

BANK OF INDIA AND ANR.
v.
TARUN KR. BISWAN AND ORS.

JULY 30, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Labour laws: Regularisation—Claim of, by Budlee workers engaged on temporary basis—Scheme for their absorption against permanent vacancies subject to completion of 240 Budlee working days of service in a block year of 12 months—Single Judge of High Court relaxing the norm of 240 days if shortfall marginal—Division Bench holding that employer to proceed on the basis that each of the worker completed 240 days—On appeal, held: Employee is to establish that he had worked for more than 240 days—High Court erred in holding that each of them had worked for more than 240 days without factual aspect having been established by workers—Also employees accepted that they did not complete 240 days of work—Entitlement being under the Scheme, order of High Court is unsustainable and thus, set aside.

Appellant-bank prepared a panel for appointment of Budlee Sepoys on temporary basis against leave vacancies and absorb them when regular vacancies arose. The scheme for absorption was formulated which was subject to completion of 240 Budlee working days of service in a block year of 12 months or a calendar year. On absorption the Budlee Sepoys would continue on approved panels and would be deployed on leave vacancy on need basis and would be absorbed in permanent vacancies arising in future.

Respondents-Budlee workers were engaged on temporary basis as subordinate staff. They were asked by the Bank to exercise their option for the engagement in non-CCA in West Bengal but were not given employment. Thereafter, respondents filed writ petition seeking regularization of service as subordinate staff in the Bank on the ground that they had served for more than 240 days in a block of 12 months. Appellant submitted that the writ petitioners were being used as Budlee workers and could not be absorbed having not completed 240 days in a block year. Single Judge of High Court held that the majority of the writ petitioners worked for more than 240 days in the year or a block of 12 calendar months and directed that the norm of

A 240 days be relaxed if the shortfall was marginal. Appellant-Bank challenged the order on the ground that the Single Judge could not have directed absorption of budlee worker who had not completed 240 days in a particular year. It contended that for purpose of calculating 240 days, Sunday and public holidays were excluded. Division Bench of High Court though observed that the Single Judge was not justified in directing that those who had worked for 210 days could be considered for absorption, but held that the appellants ought to proceed on the basis that each of the writ petitioners had completed 240 days in the block of 12 calendar months, and that there was no logic in excluding the Sundays and public holidays while making the calculations. Hence the present appeals.

C Appellant-Bank contended that the letter of engagement stipulated that the employment was only for a specific period of time and on its expiry their services would be terminated; that the respondents in the representation before Assistant Labour Commissioner accepted that the appellant did not allow them to work for 240 days in a block of 12 calendar months; that in the writ petition also respondents clearly admitted that they did not complete the required 240 days of service in a calendar year under the scheme for their deployment/absorption against permanent vacancies; that the Bank had asked the writ petitioners to exercise their option for engaging in non-CCA areas in West Bengal but the respondents failed to exercise their option and never expressed their willingness for the same; that the said exercise of option did not mean any commitment or assurance for appointment by the Bank; that the Bank had surplus staff even after implementation of Voluntary Retirement Scheme, 2000; that there was no permanent vacancy of sub-staff in the Bank; and that no weekly off was given to Budlee worker if he worked only for 6 days, it was only when the engagement of budlee Sepoy was more than 6 days at a stretch then weekly off was given after 6 days of work.

Respondents-employee contended that the High Court had given finding of fact that the writ petitioners had completed 240 days of work; and that in view of American Express's case that Sundays and public holidays are also to be reckoned, each of the writ petitioners had completed 240 days.

G Allowing the appeals, the Court

HELD: 1.1. The onus is on the employee to establish that he had worked for more than 240 days. The High Court was not right in holding without factual aspect having been established by the respondents that each of them

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had worked for more than 240 days. The effect of the decision not to fill up the vacancy was also not considered. The writ petitioners accepted that they did not completed 240 days of work. Their stand was that the management did not permit them to do so. The Scheme speaks for 240 days of work in Budlee Service. The scheme of budlee days denotes actual working days.

[Para 11] [632-F, G; 633-A]

Workmen of American Express International Banking Corporation v. Management of American Express Internationa Banking Corporation AIR (1986) SC 458, distinguished.

Ram Prakash Makkar v. State of Haryana and Ors., [1992] 4 SCC 727, referred to.

1.2. There is distinction between temporary worker and budlee worker. The instant case relates to entitlement under the settlement and the scheme. Thus, the High Court's order is clearly unsustainable and is set aside. When the respondents complete 240 days budlee work in a year or block of 12 months, their cases would be considered in the light of the scheme, subject to continuance of the scheme, and change in policy. [Para 12] [633-A, B]

Secretary, State of Karnataka and Ors. v. Uma Devi, (3) and Ors., [2006] 4 SCC 1, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8036-8037 of 2004.

From the Judgment and Order 04.04.2003 of the Calcutta High Court in APOT No. 278 of 2002/G.A. No. 1686 of 2002 in W.P. No. 1081 of 2000.

L. Nageshwar Rao, Akansha, Neha Sharma and Binu Gupta for the Appellants.

Jaideep Gupta, Piyush K. Roy and G. Ramakrishna Prasad for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment of a Division Bench of the Calcutta High Court dismissing the Letters Patent Appeal filed by the appellant Bank and its functionaries.

2. Background facts in a nutshell are as follows:

A In the year 1986 a panel for appointment of Budlee Sepoys was prepared by the appellant-Bank for engagement on temporary basis (strictly on 'no work no pay') in the leave vacancies and to absorb them in the Bank as and when regular vacancies arise. The scheme for deployment/absorption was formulated on 24.2.1988 for Budlee sepoys who appear on center-wise approved panels and who had completed 240 Budlee working days of service as on 1.2.1988 in a block of 12 months or a calendar year. It was stipulated in the scheme that on absorption Budlee Sepoys would be continued on the approved panels and would be deployed on leave vacancy on need basis only and would be absorbed in permanent vacancies that may arise in future.

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C 3. The aforesaid scheme clearly stated that absorption/regularization of Budlee Sepoys would be subject to two conditions: (1) completion of 240 days in a block year of 12 months or a calendar year: (2) availability of vacancies arising in future.

D 4. Respondents who are Budlee workers were engaged on a temporary basis. Letter of engagement to the respondents clearly spells out that their employment was that of seasonal requirement of the appellant-Bank and it was only for a specific period of time on the expiry of which their services will stand terminated. The relevant stipulations read as follows:

E "2(i) to fill up immediately the existing clear, unfilled vacancies at Regions/Zones by absorbing Budlee Sepoys preferably from the centre-wise approved panels of Budlee Sepoys who have completed more than 240 working budlee days as on 1st February, 1988 in a block of 12 months or a calendar year. In regard to such unfilled vacancies if the required number of Budlee Sepoys, who have completed more than 240 budlee days as on 1st February, 1988 in a block of 12 months or a calendar year is not available on approved panel/s such vacancies should be filled in by a board Budlee Sepoys from the respective approved centre-wise panels, who have not completed 240 budlee working days in a block of 12 months of in a calendar year. This process of absorption has to be completed by you before 30th June, 1988 after obtaining Head Office approval well in time by sending your specific repeat specific approval giving the details of immediately unfilled centre-wise vacancies.

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H (iii) Those of the Budlee Sepoys on approved panel, who have not

completed 240 days of budlee days' service in a block of 12 months or a calendar year as on 1st February, 1988, are to be continued on the panel/s and to be engaged on need basis in leave vacancies only that may arise from time to time at branches where no Budlee Sepoys who have completed 240 days are available on panels. Their case for absorption in permanent services of Bank may be considered in permanent vacancies that may arise in subsequent years." A
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5. Writ petitions were filed by the respondents praying for issuance of writ in the nature of mandamus directing the Bank to regularize service of the respondents as subordinate staff in the Bank. It was stated that their names were sponsored by the employment exchange for interview for the recruitment of subordinate staffs. Panel was prepared including the names of writ petitioners and out of panel, 43 were appointed as staff in different branches of the Bank and 14 persons who had filed writ petition were left out. On different dates between 2nd March, 1986 to 30th June, 1986 writ petitioners were temporarily appointed as subordinate staff along with other candidates. On 5th December, 1991, the Bank asked the writ petitioners to exercise option for post of subordinate staff in non-CCA areas in West Bengal and the writ petitioners exercised their option to such posts. But no appointment was given. Stand in the writ petition was that though they had served for more than 240 days in a block of 12 months on several occasions they have not been absorbed in the existing vacancies permanently. It was also pleaded that they were performing the duties which were done by regular subordinate staff of the Bank and the same are all permanent, regular and continuous nature of job relating to day to day business of the Bank. The Bank of India Employees' Association in the year 1994 raised an industrial dispute for regularization of the employees and staff who have completed 240 days service in a block of 12 calendar months in the office of Assistant Labour Commissioner (Central), Calcutta. The said dispute was ultimately concluded through settlement on 23rd September, 1997, whereunder Bank agreed to regularize service of empanelled sub-staff who have completed 240 days in any block of 12 months. But ultimately three of the persons were regularized in 1997 but the rest were not regularized and they continued to work on daily rate basis. C
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Bank's stand was that the writ petitioners are being used as Budlee workers and could not be absorbed having not completed 240 days in a block year.

6. Learned Single Judge held that the Bank had already formulated a H

A scheme for absorption of employees in terms of the decision of this Court in *State of Haryana and Ors. v. Piara Singh and Ors.*, AIR (1992) SC 2130. Learned Single Judge held that majority of the writ petitioners worked for more than 240 days in the year or a block of 12 calendar months. It was also noted that vacancies did exist as on 6.1.1999. Learned Single Judge also took into consideration the fact that the writ petitioners on being asked by Bank exercised their option for the engagement in non-CCA in West Bengal were not given employment. Learned Single Judge directed relaxation from the norm of 240 days if the shortfall was marginal. Following direction was given:-

"The question of working for 240 days in a year or in a block of 12 calendar months may be relaxed if the shortfall is marginal. If it is found that in the total period of engagement if any one of these petitioners had worked for 210 days in a year or in a block of 12 calendar months he may be considered for such absorption. His case will be considered according to fulfillment of the criteria by preparing a list viz. that the persons who had completed 240 days in any of the years or a block of 12 calendar months since 1986 first they shall be placed at the top and all such persons may be serially placed and the persons who had at least 210 days of work in any of the years since 1986 shall also be placed similarly and the persons who completed 240 days of work in any particular year since 1986 till date shall be given preference in accordance with the list so prepared within the time framed mentioned above.

With above observations, this writ petition is disposed of."

Bank challenged the judgment of the learned Single Judge, firstly, on the ground that court changed the scheme for regularization or absorption for the casual workers by even directing the Bank to consider those who have not completed 240 days in a particular year but at least completed 210 days of work, and they shall be considered for absorption and regularization. It was also contended even though there may be vacancies such vacancies may not be filled up with a view to make the Bank more efficient as well as for controlling operation cost and to improve the prospects of career growth and skills upgradation for employees by rationalizing the manpower and to help the Bank to right size of the growth. It was pointed out that Board of Directors in its meeting held on 28th October, 2000, had approved the Voluntary Retirement Scheme for the employees of the Bank under "Bank of India Voluntary Retirement Scheme, 2000". As a matter of fact, after the implementation of the said scheme, still 900 sub-staff members are in excess

of the strength. It was further stated that none of the writ petitioners had completed 240 days work in a year and therefore cannot be absorbed under the scheme. Further, in terms of the directions given, an affidavit was filed stating that no writ petitioner had completed 240 days in a year giving details thereof. Response of the writ petitioners was that each of them completed 240 days of work. It was stated that while making calculations the Bank excluded Sundays and holidays for the purpose of calculations.

7. The Division Bench held that there was no logic for excluding the Sundays and public holidays. The Division Bench, however, observed that learned Single Judge was not justified in directing that those who had worked for 210 days could be considered for absorption. It did not accept the stand that there was factual dispute about the number of days. Relying on the decision of this Court in *Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*, AIR (1986) SC 458 it was held Sundays and public holidays are also to be reckoned. The High Court did not find it necessary to consider the effect of the Voluntary Retirement Scheme, 2000. It was held that appellants shall proceed on the basis that each of the writ petitioners had completed 240 days in the block of 12 calendar months.

8. Learned counsel for the appellant-Bank submitted that in the letter of engagement in each case it was clearly stipulated that the employment was for the seasonal requirement and it was only for a specified period of time on the expiry of which their services would stand terminated. The respondents in the representation made before the Assistant Labour Commissioner (dated 16.2.2000) had accepted that the appellant did not allow the workmen to work for 240 days in a block of 12 calendar months and thus they had not completed 240 days of service.

9. In the writ petition also in paras 13 and 39 it was clearly admitted that they have not completed the required 240 days of service. In the light of this, prayer for regularization was clearly unacceptable. Without prejudice to the fact that they had not completed 240 days being a model employer, Bank had asked the writ petitioners to exercise their option for some future vacancies which were likely to occur in non-CCA areas outside the Calcutta Metropolitan Area in West Bengal. The respondents failed to exercise their option for the said areas and never expressed willingness to join any non-CCA Bank. The said exercise of option was not binding on the Bank and the letter of option did not mean any commitment or assurance for appointment.

- A The Bank has surplus staff even after implementation of the Voluntary Retirement Scheme, 2000 which was essentially meant for downsizing excess power of the Bank. After acceptance of the VRS options 900 subordinate staff were in excess including the Banks' Kolkatta Zone. There was no permanent vacancy of sub-staff in the Bank. It was pointed out that position in *American Express's* case (supra) was factually different. It related to employment of typists in temporary capacities with a number of short breaks, till a specified period of time when their services stood terminated. There was dispute as to whether Sundays and other holidays for which wages were paid under the law of contract and Statute could be treated as days on which employee "actually worked under the employer" for the purpose of Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947 (in short the 'Act'). It is submitted that the facts involved in the present case are entirely different as they have not admittedly completed 240 days in a calendar year as required by the scheme for their deployment/absorption against permanent vacancies. It was pointed out that no weekly off is given to Budlee worker if he works only for 6 days. It is only when the engagement of budlee Sepoy is more than 6 days at a stretch then weekly off is given after 6 days of work. It was also submitted that in view of what has been stated in *Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors.*, [2006] 4 SCC 1 question of regularization does not arise because there was no enforceable legal right.

E 10. In response, learned counsel for the respondents submitted that the High Court had given finding of fact that the writ petitioners have completed 240 days of work. It was also submitted that in view of what has been stated in *American Express's* case (supra) the inevitable conclusion is that each of the writ petitioners had completed 240 days.

F 11. It is to be noted that the onus is on the employee to establish that he had worked for more than 240 days. The High Court is not right in holding without factual aspect having been established by the respondents that each of them had worked for more than 240 days. The effect of decision not to fill up the vacancy was also not considered. The effect of change of policy has been considered by this Court in *Ram Prakash Makkar v. State of Haryana and Ors.*, [1992] 4 SCC 727. Unfortunately, the High Court did not consider the effect thereof. As noted above, the writ petitioners have accepted that they have not completed 240 days of work. Their stand was that the management did not permit them to do so. The scheme to which both the appellant and the respondents have referred to in para 2(1) speaks for 240 days of work in Budlee Service. Similar is the position in para 2 as quoted

above. The scheme of budlee days is different. It denotes actual working days. *American Express's* case (supra) has no application as the nature of work is different. Additionally, dispute is about as to whether the respondents had completed 240 budlee days. A

12. There is distinction between temporary worker and budlee worker. The present case relates to entitlement under the settlement and the scheme. That being the position, the High Court's order is clearly unsustainable and is set aside. Needless to say that whenever the respondents complete 240 days budlee work in a year or block of 12 months, their cases shall be considered in the light of the scheme, subject to continuance of the scheme, and change in policy if any. B C

13. Appeals are allowed without any order as to costs.

N.J.

Appeals allowed.