

(2011) 07 GUJ CK 0149
In the Gujarat High Court

Case No : Special Civil Application No's. 9627 and 9628 of 2000

Bank of Baroda

APPELLANT

Vs

H.D. Dhobi

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2012) 1 GLR 408

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Darshan M. Parikh, for the Appellant; Ketan A. Dave, for the Respondent

Judgement

Ravi R. Tripathi, J

1. Heard learned Counsels at length on all issues. These two petitions are directed against Award dated 13-4-2000, passed by the Central Industrial Tribunal, Vadodara in Reference (I.T.) No. 10 of 1997 (Spl. C.A. No. 9627 of 2000) and also award dated 13-4-2000, passed by the Central Industrial Tribunal, Vadodara in Reference (I.T.) No. 1997 (Spl. C.A. No. 9628 of 2000). It is prayed that the impugned Award be quashed and set aside and consequential relief be granted.

2. Before setting out the fact, it has to be stated that the basic facts in both the matters are identical except the date of engagement of the respondent which differ from one petition to another. Similarly, the number of days worked by the respondent in one petition to another petition also differs. However, the basic facts remain the same in both the cases. These facts are such that the respondent is not able to controvert them. In those circumstances, both the matters are disposed of by this common judgment.

3. The Bank in the petitions has inter alia contended that :

(a) The petitioner-Bank is a Nationalised Bank, under the Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1970.

(b) The petitioner being a Nationalised Bank is required to follow a definite pattern especially in the matter of employment. So far as the Sub-Staff like Peon is concerned, the Bank is required to notify to the Employment Exchange about the vacancies and only from the names received from the Employment Exchange, appointments whether temporary or permanent can be made by the Regional Manager and above being the appointing authority. The Branch Managers have no powers to make appointment.

(c) It is a matter of common knowledge of which judicial note can be taken that there are certain vested interests functioning in a particular manner in such organisations. There are hundreds of persons who had some contact with some Officer of the Bank and they desire such Officer to engage either themselves or their relative at least on temporary basis. In branches, when a Peon is not available on a particular day, some such person is required to be engaged and is paid on vouchers. In fact even when there is no vacant post available, one or the other Peon is engaged in place of a person absent. Such person is given work in one or the other branch. Sometimes, if the work is more, such person/s may be engaged for longer periods. However, the fact remains that all such engagements are without any authority and beyond the applicable rules and law also does not favour such engagement.

(d) The situation grew so alarming that the Central Government, after due consideration of all relevant factors and in consultation with the Ministry of Labour, worked out an approach paper to deal with this problem. By the said approach paper, the Government permitted regularisation of services of certain persons as set out in the said approach paper. Under the approach paper, certain guidelines were issued by the Central Government, which provided that in respect of only those persons who are recruited through Employment Exchange between 1st January, 1982 and 31st December, 1989, the requirement of "Employment Exchange Procedure" for appointment of these "temporary workmen" as "regular workmen" of the Bank need not be followed. In cases of such persons, the Bank was required to apply to the Director General of Employment & Training, hereinafter referred to as D.G.E.T. for short, for exemption, giving full justification for making initial recruitment without reference to Employment Exchange. The approach paper is annexed to the petition and the attention of the Court is invited to various provisions by both the parties.

(e) The father of the respondent in Spl. C.A. No. 9628 of 2000 was serving in the Bank. He is likely to have introduced the respondent to some branch. It appears that thus the respondent was engaged from time to time, by various branches to work on temporary basis against leave vacancy on daily-wage basis. Similarly, the respondent of Spl. C.A. No. 9627 of 2000 was also engaged, from time to time, by various branches to work on temporary basis against leave vacancy on daily-wage basis. After the approach paper was issued they had applied for being

absorbed on permanent basis. (Copies of their application forms are annexed to their respective petitions.) It is also the case of the Bank that in the hope that they may be permitted to be absorbed, they were continued to be engaged on temporary basis. However, on a refusal from the D.G.E.T., the respondents could not be engaged as they could not have been regularised or given work. Not only the respondents but various other similarly placed persons also could not be absorbed in employment or could be continued to be given work. Giving work to them was to mean, "permitted them a back-door entry" without there being any available post and without following due process of law.

(f) Subsequently, the petitioner-Bank issued an advertisement in the local newspapers on 10-1-1991, for the purpose of drawing up a panel of such persons who have worked on a temporary basis, (for a period of ninety days or more between 1st January, 1982 and 31st December, 1990) for consideration of their cases for future vacancies, temporary or permanent, subject to certain conditions.

(g) Thereafter, the petitioner-Bank, from amongst the applications received, submitted particulars of temporary employees which it proposed to consider for appointment, to the Director General of Employment and Training. The D.G.E.T., by letter dated 8-8-1994 asked the petitioner-Bank to prepare and send a list with cut-off date being 31-12-1989 and not 31-12-1990. Such a list was sent to D.G.E.T., who after proper scrutiny and screening, approved a panel comprising of 681 employees who had completed 90 days of temporary service between 1st January, 1982 and 31st December, 1989.

(h) Though, the respondents had not fulfilled the criteria, and were ineligible to be selected under the guidelines laid down, they applied for being absorbed as per the guidelines. The respondent of Spl.C.A. No. 9627 of 2000 had admittedly worked as a temporary Peon for 268 days during 1990 and respondent of Spl.C.A. No. 9628 of 2000 had admittedly worked as a temporary Peon for only eighty-seven days during 1990, their names could not be included in the Panel aforesaid.

(i) Despite not being qualified, the respondent approached the Gujarat Bank Workers Union which by its letter of 24-4-1996 demanded that the Bank must reinstate the respondent from 1-3-1996, issue him a letter of permanency from 6-10-1990, and pay him all arrears as per the successive bipartite settlements. As a panel of temporary workers was already set-up, from amongst which only the petitioner-Bank could have made temporary appointments, as prescribed by the guidelines issued by the Central Government in the approach paper, the petitioner-Bank did not have an option and had to refuse. On such refusal the Gujarat Bank Workers Union by its letter dated 7-5-1996 raised an Industrial Dispute before the Assistant Labour Commissioner, Vadodara. The Conciliation Officer made a failure report, and hence, an Industrial Dispute was raised before the Industrial Tribunal, Vadodara. The Hon'ble Industrial Tribunal passed the impugned Award and order. The Statement of Claim and the written statement

are on record along with an additional affidavit filed by the petitioner-Bank.

(j) It is required to be observed that sometime in March, 1996, fifteen other similarly placed employees, through the Gujarat Bank Workers Union filed a Writ Petition in this Court being Spl. C.A. No. 642 of 1996, praying for regularization of their services, without disclosing the fact that they were not entitled under the guidelines laid down in the approach paper. This Court inter alia directed the petitioner, by an order dated 17-44996 as under:

"In view of this position, in my view, if the Bank needs time to re-examine its position, there is no reason why the time should be declined, particularly when in the same affidavit, the Officer has accepted that the interest of petitioners is sufficiently safeguarded in view of the interim relief operating in their favour.

While re-examining the matter, the Bank may either deny regularization to the 12 similarly placed persons or may regularize the first 15 petitioners. This is because this is not a case of one or two persons. In any case, while rectifying the "error" as accepted by the Bank, if it does not remove the discrimination (as assumed in its affidavit) in spite of being granted time as sought by it, then it will mean that it has consciously retained the cut-off date of 31-12-1990 in the advertisement (which is submitted by Mr. Mansuri) or there is something more than what meets the eye.

Mr. Parikh seeks time beyond the main vacation. Matter to stand-over to 26th June, 1996. In the meanwhile, the interim relief granted in this matter on 25th January, 1996; as modified on 19th February, 1996, shall continue. In the event, the Bank not coming out with a clear stand by the next date of hearing, the Court will be constrained to draw necessary inference, as indicated above and pass appropriate orders."

(k) The petitioner complied with the aforesaid order and filed an affidavit of compliance. This Court thereafter took up the matter for further hearing and passed an order dated 3-7-1996, rejecting the petition. This Court after hearing the parties and after perusing the guidelines prescribed in the approach paper was of the opinion that if the respondents do not fall within the parameters thereof, they cannot be entitled to any relief. The Court observed as under :

".....The Bank found that if such irregularity is condoned, and the present 15 petitioners are also regularised, a large number of other employees might come forward claiming regularisation on the ground that they have completed 90 days of temporary service between 1-1-1982 to 31-12-1990 while in fact the approach letter of the Central Government the date was to be read as 31-12-1989."

".....It shall have to be kept in mind that these are totally voluntary schemes sponsored and encouraged by the Central Government with a view to providing employment to totally unemployed persons. For preparing such a scheme approach letter is prepared in consultation with Banks and representative Unions and scrupulous compliance to such approach letter is very much needed. In fact

the schemes are purely beneficial schemes with a view to seeing that unemployed persons are provided employment. The permanent object is to be seen and further that the objective to provide employment on terms and conditions of approach letter is also satisfied. In the present case since terms and conditions of the approach letter were not satisfied and since the names of the petitioners were rightfully excluded from the panel they cannot claim any protection of Sec. 25F of the Industrial Disputes Act."

(l) The Court dismissed the petition filed by similarly placed persons. The learned Advocate for the petitioner-Bank invited the attention of the Court to the said judgment as also the judgment of a Division Bench of this Court in L.P.A. No. 1028 of 1996. In the said appeal, the aforesaid judgment of the Learned Single Judge was challenged. The Division Bench approved the judgment of the learned Single Judge and rejected the said L.P.A.

(m) The learned Advocate for the petitioner-Bank submitted that these matters are required to be considered in the backdrop of the aforesaid facts.

4. The Hon"ble Industrial Tribunal has proceeded on the basis that there was a flagrant violation of Sec. 25F of the Industrial Disputes Act, 1947 since the Bank had not followed the procedure laid down thereunder. Shri Dave, learned Counsel has also made submissions to that effect.

5. While admitting the petitions, this Court, (Coram : Hon"ble Mr. Justice D.H. Waghela), on 13-9-2000 had passed the following order :

"Rule returnable on 5-10-2000. There shall be stay of the payment of back wages only on condition that the petitioners shall reinstate the respondent subject to its rights and contentions in the petition."

6. Both the learned Advocates have accepted the fact, that there was reinstatement as directed by this Court as per the interim order and the respondents have been working since then with the petitioner-Bank.

7. By filing a further affidavit dated 7-10-2009 the respondent has brought on record that the petitioner-Bank has entered into a settlement and has come out with a fresh scheme of regularising illegal appointees. The Bank has, by filing a counter-affidavit, denied that the said settlement is applicable to the respondents for the reasons stated in the said affidavit.

8. The learned Advocate for the petitioner-Bank relied upon the judgments of this Court in Spl. C.A. No. 642 of 1996 and the L.P.A. No. 1028 of 1996. The learned Advocate relying upon the other judgments set out hereinbelow, prayed for allowing the petition and quashing and setting aside the awards and the directions contained therein. Following are the judgments relied upon by the learned Advocate for the petitioner-Bank :

In the matters of -

(i) Secretary, State of Karnataka and Others Vs. Umadevi and Others, ;

- (ii) Rajasthan Tourism Development Corporation Ltd. and Another Vs. Intejam Ali Zafri, ;
- (iii) Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, ;
- (iv) M.P. Housing Board and Another Vs. Manoj Shrivastava, ;
- (v) U.P. State Road Transport Corporation Vs. Man Singh, ;
- (vi) Mahadeo Bhau Khilare (Mane) and Others Vs. State of Maharashtra and Others, ;
- (vii) General Manager, Haryana Roadways Vs. Rudhan Singh, ;
- (viii) Amreli Municipality v. Gujarat Pradesh Municipal Employees Union, reported in 2004 (2) GLH 692 (FB) : 2004 (3) GLR 1841 (FB);
- (ix) Taluka Development Officer v. Rameshchandra M. Bhatt, reported in 2003 (3) GLH 417 : 2003 (4) GLR 3594;
- (x) Halvad Nagarpalika. v. Jani Dipakbhai, reported in 2003 (4) GLR 3229;
- (xi) State of Jharkhand and Others Vs. Manshu Kumbhkar, ; and
- (xii) State of U.P. Vs. Neeraj Awasthi and Others, ;

9. The Court deems it proper not to go into the other facts and also not to go through the judgments cited at the Bar during the arguments in light of the peculiar facts of the case on hand. The Court is passing this order in the peculiar facts of the case with a clear direction that this order shall not be cited as a precedent in any other similar case/s which may arise in future.

10. The Court is also of the opinion that since the respondent-workman in each of the cases has continued in service for last more than 11 years during the pendency of these petitions, disturbing their employment now would not only render them and their families in a helpless situation but also considering important factor - their age which renders them ineligible for any other job, it will be in the interest of justice despite vehement submissions of learned Advocate for the petitioner-Bank to make the Rule absolute in the following terms so as to see that the ends of justice are best served :

(a) The award and order of back wages and costs is quashed and set aside in each of the petitions, and thereby, the respondent-workman in each of the cases will not be entitled to any back wages;

(b) The award insofar as it holds that there is violation of Sec. 25F is quashed and set aside in view of the order in Spl. C.A. No. 642 of 1996 read with order in L.P.A. No. 1028 of 1996 in each of the petitions;

(c) The respondent in each of the petitions is directed to be continued to be engaged as per the interim instructions of this Court by order dated 13-9-2000;

(d) The petitioner-Bank is directed to consider each of the respondents for regular appointment from the date of this order in terms of the settlement dated March 18, 2008 (produced at pages 112 to 119 of the paper-book in Spl. C.A. No. 9627 of 2000) on and from the date of this order as if fresh appointment is being made from the date of this order;

(e) The respondent-workman in each of the petitions will not be entitled to any other benefit for the period upto the date of this order;

(f) This order shall not be treated as a precedent in any case; and

(g) The awards in each case shall stand modified accordingly.

The petitions are partly allowed. Rule is made absolute in the aforesaid terms. No order as to costs.