

# SUPREME COURT OF INDIA

Branch Manager, State Bank of Hyderabad

Vs.

Abdul Raheem

(S. R. Babu and D.P. Mohapatra JJ.)

03.11.2000

## ORDER

1. Leave granted.

2. An industrial dispute was raised by the first respondent before the Industrial Tribunal (hereinafter referred to as the 'respondent') by which a question as to whether his termination of service was justified or not was referred to. The case put forth by the respondent is that he was engaged by the appellant on 9.4.84 as a peon on an emolument of Rs. 200/- per month; that he was to keep watch over the goods locked up in stores and the small scale industrial units which were financed by the Bank; that he had been carrying on his duties under the guidance of the concerned Branch Manager; that pursuant to a notification dated 20.7.91 he made an application for regularisation but his services were terminated w.e.f. 4.9.91 without assigning any reason; that the Branch Manager had recommended his case for the appointment of the respondent on permanent basis by the letter dated 23.5.90 despite which termination order had been issued.

3. The appellant resisted the claim in dispute by stating that in the course of its business a large number of godowns have to be dealt with, which are hypothecated with the bank, and in certain cases in order to see that appropriate security is provided to the goods in question the loanee is requested to make suitable arrangement for security of the goods kept therein and the appellant had asked the loanee in the present case to post a watchman to look after the goods kept in the godowns. Though it may be at the instance of the bank, the loanee had appointed the respondent and requested the bank to debit its accounts towards his emoluments. That arrangement was carried on and respondent had neither been appointed by the appellant nor had he worked under the guidance of the Branch Manager concerned.

4. On this aspect of the matter as to the non-existence of the relationship of employer and the workman, the finding of the Tribunal is as follows:

Thus the petitioner was appointed by the bank itself to safeguard its own interest. The petitioner is a representative of the bank. He watches the hypothecated goods of the loanee. The Branch Manager under Ex. M3 letter dated 23.5.90 addressed to the Regional Manager to provide employment to the petitioner. He has admitted therein taking into consideration his youth welfare and the length of service he has put in with us indirectly relying in our good faith, I recommend that he may be provided with employment opportunity on a permanent basis.

5. Thus the Tribunal passed an award reinstating the respondent in service of the appellant with continuity of service and back wages. When the matter was carried on in a writ petition and thereafter in a writ appeal unsuccessfully, the findings recorded by the Tribunal stood confirmed. The fact that the goods had been hypothecated with the bank and they needed to be appropriately taken care of is not in dispute. However, such arrangement had to be made by the owner of the goods and which, in fact, he did. Though, it is possible that the bank manager may have recommended such a person does not by itself alter the situation that the concerned watchman would become the employee of the bank and not that of the loanee. The recommendation made by the Manager to the Regional Manager will not by itself conclude the question whether there is any relationship of master and servant at all. May be out of sympathetic consideration the Branch Manager might have recommended his case to the Regional Manager. In this situation we find there is no justification for the Tribunal to come to the conclusion as it did to hold that there was relationship of employer and the workman.

6. In this appeal the only contention urged on behalf of the appellant is as set forth above. We have come to the conclusion that the finding reached by the Tribunal that there is relationship of master and workman cannot be sustained. Therefore, we set aside the Award made by the Tribunal, the order of the High Court in the writ proceedings initiated against the Award and dismiss the claim and the dispute raised by the respondent. The appeal is allowed accordingly.

7. The order passed by us will not come in the way of the Bank in considering the case for appointment of the respondent on any of the posts available taking into account the experience gained by him in that field.