

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (L) No. 5108 of 2009

Surendra Kumar Bhushan, son of Sri Gena Ram, resident of
Gola Park, P.O.- Ramgarh Cantt. P.S.- Ramgarh, Dist.-
Ramgarh Petitioner

Versus

Employers in relation to the management of Bank of India
through the Branch Manager, Bank of India, Ramgarh
Cantt., P.O- Ramgarh Cantt., P.S.- Ramgarh, Dist.- Ramgarh
..... Respondent

For the Petitioner : Mr. H.K.Shirkarwar, Adv.
Mr. J.K.Soni, Adv.

For the Respondent : Mr. A.Allam, Sr. Adv. , AC to GP III.
Ms. Sushmita Kumari, Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This writ petition has been filed invoking the jurisdiction of this court under Article 226 of the Constitution of India, with a prayer for issuance of writ of certiorari for setting aside the award dated 14.11.2008 passed by learned Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad in Reference No. 124 of 1996, by which the Central Government Industrial Tribunal No. 1, Dhanbad has held the action of the respondent management of Bank of India, Ramgarh Cantt. Hazaribag in terminating the services of writ petitioner, instead of regularising him, is legal, justified and hence, the writ petitioner workman is not entitled to any relief.

3. The brief facts of the case, is that the writ petitioner, claimed to have been appointed on 07.07.1981 against permanent vacancy as Badli Sepoy with the respondent management of Bank of

India. He pleaded that he worked continuously, to the satisfaction of the management and put more than 240 days attendance in each calendar year but the management illegally and arbitrarily stopped him from work with effect from 1993 without following the mandatory provision of law and hence, it was contended by the writ -petitioner workman that the management has not complied with the provision of section 25F of the Industrial Disputes Act, 1947. On behalf of writ - petitioner workman, industrial dispute was raised before the Asst. Labour Commissioner, Central Hazaribag but the same ended in failure, and following reference was made was made to the Central Government Industrial Tribunal, Dhanbad; by the Central Government, Ministry of Labour, in exercise of power conferred under Section 10 (1) (d) of the Industrial Disputes Act, 1947 :-

"Whether the action of the management of Bank of India, Ramgarh Cantt., Dist. Hazaribagh in terminating the services of Shri Surendra Kumar Bhushan, Ex-Badlee Sepoy, rather than to regularise him, is legal and justified? If not, to what relief the workman is entitled ?"

4. Before the Central Government Industrial Tribunal, Dhanbad, in its written statement, the management challenged the maintainability of the reference. The management contended that writ petitioner workman was engaged as Badli Sepoy in the month of July 1981 as and when required in the year 1981 to 1985 he was employed as follows:-

In 1981	-	employed for 64 days
In 1982	-	employed for 30 days
In 1983	-	employed for 83 days
In 1984	-	employed for 52 days
In 1985	-	employed for 24 days

5. The management further contended that in the year 1990 (September), in the year 1991-92 and 1993 (10th October), the workman was provided some casual jobs as and when required but from 11.10.1993, no job could be provided to him. The management further considered that service of the workman as Badli Sepoy used to terminate as soon as he was no longer required or no job could be available for him. The concerned workman did not approach the management for the job immediately. The management also denied that the writ petitioner- workman was ever appointed against any permanent vacancy of Badli Sepoy but contended that he was engaged against leave vacancy only from time to time and never worked for 240 days in any calendar year. Therefore, it was contended that there is no violation of mandatory compliance to the provisions of section 25 F of the Industrial Disputes Act, 1947. Before, the Central Government Industrial Tribunal No. 1, Dhanbad, the management witness no. 1 being representative of management was examined and he proved the contents of the written statement filed on behalf of the management and also proved the concerned document.
6. The writ petitioner workman was examined as workman witness no. 1, and in his cross-examination, he has stated on oath, that in the year, 1992, he worked for 132 days. He further stated that from January, 1993 to 10.10.1993, he worked for 160 days. The Central Government Industrial Tribunal No. 1, Dhanbad found corroboration of this statement on oath of the writ petitioner-workman from application submitted by the workman before the Asst. Labour Commissioner, Central Hazaribag, in which, it was stated that from January 1992 to December 1992, the writ petitioner worked for 132 days and from January 1993 to 10.10.1993, he worked for 181 days. The Central Government Industrial Tribunal No. 1, Dhanbad

considered provisions of Section 25 F of the Central Disputes Act, 1947, according to which, a workman, who has done continuous work for 240 days, in a calendar year, preceding to the year, applicable to him, is protected from retrenchment by employer but as the writ petitioner workman has not worked for 240 days in the year 1992, hence, it was observed by the tribunal that he is not entitled to be regularised with the services of the bank and held that he is not entitled to any relief.

7. Learned counsel for the petitioner submits that learned tribunal failed to consider the statement of the dates, prepared by the writ petitioner, showing his employment for 241 days in the year 1992, hence, it is submitted that the award passed by the Central Government Industrial Tribunal No. 1, Dhanbad being not sustainable in law, be quashed and set aside.

8. Learned senior counsel for the respondent management on the other hand, vehemently, opposes the prayer made by the writ petitioner, and submits that the chart which has been prepared by the petitioner, showing the employment on different dates, is a private document, self-prepared by the petitioner and the bank has no knowledge and has also no concern, with the said chart which has been annexed as Annexure 1 to this writ petition but the writ petitioner, never worked in a year beyond 240 days, rather the maximum, he could work in any single calendar year is for 160 days that too, with intervals. It is further submitted by learned senior counsel for the respondents that learned tribunal has, in no uncertain manner, mentioned in the impugned award that the petitioner failed to produce any document to show that he worked for 240 days in any calendar year; rather in his oral testimony on oath, he categorically stated that he worked for 132 days in the year 1992 so the benefit of Section 25 F has rightly been denied to the to the writ petitioner, by the tribunal. It is further submitted that as per Section 25 B of the Industrial Disputes Act, 1947 it is

necessary for a workman to work, either for a period of one year or for 240 days, in a year, in order to make the regularisation under the Industrial Disputes Act, 1947 but as the fact remains that the petitioner, never worked for 240 days, in a calendar year, which in no uncertain manner, has been admitted by him in his deposition also, hence, it is submitted that this writ petition, being without any merit be dismissed.

9. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that as has rightly been mentioned by the Central Government Industrial Tribunal No. 1, Dhanbad that the writ petitioner workman has in no uncertain manner stated in his deposition on oath before the Central Government Industrial Tribunal No. 1, Dhanbad that during January to December, 1992, he worked for 132 days, which is corroborated by the application submitted by him before the Asstt. Labour Commissioner, Central Hazaribag and the writ petitioner workman further stated under oath that from January 1993 to 10.10.1993, he worked for 181 days. So when it is the admitted case of the writ petitioner, having been stated on oath that he never worked for 240 days in any calendar year, nor any document issued or bearing the signature of any of the officers of the respondent management bank, could be produced by him; this court finds that the Central Government Industrial Tribunal No. 1, Dhanbad has not committed any illegality in arriving at the conclusion that the writ petitioner workman has failed to establish that he worked for 240 days in any calendar year and on failure to prove the same, he is not entitled to any relief of regularisation for which, at least 240 days of services in a calendar year is a *sine qua non*.
10. Accordingly, this court is of the considered view that there is no merit in this writ petition, and there is no scope for interfering with the award dated 14.11.2008 passed by learned Presiding

Officer, Central Government Industrial Tribunal No. 1, Dhanbad
in Reference No. 124 of 1996 by this court.

11. Accordingly this writ petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 4th January, 2024
Smita / AFR