

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9002 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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JAGJIVAN MAGANJI BADODIA

Versus

REGIONAL MANAGER REGINON NO1

Appearance:

1. Special Civil Application No. 9002 of 1991
MR PK JANI for Petitioner No. 1
MR PRANAV G DESAI for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 30/08/2002

ORAL JUDGEMENT

1. By filing this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the judgment and order dated September 3, 1991, rendered by the Central Industrial Tribunal in Reference (ITC) no.22/1988, by which the petitioner is refused relief of

reinstatement in service, but granted compensation in lieu thereof.

2. The petitioner was engaged by the Madhavpura Branch of the State Bank of India as Sweeper for doing cleaning work on the basis of lumpsum payment of Rs.50/-per month. After some time, the wages were increased to Rs.100/-per month. On April 15, 1985, the petitioner was employed as Sweeper-cum-Waterman, and was paid three-fourth of the pay admissible to a peon. The State Bank of India has framed Rules for the appointment of Sweeper-cum-Messenger, and as per those Rules, cases of those employees who had put in ninety days of service on temporary basis before October 31, 1984, were required to be considered for the said post. As per the Rules, the educational qualification for the post is that, a candidate should have passed Standard VII examination and should not have passed S.S.C. examination. The petitioner had put in more than ninety days of service, and therefore, his case for appointment on the post of Sweeper-cum-Messenger was considered by the Selection Committee, but it was found by the Selection Committee that, the petitioner had not passed the Standard VII examination and passed Standard I examination. As the petitioner was not qualified to be appointed on the post of Sweeper-cum-Messenger, his services were terminated with effect from April 15, 1985.

3. Feeling aggrieved by the action of the respondent-Bank, the petitioner raised an industrial dispute, which was referred to the Central Industrial Tribunal, Ahmedabad for adjudication. Before the Central Industrial Tribunal, the same was registered as Reference (ITC) no.22/1988. The petitioner filed statement of claim, to which the Bank filed reply at Exh.9. The parties led oral as well as documentary evidence in support of their respective cases. On appreciation of evidence adduced by the parties, the Tribunal came to the conclusion that, the petitioner had worked as Sweeper-cum-Waterman on temporary basis for a period of more than 240 days in the previous year, and that the respondent-Bank had not followed the provisions of Section 25F of the Industrial Disputes Act, 1947 before terminating his service, and therefore, termination of his services was illegal. However, the Tribunal found that the petitioner was appointed as Sweeper-cum-Waterman on temporary basis till a regularly selected candidate was available, and as petitioner was not fulfilling the qualifications prescribed by the Bank for the post of Sweeper-cum-Messenger, he was not entitled to relief of reinstatement in service. In view of the said finding, the Tribunal has refused the relief of reinstatement in

service and granted compensation in lieu thereof, giving rise to the present petition.

4. The learned Counsel for the petitioner submitted that, after having held that the termination of services of the petitioner was illegal, the Tribunal ought to have granted relief of reinstatement in service to the petitioner, and as the Tribunal has exercised discretion arbitrarily, the same should be set aside by this Court. What was pleaded was that, as the petitioner had continuously served for more than 240 days in the previous year, and was within the age limit prescribed by the Bank for the post of Sweeper-cum-Messenger, reinstatement ought to have been granted, and that part of the order by which the said relief is refused to the petitioner should be set aside. Mr. P.G. Desai, learned Counsel for the respondents has submitted that, having regard to the facts of the case, it cannot be said that, the Tribunal has exercised the discretion vested in it under Section 11A of the Act arbitrarily, and therefore, the petition should be dismissed.

5. Having heard the learned Counsel for the parties, I am of the view that, the Tribunal did not commit any error in not ordering reinstatement of the petitioner in service. Admittedly, the petitioner does not possess qualification for the post of Sweeper-cum-Messenger, prescribed by the Rules which are framed by the respondent-Bank. He was appointed on temporary basis till regularly selected candidate was available, by the Selection Committee. It is true that before terminating his services, provisions of Section 25F of the Act were not complied with, and therefore, the Tribunal has held that the termination of his services was illegal. However, Section 11A of the Act confers discretion, and in certain cases, it is open to the Central Industrial Tribunal to refuse the relief of reinstatement, to which an employee would be otherwise entitled, if termination of his services is found to be illegal. In view of the reasons which are stated in paragraph 7 of the impugned judgment, it cannot be said that the discretion vested in the Tribunal under Section 11A of the Act, is exercised arbitrarily because the Tribunal could not have ignored the Rules for recruitment to the post in question nor could have directed the Bank to ignore the same and appoint the petitioner contrary to Rules. Therefore, the petition is liable to be dismissed. It may be stated that, no grievance has been made by the petitioner in the present petition regarding compensation awarded to him in lieu of reinstatement, and the petitioner is satisfied with that part of the judgment.

6. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J.M.Panchal,J.)

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