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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL WRIT PETITION NO. 11614 OF 2014

The Friends Co-Operative Bank Ltd. & Anr. ... Petitioners.

V/s.

Mr. Abdul Aziz Shaikh. ... Respondent.

Mr. Dipesh Siroya for the Petitioners.

Ms. Anjali Purav Yajurvedi for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 24 AUGUST, 2015.

P.C. :-

The Liquidator of the Petitioner – Bank has filed the present Petition challenging the orders passed by the Labour Court, Mumbai and Industrial Court, Mumbai directing that the Petitioner – Bank to settle all the legal dues of the Respondent including retrenchment compensation and back wages to be paid to him in the same manner and on par with other 42 employees which claim was already settled by it.

2. The Respondent filed a Complaint ULP No. 219 of 2001 complaining of unfair labour practices on the part of the

Petitioner – Bank. According to the Respondent he joined the services as a Clerk on 23 June 1977 and thereafter, he worked in the capacity as Clerk-cum-Junior Officer. On 28 December 2000, he was not allowed to join his duties. He averred that the Petitioner – Bank had gone in liquidation, and had settled the dues of other employees but request of the Respondent to pay the dues to him was refused. In this complaint the Petitioner - Bank took a stand that the Respondent was not a workman. The Labour Court came to the conclusion that the Respondent was working in clerical capacity and he had no powers to sanction leave of staff members nor he worked as an independent authority. The Labour Court found that no documentary evidence was produced on record to show that the Respondent worked in a managerial capacity. Accordingly, the Labour Court by order dated 27 February 2014 allowed the complaint. The revision filed by the Petitioner against this order was dismissed by the Industrial Court by order dated 25 July 2014.

3. The learned Counsel for the Petitioner submitted that the Respondent was working as a Recovery Officer and he was so appointed under Section 156 of the Maharashtra Co-operative Societies Act and this fact, which is also admitted by the Respondent himself, clearly shows that the Respondent was not a workman. The learned Counsel for the Respondent has drawn my attention to the written statement filed by the Petitioner. In this written statement the Petitioner has clearly averred that at the

relevant time the Petitioner – Bank was in financial crisis and its licence was about to be cancelled by the Reserve Bank of India and therefore, the Petitioner – Bank called upon every staff member to carry out certain additional duties. It is stated that it is only to avoid cancellation of licence that the Respondent was assigned work as a Recovery Officer. Soon thereafter, the Petitioner – Bank has gone in liquidation. Both the Courts considered this position and came to the conclusion that the Respondent was never regularly appointed as Recovery Officer and it was only a task given to him in a crisis situation.

4. The learned Counsel for the Petitioner then submitted that the Petitioner was working as a Branch Manager at Kurla and even this fact has not been considered by the Courts below. He relied on the admission of the Respondent in the cross-examination that the Respondent was asked to work as a Assistant Branch Manager. In the cross-examination itself the Respondent has clarified that he was only temporarily asked to work as a Assistant Branch Manager and there was no such post. If there was any such post, in the light of specific assertion by the Respondent, it was incumbent upon the Petitioner to produce the staffing pattern to show that there existed such post and the Respondent was appointed on it. No such document was produced. Even the documents showing the exact duties of the Respondent has also not been filed in the Courts below.

5. In the circumstances, and in the absence of documentary evidence, no error was committed by both the Courts below in accepting the case of the Respondent that he was a workman having been appointed as a Clerk in the establishment of the Petitioner – Bank, and granting him the benefits.

5. In the circumstances, there is no merit in this Petition. The Petition is rejected.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed order.”

Uploaded by : Jyoti Pawar

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