

Umesh Chandra Pathak Vs. Chief Manager, Sbi, Bareilly Zone and ors.

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Court : Allahabad

Decided On : Apr-23-2003

Reported in : [2003(97)FLR1047]; (2003)IIILLJ84All; (2003)2UPLBEC1824

Judge : Vineet Saran, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 32551/1997

Appellant : Umesh Chandra Pathak

Respondent : Chief Manager, Sbi, Bareilly Zone and ors.

Advocate for Def. : Navin Sinha, ;Vipin Sinha and ;G.C. Bhattacharya, Advs.

Advocate for Pet/Ap. : Ashok Khare, ;A.N. Bhargava, ;M.A. Mishra and ;S.K. Dwivedi, Advs.

Disposition : Petition dismissed

Judgement :

Vineet Saran, J.

1. Heard learned counsel for the petitioner and Sri Navin Sinha assisted by Sri Vipin Sinha for the respondents. Counter and rejoinder-affidavits have been exchanged and with the consent of the learned counsel for the parties, this writ

petition is being disposed of at the admission stage.

2. The petitioner, who has worked as a Messenger with the respondent Bank for 58 days during the period from May 1, 1989 to February 28, 1990 has filed this writ petition with a prayer for a direction to respondents to treat the petitioner as permanent employee in service. The petitioner has also challenged the order dated March 26, 1997 whereby the claim of the petitioner for regularisation in service has been rejected by respondent No. 1, the Chief Manager, State Bank of India, Zonal Office, Bareilly.

3. Although it is not disputed by the respondent Bank that the petitioner had worked for 58 days during the period the petitioner is claiming to have worked but it has been categorically stated in Paragraphs 6 and 7 of the counter-affidavit that the petitioner worked on scale wages and not on daily wages. The circulars and office orders which the petitioner is relying upon for confirmation of service relating to daily wagers and not the scale wagers. The averments of Paragraphs 6 and 7 of the Court affidavit have not been denied by the petitioner in the rejoinder affidavit. In the absence of any proof that the petitioner had actually worked as daily wager with the respondent Bank and not as scale wager, the petitioner cannot be given the benefit of the circulars on which he is relying upon. Otherwise also even if it is assumed that the petitioner worked as daily wager for 58 days in 1989-90, he is claiming regularisation on the basis of a settlement arrived at between the employees and the Bank, which cannot be enforced under Article 226 of the [Constitution of India](#).

4. In my view, this petition is devoid of merits and is accordingly dismissed. However there shall be no order as to costs.

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