

(2014) 05 GUJ CK 0009
In the Gujarat High Court
Case No : S.C.A. No. 10125 of 2006

Junagadh District Central Co-operative Bank Ltd.	APPELLANT
Vs	
Amit Kumar C. Parekh	RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 84

Citation : (2014) 142 FLR 740 : (2014) 3 LLJ 694 : (2015) 1 LLN 138

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : P.S. Gogia, Advocate for the Appellant; R.K. Mishra, Advocate for the Respondent

Judgement

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Paresh Upadhyay, J.—Challenge in this petition is made to the order passed by the Industrial Court, Rajkot in Appeal (IC) No. 02 of 2003 dated 29.10.2005, under Section 84 of the Bombay Industrial Relations Act, 1946. By the said order, the Industrial Court has interfered in the order passed by the Labour Court, Junagadh in BIR Application No. 20 of 1998 dated 24.01.2003 and it is quashed and set aside. The Labour Court had rejected the demand of the employee for regularization of his service on the post of Peon-cum-Clerk, which, in appeal, is partly accepted by the Industrial Court. By the impugned order, the action of the employer of discontinuing the service of the concerned employee, which was an attempt to make the proceedings infructuous, is also set aside. The employee is ordered to be reinstated in service with 75% back wages. He is treated to be in regular employment of the bank as a Peon with effect from 01.01.2001, the date on which his immediate junior is regularized in service by the employer - Bank itself. The employer is directed to consider the case of the concerned employee for appointment on the post of clerk, considering his qualification, experience, date of joining etc., but without age bar. It is this order of the Industrial Court, which is under challenge at the hands of the concerned employer. It was the case

of the concerned employee before the Labour Court that he was in the employment of the bank as a peon-cum-clerk from 01.09.1993 and though about five years had passed, the bank was not regularizing his services, though the persons junior to him were already confirmed. Therefore, on 04.08.1998 an approach letter, as required under the law, was tendered and thereafter, the concerned employee moved the Labour Court by filing BIR Application No. 20 of 1998, praying for regularization of service on the post of Peon-cum-Clerk. Since it was apprehended by the concerned employee that with a view to frustrate his claim of regularization of services, the employer shall terminate his service altogether, therefore interim protection was also prayed for, which was granted by the Labour Court. The Management however pretended before the Labour Court that, the service of the concerned employee was already dispensed with before that interim protection was granted by the Labour Court on 15.09.1998, and thus the restrained order not to discontinue the services of the employee was infructuous interim protection. However, at this juncture, that argument does not change the complexion of the matter, since by the final order, the Labour Court had rejected the application vide order dated 24.01.2003.

2. Being aggrieved, the concerned employee challenged the said order of the Labour Court before the Industrial Court invoking Section 84 of the Bombay Industrial Relations Act, 1946. The Industrial Court, on re-appreciation of the evidence on record, came to the conclusion that the Labour Court had erred in arriving at the conclusion that the concerned employee was not entitled to relief. The Industrial Court has categorically recorded finding that, the concerned employee was entitled to be regularized in service, if not as Clerk, or Peon-cum-Clerk, may be on the post of Peon, since the persons junior to him were already regularized as such by the employer itself.

3. Learned advocate for the petitioner-bank has firstly submitted that the very initiation of the proceedings before the Labour Court was infructuous, since it was the case of regularisation of service, while the bank had already discontinued the service of the concerned employee. It is submitted that there is dispute even with regard to the submission of the approach letter. It is submitted that the order of the Labour Court was just and proper and there was no occasion to interfere with the same and the order passed by the Industrial Court be quashed and set aside. Learned advocate for the petitioner has, in support of his submission, also relied on the following decisions of Hon"ble the Supreme Court of India.

(i) M.P. Electricity Board Vs. Hariram etc.,

(ii) Civil Appeal Nos. 4990-4991 of 2011 - Union of India v. Arulmozhi Iniarasu

(iii) Civil Appeal No. 1017 of 2007 - State of U.P. v. Rekha Rani.

4. On the other hand, learned advocate for the respondent employee has submitted that, there is ample evidence on record before the Courts below to come to the conclusion that, the action of the Bank of not regularising the

service was absolutely illegal, since persons junior to him were already regularized in service. It is further contended that, the employer had even resorted to victimization of the employee since he had moved the Labour Court. Further, learned advocate for the respondent has also taken this Court through the evidence of concerned employee viz-a-viz the evidence of the management-representative both, which is on record. It is submitted that in the finding of fact recorded by the Industrial Court, this Court may not interfere. It is submitted that the petition be dismissed.

5.1 Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, there is no infirmity in the reasoning recorded by the Industrial Court. This Court has gone through the relevant evidence on record, not for the purpose of reappreciation thereof, but with a view to ascertain as to whether there was any misreading thereof by the Court below, and this Court finds that the reading thereof as done by the Labour Court was perverse, which led to an erroneous conclusion and the said error is corrected by the Industrial Court, and it has arrived at the correct conclusion. The reasoning and finding of facts recorded by the Industrial Court, more particularly starting from Para-34 to Para-38 of the impugned order are minutely gone through by this Court and it is found that, no error is committed by the Industrial Court in arriving at the conclusion and the challenge thereto needs to be rejected.

5.2 So far the argument of the employer, that in view of the discontinuance of service of the concerned employee, the exercise before the Labour Court and in turn, before the Industrial Court was infructuous, is concerned, it needs to be recorded that, it was an ingenuine attempt of the employer of making the proceedings infructuous, which should have been dealt with sternly by the Court below, which the Industrial Court has already done. Detailed reasons are recorded by the Industrial Court for doing so, which does not call for any interference.

5.3 So far the argument about absence of any approach letter is concerned, it is a question of fact which the Industrial Court has already gone into and it is recorded by it that no lacuna was there even on this count. Even the copy of the document in that regard dated 04.08.1998, which was on record before the Labour Court (Exh.37) and Industrial Court, is placed on record of this Court as well and this contention pressed into service on behalf of the employer is factually ill founded.

5.4 The authorities cited by the learned advocate for the petitioner-bank in above factual background, will not take the case of the petitioner employer any further. I see no reason to interfere in the findings recorded by the Industrial Court nor in the final order passed by it. This petition, therefore, needs to be dismissed.

For the reasons recorded above, this petition is dismissed. Interim relief is vacated. Petitioner is directed to give effect to the impugned order of the

Industrial Court, within a period of three months from today. Rule discharged. No order as to costs.