

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7453 OF 2015

M/s Bhagyalaxmi Mahila Sahakari Bank Ltd.
(Through its Authorized Signatory)
Head Office, Mahavir Chowk, Nanded.

The Branch Manager,
M/s Bhagyalaxmi Mahila Sahakari Bank Ltd.
Branch Kandhar, Tq. Kandhar, Dist. Nanded ..Petitioner

Versus

Sindhutai Govindrao Joshi,
Age 51 years, Occupation Nil,
R/o Vakil Colony, Kandhari, Dist. Nanded. ..Respondent

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Advocate for Petitioners : Shri Kawre B.R.
Advocate for Respondent : Shri Pathan Hamzakhan I.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 30, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. While issuing notice in this matter, this Court has observed in

it's order dated 27.7.2015 as under:-

“1. The petitioner challenges the judgment and order delivered by the Labour Court dated 04/01/2014 in Complaint (ULP) No.75/2009 and the judgment dated 23/01/2015 delivered by the Industrial Court in Revision (ULP) No.6/2014.

2. Grievance is that the respondent was temporarily engaged as a “Wet Sweeper” by the Branch Manager of the petitioner/Bank. She was deployed between 8.00 a.m. to 10.00 a.m. and her services were not utilized after 10.00 a.m.

3. Though she may have worked for 240 days in each year continuously, the issue before the Labour Court was not about engaging a person for 240 days, but that there was no permanent vacant post on which the respondent could have been appointed. Similarly, working in between 8.00 a.m. to 10.00 a.m. would not make the respondent a Workman u/s 2(s) of the Industrial Disputes Act 1947.

4. Issue notice to the respondent, returnable on 28/08/2015. In the event, the respondent is still not reinstated by the petitioner, status-quo, as existing today, shall be maintained till the next date of hearing subject to the petitioner depositing the last drawn wages of the respondent from 18/03/2005 till this date inclusive of the costs as are imposed upon the petitioner by the Industrial Court, on or before the 14/08/2015.

5. It is made clear that the ad-interim protection granted to the petitioner is subject to depositing the said amount as

directed above, failing which the protection shall stand vacated without reference to this Court. ”

5. I have gone through the petition paper book and the judgments cited.

6. The petitioner is a cooperative society, which operates the Bank upon being granted the license to indulge in Banking business by the Reserve Bank of India. It is contended that the respondent - lady was working as a Sweeper from 6.9.1997 at the rate of Rs.11.70 per day. The petitioner further contends that she used to work for about two hours and the nature of her duties was to clean toilets, bathrooms and the bank premises. There is no post of a Sweeper available with the petitioner as per the staffing pattern.

7. The respondent claimed to be orally terminated on 8.3.2005 and preferred Complaint (ULP) No.75 of 2009 before the Labour Court. By judgment dated 4.1.2014, the Labour Court allowed the complaint and by setting aside her termination, granted reinstatement with continuity and full backwages. The petitioner's Revision (ULP) No.23 of 2012 was dismissed by the Industrial Court by judgment dated 23.1.2015.

8. During the course of the hearing in this matter, this Court had

called upon the petitioner / Bank to submit its staffing pattern. The same is shown to the Court as well as the learned Advocate for the respondent. As per the existing staffing pattern, 36 posts of Peon (Sepoy) are sanctioned. 35 posts are filled in. As per the proposed staffing pattern to be implemented by 2018, the petitioner / Bank has sought 96 posts of Peon as against the 36 sanctioned posts. The post of Peon requires 10th standard education. The respondent contends that she has passed her 10th standard.

9. While allowing the complaint, the Labour Court has observed in its judgment in paragraph No.7 and 8 as under:-

“..... In addition to that the complainant has filed document as per list at Exh.C-20, those documents are regarding the number of working days of complainant in each month and the wages paid to her along with payment vouchers. Those documents are nothing but the documents in elaborate form regarding the number of working days and payment made to complainant to the documents already filed by respondent as per list at Exh.C-11.

“ I have carefully perused the statements showing number of working days, the amount paid to the complainant and the date of payment which is filed at Exh.C-11. It is not disputed that the complainant was getting monthly wages of Rs.250/- in the beginning and also there is no specific denial that thereafter her salary was enhanced to Rs.20/- per day later on. On perusal of the statement, Exh.C-11, it is seen

that there are material defects which are appearing on the face of the record. For 25 days in the month of November 97 and December 97, the complainant is paid salary @ Rs.250/- for each month. In the month of February 98 for 18 days of working days similar amount is paid to her. If she was working on daily wages basis, the wages should have been calculated for the actual working days done by the complainant. There are similar discrepancies throughout the entire statement prepared by the bank. This shows that the statement regarding number of working days prepared by the bank is not correct and it is imaginary and inserted later on so as to bring the number of working days below 240 days in a year. The payment so made could not be changed because the vouchers are available with the bank which are also filed on record. There must be some record available with the bank to calculate the number of working days on the basis of which the payments are made by the respondents as per voucher, but that record itself is not produced before this Court.”

10. In the above backdrop, the Industrial Court dismissed the Revision Petition filed by the petitioner

11. What emerges from the proceedings and record is as under:-

(a) The respondent has worked for about 7 years and 6 months with the petitioner.

(b) The respondent is out of employment for the last 12

years.

(c) The respondent is about 54 years old and the retirement age is 58 years, which leaves her only with four years of service.

(d) It is evident from the record that the respondent has not proved before the Labour Court that she was working as a Peon for the whole day. The evidence shows that she was a Sweeper and used to perform the duties of sweeping and mopping in the early hours before the Bank commenced its daily business. There was no evidence that she was working for the whole day or half of the day.

(e) It is equally undisputed that this petitioner Bank has not created any such posts of a Sweeper or Wet Sweeper, though the activity of cleaning the washrooms and sweeping and mopping the bank office premises is a perennial nature of work, though it may require one or two hours for performing the same.

12. The petitioner has erroneously relied upon the judgment of the Honourable Apex Court in the matter of Mahboob Deepak Vs. Nagar Panchayt, Gajraula and another [(2008) 1 SCC 575], wherein,

the Honourable Apex Court has ruled that while appointing persons in statutory authorities / local authority or 'State instrumentality', the selection process has to be followed and merely because an employee has completed 240 days in continuous service, would not warrant regularization in service. Instead, compensation could be granted.

13. The petitioner Bank is neither a State instrumentality nor a local authority. If the nature of work of sweeping and mopping the office premises and the washrooms provided in the office is of a perennial character, the petitioner / Bank needs to include the said work in the job profile of a Peon or should create posts for engaging such personnel.

14. The Honourable Apex Court in the following four cases has concluded that where reinstatement is not practicable, compensation at the rate of Rs.30,000/- to 40,000/- per year of service put in would be an appropriate compensation:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. *BSNL Vs. Man Singh [(2012) 1 SCC 558] and*

4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327].*

15. In the instant case, the respondent has worked for 7 years and 6 months and is out of employment for about 12 years and has only 4 years left for attaining the age of retirement. In this backdrop, I am inclined to grant compensation to the respondent at the rate of Rs.40,000/- per year of service put in. She has worked for 7 years and 6 months. Hence, the compensation amount would be Rs.3,00,000/-.

16. In the light of the above, this petition is partly allowed. The impugned judgment of the Labour Court is modified and is replaced by a direction to the petitioner to pay compensation of Rs.3,00,000/- (Rs. Three Lakhs only/-) to the respondent within a period of eight weeks from today, failing which the said amount shall carry interest at the rate of 6% per annum from the date of the judgment of the Labour Court. Complaint (ULP) No.75 of 2009 is accordingly partly allowed.

17. The petitioner has deposited an amount of Rs.77,720/- on 21.8.2015. Considering the interest accrued, the amount must have become about Rs.80,000/-. As such, the respondent will be at liberty

to withdraw the said amount with interest by making an application supported with identity proof in the form of Voter ID card / Aadhar Card. The remaining amount of Rs.2,20,000/- shall be paid by the petitioner as directed above, within eight weeks.

18. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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