

(1996) 06 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 903 of 1996

Anz Grindlays Bank

APPELLANT

Vs

Rambhuvan R. Kahar and Others

RESPONDENT

Date of Decision : 17-06-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 33(1), 33A

Citation : (1996) 74 FLR 2097

Hon'ble Judges : V.P. Tipnis, J;F.I. Rebello, J

Bench : Division Bench

Judgement

Tipnis, J.—This petition filed by the ANZ Grindlays Bank, Bombay impugns the correctness and legality of the order dated 9.1.1996 passed by the learned Presiding Officer, Central Government Industrial Tribunal 11, holding that the order of retrenchment dated 10.5.1994 passed by the Bank against one Rambhuvan R. Kahar who was employed by the petitioner, as sweeper, is bad in law and the Bank was directed to reinstate the sweeper original complainant, with full back wages, continuity of service and other consequential benefits.

2. The respondent no. 1 who was engaged as temporary sweeper in the Bank, filed a complaint under the provisions of section 33A of the Industrial Disputes Act and contended that the Bank has committed breach of the provisions of law prohibiting the Bank to change of service conditions during the pendency of the reference. It is an admitted position that a reference is made in respect of about 43 workmen employed by the Bank and the main issue was regarding regularisation of their services from temporary to permanent nature with the Bank. It is further an agreed position that during the pendency of the aforesaid reference, the services of the respondent no. 1 - workman came to be terminated by the Bank. It is also an agreed position that he was paid retrenchment compensation as required under the provisions of section 25F of the Industrial Disputes Act.

3. The learned Presiding Officer, after having gone through the evidence recorded

and the facts and circumstances of the case, held that the Bank has committed breach of section 33(1)(a) of the Industrial Disputes Act. In view of the judgment reported in 1977 LIC 834 The Bhavnagar Municipality v. Alibhai Karimbhai & Others, we are of the opinion that the learned Presiding Officer was right "in his conclusion that there has been breach of the provisions of section 33(1)(a) of the Industrial Disputes Act.

4. Shri Rele, learned Counsel for the petitioner submitted that even if the learned Presiding Officer comes to such a conclusion, in view of the decision of the apex Court reported in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, and also in view of the observations of the Apex Court in paragraph 15 of the judgment in the case of The Bhavnagar Municipality, the learned Presiding Officer was obliged to go into the merits of the matter. In the submission of Shri Rele, the Learned Presiding Officer has not gone into the merits of the matter.

5. With the assistance of the learned counsel for both sides we have gone through the affidavit filed on behalf of the employer i.e. the Bank and also cross-examination of behalf of the workman. Paragraphs 29, 30 and 31 of the impugned order, in our opinion, clearly discuss the merits of the matter. The learned Presiding Officer has referred to the letter written by the Bank which shows that the management of the Bank found the workman suitable for the post for which he was working. The learned Presiding Officer has also referred to the fact that the work of a sweeper or that of a peon is not of a durational nature. He has observed that there is no evidence to show that as to what type of additional work was there when the workman was employed temporarily. He has also observed that the workman has worked 3-4 years. In view of the aforesaid position in law and the material on record we do not find any fault either with the reasoning or with the conclusion reached by the learned Presiding Officer.

In our opinion there is no ground for interference in our writ jurisdiction. In the result writ petition is summarily rejected.

6. Certified copy expedited.