

(2010) 10 GUJ CK 0076

In the Gujarat High Court

Case No : Special Civil Application No. 16381 of 2003

Chairman/Manager

APPELLANT

Vs

Umeshkumar Radheshyam Brahmbhatt

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2

Citation : (2011) 128 FLR 178 : (2011) LLR 260

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : K.V. Gadhia, for the Appellant; Rule Served, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the Petitioner has prayed for appropriate writ, order and/or direction quashing and setting aside the impugned order dtd. 8/10/2003 passed by the Appellate Industrial Court, Nadiad in Appeal (ICN) No. 9 of 2002, by which the appellate court has partly allowed the said appeal directing the Petitioner herein to reinstate the Respondent workman as a Clerk with continuity of service but without back-wages or other monetary benefits.

2. Though served nobody appears on behalf of the Respondent workman.

3. It appears from the affidavit filed by the Petitioner dtd. 17/9/2008 that the Respondent shall not be interested in the present litigation, as he is already working in the Income Department and is gainfully employed and he might not be interested in appointment as a Clerk in the Petitioner Bank.

4. Having heard Mr. Gadhia, learned advocate appearing on behalf of the Petitioner and considering the judgment and order dtd. 31/7/2001 passed by the Labour Court, Nadiad in T-Application No. 9 of 1992 as well as the order dtd. 8/10/2003 passed by the Appellate Industrial Court, Nadiad in Appeal (ICN) No.

9 of 2002, it appears that the appointment of the Respondent as a Clerk was a training, initially for a period of six months, which was extended for a further period of six months and that thereafter on completion of training period, he was relieved.

5. Considering the above the case squarely falls within Section 2(oo)(bb) of the Industrial Disputes Act, 1947. Under the circumstances, the Industrial Court has materially erred in allowing the appeal preferred by the Respondent workman and directing the Petitioner employer to reinstate the Respondent workman on the post of Clerk with continuity of service.

6. In view of the above and for the reasons stated above, present petition succeeds. The impugned order dtd.8/10/2003 passed by the Appellate Industrial Court, Nadiad in Appeal (ICN) No. 9 of 2002 is hereby quashed and set aside and the judgment and order dtd. 31/7/2001 passed by the Labour Court, Nadiad in T-Application No. 9 of 1992 is hereby restored. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.