

(2014) 08 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8549 of 2014

Alwar Urban Co-operative Bank Limited

APPELLANT

Vs

Dinesh Chand Choudhary

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Companies Act, 1956 — Section 617
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2(k), 47, 47(1)

Citation : (2015) LabIC 717

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Mahesh Mudgal, Chief Executive Officer, Advocates for the Appellant

Judgement

Mohammad Rafiq, J.—This petition has been filed by Alwar Urban Co-operative Bank Limited assailing the order dated 20.07.2014 passed by the Disability Commissioner. In the aforesaid order, the Disability Commissioner has set aside the order dated 11.06.2014, by which the respondent was compulsorily retired from service only on the ground that he has been rendered disable to the extent of 70% during service with the petitioners. The Disability Commissioner has directed the petitioner to reinstate the said respondent Dinesh Chand Choudhary forthwith in compliance with the provisions of Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the 1995 Act"). Mr. Mahesh Mudgal, Chief Executive Officer, Alwar Urban Co-operative Bank Limited, present in person, has submitted that the petitioner-Bank is a co-operative society registered under the Rajasthan Societies Registration Act, 1958 and therefore, it could not be taken as an "establishment" in the meaning of Section 2(k) of the 1995 Act. Therefore, the provisions of Section 47 of the 1995 Act are not applicable to it. It is argued that the service conditions of the petitioner-Bank are covered by the Urban Co-operative Banks Employees Service Rules, 2006 (hereinafter referred to as "the 2006 Rules"). The petitioners have invoked Rule 15 of the 2006 Rules and in

compliance thereof, paid to the respondents salary of three months in advance in lieu of notice of three months along with other allowances with the order of his compulsory retirement dated 11.06.2014.

2. Mr. Mahesh Mudgal has invited attention of this Court towards the Rule 15 of the 2006 Rules which, inter alia, provides the procedure of compulsory retirement. Rule 15 of the 2006 Rules, relied upon by the petitioner reads as under:

"15. Compulsory Retirement:

(i) At any time, after a Bank employee has completed 15 years qualifying service or has attained the age of 50 years, whichever is earlier, the Board of Directors, upon having been satisfied that the concerned employee has on account of his indolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties, has lost his utility, may require the concerned employee to retire in Bank interest giving specific grounds to arrive at the decision. In case of such retirement, the employee shall be entitled to retiring benefits.

(ii) In such a case, the Bank shall give a notice in writing to the employee at least three months before the date on which he is required to retire in the bank interest or three months' pay and allowances in lieu of such notice."

3. No doubt, the petitioner can retire a Bank employee after completing 15 years or on attaining the age of 50 years, whichever is earlier, upon having been satisfied that the concerned employee has on account of his indolence or doubtful integrity or incompetence to discharge official duties or inefficiency in due performance of official duties, has lost his utility, but the aforesaid Rules stand superseded by Section 47(1) of the 1995 Act, which reads as under:

"47. Non-discrimination in Government employments.--(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service :

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

4. Perusal of Section 47(1), thus, clearly show that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during service. The first proviso to section 47(1) stipulates that if an employee, after acquiring disability is not suitable for the post he was holding, he could be shifted to some other post with the same pay scale and service benefits. Second proviso to Rule 47(1) provides that if it is not possible to adjust the employee against

any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Such intention of the Parliament is further reflected from sub-section (2) of Rule 47 of 1995 Act, which provides that no promotion shall be denied to a person merely on the ground of his disability. Although, of course, this provision has been subjected to a proviso that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section, but that is regarding promotion wherefore the Government may by notification exempt any establishment. There is no such dilation in regard to compulsory compliance of sub-section (1) of Section 47 which provides that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. The 1995 Act, as its preamble has been enacted by the Parliament with a view to give effect the proclamation on the full participation of the people suffering from disabilities in Asian and pacific region. Is with that laudable object that the Parliament has enacted the Act as a measure of social obligation. Rule 42 of the Rajasthan Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 2011 has also recognized such right of an employee, who become disabled while in service.

5. Contention that the Alwar Urban Co-operative Bank Limited being a co-operative society registered under the Rajasthan Societies Registration Act, cannot be taken as an establishment, is noted to be rejected for the stated reasons. Section 2(k) of the 1995 Act defines the establishment in the following terms:

"(k) "Establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government."

6. According to above definition, an establishment means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government. The petitioner-Bank is subject to control or the Registrar of Co-operative Societies Registration and is bound to follow the directions under the Scheme of the said Act. This issue stands concluded by the judgment of the Hon"ble Supreme Court in Daman Singh and Others Vs. State of Punjab and Others, , wherein it has been held that every registered co-operative society has status of body corporate having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. A co-operative

society is therefore, a corporation as commonly understood and the scheme of its constitute does not make any difference in its status. The co-operative society incorporated under the Rajasthan Cooperative Societies Act, therefore, would be deemed to be corporation. The contention of the petitioner is thus, liable to be rejected.

7. In the view of the above, I do not find any reason to interfere with the order passed by the Disability Commissioner. The writ petition stands dismissed. However, the petitioner is directed to reinstate the respondent forthwith.