
(2010) 06 GUJ CK 0017
In the Gujarat High Court

Chief Manager, Indian Bank

APPELLANT

Vs

Anilkumar Sukhvasia

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2

Citation : (2010) 06 GUJ CK 0017

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : K.V. Gadhia, for the Appellant; Dakshesh Mehta, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. KV Gadhia for petitioner Bank and learned Advocate Mr. Dakshesh Mehta for respondent workman.

2. This Court has passed order on 3rd May, 2010 granting relief u/s 17B of ID Act, 1947 with a direction to petitioner bank to pay amount of unemployment to respondent workman within fifteen days from date of receiving affidavit of unemployment from respondent workman. Today, learned Advocate Mr. Mehta for respondent workman has placed on record affidavit of respondent as required u/s 17B of ID Act, 1947. Copy thereof is served to learned Advocate Mr. Gadhia. However, it is submitted by learned advocate Mr. Gadhia that aforesaid order of this Court dated 3rd May, 2010 has been stayed by Division Bench of this Court in Letters Patent Appeal. Today, matter is taken up for final hearing by this Court with consent of both learned advocates.

3. Petitioner Indian Bank has challenged award passed by Central Government Industrial Tribunal cum Labour Court, Ahmedabad in CGITA No. 226/04 Exh.45 dated 30th April, 2007. Industrial Tribunal has allowed reference with a direction to petitioner bank to absorb second party _ Anilkumar Sukhvasia from date of order as its regular employee and prayer of back wages and other relief has not been considered and second party workman is not entitled for same.

4. Learned Advocate Mr. KV Gadhia for petitioner has raised contention before this Court that the petitioner is a Nationalized Bank and respondent was engaged by Assistant General Manager in his personal capacity as his personal driver. He submitted that respondent was never engaged by petitioner bank and, therefore, there is no question of relationship of master and servant between both parties. He further submitted that respondent was never paid by petitioner bank but he was being paid by Assistant General Manager in his personal capacity. As per his submission, respondent was not a workman as defined u/s 2(s) and industrial dispute which has been raised is not satisfying Section 2(k) of ID Act, 1947. Industrial dispute which has been referred by Central Government on 5th November, 1999 is quoted as under:

Whether Sri Anil Kumar Sukhvasia is a workman u/s 2(s) of the Industrial Disputes Act? If so, whether his employment in Indian Bank from 01/01/1990 and his termination from the service of the Bank w.e.f. 27/05/1998 is legal and justified and to what relief the concerned person is entitled to and from which date?

5. He further submitted that after considering aforesaid industrial dispute, industrial tribunal has framed following issues for determining merits of matter.

1. Whether Sh. Anilkumar Sukhvasia is Employee of the First Party?
2. Whether he can be absorbed
3. What order?

6. He submitted that issue No. 1 was answered by Industrial Tribunal in negative and, therefore, finding given by industrial tribunal on issue No. 2 is contradictory and beyond the scope of reference and, therefore, present petition is filed by petitioner. He submitted that once employee is not engaged by bank, then, question of regularization of his service by bank does not arise and it is beyond scope of terms of reference referred by Central Government by order dated 5th November, 1999. In short, his submission is that finding recorded by Industrial Tribunal is contrary to record, contrary to terms of reference and also having contradictory finding and, therefore, it is required to be set aside.

7. Learned Advocate Mr. Dakshesh Mehta is relying upon one decision of apex court in case of Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari, He submitted that in fact, respondent workman was engaged by petitioner bank and vouchers are produced on record accordingly before industrial tribunal by workman. Affidavit in reply is filed by respondent workman. Learned Advocate Mr. Mehta has also relied upon affidavit filed by respondent and submitted that in para 11, following documents have been produced by respondent workman before industrial tribunal but same have not been considered by industrial tribunal:

11. The respondent begs to submit the following documents:

- (1) The letter dated 27.1.1994 written by the Regional Office, Ahmedabad to

Zonal Office, Mumbai.

- (2) The xerox copy of the share certificate issued by the petitioner Bank dtd. 5.5.1994.
- (3) The xerox copy of the letter dtd. 6.10.1994 written by the Regional Office to the Branch Office.
- (4) A letter written by Regional Office dtd. 9.12.1994.
- (5) A copy of the letter written by the respondent employee dated 1.2.1995 to regularize him.
- (6) A copy of letter written by Regional Office Ahmedabad dtd. 10.2.1995.
- (7) Letter dtd. 22.4.95 written by the Regional Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner bank.
- (8) Letter dtd. 15.6.1995 written by the Regional Office (Personnel), Ahmedabad to the Zonal Office, Mumbai for regularizing.
- (9) Character Certificate dated 30.9.95 issued by the Chief Manager of the petitioner Bank Regional Office, Ahmedabad to the respondent.
- (10) Letter dtd. 18.10.95 addressed by the Respondent to the Zonal Office, Mumbai for regularizing him.
- (11) Letter dtd. 22.11.95 written by the Regional Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner Bank for regularizing.
- (12) Letter dtd. 5.2.95 written by the Regional Office, Ahmedabad to Head Office, Madras of the petitioner Bank regarding increase of pay of the respondent.
- (13) Letter dtd. 2.3.96 written by the Regional Office, Ahmedabad to the Central Office, Madras of the petitioner Bank regarding the courage of the respondent.
- (14) Letter dtd. 9.3.96 written by the Regional Office, Ahmedabad to the Zonal Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner bank (for increasing the pay).
- (15) Letter dtd. 26.4.96 written by the Regional Office, Ahmedabad to the Central Office, Madras of the petitioner Bank for increasing the pay of the respondent.
- (16) Copy of letter dtd. 6.6.96 given by the Zonal Office, Mumbai to the Regional Office, Ahmedabad to the letter at No. 15.
- (17) Letter dtd. 18.7.96 written by the Regional Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner bank for increasing the pay of the respondent.
- (18) Letter dtd. 6.8.96 written by the Regional Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner for increasing the pay of the respondent.

- (19) Letter dtd. 6.8.96 written by the Regional Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner Bank for increasing the pay of the respondent.
- (20) Letter dtd. 9.8.96 written by the Regional Office, Ahmedabad to the Central Office, Madras of the petitioner Bank for increasing the pay of the respondent.
- (21) Letter dtd. 1.11.96 addressed by the AGM to the Bank.
- (22) Letter dtd. 25.4.97 written by Regional Office, Ahmedabad to the Zonal Office, Mumbai of the petitioner bank for regularizing the services of the respondent.
- (23) Letter dtd. 20.5.98 through his advocate written by the respondent to the Regional Office, Ahmedabad for regularizing him.
- (24) Copy of Regd. AD Money Slip No. 1749 dt. 23.5.98 of the aforesaid letter.
- (25) Copy of acknowledgment receipt of the letter dtd. 20.5.98.
- (26) Letter dtd. 29.5.98 written by the respondent regarding terminating his services to the Regional Office, Ahmedabad of the petitioner Bank.
- (27) Copy of the Regd. AD Slip No. 2452 dtd. 29.5.98 regarding sending the letter at Sr. No. 26.
- (28) Copy of the Acknowledgment slip dtd. 30.5.98 for receipt of the letter at Sr. No. 26.
- (29) Copy of Money slip dtd. 29.5.98 for sending the letter at Sr. No. 26 to the Zonal Office, Mumbai.
- (30) Copy of Regd. AD Acknowledgment receipt dtd. 3.6.98 for receipt of the letter at Sr. No. 26 by the Zonal Office, Mumbai.
- (31) Copy of complaint dtd. 12.6.98 filed by the respondent before the ACL (Central) Ahmedabad for reinstating him in service.
- (32) Copy of written reply dtd. 9.9.98 filed by the petitioner Bank before the ACL (Central) Ahmedabad.

8. Therefore, after considering aforesaid submissions made by both learned advocates, question is, whether industrial tribunal Ahmedabad has rightly examined industrial dispute which has been referred for adjudication by Central Government, or not. One affidavit is also filed by petitioner Bank by one officer Ballubhai Chhabildas Surti. That has also been considered by this Court. This Court has also considered further affidavit in reply filed by respondent workman. I have also considered award passed by Industrial Tribunal, Ahmedabad. I have also considered documents which are annexed to petition as well as contentions raised in petition and affidavit in reply filed by both parties.

9. Industrial Tribunal has not properly examined issue which is referred to for adjudication. First dispute has been referred whether Anilkumar Sukhvasia is a

workman within meaning of Section 2(s) or not. Second dispute was whether his employment in Indian Bank from 1st January, 1990 and his termination from service of bank dated 27.5.98 is legal and justified or not. These questions have not at all been examined by Industrial Tribunal Ahmedabad. Whole industrial dispute was whether termination of workman is right or wrong, legal or not. That industrial dispute itself has not been examined by industrial tribunal, Ahmedabad. Without examining this question, Question of granting relief in either way in favour of respondent workman does not arise. Therefore, considering reasoning given by industrial tribunal, while framing issues, in respect to issue No. 1, industrial tribunal has come to conclusion that respondent workman was not an employee of Indian Bank and thereafter, further relief is not necessary to be granted in favour of respondent which has been granted by industrial tribunal, Ahmedabad.

10. Therefore, according to my opinion, industrial tribunal, Ahmedabad has committed gross error in deciding aforesaid reference. Not only that but this award has been given by Industrial Tribunal in half hearted manner, with non application of mind. Whether the termination is legal or not, that question must have to be examined by industrial tribunal. Then, question arise whether he was employed by petitioner bank or not and third question then arising is whether he is a workman within the meaning of Section 2(s) of ID Act, 1947 or not and thereafter, whatever relief is available to workman, same is required to be granted, otherwise, in absence of such finding, apparently, workman is not entitled to any relief against petitioner bank. Therefore, according to my opinion, award passed by industrial Tribunal, Ahmedabad is required to be quashed and set aside since industrial tribunal, Ahmedabad has apparently committed error in giving contradictory finding and not deciding industrial dispute which has been referred for adjudication while remanding matter back to industrial tribunal, Ahmedabad for deciding industrial dispute which was referred for adjudication while considering following questions.

11. Therefore, in result, present petition is allowed. Award passed by Industrial Tribunal, Ahmedabad in Reference (CGITA) No. 226 of 2004 Exh.45 dated 30.4.2007 is hereby quashed and set aside and matter is remanded back with a direction to CGIT Ahmedabad to decide a fresh Reference (CGITA) No. 226 of 2004 in accordance with law after considering industrial dispute which has been referred for adjudication by appropriate Government on 5.11.1999. Therefore, following issues are required to be examined and decided by industrial tribunal, Ahmedabad:

- (1) Whether workman is satisfying definition of Section 2(s) of ID ct, 1947?
- (2) Whether termination of workman is legal and valid or not?
- (3) Whether termination of workman is justified by petitioner bank or not and to what relief concerned workman is entitled?
- (4) Whether any relationship of employee and employer has been established

between respondent workman and petitioner bank or not?

(5) What policy was prevailing at the time when workman was working with Assistant General Manager as a driver, providing service benefits to Assistant General Manager by petitioner bank?

(6) Whether car allowance or salary of workman is to be paid by bank to Assistant General Manager or not and further whether salary which was paid by Assistant General Manager has been reimbursed by petitioner to Assistant General Manager or not.

These are relevant questions must have to be examined by Industrial Tribunal, Ahmedabad with proper application of mind. Over and above that, if industrial tribunal thought it fit to decide further any question, then, it is open for him to decide it in the interest of justice for doing substantial justice between the parties, being incidental matter. It is also open for both parties to produce any documentary evidence and also to lead oral evidence in support of their respective case. Industrial Tribunal is directed to consider documents which are on record produced by both parties while deciding aforesaid reference in accordance with law. It is also directed to industrial tribunal to decide aforesaid reference in accordance with law after giving reasonable opportunity of hearing to both parties within period of four months from date of receiving copy of this order and both parties are directed to cooperate hearing before CGIT Ahmedabad. In result, award passed by CGIT Ahmedabad in Reference (CGITA) No. 226 of 2004 dated 30.4.07 Exh. 45 is hereby quashed and set aside subject to aforesaid directions given by this Court. Accordingly rule is made absolute to that extent with no order as to costs.