IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

<u>Appellate Side</u>

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 24372 of 2025
Central Bank of India
Vs.
Soumen Goswami & Ors.
With
WPA 10317 of 2025
Mr. Soumen Goswami
Vs
Union of India & Anr.

For the Petitioner In WPA 24372 of 2025	: Mr. Balaram Patra, Mr. Suvadip Bhattacharya.
For the Respondents in WPA 10317 of 2025 & 24372 of 2025	: Mr. Balaram Patra, Mr. Suvadip Bhattacharjee.
For the Central Bank of India /Petitioner in WPA 24372 of 2025	: Mr. Bishwambhar Jha, Mr. Harshwardhan Kumar Jha, Ms. Munmun Mishra.
For the Respondent in WPA 10317 of 2025	: Mr. Bishwambhar Jha, Mr. Harshwardhan Kumar Jha, Ms. Munmun Mishra.
Judgment reserved on	: 30.06.2026
Judgment delivered on	: 21.07.2026

<u>SHAMPA DUTT (PAUL), J. :</u>

1. The writ application has been preferred challenging an award dated 13.12.2024 passed by the learned Central Government Industrial Tribunal, Kolkata.

2. Vide the impugned order the learned Central Government Industrial Tribunal directed as follows:-

> *"…………In view of above, this Tribunal holds that termination of Sri Soumen Goswami, a casual driver by the bank without following procedures laid down in section 25-F of the I.D. Act, to be illegal. Therefore, the concerned workman is entitled to get a compensation of Rs.2,00,000/- (Rupees Two Lakh only) from the bank.*
>
> *Bank is directed to make payment of such compensation within two months of publication of the award.*
>
> *So far the claim for back wages as made by workman, this Tribunal is not inclined to pass any order as nothing has come on record that after retrenchment the workman is still unemployed. He being a professional driver, it cannot be assumed that he is sitting idle at home without any job. In fact it is a matter of common knowledge with the coming of Ubber, Olla etc. Cab Services in India, there is high demand for experienced drivers. So, one cannot expect an experienced driver to remain jobless for more than seven years.*
>
> *So far the claim of regularisation is concerned, the workman has failed to produce any document showing that there exists a permanent vacant post of a driver in the Regional Office at Kolkata or he possesses the eligibility criteria as laid down in Exb. W-7 & W-8. That apart Exb. 4,5, 6 and 7 series shows that casual drivers senior to the present workman were absorbed by the bank against the post of Sub Staff cum driver in the year 2011 and on the condition that they would be absorbed in the permanent post of driver as and when same falls vacant.*

> *Accordingly, Reference Case No.04 of 2020 is disposed of in favour of workman holding his retrenchment to be illegal and he is entitled compensation of Rs.2,00,000/- (Rupees Two Lakh only).*
>
> ***Sd/-***
>
> ***Presiding Officer."***

3. The Central Bank of India being aggrieved with the award of compensation has preferred the writ application being WPA 24372 of 2025. It is the case of the Bank herein that the respondent no. 1/Driver/worker herein, who is the petitioner in WPA 10317 of 2025, was engaged as a personal driver by certain executives of the bank in their individual capacity, without any formal appointment or recruitment process by the bank. He was never issued an appointment letter nor was he under the control or supervision of the bank's management. The bank has consistently maintained throughout the conciliation proceedings and before the Tribunal that the respondent was never its employee-neither casual, temporary, nor regular and was only engaged by the executives for personal use, without following any rules of public employment. Despite this, and in the absence of clear evidence establishing an employer-employee relationship, the Learned Tribunal erroneously assumed the existence of such a relationship and proceeded to grant compensation under the Industrial Disputes Act, 1947. The Tribunal also incorrectly invoked the provisions of Section 25F of the Act, treating the respondent as a workman, even though it admitted that the respondent would not receive back wages and was still professionally employable.

4. The petitioner asserts that the impugned award is perverse, illegal, and without jurisdiction, as no industrial dispute exists in this case, and seeks quashing of the same on the ground that the Tribunal failed to appreciate settled legal principles regarding personal drivers engaged by executives in their personal capacity not falling within the scope of employment under the bank.

5. The petitioner has relied upon the following judgments:-

i. Secretary, State of Karnataka & Ors. vs Umadevi (3) & Ors., (2006)4 SCC 1, (Para 44,45,47,48).

> ***"47.*** *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."*

ii. ***University of Rajasthan and Anr. vs Prem Lata Agarwal, (2013) 3 SCC 705, (Para 25, 26, 27).***

iii. ***Maharashtra State Road Transport Corporation vs Mahadeo Krishna Naik, (2025) 4 SCC 321, (Para 48).***

6. The respondent no. 1/workman herein has argued that he was appointed as driver to drive the vehicle which was owned by Bank and he worked there for more than 10 years. He discharged his duties sincerely and diligently and he was illegally and unlawfully terminated by the respondent No. 2 on **24.04.2017.** It has been categorically observed by the Learned Tribunal that the workman was discharging his duties for and on behalf of the Bank and previously three drivers namely Sri Ramagya Pandy, Sri Jagdeo Prasad and Md. Rafique in year 2011 were absorbed in service, but unfortunately petitioner's service was terminated and even after being satisfied by the evidence which was adduced by the workman, Learned Tribunal has miserably failed to pass an Award of reinstatement.

7. It is further stated that the Learned Tribunal failed to consider it's own findings that the workman had worked continuously for more than 240 days, but the Bank had failed to comply with Section 25F of the Industrial Disputes Act, 1947. In spite of that the Learned Tribunal did not direct the Bank to reinstate the workman, in service with full back wages and all consequential benefits from the date of termination of service. Moreover, the respondent No. 2 is a nationalised bank and as such should act as a model employer.

8. The employee/workman has prayed for reinstatement being not satisfied with the compensation granted by the tribunal.

9. **The employee has relied upon the following judgments:-**

i. ***Mohan Lal vs Management of M/s Bharat Electronics Ltd. (1981) 3 SCC 225.***

ii. ***Gammon India Ltd. vs Niranjan Dass (1984) 1 SCC 509.***

iii. ***Tapash Kumar Paul-vs-Bharat Sanchar Nigam Ltd. & Anr. (2014)15 SCC 313.***

iv. ***Armed Forces Ex-Officers Multi Services Co-operative Society Ltd. vs Rashtriya Mazdoor Sangh (INTUC) (2022) 9 SCC 586.***

v. ***Allahabad Bank & Ors. vs Avtar Bhushan Bhartiya (2022) 13 SCC 202.***

vi. ***Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors. (2013) 10 SCC 324.***

10. The Bank has relied upon the judgments in:-

i. ***University of Rajasthan and Anr. Vs Prem Lata Agarwal, (2013) 3 SCC 705.***

ii. ***Maharashtra State Road Transport Corporation vs Mahadeo Krishna Naik, (2025) 4 SCC 321.***

iii. ***Secretary State of Karnataka & Ors. Vs UmaDevi (3) & Ors. (2006) 4 SCC 1.***

> ***"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.***
> ***48.*** *It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are*

> *discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."*

11. From the materials on record, it appears that in the cross examination of the workman by the bank, that he was appointed as a driver but **without any appointment letter.**

12. The workman further deposed that ***"The security officer of the bank engaged me to drive the vehicle and not Mr. Anamla Mohan".***

13. **In the impugned award,** the learned tribunal on the basis of evidence adduced by the parties held:-

(i) *From the insurance claim form of Exb.-W-12, it appears that the vehicle No. WB-06G-9338, Maruti Swift was/is*

owned by Central Bank of India was insured with Cholamandalarm M/s. General Insurance Co. Ltd. It further shows Central Bank of India had made a damage claim from Cholamandalam M/s. General Insurance Co. Ltd. towards damage of the glass of the said vehicle and which was parked on the office car parking area.

Exb.W-12 prima facie proves that vehicle No. WB-06G-9338 was and is owned by Central Bank of India and it was not a personal private vehicle of the Executive.

(ii) The contents of exhibits W-5 to W-9, Exb.W-13 series, Exb.W-11 (collectively) leave no room for doubt that the concerned workman was indeed engaged by bank as a driver to drive the vehicle owned by the bank and provided to its Dy. General Manager, Kolkata for his official use.

(iii) The documents which have come on record prove that the concerned workman was indeed engaged by the bank though not following the proper procedure or orally with the help of their Security Guards etc. to drive the official vehicle owned by the bank and place for official use by Dy. General Manager for his official use. The concerned workman has rendered continuous service to the bank as a Driver since 2010 i.e. for more than 240 days in a

calendar year till his retrenchment in the year 2017. In view of provisions of section 25-B of the Industrial Disputes Act, he is presumed to be in continuous services of the bank as a casual driver to drive a vehicle owned by the bank.

(iv) That Exb.W-4, 5, 6 and 7 further prove that the bank without creating any post of Drivers in the Regional Office used to get all its official vehicles driven by drivers engaged in casual manner. Such facts prove involvement of bank in an unfair labour practice by getting its vehicles driven by casual drivers and getting permanent nature of work done by engaging casual drivers.

(v) So far the claim for back wages as made by workman, this Tribunal is not inclined to pass any order as nothing has come on record that after retrenchment the workman is still unemployed. He being a professional driver, it cannot be assumed that he is sitting idle at home without any job. In fact it is a matter of common knowledge with the coming of Ubber, Olla etc. Cab Services in India, there is high demand for experienced drivers. So, one cannot expect an experienced driver to remain jobless for more than seven years.

(vi) So far the claim of regularisation is concerned, the workman has failed to produce any document showing that there exists a permanent vacant post of a driver in the Regional Office at Kolkata or he possesses the eligibility criteria as laid down in Exb. W-7 & W-8. That apart Exb. 4,5, 6 and 7 series shows that casual drivers senior to the present workman were absorbed by the bank against the post of Sub Staff cum driver in the year 2011 and on the condition that they would be absorbed in the permanent post of driver as and when same falls vacant.

14. From the materials on record the following is evident:-

a) The employee/driver was engaged on casual basis through a security officer of the Bank. There was no appointment letter and the driver was not engaged/appointed through regular/lawful process ***(UmaDevi (Supra)).***

b) The employee/driver continued to work on casual basis for the bank officials, driving the bank's vehicle and receiving this due payments from the bank.

c) The employee/driver was neither employed by the Bank officials nor paid by the said officials in their personal capacity.

d) He continued to work as a casual employee till his services were not required.

e) The tribunal rightly held that the said conduct of the Bank comes within the definition of "unfair labour practice" and thus granted compensation, which is challenged by the Bank.

f) The question of regularization does not arise as admittedly the private respondent was not appointed by following the regular/lawful process ***(UmaDevi (Supra))*** and was employed on casual basis only for about seven (7) years.

g) The findings of the tribunal as to back wages also appears to be prima facie correct and thus requires no interference.

15. Considering that documents filed show that the workman herein worked as a driver for the Bank from 2010 to 2017, **it is on record that he put in 240 days a year for the period from 2010 to 2017.**

16. Thus the tribunal rightly held that the workman herein was in **continuous service** as per Section 25B of the I.D. Act. That being the position, he is entitled to the benefit as provided under the law.

17. The learned tribunal on its said findings also rightly decided the issue as to compliance of Section 25F of the I.D. Act and on doing so granted relief by invoking Section 11A of the Act.

18. In ***Syed Yakoob vs K.S. Radhakrishnan & Others**, **1964 AIR 477, on 7 October, 1963,*** the Supreme Court held:-

> *"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of tact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the. Tribunal had. erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on*

> *a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3). It is, of course, not easy to define or adequately describe what an error of law apparent on the face of (1) [1955] 1 S.C.R. 1104. (2) [1958] S.C.R. 1240. (3) A.I.R. 1960 S.C. 1168."*

19. In judicial review, the Court does not sit in appeal. If the conclusion arrived at is possible, Courts should not interfere.

20. Thus the impugned award in the present case requires no interference by this Court.

21. **WPA 24372 of 2025 with WPA 10317 of 2025 are dismissed and accordingly disposed of.**

22. Applications, if any, connected thereto stand disposed of consequently.

23. Interim order, if any, stands vacated.

24. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul), J.]