

(2001) 06 BOM CK 0025

In the Bombay High Court

Case No : A.S.C.J.W.P. No. 6126 of 1988

Jaywant Ganpatrao Dalvi

APPELLANT

Vs

Kolhapur District Central Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 07-06-2001

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 2, 3(13)

Citation : (2001) 3 ALLMR 666 : (2001) 91 FLR 127 : (2002) 4 LLJ 975

Hon'ble Judges : V.K. Barde, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Barde, J.—The Petitioner was appointed as Inspector by the Respondent-bank as per the order dated July 18, 1960. The Petitioner continued his service with the Respondent Bank and from time to time he was given promotions. He was promoted to the post of Chief Executive Officer in the year 1977 in the pay-scale of Rs. 425-1070. However, his services came to be terminated by the bank as per order dated May 5, 1983. He, therefore, filed an application before the learned Labour Court at Kolhapur challenging the order of termination on the ground that no previous notice was given to him; no departmental enquiry was held against him and, therefore, the order of termination amounted to unfair labour practice. According to the Petitioner, the Respondent-Bank is governed by the provisions of the Bombay Industrial Relations Act, 1946. The Respondent-Bank had, therefore, raised a preliminary issue contending that the petitioner was not an employee as per the definition of Sub-section 13 of Section 3 of the Bombay Industrial Relations Act, 1946 and on that count the Labour Court did not have jurisdiction to entertain the application.

2. Evidence was recorded with respect to this preliminary issue before the learned Labour Court and then by his order dated October 16, 1986, the learned Judge dismissed the application holding that the petitioner was not an employee within the meaning of Sub-section (13) of Section 3 of the Bombay Industrial

Relations Act and, therefore, the Labour Court had no jurisdiction to entertain the application.

3. Being aggrieved by this order of dismissal of his application, the petitioner filed an appeal, being Appeal No. 15 of 1986, before the Industrial Court at Kolhapur, which also came to be dismissed on August 11, 1988 by the learned Member of the Industrial Court, Kolhapur and hence this Writ Petition.

4. The short question that arises in this petition is as to whether the petitioner was an employee as defined in Sub-section (13) of Section 3 of the Bombay Industrial Relations Act at the time of his dismissal from the service. Two things are admitted, the first that the petitioner was working as the Chief Executive Officer from the year 1977 and at the time of his dismissal from the service his basic salary was Rs. 1070 plus Rs. 50 as an additional increment and in the backdrop of this admitted fact, the question is to be decided.

5. The learned counsel for the petitioner has argued that the question as to whether the present case is governed by the provisions of Sub-section (13) of Section 3 of the Bombay Industrial Relations Act or not is to be considered not from the designation of the post which he is holding but from the nature of the work he is discharging from that post. This point was argued before the Industrial Court and the learned Member of the Industrial Court has accepted the principle that the question is to be decided not on the basis of nomenclature of the post but on considering the nature of the work discharged by the holder of the post. Therefore, here is a question of fact as to what was the nature of the work of the present petitioner when he was dismissed from the services.

6. Page 70 of the petition is the table giving hierarchy of the staff in the Respondent-bank. First, there is a Manager, below him is the Assistant Manager, then below are the posts of Chief Accountant, Additional Chief Accountant, Chief Executive Officer (Audit & Inspection Compliance), Chief Executive Officer (Agriculture), Chief Executive Officer (Non-Agriculture) and Chief Executive Officer (Development & Inspection Cell). Then there are other posts below these officers. The Petitioner was working as Chief Executive Officer (Audit & Inspection) at the time of his dismissal from the service. The pay-scale of the Chief Executive Officer is the same for all the four posts as shown on page 70 of the petition and the petitioner has also in his cross examination admitted that the posts of the Chief Executive Officer are inter-changeable, that is, a person appointed as Chief Executive Officer in one branch can be transferred as Chief Executive Officer in another branch. In the hierarchy, below the posts of Chief Executive Officer, there are 1st Grade Officers, other officers including the Chief Officer and then clerical staff working under the Chief Executive Officer. So if this hierarchy on page 70 is seen, it is clear that the petitioner was holding a very high post while in the services of the respondent-bank as next to him is the only Assistant Manager and then Manager.

7. At page 145 of the petition is the list of duties and responsibilities of Chief

Officers and it will be worth noting that the Chief Officer has to report about his own work and work of his subordinates to the Chief Executive Officer-the post held by the petitioner herein. The Chief Officer has to entertain correspondence through the Chief Executive Officer. So, if the Chief Officer is subordinate to the Chief Executive Officer and if the Chief Officer has to carry out the orders issued by the Chief Executive Officer and has to report about the compliance of the orders to the Chief Executive Officer, then definitely the post of Chief Executive Officer is of the administrative and supervisory capacity. The Chief Executive Officer has also to administer the entire department for which he is appointed as Chief Executive Officer.

8. The cross examination of the petitioner before the learned Labour Court clearly indicates that he was appointed as Inspector and he never did clerical job during the tenure of his services. The cross examination further indicates that he had to entertain correspondence with Co-operative Department of the State of Maharashtra, Agricultural Department of the State of Maharashtra, Reserve Bank of India and Apex Bank. Therefore, definitely the, petitioner was holding a very high post which was of administrative capacity. It is also clear from the records before the Court that he was supposed to receive audit reports from the above mentioned officers and get the compliance report from his subordinates and various branches with respect to audit objections raised in audit inspection. This was the executive work which the petitioner was doing and, therefore, it cannot be said that he was a member of clerical staff. The cross examination of the petitioner clearly indicates the nature of his duties and responsibilities and that supports the contention of the bank that he was not an employee as defined under Sub-section (13) of Section 3 of the Bombay Industrial Relations Act, 1946.

9. One more circumstance has also to be taken into consideration. References were made for fixation of salary of the employee of the bank to the Industrial Court and in this reference, pay scale of various categories of the employees were fixed. However, the person working in the cadre of Manager, Assistant Manager, Chief Officer and Chief Executive Officer, were not covered under the said references obviously because they did not come within the definition of the employee as given in Sub-section (13) of Section 3 of the said Act and, therefore, the Board of Directors of the bank separately fixed the salaries of the officers of these four categories as indicated on page 78 of the petition. This circumstance also, therefore, indicates that the officer in the Cadre/ Grade of Chief Executive Officer was not being considered as an employee for whom a reference could be made to Industrial Court for decision on a dispute with respect to salary and allowances. If all these circumstances are taken into consideration, I do not find that there is any mistake in the finding recorded by the learned Labour Court and confirmed by the learned Member of the Industrial Court. The petitioner, who was working as the Chief Executive Officer was holding the administrative and supervisory post. Not only that he was drawing basic salary more than Rs. 1000/- and, therefore, cannot be included in the definition of employee under Sub-section (13) of Section 3 of the Bombay Industrial

Relations Act.

10. Therefore, considering all the facts and circumstances, I am of the opinion that no interference is called for in the order passed by the learned Labour Court as confirmed by the learned Member, Industrial Court. Writ Petition, therefore, dismissed. Rule discharged. Considering the circumstances, no order as to costs.