placed by the learned counsel for the petitioner was framed by the State while exercising its power under Section 122 sub-section (1) of the U.P. Cooperative Societies Act 1965. The said Act under which the subordinate legislation was framed by way of the Regulations of 1975 had been later on repealed, and State of Uttarakhand had framed an Act called as Uttarakhand Cooperative Societies Act, 2003, and as per the provisions of the Uttarakhand Cooperative Societies Act, 2003, the Rules framed under section 122 of the Act of 1965 have not been protected or saved in its applicability, governing the service conditions of the employees.

9. In that eventuality, the Regulations of 1975, and particularly, Regulation 12, the reference of which has been made by the learned counsel for the petitioner would not be applicable. Secondly, if even for a moment though without accepting the argument extended by the learned counsel for the petitioner, if Rule 12, is taken into consideration, it was a case where it was fixing an age limit for the purposes of making a candidate eligible to be considered for "direct recruitment" and not for any other purpose.

10. Hence, the age fixation for recruitment, as provided under Regulation 12, will have no applicability for the purposes of deciding the payment of gratuity under the Act of 1972, wherein, the tenure of service for the purposes of payment of gratuity as provided under Section 4, of the said Act would be determined from the date of initial recruitment of an employee.

11. Learned counsel for the petitioner submits, that since the respondent No.3, services stood dismissed on 3rd April 1989, and he was said to have been reinstated on 25th April 2009, the said period would not be treated as to be a period in continuity for the purposes of payment of gratuity under Section 4 of the Act of 1972.

12. This argument of the learned counsel for the petitioner is not acceptable by this Court for the reason being that the inability of the respondent No.3, to continue to discharge his duties, was as a consequence of an order of the dismissal dated 3rd April 1989, which was ultimately later on quashed by the Division Bench by the judgment dated 24th July 2007, which was also affirmed by the Honorable Apex Court by the judgment dated 3rd March, 2010, hence as a consequential effect of quashing of the order of the dismissal dated 3rd April 1989, would be that the respondent No.3, would be treated to be in continuous service with the petitioner, and the order dated 25th April 2009, which was passed by the petitioner treating the respondent No.3, to be reinstated into the services is a misnomer. In fact, the order of the inductment of the respondent No.3, into the services by an order dated 25th April 2009, would not be treated as to be a reinstatement, but rather it would and should be treated as to be a perpetuating into the services because of a rejoining, as a consequence of the judicial dictum of the Courts, and hence the period from 23rd April 1989 till 25th April 2009, would be treated as to be a period in continuity of services, and the respondent No.3, claim for the payment of gratuity will fall within ambit of consideration provided under Section 4 of the Payment of Gratuity Act 1972, as such, even if the impugned orders are taken into consideration, which has been rendered by the Competent Authority in the light of the provisions contained under sub-section (4) of Section 7 of the Act. The interpretation given therein by the Competent Authority for the purposes of determining the period of continuity of service, as it has been observed in the findings recorded in the light of the explanation given to the definition of "continuous service" provided under section 2(c) of the Act, which is extracted, hereunder:-

"Continuous Service means continuous service as defined in Section 2-A"

13. There is no anomaly as such while drawing an inference of the continuous service in the light of the provisions contained under Section 2(c) of the Payment of Gratuity Act 1972, and even otherwise also, I am of the view that once by virtue of the judicial order, the order of dismissal has been held to be an illegal, and it has been set aside by the Competent Court, the respondent No.3, attains the same stage of appointment as it was prevailing on the date prior to his services were dismissed.

14. In that eventuality, the concurrent interpretation given to the term of "continuous service", by the impugned orders do not suffer from any apparent legal error, which could call for any interference under article 227 of the Constitution of India. Consequently, the writ petition lacks merit, and the same is accordingly dismissed.

(Sharad Kumar Sharma, J.) 16.02.2022 NR/