

*Before Jawahar Lal Gupta & N.C. Khichi, JJ*

THE GURDASPUR CENTRAL CO-OPERATIVE  
BANK LTD,—Appellant

*versus*

THE PRESIDING OFFICER, LABOUR COURT,  
GURDASPUR,—Respondent

*Letters Patent Appeal No. 1334 of 1990*

15th January, 1998

*Industrial Disputes Act, 1947—S.25-F—Workmen appointed on 89 days basis purely on ad hoc & temporary basis till appointment of regular Clerks & Peons—89 days appointment extended time to time till regular selection completed—Services terminated after workmen completed 230 days—Such termination will not amount to unfair labour practice.*

*Held*, that the posts had been actually advertised and the facts that the respondent-workmen had been appointed on the posts of Clerks and Peons on purely *ad hoc* basis for 89 days, it can be safely inferred that the Bank had intended to make a temporary arrangement so as to carry on the day-to day-work till the regular selections and appointments were made. It also cannot be disputed that an employer has the right to make an *ad hoc* arrangement pending a proper selection. In such a situation, if the employer terminates the services of the persons who had been appointed on purely *ad hoc* basis it cannot be accused of having acted unfairly. In fact, the purpose of the Bank was clear to all the employees even at the time of their appointment that a purely *ad hoc* arrangement is being made which would last till the regular selections are made. Taking the totality of circumstances into consideration, it cannot be said that the Bank was acting unfairly.

(Para 7)

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P.S. Patwalia and H.S. Sethi, Advocates, *for the Appellant.*

H.S. Riar with D.P.S. Kahlon and Dinesh Kumar, *for the Respondents.*

### JUDGEMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) These three appeals arise out of a common judgment. A few facts may be noticed.

(2) On 29th November, 1978, the Gurdaspur Central Co-operative Bank Limited, Gurdaspur (hereinafter referred to as the Bank) had advertised certain posts of Clerks and Peons. Since the process of selection and recruitment had to take sometime, the Bank appointed about 40 persons on purely ad hoc basis. These appointments were for a period of 89 days. Since the selection could not be completed, the appointments were periodically extended. It is agreed between the parties that the appointments were made during December, 1978. In August/September 1979, the Bank terminated the services of all the persons who had been appointed on *ad hoc* basis. Thereafter, it had appointed 53 persons who had been regularly selected. Aggrieved by the termination, 17 persons raised an industrial dispute. The appropriate authority made separate references to the Labour Court. These references were consolidated and decided by the Labour Court,—*vide* its award dated the 7th February, 1986. Aggrieved by the award, the Bank filed C.W.P. Nos. 1196 of 1986 and 9053 of 1987. The workmen on the other hand filed C.W.P. No. 6866 of 1989 to claim the consequential benefits flowing from the award of the Labour Court. The two Petitions filed by the Bank having been dismissed and that filed by the workmen having been allowed, the Bank has filed these three appeals.

(3) Mr. P.S. Patwalia, counsel for the appellant—Bank has contended that the respondent—workmen had not completed service for 240 days. Thus, they were not entitled to the protection of section 25-F. Still further, it has been submitted that in the circumstances of the case, it could not be said that the Bank was guilty of adopting an unfair labour practice.

(4) On behalf of the respondents—workmen, it has been submitted by the learned counsel that the Registrar had issued instructions that none of the workmen should be allowed to complete

a service of 240 days. This was symbolic of the real intention of the appellant-Bank. The Bank was, thus, guilty of following an unfair labour practice. The finding recorded by the learned Single Judge should, therefore, be sustained.

(5) The short question that arises for consideration is—Did the Bank act unfairly in terminating the services of the respondent-workmen before they had completed 240 days of service ?

(6) It is the admitted position and has not been disputed by the counsel for the respondent-workmen that the posts had been advertised by the Bank on 29th November, 1978. It has also not been disputed that after the advertisement, the Bank had actually appointed 53 persons in November 1979. Still further, the Bank had specifically pleaded before the Labour Court in para 1 of its preliminary objections as under :—

“All the 20 concerned workmen were appointed purely on temporary and *ad hoc* basis for 89 days with one day break for a specified period of 230 days by different orders with clear understanding that their services could be terminated without notice till the appointment of regular Clerks and Peons. As such discharge of workman appointed for specified period does not constitute an industrial dispute. Consequently, all the 20 references are illegal, without jurisdiction and a nullity.”

(7) In view of the admitted position that the posts had been actually advertised and the facts that the respondent-workmen had been appointed on the posts of Clerks and Peons on purely *ad hoc* basis for 89 days, it can be safely inferred that the Bank had intended to make a temporary arrangement so as to carry on the day-to-day work till the regular selections and appointments were made. It also cannot be disputed that an employer has the right to make an *ad hoc* arrangement pending a proper selection. In such a situation, if the employer terminates the services of the persons who had been appointed on purely *ad hoc* basis, it cannot be accused of having acted unfairly. Still further, learned counsel for the respondents have not been able to show by referring to any evidence on the record that even a suggestion had been made in the Claim Statement filed by the Workmen that the Bank was guilty of an unfair labour practice. It was only at the state of filing the replication that a totally vague plea of unfair labour practice was raised. Admittedly, there is no evidence which may even indirectly

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suggest that the Bank was prompted by any extraneous consideration or ulterior motive in making appointments on *ad hoc* basis or terminating the services before completion of 240 days. In fact, the purpose of the Bank was clear to all the employees even at the time of their appointment that a purely *ad hoc* arrangement is being made which would last till the regular selections are made. Taking the totality of circumstances into consideration, it cannot be said that the Bank was acting unfairly.

(8) It is pertinent to add that the charge of unfair labour practice should be specifically levelled so that the employer is able to meet it. It should also be proved by clear evidence. It is undoubtedly correct that sometimes the facts may speak by themselves and it may be possible to infer that the employer was acting unfairly but there should be some evidence which should indicate an improper motive so as to enable the court to arrive at a finding of unfair labour practice. In the present case, counsel for the respondents are unable to refer to any evidence on the record. The only document to which a reference has been made, is said to be a letter sent by the Registrar in which it had been conveyed that no workman should be allowed to complete more than 230 days. The obvious purpose of this letter was to prompt the Bank to make regular selections speedily so that the rights of the workmen who had been appointed on *ad hoc* basis did not crystallise and the Bank was not faced with an avoidable liability. Such a communication can not by itself constitute an unfair labour practice.

(9) At this stage, it may also be pointed out that even the learned single Judge has merely observed that the workmen had raised the plea of unfair labour practice in the replication. However, no categorical finding that the Bank had acted unfairly has been recorded.

(10) Faced with this situation, counsel for the respondent-workmen have submitted that in pursuance of the award and the judgment of the learned Single Judge, the respondent-workmen have already been reinstated. It has been further pointed out that the workmen have now become over-age and shall not be able to compete for any other post. In view of this situation, Mr. Patwalia, counsel for the Respondent-Bank has submitted that if the award given by the Labour Court and the judgment of learned Single Judge are not set aside, the Bank shall be fastened with the liability of more than Rs. 20 lacs. This would be an unbearable financial burden on the Bank. He further points out that in fact each of the clerks

has already been paid an amount of Rs. 43,000 approximately and each of the Peons has been paid an amount of Rs. 36,000 approximately. He further submits that each of the workman has been reinstated since 1991, except respondent Nos. 4, 12, 14, 16, 17, and 19 in LPA No. 1334 of 1990. These respondents were offered reinstatement but they had not joined.

(11) In the circumstances of his case, we think that the offer made on behalf of the appellant-Bank is absolutely just and fair. Even though, we are not persuaded to up-hold the findings recorded by the Labour Court and the learned Single Judge, we think the ends of justice would be met if the respondents-workmen are allowed to continue on the posts held by them. They are further allowed to retain the amount already paid to them. However, since the respondent-workmen had not performed any duties during the period of litigation and fairly significant amounts have been paid to each one of them, it would not be fair to place any further financial burden on the appellant-Bank.

(12) Resultantly, the appeals are allowed to the extent that the finding that the Bank was guilty of unfair labour practice is reversed. However, we do not interfere with the order of reinstatement with continuity of service. It is, however, clarified that the workmen shall not be entitled to any payment beyond the amounts already received by them. No costs.

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*J.S.T.*

*Before Jawahar Lal Gupta & Iqbal Singh, JJ*

STATE OF PUNJAB & ANOTHER,—*Appellants*

*versus*

KHARAK SINGH KANG & ANOTHER,—*Respondents*

*L.P.A. No. 640 of 1990*

*20th January, 1998*

*Punjab Civil Services Rules, Vol. II—Rl. 6.17—'Family'—Rule cannot be sustained to the extent that it excludes parents of deceased employee from concept of family—Rule to be reasonable and not arbitrary.*