

State Bank of India

Vs

Presiding Officer and Another

Civil Appeal No. ... of 1996 (arising out of Slp (C) No. 26517 of 1995)

(S.C. Agarwal, G.T. Nanavati JJ)

08.04.1996

ORDER

1. Leave granted.

2. Respondent 2 was employed with the appellant as a Godown Darban during the period from 21-10-1973 to 28-2-1975. His services were terminated on 28-2-1975. He was subsequently appointed as Messenger by order dated 31-10-1987. After such appointment, Respondent 2 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Tribunal") claiming back wages for the period 16-1-1976 to 30-10-1987. The said claim of Respondent 2 was based on the settlement dated 22-8-1977 arrived at between the State Bank of India and the workmen employed in the State Bank of India represented by the All-India State Bank of India Staff Federation. The said application of Respondent 2 was allowed by the Tribunal by order dated 12-10-1994. The Tribunal has directed that Respondent 2 should be paid the back wages for the period from 16-1-1976 to 30-10-1987 together with such increments as would be admissible to him as a temporary employee after deducting Rs 500 per month which Respondent 2 had already earned during this period. The writ petition filed by the appellant to challenge the said order of the Tribunal has been dismissed in limine by the High Court of Punjab and Haryana by the impugned order dated 5-7-1995. Hence this appeal.

3. The only question which falls for consideration in this appeal is whether Respondent 2 is entitled to claim any benefit on the basis of the settlement dated 2-8-1977. The claim of Respondent 2 is based on para 1 of the said settlement which provides as under :

"1. That each of the temporary employees concerned will be paid back wages together with such increments as would have been admissible to him as a temporary employee in the Bank's service for the period up to the date of reinstatement, from the date of judgment, namely, 16-1-1976, is (sic if) the date of last termination of his services was earlier than 16-1-1976 and from the date of the last termination if it is later than 16-1-1976."

4. The said paragraph refers to "temporary employees concerned". The said expression has been explained in the settlement as referring to the temporary employees whose services stood terminated and who have been and/or are being and/or will be reinstated by the Bank in its service in view of the decision of this Court in State Bank of India v. N. Sundara Money [(1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160].

5. Shri Dhavan, the learned Senior Counsel appearing for the appellant, has submitted that

Respondent 2 cannot be regarded as a "temporary employee concerned" because he cannot avail the benefit of the decision in Sundara Money case [(1976) 1 SCC 822 : 1976 SCC (L&S) 132 : (1976) 3 SCR 160] since he had not put in 240 days of continuous service in a particular year prior to the termination of his services under order dated 28-2-1975 and the termination of his services could not be held to be in violation of the provisions of Section 25-F of the Act. In this context, Shri Dhavan has pointed out that during the period from 21-10-1973 to 28-2-1975, the respondent had worked for a period of 271 days and the break-up of the said period was as follows :

#(i) During the period 20-10-1973 - 71 days to 31-12-1973(ii) During the period 1-1-1974 to - 144 days 31-12-1974(iii) During the period 1-1-1975 to - 56 days 28-2-1975##

6. This fact is not disputed by Respondent 2. This shows that Respondent 2 had admittedly not worked for more than 240 days continuously in a year as required under Section 25-B of the Act. The Tribunal has proceeded on the basis that the benefit of the settlement dated 22-8-1977 was available to all temporary employees irrespective of the fact whether they had put in 240 days' continuous service or not and has directed the payment of back wages to Respondent 2 on the view that Respondent 2 had worked for more than 90 days in a year. This view of the Tribunal cannot be upheld because, as pointed out earlier, para 1 of the settlement dated 22-8-1977, clearly refers to "temporary employees concerned" and temporary employees concerned are only those who satisfy the requirements of Section 25-B of the Act having worked for more than 240 days continuously in a year so as to take the benefit of the decision in Sundara Money cases. Since Respondent 2 did not put in 240 days' service in any year, he cannot be regarded as a temporary employee concerned and he could not be extended the benefit under para 1 of the settlement dated 22-8-1977. The order passed by the Tribunal cannot, therefore, be upheld and has to be set aside and for the same reason the impugned order of the High Court dismissing the writ petition filed by the appellant has also to be set aside.

7. The appeal is accordingly allowed, the order dated 12-10-1994, passed by the Tribunal as well as the impugned order of the High Court dated 5-7-1995 dismissing the writ petition are set aside and the application filed by Respondent 2 under Section 33-C(2) is, dismissed. No order as to costs.