

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3887/2019

The Gondia District Central Co-operative Bank Ltd., Gondia

..Vs..

Lalita W/o Narayan Rangire and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.L. Jaiswal, Advocate h/f Shri A.M. Ghare, Advocate for the petitioner.
Shri S.R. Bhongade, Advocate h/f Shri R.M. Bhongade, Advocate for respondent No.1.
Shri N.R. Patil, A.G.P. for respondent No.3.

CORAM : Z.A. HAQ, J.

DATED : 7.6.2019.

Heard.

The petitioner bank / employer has challenged the order passed by the Industrial Court, allowing the complaint filed by the respondent No.1 / employee and directing the employer to confer permanency w.e.f. 25th October, 2017. The Industrial Court, after examining the pleadings, documents and evidence on record has summed up its conclusions in paragraph Nos.9 and 10 of the impugned order as follows:

“9. I reflected over the submissions made by both the learned Advocates, I have gone through the entire pleadings, evidence including the documents produced on record and the judgments relied on behalf of both the parties. As regards the maintainability of the present complaint it can be seen that the present complaint came to be filed on 21/7/2015, whereas the pleadings in written statement, particularly at paragraph No.1 makes it clear

that since 01.08.2015, the respondents refused to provide the work to the complainant No.1. Thus, it is crystal clear that at the time of filing the present complaint, the complainant No.1 was in employment with the respondent Bank. As regards the admission of the complainant in her cross examination that at the time of filing the present complaint she was out of employment, the same deserves to be kept beyond the scope of consideration, for the reasons that the respondents have already pleaded about the discontinuity of complainant's employment since 01.08.2015. The respondents, therefore, have now estopped from pleading contrary and thus, the suggestion in this regard ought not to have been given to the complainant. Moreover, the complainant is less educated in comparison to respondents, and therefore her admission needs to be kept beyond the scope of consideration. Hence the judgment relied by respondents, in this regard, is not helpful to them. As regards the appointment of complainant No.1 on contractual basis, the respondents have utterly failed to produced on record even a single document, in order to suggest that the appointment of complainant No.1, was made on contractual basis. At the outset, it can be said that the complaint is maintainable.

10. As regards the merits, complainant No.1, came with the case that on 01.08.2003, she was appointed by the respondent Bank against the vacant and sanctioned post of Peon and was assured to regularize her services after completion of her probation period i.e. one year, in pursuance of Service Rule 20 applicable to the respondent Bank. The complainant accordingly led the additional evidence at Exhibit No.U-18. Moreover, the respondent Bank vide it's additional evidence at Exhibit No.C-14 has made it clear that, as many as 51 posts of Peon were sanctioned on 25-10-2017. In the present

matter, it is not disputed that, the respondent Bank has hired the services of complainant w.e.f. 01.08.2003. It is also not disputed that, in the year 2009 some of the employees (Peon) were benefited with permanency as sanctioned posts were, at the relevant time, lying vacant with the respondent Bank. Moreover, admittedly in pursuance of Exhibit Nos.U-11 and U-12 the resolutions were passed by the respondent Bank whereby they have passed the resolution to give the effect of permanency to the employees. As regards the judgments relied by the learned Advocate for complainant, it is seen that, judgments suggest that the services of the employee may be regularized subject to that there must be vacant and sanctioned posts existing with the employer establishment. Moreover, the Hon'ble High Court of Bombay, Bench at Nagpur recently in Municipal Council, Tirora, through the Chief Officer & Anr -Vs- Tulsidas Baliram Bindhade, Gondia 2016 III CLR, 569, has been pleased to hold that in absence of sanctioned and vacant post with the employer the service of the temporary daily wages employee, may not be regularized despite the completion of 240 days and application of Clause 4(c) of Model Standing Orders. Though, the complainant has come with case that, at the moment of her initial appointment, sanctioned and vacant posts of Peon were lying with respondent Bank, however, she failed to prove this fact with corroborative piece of evidence. The complainant No.1 would have made hue and cry at the very moment of completion of her so called period of probation of year, had she been, in fact, appointed against the vacant and sanctioned post of Peon. For this reason and the settled position of law as discussed earlier, I am of the opinion that the complainant No.1 is entitled for the relief of permanency, however, w.e.f. 25-10-2017 only. Hence, I reply Issue Nos.1 and 2 partly affirmative.”

After hearing the Advocates for the respective parties and examining the record of the petition, I find that the conclusions of the Industrial Court are based on proper appreciation of material on record.

The impugned order is attacked mainly on the ground that permanency could not have been conferred on the respondent No.1 as she failed to produce any appointment order, and vacant post was not available when she was initially engaged. These aspects are also considered by the Industrial Court and finding of fact is recorded that the respondent No.1 was appointed on 1st August, 2003 and continued in employment of the petitioner for more than 240 days in the preceding year. The Industrial Court has recorded that 51 posts of Peon came to be sanctioned on 25th October, 2017. Though the petitioner- Bank contended before the Industrial Court that 51 Peons are working with the petitioner bank, there is no explanation why list of those 51 persons / Peons is not produced on record giving dates of their appointment.

In my view, the impugned order is proper and does not require any interference by this Court in the extra-ordinary jurisdiction. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE