

ALLAHABAD BANK

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v.

SHRI PREM SINGH

SEPTEMBER 9, 1996

[J.S. VERMA AND B.N. KIRPAL, JJ.]

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Labour Law :

Industrial Disputes Act, 1947

Contractual employment—Can a contractual employee seek employment as a matter of right—Industrial Dispute—Tribunal held that such employees should be continued in service—On appeal held no, since the relationship between the parties was contractual.

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The appellant Bank by its letter dated 13th June, 1977 employed the respondent for one day i.e. for 14th June, 1977. Thereafter, by a second letter dated 15th June, 1977, he was appointed for one day, i.e. for 15th June, 1977. The respondent was again given appointment for two days i.e. for 16th and 17th June, 1977 by the appellant Bank. Each of the letters contained an identical stipulation that the services stood automatically terminated at the end of the day. The respondent was not given appointment by the appellant after 17th June, 1977.

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At the instance of the respondent, an Industrial Dispute was referred to the Industrial Tribunal. The Tribunal held that the denial of employment to the respondent by the appellant Bank amounted to termination of his services and declared that the respondent was entitled to employment and he must be deemed to be in continued service/employment of the Bank w.e.f. 16th June, 1977 with all the back wages and allowances.

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Allowing the Appeal, this Court

HELD : 1. The respondent was given appointment for one day at a time with the issuance of successive letters. The terms of the contract was that the service automatically stood terminated at the end of the day. The relationship between the parties was contractual. No reason had been given by the Tribunal as to what was the obligation on the appellant Bank to employ the respondent. At the most the respondent was a daily wager.

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A This being so, the award of the Tribunal cannot be sustained. The appellant Bank was under no legal obligation to continue the respondent in employment. [622-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 107 of 1981.

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From the Judgment and Order dated 25.5.80 of the Central Government Industrial Tribunal in I.D. No. 77 of 1978.

R.K. Maheshwari for the Appellant.

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Ms. K. Sharda Devi for the Respondent.

The Judgment of the Court was delivered by

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KIRPAL, J The appellant bank had requisitioned application for appointment as cashiers or cash clerks from amongst Ex-servicemen through the District Soldiers, Sailors and Army Board, Delhi. Thereafter on 13th June, 1977 the respondent was appointed by the appellant at its Lajpat Nagar Branch as a temporary cashier subject to the terms and conditions contained in the letter of appointment. The appointment was only for one day, i.e., 14th June, 1977. It is the case of the appellant that the respondent thereafter was appointed at different branches for another three days. The total period of service of the respondent with the appellant was from 14th June to 17th June, 1977.

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The appellant did not give any further employment to the respondent after 17th June, 1977. Thereupon, at the instance of the respondent, an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 was referred to the Industrial Tribunal, New Delhi. The only term of reference was as follows :

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"Whether the action of the management of Allahabad Bank, Parliament Street, New Delhi in denying employment as Cash Clerk to Shri Prem Singh w.e.f. 16.6.77 is legal and justified? If not, to what relief is the workman entitled?"

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The case of the appellant before the Tribunal was that the respondent did not possess the requisite qualification as he had not passed matriculation examination or high school examination. It was contended

that the respondent had misrepresented that he had passed the matriculation examination and was qualified to be appointed as a cash clerk. A

The Tribunal framed the following two issues vide its order dated 6th February, 1979 :

"1. Whether Shri Prem Singh is not qualified to be appointed as a cash clerk? B

2. As in the order of reference?"

By a subsequent order dated 20th June, 1979, one more issue was framed which was as follows : C

"1. Whether the referred matter is not an Industrial Dispute?"

The Tribunal vide its award dated 29th May, 1980 found that the respondent had appeared in the higher secondary examination held in April, 1954 but had failed in the same. This examination was of class XIth. D
The Tribunal further held that recognition had been granted to the Xth class certificate from a higher secondary school in India as being equivalent to matriculation certificate for the purposes of employment under the Central Government. It, therefore, concluded that the respondent must be regarded as having passed the matriculation examination. On merits the Tribunal came to the conclusion that once a workman had been lawfully E
appointed, his services could be terminated only in accordance with law and the denial of employment to him as cash clerk by the management amounted to termination of his services. The Tribunal then declared that the respondent was entitled to employment and he must be deemed to be in continued service/employment of the bank with effect from 16th June F
1977. It further directed that the respondent should be paid his usual pay and allowances as well as arrears of wages with effect from 16th June, 1977 till the date of the award.

The aforesaid award has been challenged in this appeal by special leave. The only question which arises for consideration is whether the respondent had any right to get any relief from the Tribunal. G

As already noticed the respondent was appointed by the appellant only on four days. He was appointed as a temporary hand at the Lajpat Nagar Branch on 14th June, 1977 by virtue of the letter dated 13th June, H

A 1977. Thereafter by two letters dated 15th June, 1977, he was offered service for one day, i.e., 15th June, 1977 at the appellant's Karol Bagh Branch and for two days, i.e., 16th and 17th June, 1977 at the appellant's Chandni Chowk Branch. It is not disputed that the terms of employment contained in the said letters were more or less identical. The first term contained in the said letters was as follows :

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"1. That your appointment is on purely temporary basis for a period of *one* day, i.e., 14.6.77 after which your service will stand terminated automatically without notice. Your services can, however, be terminated at any time during the above period without notice."

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It is no doubt true that the reason for the appellant for not employing the respondent was that he did not possess the requisite educational qualification. Even if it be assumed that this reason was incorrect, the question would still arise as to whether the bank was under any obligation to employ the respondent.

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This is not a case where by passing any order the existing services of a workman were terminated. The respondent was given employment for one day at a time with the issuance of successive letters. The relationship between the parties being contractual, the term of the contract was that the services stood terminated at the end of the day. The Tribunal has not given any reason whatsoever as to what was the obligation on the appellant to employ the respondent. The status of the respondent was, at best, that of a daily wager. By virtue of his letters of employment he ceased to be employed at the end of each day. His day's service stood automatically terminated. This being so the decision of the Tribunal in holding that the respondent shall be deemed to have continued in service from 16th June, 1977 and would also be entitled to usual pay and allowances is clearly untenable. The respondent could not insist on his being continued to be employed and the appellant was under no legal obligation to employ him.

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For the aforesaid reasons the award of the Tribunal dated 29th May, 1980 is set aside as the respondent is neither entitled to demand employment nor is he entitled to any other relief. The appeal is accordingly allowed. There will, however, be no order as to costs.

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Appeal allowed.