
(2008) 06 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No. 974 of 1996

Vyankatesh

APPELLANT

Vs

State Transport Corporation Bank Ltd.

RESPONDENT

Date of Decision : 10-06-2008

Acts Referred:

Evidence Act, 1872 — Section 106

Citation : (2009) 120 FLR 392

Hon'ble Judges : P.R. Borkar, J

Bench : Single Bench

Advocate : P.P. Chavan, for the Appellant; V.N. Dankh, for the Respondent

Final Decision : Allowed

Judgement

P.R. Borkar, J.—The petitioner who was a Bank employee and working as Branch Manager was suspended and ultimately reinstated as per the order passed by the Industrial Court, Jalna in Appeal (B.I.R) Nos. 11 and 12 of 1994 decided on 17.8.1995 by common judgment. However, backwages were refused to him and, therefore, this writ petition.

2. There is long history of litigation. It is admitted position that the petitioner was appointed as Branch Manager on probation on 2.10.1979. He was confirmed in service on 3.11.1979. He was working as Branch Manager, the State Transport Corporation Bank Ltd. Bombay, Branch at Nanded.

3. While he was working so, Madhav Vithal Gaikwad, Baliram Sambhuji Kamble and Rama Narayan Kamble were admitted as members of the Bank and all the three persons made applications for loan on 20.11.1980. The loan proposals were processed and sanctioned by the petitioner. Loans were sanctioned to Madhav Gaikwad, Rama Kamble and Baliram Kamble respectively of Rs. 2,100/-, 2,200/- and 2,300/-. It is found that none of these persons were entitled to be members of the Bank and they were also not entitled to get loan sanctioned and by gross negligence loan amounts were sanctioned to these persons. Thereafter

charge-sheet was served, inquiry was held and there was order of dismissal passed on 19.8.1981.

4. The petitioner filed departmental appeal which was turned down and, therefore, the petitioner filed Application (BIR) No. 25 of 1981 in the Labour Court, Aurangabad. The Labour Court set aside the termination of the petitioner and ordered reinstatement with continuity and payment of half backwages. The Bank preferred Appeal (BIR) No. 11 of 1986 to the Industrial Court. Thereafter the petitioner also preferred Appeal (BIR) No. 12 of 1986 in the Industrial Court. The Industrial Court partly allowed appeal of the Bank and dismissed" the appeal of the petitioner and remanded the matter to the Labour Court for passing proper order of punishment under Certified Standing Orders.

5. The Labour Court on remand set aside the termination order and reinstatement in service with continuity of service and payment of half back wages and ordered stoppage of annual increments for 2 years permanently. The same order was challenged before the Industrial Court in Appeal (BIR) Nos. 11 and 12 of 1994 and ultimately the Industrial Court came to the conclusion that the punishment of stoppage of 2 increments and reinstatement with continuity of service was proper, but the award of backwages was wrong. It is this order which is challenged in this petition.

6. It is argued by Shri Chavan, advocate for the petitioner that in para 15 of the written arguments submitted before the Labour Court, it is averred that the applicant was without job. He did not get job and he was leading life without employment. However, the Industrial Court relying on certain authorities held that the appellant, did not plead or lead any evidence about his nonemployment. Such statement in argument is not enough to hold that the petitioner was not gainfully engaged during the period of suspension. It is argued before me that backwages cannot be awarded in such matter in which the Labour Court and the Industrial Court have held the validity and legality of the departmental inquiry and imposed punishment. Secondly there must be pleading and proof that the employee was not gainfully employed.

7. Learned advocate Shri Dankh relied upon the ruling of the Supreme Court in the matter of Rajasthan State Road Transport Corporation v. Bhagyo Mai and others 1944 (2) CLR 1301. Following observations are made in para 2:

The Tribunal while reducing the punishment and reinstating the workman, had denied the back wages to him. However, in writ petition the High Court interfered with the order denying the back-wages, and while affirming the punishment, directed that the respondent would be entitled to the back wages. We find that the High Court's order is self contradictory .When the High Court had found that the respondent-employee deserved punishment on account of his misconduct, the High Court could not have rewarded the employee by granting him the backwages particularly when the Tribunal had converted the order of dismissal into that of the stoppage of two increments with cumulative effect. We,

therefore, allow the appeal and set aside that part of the order of the High Court whereby the respondent-employee has been given the benefit of back wages. The rest of the order is maintained. The appeal is allowed accordingly with no order as to costs.

8. In this case the Labour Court so also the Industrial Court have come to the conclusion that there was no violation of principles of natural justice in holding the departmental inquiry. The inquiry held was fair and proper. In this case, the Labour Court so also the Industrial Court have come to a conclusion that the petitioner was guilty and punishment of stoppage of 2 increments was imposed. This is not a case where there was exoneration of charges by the Labour Court or the Industrial Court. In these circumstances refusal or denial of backwages cannot be said to be illegal.

9. Secondly the Industrial Court has observed in paras 23 to 25 that the present petitioner has not proved that he was unemployed or was not gainfully employed. It is observed that no evidence was adduced and in absence of proper pleadings and evidence, the appellant/petitioner was not entitled to the relief. In support of this, learned advocate relied upon the case of U.P. State Brassware Corporation Ltd. and Anr. v. Udai Narain Pandey 2006 (108) FLR 201 quote para 31 thereof which is as follows:

It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.

In Kendriya Vidyalyaya Sangathan (supra), this Court held:

.....When the question of determining the entitlement of a person to backwages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

See also Allahabad Jal Sansthan (supra), para 6.

10. In view of abovesaid position of law and in the facts and circumstances of the case, this writ petition cannot be allowed. The same is dismissed. Rule is discharged. In the circumstances, the parties to bear their own costs.