

(1988) 02 GUJ CK 0005
In the Gujarat High Court
Case No : Spl. Civil Application No. 8 of 1988

Ishwarbhai Mulchanddas Modi

APPELLANT

Vs

Vadnagar Nagrik Coop. Bank Ltd.

RESPONDENT

Date of Decision : 08-02-1988

Acts Referred:

Bombay Industrial Relations (Gujarat) Rules, 1961 — Rule 53, 53(1), 53(2)
Bombay Industrial Relations Act, 1946 — Section 42(4), 78(1), 79(3)
Constitution of India, 1950 — Article 227

Citation : (1989) 58 FLR 136 : (1988) 1 GLR 507 : (1988) 2 LLJ 367

Hon'ble Judges : P.M. Chauhan, J; A.M. Ahmadi, J

Bench : Division Bench

Judgement

Ahmadi, J.—The petitioner, a peon in the respondent-Bank, came to be dismissed from service on 9th December, 1983 under Standing Order framed in pursuance of Entry 10 in Schedule I of the Bombay Industrial Relations Act, 1946, (hereinafter referred to as "the Act"). On the terminations of his employment, he made an application to the employer u/s 42(4) read with Rules 53(1) of the Bombay Industrial Relations (Gujarat) Rules, 1961. The application to the employer was made on the very next day and must have been received by the employer in normal course within a day or two thereafter. No agreement was arrived at between the employer and the employee within fifteen days from the receipt of the application by the employer as required by Rule 53(2) of the said Rules. The petitioner thereafter fixed an application in the Labour Court on 15th May, 1984 challenging the legality and propriety of the order of termination passed by the employer under the Standing Orders. The Labour Court, Ahmedabad, dismissed the application as barred by limitation, it having been filed after a period of three months from the date of the dispute. It is this order of the Labour Court which is assailed under Art. 227 of the Constitution.

2. Section 78(1) of the Act empowers the Labour Court to decide a dispute regarding the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders. There is no dispute before us that

the order of termination of service was passed by the employer under the relevant Standing Orders. Once the legality or propriety of such an order is questioned, Section 42(4) and Rule 53(1) require the employee or the representative Union desiring a change in respect of the said order to make an application in writing to the employer. Such an application for change in respect of the said order passed by the employer under the relevant Standing Orders has to be made within a period of six months from the date of such order. Rule 53(2) next requires that where an application has been made as above by an employee, the employer and the employee may arrive at an agreement within fifteen days of the receipt of the application or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer of the local area or the representative Union, as the case may be. Admittedly, in the present case no agreement was arrived at by and between the parties within fifteen days from the receipt of the application. It is also an admitted fact that the time was not mutually extended by the employer and the employee or the Labour Officer for the area. On the expiry of fifteen days from the receipt of the application the petitioner had the right to approach the Labour Court for a decision on the legality and propriety of the impugned order. Section 79(3) of the Act, however, posits that the application in respect of the dispute falling under clause (a) of paragraph A of sub-section (1) of Section 78 shall be made if it is a dispute falling under sub-clauses (i) or (ii) of the said clause, within three months of the arising of the dispute. On the expiry of fifteen days from the receipt of the application by the employer since there was no agreement between the parties and since the time was not mutually extended, a dispute can be said to have arisen within the meaning of Section 79(3) of the Act. It was, therefore, obligatory on the part of the petitioner to move the Labour Court within three months of the arising of the dispute. Instead, the petitioner filed the application in question on 15th May, 1984, that is, after the expiry of the period of three months prescribed by Section 79(3) of the Act. The Labour Court has, therefore, come to the conclusion that the application is barred by limitation. It is conceded before us that there is no provision for condonation of delay. No such request was also made before the Labour Court.

3. Mr. Uppal, however, submitted that in computing the period of limitation the Court must take into consideration the total period allowed under Rule 53 read with Section 79(3) of the Act. According to him the period of six months prescribed by Rule 53(1) the period of fifteen days allowed by Rule 53(2) and the period of three months allowed by Section 79(3) must be clubbed together for the purpose of determining the total period for the institution of the application. He submitted that if such a view is not taken, an employee who has made an application to the employer promptly will be required to approach the Labour Court earlier in point of time than an employee who has taken his own time and moved the employer under Rule 53(1) at leisure, albeit before the expiry of the period of six months. We do not see any merit in this submission. Rule 53(1) prescribes a period of six months for forwarding an application to the employer.

The employee can forward his application at any time before the expiry of the said period. The period prescribed by Rule 53(2) has reference to the date of receipt of the application. According to that provision an agreement must be reached between the employee and the employer within a period of two weeks from the date of the receipt of the application. Therefore, once the application is forwarded to the employer and the same is received by him, the period prescribed under Rule 53(1) gets exhausted and the period prescribed under Rule 53(2) begins to operate from the date of receipt of the application. Therefore, the submission of Mr. Uppal that notwithstanding the fact the petitioner sent his application on the very next day which the employer must have received in ordinary course within a couple of days, the remaining period out of the total period of six months prescribed by Rule 53(1) would still be available to the petitioner cannot be accepted as correct. Once the application is received whether it is within ten days of the passing of the order or five months of the passing of the order, the period of six months gets exhausted and the period of fifteen days prescribed in Rule 53(2) begins to run. If no agreement is arrived at between the employer and the employee within fifteen days and if the time is not extended, a dispute comes into existence within the meaning of Section 79(3) of the Act. The period of limitation for filing an application for a decision on the said decision is three months of the arising of the dispute. In the absence of a specific provision for extension of this period of three months, we must hold that the application filed by the petitioner after the expiry of the said period on 15th May 1984 was clearly barred by limitation. We are, therefore, of the opinion that the conclusion reached by the Labour Court on the question of limitation is unassailable.

4. In the result, we see no merit in this petition and summarily reject the same. Mr. Uppal makes a request for a certificate of fitness to approach the Supreme Court. We do not think that the question involved in this petition is one which needs to be decided by the Supreme Court. We, therefore, reject this request.