

CASE NO.:
Appeal (civil) 5303-5305 of 2002

PETITIONER:
Daulat Singh & Ors.

RESPONDENT:
The Railway Emp.Cooperative Banking Society Ltd.& Anr.

DATE OF JUDGMENT: 24/02/2004

BENCH:
Y.K. Sabharwal & B.N. Agrawal.

JUDGMENT:
JUDGMENT

Y.K. Sabharwal, J.

The appellants are the employees. The first respondent is the employer. The termination of services of the appellants was held to be illegal and the first respondent was directed to reinstate them in service with all consequential reliefs in terms of the order made by the prescribed authority constituted under the Rajasthan Shops and Commercial Establishments Act, 1958 (Act No.31 of 1958) (for short, 'the Act').

Writ petitions filed by the first respondent were dismissed by a learned Single Judge of the High Court, inter alia, holding that the prescribed authority after elaborate consideration of evidence has rightly come to the conclusion that the employees had been working continuously for six months. The Division Bench of the High Court by the impugned judgment has allowed the appeals and set aside the judgment of the Single Judge as also the order made by the prescribed authority on the ground that pre-condition for invoking Section 28-A of the Act has not been established and, therefore, appellants could not make a complaint before the prescribed authority challenging the termination of their services. The employees are in appeal on grant of leave.

The only point for consideration is whether the appellants were in continuous employment for a period of not less than six months before termination of their services.

Section 28-A of the Act, inter alia, provides that no employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than six months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice. The case of the employer/first respondent before the prescribed authority was that the employees had not been in employment for a continuous period of six months as there was a break of about two months in their service, their services having been terminated on 20th August, 1992 and they were again re-employed in October, 1992. This case set up by the first respondent has not been accepted even by the Division Bench while coming to the conclusion that the employees have not been in continuous employment for a period of not less than six months. The Division Bench has reached the said conclusion by holding that there was a break of service for four days, namely from 16th July, 1992 to 19th July, 1992. The Division Bench held that there was hiatus of four days between employment under letter dated 16th June, 1992 and new appointment by letter dated 19th July, 1992. The impugned judgment concludes that :

"In the absence of any material and objection to term of employment dated 16.6.1992 and to the automatic end of service stipulated under the letter of appointment dated 16.6.1992 on 15.7.1992, and fresh employment, which only continued upto the alleged date of termination came, into effect only on 20.7.1992, there was no continuity of service between

15.7.1992 to 20.7.1992 or to wit the applicants were not in the employment of society on any view of the matter on 16.7.92, 17.7.92, 18.7.92 and 19.7.92. Thus, the order of the Authority under the Act suffered from an error of law as well as of fact on the question of 'continuous employment for not less than six months' which is apparent from record."

The case of the appellants before the prescribed authority was that they had been getting regular salary from June 1992 and worked continuously upto 31st December, 1992 on the post of Peon in the office of the first respondent; they marked their attendance upto 7th December, 1992 but thereafter though they worked upto 31st December but were not allowed to mark the attendance and on 1st January, 1993, the employer refused to take them on duty and terminated their services by an oral order without giving one month's notice and compensation for retrenchment and that they worked for a period of more than six months from the date of their appointment. It is not in dispute that the appellant Daulat Singh was appointed as a casual labour in terms of appointment dated 16th June, 1992. It was a temporary appointment for specific period of one month from 16th June, 1992 to 15th July, 1992. The Division Bench has noticed that the actual date of commencement of employment has not been disputed by the employer but the employer has alleged that the services came to an end on 20th August, 1992 and no attendance was marked after the said date. An appointment letter dated 19th July, 1992 in the case of appellant Daulat Singh has been reproduced in the impugned judgment. Admittedly, the case of other two appellants is similar. The appointment letter dated 19th July reads as under :

"RAILWAY EMPLOYEES CO-OPERATIVE BANK
SOCIETY LTD., JODHPUR.

S.No.R.E.C.B.S/Esstt./DS/P/6

Dated 19.7.92

Shri Daulat Singh Sankhala,
S/o Shri Durga Singh Ji Sankhla,
Outside Chandpole Gate,
Near Vidhyashala School,
JODHPUR.

Sub : Appointment as a Peon in this Society.

As a result of selection held in the office of the society today, you have been found to have passed the selection for the post of Peon in the grade 750-940 with usual allowances as admissible to other staff of the society from time to time w.e.f. 20.7.92.

You will be deemed to have been confirmed in the grade on completion of your 50 days service from the initial date of your joining as casual labour in the office of the society, provided there is no complaint and/or adverse report against you during this period of 50 days.

Sd/
HONORARY SECRETARY

Copy Received.

Sd/
(DAULAT SINGH SANKHLA)
Dated : 19.7.92"

On the basis of the aforesaid letter, the Division Bench has held that the new appointment was offered w.e.f. 20th July, 1992., and the earlier appointment under appointment letter dated 16th June, 1992 came to an end on 15th July, 1992 and, thus, there was a break of four days from 16th July to 19th July and, therefore, there is apparent error in the judgment of learned Single Judge and in the order of

the prescribed authority in coming to the conclusion that the employees were in continuous employment for a period of not less than six months. The Division Bench, it is evident, lost sight of the second paragraph of the aforesaid letter which stipulates the confirmation of the services of the employees from the initial date of joining as casual labour provided there is no complaint and/or adverse report against the employee during the period of 50 days. It is not in dispute that the initial date of joining as casual labour was 16th June, 1992. It has also been established that on completion of satisfactory work for 50 days, confirmation orders were issued. One such order dated 5th August, 1992 has been placed on record. The issue of the said letter is also not in dispute.

The prescribed authority, on detailed examination of evidence, oral as also documentary including the appointment letters, the attendance register, payment of salary etc., came to the conclusion that the employer had failed to prove that the services of the employees have been terminated on 20th August, 1992 and that employees had proved that they continued in service upto December, 1992 and had completed services with the first respondent for a period of not less than six months. The issue 'whether applicant did not complete six months' service continuously in non-applicant society', therefore, suit is not maintainable' was answered by the prescribed authority in favour of the employees. The plea of the first respondent that the employees were reappointed in October, 1992 was not accepted by the prescribed authority. The complaint under Section 28-A was held to be maintainable and as earlier noticed, the writ petition of employer was dismissed.

At no stage, the first respondent took the plea that there was break of service of the appellants in July 1992. The only basis on which the order of the prescribed authority and the judgment of the Single Judge were reversed by the impugned judgment was break in service for four days in July, 1992. Apart from the fact that the plea that the employees being not in continuous service for six months was not based on break of their service for these four days, even otherwise the conclusion of the Division Bench was contrary to the terms of the letter of initial appointment, letter of appointment after selection and the letter of confirmation of service. According to the appointment letter dated 19th July, 1992, the employees were deemed to be in service from the date of their initial appointment as a casual labour, i.e. since 16th June, 1992.

Learned counsel for the respondent contends that in the complaint as also in evidence, the employees themselves stated that the first appointment was made on 19th July, 1992 and, therefore, it is evident that the employees had not completed six months' continuous service. That is not the ground on which the Division Bench has reversed the judgment of learned Single Judge. Moreover, the pleadings and the evidence cannot be construed in a hyper technical manner as sought to be contended by learned counsel for the employees. True, the employees stated about their first appointment on 19th July, 1992 but a perusal of the appointment letter clearly shows that the reference by the employees to the appointment on 19th July is to their regular appointment after due selection. The stand of the parties was clear before the prescribed authority, the learned Single Judge as also the Division Bench. The stand of the employees in substance was that they were in continuous employment since 16th June, 1992 till December 1992. The stand of the employer was that there was a break for a period of two months from 20th August to October, 1992. On consideration of evidence the stand of employees was accepted and that of employer rejected. Under these circumstances, we are unable to sustain the conclusion of the Division Bench that there was break of service of four days and on that ground the complaint under Section 28-A of the Act was not maintainable since the said provision requires a continuous employment for six months and the continuity would be broken as a result of hiatus of four days.

Reliance has been placed by Mr. Jain, learned counsel of the employer on a decision of this Court in *Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen* [(1964) 3 SCR 616] for the proposition that the service for the period prior to issue of appointment letter dated 19th July, 1992, could not be taken into consideration. In the cited decision, it was not disputed that the period of the former employment under the company could not be taken into consideration in computing the period because it was common ground that the reappointment of the employees was a fresh employment. The present case is just reverse. The appointment in terms of the letter of appointment dated 19th July, 1992 itself postulates continuity from 16th June, 1992. It was never the case of the employer

that for computing six months' service, the starting point of service was 20th July, 1992 and not 16th June, 1992. We cannot permit the employer to set up a new case at this stage. The cited decision has no applicability to the case in hand.

Thus, the learned Division Bench committed serious illegality in reversing the finding of fact recorded by the prescribed authority affirmed by the learned Single Judge on a point that was not pleaded by the employer at any stage and was even otherwise untenable.

For the aforesaid reasons, we set aside the impugned judgment and restore the judgment of the learned Single Judge confirming the orders of the prescribed authority. The appeals are, thus, allowed with costs.

JUDIS