**SUPREME COURT OF INDIA**

Radha Raman Samanta

Vs.

Bank of India

(S. R. Babu and Ruma Pal JJ.)

19.12.2003

**JUDGMENT**

**S. Rajendra Babu, J.**

1. Whether the Appellant is a badli worker and, if so, is he entitled to be absorbed in the Respondent bank is the matter for judgment in this case.

2. Appellant's case is as follows. That he was appointed as a Badli Subordinate Staff/Sepoy against one permanent vacancy in the Shyamsundar Branch of the Bank of India on 30/10/1988 and worked there up to 16/04/1991, for about 492 days. On 16/4/1991 the Branch Manager of the bank asked him not to work anymore. Later he made a representation to the Zonal Manager requesting to appoint him as a regular employee in the bank by quoting the circular No. XVIII/90/20 dated 7^th September 1930 of the Federation of the Bank which referred to absorption of Badli Sepoys and the bipartite agreement entered between management and Union regarding the same which provides that :

> "...a Badli worker who has more than 240 days worked in the permanent vacancy after February 1988 in a block of 12 months would be absorbed against clear vacancy as and when they arise."

3. Since he did not receive any reply from the Bank, he moved a writ petition before the High Court seeking 3 direction to the bank for absorbing him as a regular employee.

4. Stand maintained by the Respondent bank before the High Court in its affidavit-in-opposition inter alia is that the Appellant herein was only working as a coolie and not as a Badli Sepoy, therefore he is not entitled to be considered for absorption.

5. Vide order dated 14/3/1996 the learned single judge of the High Court allowed the writ petition and directed the bank to absorb him. This decision was challenged in Appeal before the Division Bench. The Division Bench [speaking through V.N. Khare, Chief Justice (as His Lordship then was)] allowed the appeal in the following terms:

"We have looked into the records and the affidavit-in-opposition of the Bank authorities and find that it was the definite case of the Bank authorities, appellants herein, that the writ petitioner was not a Badli worker and at any rate was not entitled to be absorbed in service. Learned single Judge while allowing the application did not consider that aspect of the matter. Learned single Judge ought to have first found out the status of the writ petitioner as to in what capacity he worked with the bank. In the absence of such a finding, the impugned order/judgment of the learned single Judge deserves to be set aside. We accordingly set aside the impugned order/judgment.

We send the writ petition back to the learned single Judge to dispose of the same after consideration of the stand taken by the Bank in its affidavit-in-opposition, with a direction to dispose of the same as early as possible."

(Emphasis Supplied)

6. Thus the matter again came back before a single judge. After appreciating the various documents the learned single Judge arrived at the conclusion that the Appellant was working with the Bank during the relevant period by holding that:

"Pursuant to the order passed by this Court as quoted above various documents was produced. Inspection was taken and note thereof was prepared and signed jointly by both learned lawyers. It appears to me from the contents of the joint notes that the petitioner was engaged by the Bank in order to accept his services in place of a permanent sub-staff. He was paid salaries. Moreover when the petitioner made representation by forwarding two letters being annexure 'A' and 'B', the respondent Bank did not deny nor give a reply to the same. The writ petitioner has also annexed various documents written by third parties evidencing the petitioner's engagement in the Bank in the capacity of the sub-staff. These documents have also got corroborative value of the fact of the petitioners service being rendered in the capacity of the sub-staff.

On the facts and circumstances of this case I am of the view that the petitioner has rendered his services more than 240 days in a particular calendar year. At least the petitioner rendered continuous services for 240 days during the period of January 1990 to December 1990. So the petitioner in terms of the aforesaid joint agreement and/or norms and/or policies being item No. 5 has rendered services more than 240 days of Badli service after 10^th February 1988 in a block of 12 months of a calendar year. So I declare that the petitioner is entitled to be absorbed as having fulfilled the aforesaid criteria and/or eligibilities."

(Emphasis supplied)

7. Consequently, the learned single Judge directed the bank to absorb the Appellant herein. This order was carried in appeal before the Division Bench.

8. Based on certain conclusions arrived at by the learned Division Bench, the Appeal bearing MAT No. 3014 of 1998 was allowed on 24/02/1999. The Court found that:

> "The very fact that the learned Judge himself has used the words 'it appears to me' goes on to show that nothing had been placed on record for the purpose of proving that the 1^st Respondent was appointed as a Badli Sepoy. In any event such a question could not have been adjudicated upon in a writ proceeding."

9. Thereafter the learned Division Bench ruled that the bipartite agreement based on which the appellant herein based his claims could not be enforced by filing 3 writ application and held:

> "...The appellant being a 'State' within the meaning of Article 12 of the Constitution of India, a writ petition could have been entertained only if the 1^st respondent proved violation of any of his fundamental rights guaranteed under Part III of the Constitution of India...If any right has been accrued in favour of a workman under the provision of the industrial Disputes Act, the proper course for a writ court would be to refuse to exercise its jurisdiction and ask the parties to avail the statutory alternative remedy by raising an industrial dispute which is a more speedy and efficacious one..."

10. Thereafter the learned Division Bench went on to quote a catena of authorities to hold that regularization is not a proper mode of appointment. In result, the order of the learned single judge was reversed.

11. This judgment of the Division Bench is impugned before us.

12. On the earlier occasion when the matter was considered by the Division Bench the respondent-Bank did not raise any issue of alternative remedy or any question relating to non-maintainability of the writ petition. We may also notice that when such issues might and ought to have been raised but had not been done so, it must be taken that the Division Bench had rejected such contentions and the order of the Division Bench remanding the matter to the learned single Judge was not carried in appeal and became final. Therefore, the learned single Judge was bound to address only on one issue upon which the matter had been remanded. Thus, the Division Bench could not have overlooked these facts in the appeal arising from the order of the learned single Judge on the second occasion after remand and need not have gone into the question as to whether the writ petition could have been entertained at all or not Therefore, we are of the view that the High Court could not nave overlooked these facts and interfere with the order of the learned Single judge.

13. It is too elementary to state that powers under Article 226 of the Constitution could be exercised for the enforcement of Fundamental Rights available under Part III of the Constitution, and also for any other purpose. High Courts have often exercised their power under Article 226 of the Constitution for enforcement of a legal right. It is, therefore, open to the learned single Judge to issue an appropriate direction to the respondent-Bank, if

otherwise justifiable on facts. To make matters clear, we may cite Style (Dress Land) v. Union Territory Chandigarh, , in which this Court held that :

> "...Action of renew ability should be gauged not on nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field."
>
> (Emphasis supplied).

14. In this case, pursuant to the direction of the Division Bench in FMAT No. 1119 of 1996, the learned single Judge looked into the relevant documents produced by the Respondent bank and formed an opinion that the Appellant herein was working with the bank during the relevant period. It is also not improper for the learned single Judge to look into undisputed documents and to infer as to the status of employment of the appellant. Examination of undisputed facts is not debarred in a proceeding under Article 226 of the Constitution vide *K.K. Kochunni v. State of Madras*[1]*, Ikram Hussain, Mohd V. State Of U.P. ; Govt. of AP v. Chinna Venkata Reddy*[2]. Therefore, the procedure adopted by the learned single Judge pursuant to the direction of the Division Bench is perfectly within the limits of its powers under Article 226 of the Constitution.

15. Indeed, the learned single Judge has recorded that the counsel for the respondent-Bank had "in no uncertain terms stated ....that if the petitioner (appellant before us) is able to establish his case on engagement as a badli Sepoy, he is entitled to be absorbed on the strength of ..... norms and/or policies settled and agreed by the respondent-Bank with the Employees' Union as recorded in the aforesaid circular".

16. In this context, the contrary view expressed by the Division Bench in the impugned judgment is based on a premise of law not applicable to the facts of the case in hand and on that basis should not have reversed the order of the learned single Judge. Hence, the impugned judgment is not sustainable neither in law nor on facts and the same is liable to be set aside.

17. In the instant case the question for consideration is whether the appellant is a Badli worker or not. Rival argument advanced before us is that he will not come under the Explanation of Badli workman to Section 25C of the Industrial Disputes Act. That definition of Badli workman under the Explanation is limited only to the purposes of Section 25C of the Industrial Disputes Act and not necessarily applicable to the facts arising in the present case. In Lalappa Lingappa v. Laxmi Vishnu Textile Mills, , this Court held that "...The badli employees are nothing but substitutes. They are like 'spare men' who are not 'employed' while waiting for a job..... In *Budge Budge Jute Mills Co. Ltd. v. Workman*[3] it was held that "...A badli or a special badli is a workman who is appointed in a vacant post of a permanent workman or a probationary who is temporarily absent..". Thus a Badli workman only means a person who is employed as a casual workman who is working in place of another. By virtue of bipartite agreement published in the circular No. XVIII/90/20 dated 7^th September 1990 of the Federation of the Bank, such a Badli worker is entitled to be absorbed if he completes

240 days of badli service in a block of twelve months or a calendar year after 10^th February 1988. Based on the conclusion arrived at by the learned single Judge after considering the relevant documents, the fact of Appellant's service for the required period cannot be disputed. Nomenclature of his work profile may change, but it is clear that he rendered services in a vacancy of a temporary post for more than 240 days. This is sufficient to treat him as a Badli for the purpose of absorption. Hence, he has a legal right to be absorbed in the Respondent bank by virtue of the bipartite agreement (See generally *Gujarat Agricultural University v. Rathod Labhu Bechar and Ors.*[4]). Order made by the learned single Judge deserves to be affirmed in reversal of the order of the Division Bench.

18. The learned single Judge had directed the creation of a supernumerary post if no posts were available in any branch of the respondent-Bank.

The appellant was directed to be regularised in service against such post with effect from the date of joining. Two months time was granted for this purpose.

19. At this 'stage, the learned counsel for the Respondent-Bank submitted that now the Bank has taken a policy decision to down size its work force by reducing the number of new recruits and also offering Voluntary Retirement Scheme to the existing employees. It would not be proper to give a direction to absorb an additional employee against the general policy of the Bank. In the circumstances, in modification of the relief granted by the learned single Judge, we direct that the respondent-Bank shall absorb the appellant in a vacant post or, in the absence of any vacancy in an appropriate post, compensate the appellant monetarily. The compensation shall be calculated in accordance with Voluntary Retirement Scheme of the respondent-Bank on the basis that the appellant had been regularised in service on 1^st January 1999 and voluntarily retired from such service from the date of this judgment. Either of the benefits must be granted within two months from today.

20. The appeal stands allowed accordingly.

[1]*1959 (2) Supp SCR 316*
[2]*1995 Supp (1) SCC 462)*
[3]*1970 (1) LLJ 222*
[4]*2001 (3) SCC 574*