

Sequeira

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

WRIT PETITION NO. 10230 OF 2014

The Rayat Sevak Co-op. Bank Ltd.

.. Petitioner

Vs.

Smt.Ujwala Vitthal Jadhav

.. Respondent

Mr.Saurabh Pakale i/b Mr.Avinash Belge, for the Petitioner.
Mr.Sandeep Koregave, for the Respondent.

***CORAM: N.M. JAMDAR, J.
Monday, 25 January 2016.***

Oral Order :

The Petitioner challenges the order passed by the Industrial Court Kolhapur, dated 4 July 2014 directing the Petitioner to give all benefits of the settlement dated 13 December 2012 to the Respondent.

2. The husband of the Respondent was working with the Petitioner bank as a clerk, who passed away on 14 May 2005. The Respondent, 29 years of age having family of two sons and mother-in-law, was left without any source of income. She made an application to the Petitioner on 24 May 2005 and on 21 June 2006 for appointment on compassionate basis. The Respondent holds a B.Com. degree. The Petitioner appointed the Respondent in the Kolhapur branch on daily wages as a peon. She worked till the

year 2013 completing 240 days in every year. In March 2013 the Union of employees asked the Petitioner to confirm the Respondent in service. Thereupon on 22 March 2013, the Petitioner informed the Respondent not to report to work. The Respondent filed Complaint (ULP) No.37 of 2013 praying that the action of the Petitioner in discontinuing her services was an unfair labour practice and sought reinstatement in services. By the impugned order the direction has been given to Petitioner to give benefit of the settlement to the Respondent.

3. The learned counsel for the Petitioner submitted that the Respondent was appointed on daily wages and no right can accrue to her as a daily wager. He submitted that the appointment of the Respondent was on compassionate basis and she was given work on daily wages as and when work was available. He submitted that the entry of the Respondent in services was without following the rules. The learned counsel for the Petitioner also submitted that there is no workload available and that the order therefore cannot be complied with. He relied upon the decision in the case of **Union of India (UOI) and Ors. Vs. Vartak Labour Union – [2011 (129) FLR 500]** and in the case of **Patel Engineering Works Vs Sri Santosh Kumar Rawool & 13 Ors. - 2001 1 CLR 574**. On the other hand, the learned counsel for the Respondent supported the impugned order and relied upon the settlement.

4. The Respondent was appointed on compassionate basis after her husband, who was working as a clerk had passed away. The

settlement dated 15 October 2012 specifically gives right to the employees to seek compassionate appointment. The settlement also states that it is operational from 1 January 2006 to 31 December 2015. Thus the date when the settlement was signed the Respondent had a right to be considered and appointed on compassionate basis. No capital can be made by the Petitioner of the nomenclature used in the appointment order as being on daily wages as such appointment itself is contrary to the settlement. The right accrued to the Respondent under the settlement to be appointed on compassionate basis cannot therefore be taken away and had rightly been extended by the Industrial Court. Therefore, if the appointment on daily wages itself not being in conformity with the settlement, the Judgments cited by the learned counsel for the Petitioner are not applicable. Furthermore, the decision of the Apex Court relates to an employment in a public service.

5. As regards the non-availability of work is concerned, the Industrial Court has observed that the staffing pattern was prepared by the Petitioner unilaterally, without giving notice of change, in the year 2012. No such staffing pattern existed prior to 2012 and the Respondent was in service since 2006. Therefore, based on the staffing pattern it cannot be contended by the Petitioner that there is no work available and this aspect has been considered by the Industrial Court. The learned counsel for the Respondent also points out that the nature of work performed by the Respondent, of a peon is perennial in nature.

6. Considering the facts and circumstances, and that the Respondent was admittedly appointed on compassionate basis, which is permitted under the settlement, no failure of justice has occasioned to warrant interference in the impugned order. Writ petition is accordingly **rejected**.

(N.M.Jamdar, J.)