
(2014) 10 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 16307 of 2005

Manager Baroda Central Co-Op Bank Ltd.

APPELLANT

Vs

Ramanbhai Haribhai Patel

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 10 GUJ CK 0031

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Deepak V. Patel, Advocate for the Appellant; R.D. Raval, Advocate for the Respondent

Judgement

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S.R. Brahmbhatt, J.—The petitioner, an employer, under the concerned Act i.e. the then Bombay Industrial Relations Act, 1946, now renamed as the Gujarat Industrial Relations Act, 1946 (hereinafter referred to as "the Act" for the sake of brevity) has approached this Court by way of this petition assailing the order dated 21.03.2005, passed by the Industrial Court, Vadodara in Review Application No. 5/2004 and order dated 26.08.2004 passed in Appeal (IC) No. 10/2004 and sought relief of restoring the judgment and order dated 05.12.2003, passed by learned Labour Court, Vadodara in T-Application No. 4 of 1995.

2. Facts in brief leading to filing this petition, as could be culled out from the memo of the petition, deserve to be set out hereunder.

3. The petitioner happened to be a co-operative Bank operating in the banking field, wherein the respondent workman was working as Clerk-cum-Cashier at Bajwa Branch. On account of allegations of misappropriation, the respondent workman was suspended on 18.08.1994. On 22.10.1994, a charge-sheet came to be issued for the misconduct committed by the respondent workman. The

Bank after holding inquiry and affording full opportunity to the respondent workman came to the conclusion that the charges were proved and as a result thereof ordered dismissal of the respondent workman vide its communication dated 17.02.1995. On 13.03.1995, the respondent workman filed a departmental appeal under Rule 35 for considering his case sympathetically and prayed for withdrawal of dismissal order. The respondent workman moved Labour Court by way of filing T-Application on 16.05.1995, wherein it was marked as T-Application No. 4 of 1995 for assailing the order of dismissal. The written statement was filed inter alia contending the version of the Bank and denial of the averments made in the T-Application. The said T-Application came to be dismissed vide order dated 05.12.2003, where from an appeal was led being Appeal (IC) No. 10/04, wherein the Industrial Court while accepting the appeal recorded its finding qua the infirmities in the order of the Labour Court and ordered reinstatement of the workman with full back wages. The order of the Industrial Tribunal, which was rendered on 26.08.2004, was taken into review proceeding being Review Application No. 5/04 on the ground that mark 14/2 document could not have been straightway acted upon without there being proper procedure for proving the same, which application was also turned down by the Industrial Court vide its order dated 21.03.2005. Being aggrieved and dissatisfied with these two orders, the present petitioner has led this petition under Article 226 and 227 both, as it could be seen from the cause title, on 17.01.2013, the Industrial Court, Vadodara has also joined as a party respondent after obtaining due leave from the Court.

4. Learned counsel appearing for the petitioner invited this Court's attention to the findings recorded by the Labour Court and contended that the Labour Court's order dated 05.12.2003 being just and proper did not require any interference. The findings recorded by the Labour Court in respect of the workman's failure in establishing the maintainability of the T-Application ought to have been appreciated by the appellate Court. The appellate Court ought to have appreciated the fact that the workman was under obligation to approach the Court only after following the prescribed procedure including the serving upon the employer with the approach letter, as envisaged under Section 42(4) and Rule 53 of the Rules. In the instant case, as this initial burden had not been discharged by the workman, the order of the appellate Court overlooking these factors is required to be quashed and set aside.

5. Learned counsel for the petitioner further contended that the factum of service of approach letter could not have been brushed aside by the appellate Industrial Court only by describing it to be a technical requirement. The technical requirement, even if it is so viewed, but if it goes to the root of the matter, then the same is required to be complied with and the compliance thereof has to be recorded. The appellate Industrial Court's finding qua the approach letter based upon the document at mark 14/2 cannot be sustained, in view of the fact that there was no proving of that document before the Labour Court, wherein the document is said to have been produced. In light of this, it was contended that

the Labour Court is justified in dismissing the T-Application and the appellate Court has seriously erred in not appreciating these factors and, therefore, the petition be accepted and allowed and the order of the Labour Court be restored. The factum of approach letter and the lack of its being proved works as a serious fatality the very maintainability of the T-Application and, therefore, in the instant case, when the workman failed in proving either the approach letter or the service thereof, then the appellate Industrial Court was not justified in accepting the contention of the workman that there was no dispute to that effect.

6. Learned counsel for the petitioner relied following authorities in support of his submissions namely;

(i) in case of Anant Bapu Kharat Vs. General Manager, B.E.S.T. Undertaking and Another, .

(ii) in case of The Raipur Manufacturing Co. Ltd. Vs. Okhabhai Devrajbhai Patni, .

(iii) Decision of this Court in case of Kamrul Abdul And 129 Workmen And 14 Other W-men Vs. Garden Silk Mills Ltd.& 1, in S.C.A. No. 6678 of 1998, decided on 14.07.2010.

(iv) Decision of this Court in case of Baroda Central Cooperative Bank Vs. Khodabhai Somabhai Baria, in S.C.A. No. 10084 of 2001, decided on 25.01.2006.

7. Learned counsel appearing for the respondent workman submitted that the approach of the Labour Court was not correct in recording its finding qua workman's inability to prove the factum of service of approach letter. In absence of any specific dispute qua the approach letter, there could have been no reason for the workman to undertake any further exercise, as could be seen from the proceeding.

8. Learned counsel appearing for the respondent workman invited this Court's attention to the observations of the Labour Court and findings recorded by the Labour Court and in juxtaposition thereof read the order and findings of the appellate Industrial Court and submitted that the factum which appealed the Court were required to be considered.

9. Learned counsel appearing for the respondent workman emphatically relied upon the findings recorded by the appellate Industrial Court while rendering its decision on the review application and submitted that bare perusal of those findings recorded in the order in review application would clearly indicate that the Bank only contended qua the lack of prescribed approach letter and not the approach letter itself. At the best, the Bank's submission could be said to be a lack of procedure for proving that document, but that in itself be sufficient to result into denial or disputing the factum of document at mark 14/2. Learned counsel for the respondent workman submitted that he relies upon the authorities cited in the affidavit-in-reply filed in this petition.

10. Learned counsel for the respondent workman further contended that in the

entire proceeding before the Labour Court, the earlier Presiding Officer was kind enough to record that the inquiry, which was conducted by the Bank, had been vitiated and the order so declaring i.e. order dated 25.10.2001 has remain unchallenged. The Bank thereafter was given ample opportunities time and again for coming forward and prove its case leading to justification of its dismissal order, but Bank did not avail those opportunities and therefore the Court, on the strength of availability of the evidence, could have vitiated the matter and when there was a specific averment in the T-Application to the effect that the approach letter is sent and when there is a lack of specific denial of this fact in the written statement, the Labour Court could not have recorded findings in respect of lack of approach letter so as to render the entire proceedings vitiated.

11. The Court heard learned counsel appearing for the parties and perused the documents. Before advertng to the rival contentions of the parties, it is absolutely essential to set out hereinbelow few indisputable aspects, which are emerging from the record and proceedings;

- (i) The workman was dismissed from service vide order dated 17.02.1995.
- (ii) The mark 14/1, 14/2 and others are the documents which includes the memo of the appeal and the approach letter.
- (iii) The mark 14/1 is appeal which contains the stamp of acknowledgment by the Bank.
- (iv) The mark 14/2, which is said to be an approach letter, did not contain any such stamp.
- (v) The workman after those proceedings sent one more appeal urging the Bank to reinstate him and conduct the inquiry, if they so chose, but which was of no avail.
- (vi) The application i.e. T-Application was presented on 16th May, 1995.
- (vii) The T-Application preferred by the workman contains the following which are set out verbatim as under;

It is humbly submitted that the applicant herein also has complied with the provisions of service rules as application to the parties hereto. The applicant had addressed a Petition under R. 35 of Service Rules. The applicant thereafter also addressed, issued and served approach letter to the Opponents herein. The Opponents herein have not complied or replied with any of the remedy exhausted by applicant according to applicable Rules and laws.

- (viii) The written statement, which is placed on record from page No. 43 onwards, do not contain any specific denial to indicate that the contention or averment made in the application in respect of service of approach letter was incorrect. In other words, the written statement contains general denial, but this Court has to record that it did not contain any specific denial nor did it contain any specific ground for not maintaining the T-Application, as such.

(ix) It could further be elaborated and said that the written statement if read in its entirety, nowhere revealed any objection, much less, preliminary objection against maintainability of the T-Application on ground of non availability or non service or non service of the approach letter.

(x) The predecessor of the Presiding Officer, who rendered the judgment in Labour Court, appears to have rendered one order in detail deciding the issue qua the legality and otherwise of the disciplinary proceeding conducted against the respondent workman. The order which was rendered on 25.10.2001, appears to have contained specific finding qua the disciplinary proceeding conducted by the Bank being vitiated and not in consonance with law which would have rendered the entire order of dismissal vitiated. Had the Bank not chosen to lead evidence, unfortunately as the record goes to show that the Bank did not avail the opportunity of proving its case before the Labour Court and in the subsequent proceedings, the Labour Court based upon the pleadings framed two issues namely; (i) Whether the workman is entitled to be reinstated with back wages? (ii) What order? The first issue is answered in negative and the second as per the final order.

(xi) Thus, the framing of the issue on the part of the Labour Court clearly indicate that the Labour Court also did not choose to frame specific issue qua the existence and service of the approach letter or otherwise. Had there been a specific dispute taken up on behalf of the Bank, then surely the Labour Court would have recorded its issue and findings thereon.

(xii) The Labour Court in its reasoning part has adverted to the documentary evidence and the deposition of the workman and held that the workman failed in proving the approach letter and/or its service and therefore, on that ground alone dismissed the T-Application.

(xiii) The appellate Industrial Court appreciated the evidence in light of the findings and came to the conclusion that the Bank did not raise the dispute qua approach letter and/or its service and, therefore, there was no reason for non suiting the respondent workman on that count.

(xiv) The appellate Industrial Court recorded its finding that the documents marked contain the approach letter and the Bank has not taken up a precise contention qua their genuineness or otherwise and, therefore, without going into the technicalities rendered its decision on the basis of the pleadings on the record which resulted into allowing of appeal and ordering reinstatement of the workman with back wages.

12. Against the aforesaid backdrop of almost indisputable aspects question arises as to whether this Court in exercise of the power under Article 226 and also under Article 227 of the Constitution of India, would be justified in further interfering with findings recorded by the Industrial Court. The answer would be in emphatic "no". The reason thereof are required to be mentioned as under.

13. The fact remains to be noted that there is no specific pleading in form of raising of dispute by the Bank in respect of the approach letter and/or its service. The workman has clearly mentioned in his T-Application an averment indicating that the approach letter was duly served. Though, in that behalf the workman has not mentioned either the date of approach letter or the date of its service, but that in itself would not vitiate the version of the workman; it has been found in the body of the application itself, which formed part of the pleadings. Against these pleadings, the Bank as an opponent, was under obligation to set out its own defense and version. Had the Bank really not been served with the approach letter, then nothing prevented the Bank from setting up its fundamental defense as a preliminary objection to the maintainability of the very T-Application, as the provision of the Act, the Rules and the catena of the decisions rendered on this aspect would go to show that non serving of the approach letter results into fatality which is not incurable fatality. In the instant case, if the Bank was justified in contending that there was no approach letter or service of approach letter, then Bank would have raised this issue which in turn would have required the workman to answer it with more cogent evidence, if any, and which also in turn required the Labour Court to frame a specific issue as the parties would have indicated that there was requirement of framing the issues. The Labour Court's non framing of the issue in light of the available pleadings would go to show that the Bank chose for the reasons best known to it in not taking up the issue as the issue for defending its stand or for assailing the maintainability of the T-Application before the Labour Court.

14. The authorities cited at the bar on behalf of the petitioner do not require any elaborate discussion, as those authorities are on their facts and when this Court is coming to the conclusion that on the basis of the pleadings, the Labour Court could not have gone into the issue of approach letter and when there was a specific averment in the application which had remained to be controverted specifically, then it was unfortunate that the Labour Court raked up the issue and rendered the entire application non maintainable.

15. The Court is of the considered view that the Labour Court also could not have lose sight of the fact that had there been a real issue of approach letter and/or its service, then there would not have been any further participation and proceedings which culminated into his predecessor recording findings qua inquiry proceeding being vitiated as it could be seen from the order which was rendered on 25.10.2001. In other words, it can be said that the Bank and the workman both proceeded on the aspect of the application as if there was no serious objection qua the service of approach letter and, therefore, the entire proceedings qua examining the disciplinary proceedings and its legality were fully participated by both and the proceeding culminated into the order dated 25.10.2001. When that order is there on the record and when it is clear that both the parties participated, then a question arises as to whether Labour Court was justified in any manner to resurrect the said issue which was actually non issue or which was not viewed as an issue by parties for non suiting the respondent

workman. The answer would be emphatic "no".

16. The Court is of the considered view that the orders impugned in this petition is not shown to be so perverse so as to call for any interference in light of the discussions hereinabove and therefore, petition being bereft of merits, deserves rejection and is accordingly rejected. Rule is discharged. However, there shall be no order as to costs.