

Bank of India Vs. Workmen Represented by Bank of India and ors.

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Court : Mumbai

Decided On : Aug-12-1994

Reported in : [1995(70)FLR175]

Judge : M.L. Pendse and;N.D. Vyas, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 10(1)

Appeal No. : Appeal No. 1024 of 1993 in Writ Petition No. 1778 of 1993

Appellant : Bank of India

Respondent : Workmen Represented by Bank of India and ors.

Judgement :

Pendse, J.

1. The Government of India by order dated April 14, 1986 passed in exercise of powers conferred under section 10(1)(d) of [Industrial Disputes Act, 1947](#) referred the dispute for adjudication to the Central Government Industrial Tribunal No. 2 Bombay. The dispute referred was as follows :-

'Whether the action of Zonal Manager, Bank of India, Pune is not taking into account temporary period of employment from 4-8-1974 to 2-10-1974 as part of probation period of Shri A.M. Jadhav, Agricultural Clerk in accordance with provisions of para 20.8 of Bipartite Settlement of 19-10-1966 is justified and legal?

if not to what relief the workman is entitled to?'

2. To appreciate the dispute, two facts are required to be stated. The appellants are a Banking company while the respondent No. 1 is a worker's organisation. Shri A.M. Jadhav was appointed as an Agricultural Clerk for a period of one month from August 1, 1974 to August 31, 1974 at Rashivade Branch in Kolhapur District. Another appointment was made from September 3, 1974 to October 2, 1974 and a further appointment from October 4, 1974 to November 3, 1974. With effect from October 4, 1974, Jadhav was appointed on probation in service of the bank and after expiry of six months, was confirmed in service with effect from April 4, 1975. Jadhav claimed that in accordance with Clause 20.8 of the terms of settlement between the bank and the employees, Jadhav was entitled to confirmation from an earlier date. The Industrial Tribunal by award dated October 7, 1992 hold that the bank management is entitled to treat the workman as posted on probation with effect from August 4, 1974 and to give him necessary consequential benefits arising from the said dispute. The Bank preferred writ petition No. 1770 of 1993 under Article 226 of the constitution before the learned single Judge to challenge the award but the petition ended in dismissal by order dated September 29, 1993 and that has given rise to the filing of the present appeal.

3. Shri Rele, learned counsel appearing on behalf of the Bank, at the outset submitted that the relief granted to Jadhav is not being challenged in this appeal and the Bank is desirous of securing judgment only in respect of the correct interpretation of Clause 20.8 of the settlement. Shri Dharap, learned counsel appearing for the workmen, submitted that the learned single Judge dismissed the petition by accepting the claim that the appointment of Jadhav was not as a temporary workman, as contemplated under clause 20.7 of the settlement. As Shri Rele has limited his submission to the correct interpretation of the provisions of Clause 20.8 of the settlement, it is not necessary to examine the correctness of the finding recorded by the learned single Judge.

The reference made by the Central Government to Industrial Tribunal proceeds on the basis that the appointment of Jadhav was in a capacity of a temporary workman and the issue referred was whether Jadhav was entitled to the benefit

prescribed under Clause 20.8 of the settlement. As the award is declared in favour of Jadhav and he is not challenging the merit, it is not necessary to examine the issue as to whether the Tribunal or the learned single Judge driven beyond the reference and recorded that Jadhav was not a temporary workman and Clause 20.7 of the settlement was not attracted.

4. We will now examine the correct interpretation of Clause 20.8 of the settlement and which reads as follows :-

'A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary temporary appointment shall not exceed a period of three months during which the bank shall make arrangements for filling up the vacancy permanency. If such a temporary workman is eventually selected for filling up the vacancy, the period of such temporary employment will be taken into account as part of his probationary period.'

We have examined the ambit of Clause 20.8 on the basis that the clause is attracted in case of a temporary workman which terms is defined under Clause 20.7 of the settlement. The plain reading of Clause 20.8 makes it clear that such a workman would be entitled to seek credit for the period of employment as a temporary employee for the purpose of completion of the probation period. The probation period is for a duration of six months and Clause 20.8 provides that a temporary employee under Clause 20.7 can hold the post for a duration in excess of a period of three months. In other words, the maximum period for which credit can be given under Clause 20.8 is three months while determining the period of probation. A temporary employee who is entitled to the advantage under Clause 20.8 can seek preponment of the date of confirmation on completion of probation. Clause 20.8 does not provide for preponment of the date of appointment to the date of posting as a temporary employee under Clause 20.7 The date of appointment to the post is only when the appointment is made on a probation and the advantage available to the temporary employee is only in respect of counting out the periods spent as a temporary employee while computing the period of probation required to be undergone before confirmation is made.

We have interpreted the true ambit of Clause 20.8 of the settlement. At the behest of the Bank, confirmation on completion of probation of employees who had earlier served as temporary employees will be the proper remedy. Subject to this clarification, the appeal fails.

5. Accordingly, appeal is dismissed. There will be no order as to costs.

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