

(2004) 03 GUJ CK 0030

In the Gujarat High Court

Case No : Letters Patent Appeal No. 864 of 2004, Special Civil Application No. 9542 of 1993 and Civil Application No. 2133 of 2004

UCO Bank

APPELLANT

Vs

Rajnikant A. Sachania

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 102 FLR 895

Hon'ble Judges : Bhawani Singh, C.J.;H.K. Rathod, J

Bench : Division Bench

Advocate : Darshan M. Parikh, for the Appellant;

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—This Letters Patent Appeal is directed against the Oral Judgment delivered by the learned Single Judge of this Court (Coram : R.K. Abichandani,J.) on 28.8.2003. Learned Single Judge allowed the petition directing the appellant to consider the case of the Whether reporters of Local Papers may be allowed to see the Judgment? respondent accordingly for promotion as clerk, as per the rules of promotion from the date on which he became due under Clause 4.6(ii) on the basis of his higher educational qualification from the date on which his immediate junior came to be promoted to such cadre, at the earliest, preferably within one month from the date of receipt of the writ of the said order.

2. The respondent applied for the post of Peon on October 11, 1977 when he was a Non Matriculate; in the year 1978, he appeared for the SSC Examination with prior permission of the Board and passed the examination; he was, thereafter, appointed as a peon by the Bank on November 16, 1979 and resumed on November 26, 1979; he had completed more than 14 years service; request made by him to promote him on the post of clerk was turned down by the appellant. That action was challenged by the petitioner in the petition.

3. Contention has been raised before us by the appellant that the respondent had suppressed higher educational qualification at the time of joining the service; according to the Circular dated March 8, 1979, the respondent is not entitled; the Circular dated March 8, 1979 is not applicable to the respondent; his declaration was erroneously taken; because of the directions of the learned Single Judge, seniority of the other employees will be adversely affected; clause 4.6(ii) of the Recruitment Rules is not applicable to the facts of the respondent. Except the aforesaid contentions, no other contention was raised by the appellant before us.

4. We have considered the contentions raised by the appellant before us. We have also perused the oral judgment delivered by the learned Single Judge. On the date on which the respondent applied, he was Non Matriculate. He passed SSC Examination in the year 1978. He received letter of appointment dated November 16, 1979 and resumed the duties on November 26, 1979. The petitioner disclosed the fact of his having acquired higher educational qualification by his application dated September 29, 1980. The appellant has not shown as to under which rule, higher qualification would act as a bar or disqualification for entering into the cadre of peon. The Circular dated March 8, 1979 is applicable to only those who could have made declaration on or before March 31, 1979. The respondent was appointed by order dated November 16, 1979. Therefore, Circular dated March 8, 1979 is not applicable to the respondent. His declaration was erroneously recorded. The Zonal Office opined that there was nothing on record to show that the respondent willfully suppressed his higher qualification on the date of appointment order November 16, 1979. Earlier, Head Office considered the case of the respondent relying upon the Circular dated March 8, 1979 but not on merits for promotion to the post of Clerk. Clause 4.6(ii) of the Recruitment Rules is amounting to denial of fundamental right of equality guaranteed under Article 14 and 16 of the Constitution of India. Therefore, the contention raised by the appellant is rejected. The matter at issue is rightly dealt with by the learned Single Judge and no error is committed by the learned Single Judge in issuing such directions against the appellant.

5. In an identical facts, decision of the apex court in H.D. Singh Vs. Reserve Bank of India and Others, is considered by us. The facts of the reported decision are to the effect that the appellant was Tikka Mazdoor with the first respondent, RBI; when he was selected for employment, he was not a Matriculate; he passed Matriculation Examination in 1975. On July 23, 1976, he received letter from the Bank asking him to state within a week as to what his education qualification was.; he was also informed that his name would be struck off since he had concealed his educational qualification and his services would be terminated without any notice. It seems that a confidential circular was issued by the Bank on June 27, 1976 to the effect that the Matriculates would not be retained in the list of Tikka Mazdoor. In this background of the facts, services of the appellant were terminated. Challenge to the termination of service failed before the tribunal. The apex court set aside the termination order and granted

reinstatement with full back wages. Observations made in para 10 are relevant to the facts of the present case. Therefore, same are reproduced as under:

"10. We thought it necessary to refer to the factual details in the case only to show our concern at the manner in which the employer in this case, the Reserve Bank of India, who should set a model for other employers being a prestigious institution, behaved towards its employees. It must have been his helpless condition and abject poverty that forced the appellant to accept a job on Rs.3 per day. Still see how he has been treated. We will not be far from truth if we say that the Bank has deliberately indulged in unhealthy labour practice by rotating employees like the appellant to deny them benefits under the Industrial Law. It has disturbed us to find that the appellant was denied job because he has become better qualified. Perhaps the Reserve Bank of India and its officers are not aware of the grave unemployment problem facing the youth of this country and also not aware of the fact that graduates, both boys and girls, sweep our roads and post graduates in hundreds, if not in thousands, apply for the posts of peons. It has been our sad experience to find employers trying to stifle the efforts of employers in their legitimate claims seeking benefits under the Industrial Law by tiring them out in adjudication proceedings raising technical and hyper technical pleas. Industrial adjudication in bona fide claims have been dragged on by employers for years together on such pleas. It would always be desirable for employers to meet the case of the employees squarely on merits and get them adjudicated quickly. This would help industrial peace. It is too late in the day for this Court to alert the employers that their attempts should be to evolve a contented labour. We do not forget at the same time the fact that it is necessary for the labour also to reciprocate to prevent industrial unrest. In this case, for example, the Bank should have treated the appellant as a regular hand in List II. Instead, the Bank has, by adopting dubious methods, invited from us, remarks which we would have normally avoided."

The learned Single Judge then examined the factual aspects from the record, observed as under:

"6.1 It appears from the record that the zonal office of the bank wrote a letter on 24th December, 1988 to the Head Office, a copy of which is at Annexure "E" to the petition, in para 2 of which, it was written that the Head Office had earlier advised that the circulars dated 8th March 1979 and 28th August, 1980 were meant only for those employees who were already in the employment of the bank as on 8th March 1979 and who did not disclose the higher educational qualification earlier or suppressed the higher educational qualifications at the time of joining the bank. The request of the petitioner in his representation for considering inclusion of his higher educational qualification in the service record was earlier turned down on the ground that he was not in bank's employment on 8th March 1979. In the said letter, it was also mentioned that the petitioner had now applied stating that he had inadvertently responded to the said circulars, and he cannot be said to have suppressed the higher educational qualification at

the time of recruitment and therefore, his higher educational qualification should be brought on the service record. The zonal office opined under the said letter that there was nothing on the record to show that the petitioner willfully suppressed his higher educational qualification on 16.11.1979 i.e. the date of his appointment. It was also stated that the Head Office had earlier decided his case only on the ground of the date of applicability of the circulars without going into the merits of the case as to whether he was or not eligible to apply in response to the said circular dated 8th March 1979 since he was not on the pay roll of the bank on that date.

6.2 It is not shown as to what response the Head Office gave to this letter. It is evident that the requirement of making a declaration under the circular dated 8th March 1979 which was specifically applicable only to those who could have made declaration not later than 31st March 1979, could never have been made applicable to the petitioner, who was recruited much later on 16.11.1979. There was no need for the petitioner to make any such declaration which could have been made by the employees who were already in service and who could have made declaration not later than 31st March 1979, as mentioned in the circular. Therefore, resort to the said circular or any declaration made thereunder erroneously by the petitioner for the purpose of denying his being considered for promotion as clerk despite his having adequate educational qualification as per clause 4.6(ii) of the rules of recruitment to the post of clerk, was uncalled for and erroneous. The action of the respondent bank in not considering the petitioner's case for promotion to the post of clerk is, therefore, against the provisions governing promotion to that cadre, particularly, Clause 4.6(ii) thereof, resulting in denial of the fundamental right to equality guaranteed by Articles 14 and 16 of the Constitution to the petitioner."

Considering the observations made by the learned Single Judge, according to our opinion, case of the present respondent for promotion to the post of clerk is required to be considered by the appellant as per the directions issued by the learned Single Judge. No error is committed by the learned Single Judge in issuing such directions. We are in agreement with the view taken by the learned Single Judge. No error has been pointed out in the impugned judgment. Therefore, there is no substance in the present appeal. This Letters Patent Appeal is dismissed accordingly.

In view of the above order on the appeal, Civil Application No. 2133 of 2004 shall not survive and the same is, therefore, disposed of accordingly.