

SUPREME COURT OF INDIA

Sikar Kendriya Sahkari Bank Limited

Vs.

Bhagirath Singh

C.A.No.5300-5301 of 2010

(Abhay Manohar Sapre and Mohan M.Shantanagoudar,JJ.,)

24.09.2018

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are filed against the final judgment and order dated 11.10.2007 and 23.01.2008 passed by the High Court of Rajasthan at Jaipur in D.B. Civil Special Appeal (Writ) No. 1467 of 1997 in S.B. Civil Writ Petition No. 1418 of 1990 and Civil Application No. 194 of 2007 in D.B. Civil Special Appeal (Writ) No. 1467 of 1997 in S.B. Civil Writ Petition No. 1418 of 1990 respectively whereby the High Court allowed the Special Appeal and dismissed the Civil Misc. Application stating that there is no good reason to change the earlier order.

2. In order to appreciate the controversy involved in these appeals, few facts need mention hereinbelow.

3. The appellant is a Co-operative Bank having their area of operation in District Sikar in the State of Rajasthan. The respondent-Bhagirath Singh (since dead and now represented by his legal representatives) was appointed by the appellant- Bank on 17.09.1975 on the post of Clerk. The appellant, however, terminated the services of the respondent by order dated 28.03.1979.

4. Late Bhagirath Singh felt aggrieved by his termination approached to the State Government and prayed for making on Industrial Reference to the Labour Court to decide the legality and correctness of his termination from the services.

5. The State Government acceded to his request and made Reference to the Labour Court, Jaipur under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”) on 09.04.1980. The Labour Court entertained the Reference and called upon the parties to file their respective statements. Parties accordingly filed their statements.

6. The Labour Court by award dated 21.07.1984 answered the Reference in favour of Bhagirath Singh. The Labour Court held that firstly, the respondent had continuously worked for more than 240 days in one calendar year and, therefore, entitled for protection of the labour laws; Secondly, no enquiry was conducted by the Bank before his termination; Thirdly, he was not paid any retrenchment compensation as provided under Section 25 (F) of the ID Act prior to his termination and, therefore, it is a case of illegal termination; and lastly, since no evidence was led by the Bank to prove that he was gainfully employed elsewhere, he was entitled to claim full back wages. With these findings, the Labour Court set aside the termination order and directed for reinstatement of Bhagirath Singh in service with payment of full back wages. The Bank then on 10.01.1985 allowed Bhagirath Singh to join as Clerk and he accordingly joined the services pursuant to the award passed by the Labour Court.

7. Bhagirath Singh then filed a Civil Suit No. 61/1986 in the Court of Munsif (1st class), Sikar against the Bank for a declaration and grant of mandatory injunction to claim relief of seniority, regularization and salary etc. after joining the services. The Bank as defendant contested the suit. By Judgment/decreed dated 05.12.1989, the Civil Judge dismissed the suit. Bhagirath Singh, felt aggrieved by the dismissal of the suit, filed writ petition being W.P. No. 1418 of 1990 in the High Court. The Single Judge, by order dated 13.02.1996, dismissed the writ petition. Bhagirath Singh felt aggrieved and filed intra court appeal (D.B. Civil Special Appeal (Writ) No. 1467/1997) before the Division Bench. By impugned order dated 11.10.2007, the Division Bench allowed the appeal ex parte, set aside the order of the writ court and directed the Bank to regularize the services of Bhagirath Singh from the date when the services of similarly situated persons were regularized and also directed to give him consequential benefits. Aggrieved by the said order, the appellant filed an application being Civil Application No. 194 of 2007, which was dismissed by the High Court by order dated 23.01.2008. Feeling aggrieved by both the orders, the Bank has filed the present appeals by way of special leave in this Court.

8. Heard Mr. K.L. Janjani, learned counsel for the appellant and Mr. M.M. Kashyap, learned counsel for the respondent.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and while setting aside the order of the Division Bench remand the case to the Division Bench for deciding the writ appeal afresh on merits after affording an opportunity to the Bank.

10. In our opinion, the need to remand the case to the Division Bench has occasioned because, as urged by the learned counsel for the appellant (Bank), the Division Bench allowed the employee's appeal without hearing the Bank.

11. In other words, the appeal was heard ex parte by the Division Bench without hearing the Bank or/and its counsel which resulted in passing of an adverse order against the Bank and, in consequence, resulted in allowing the employee's writ petition by directing the Bank to

give Bhagirath Singh the benefit of regularization, seniority and consequential benefits arising there from.

12. In our opinion, having regard to the facts and circumstances arising in the case, the grounds taken and the cause shown, the Bank was entitled for a hearing before the Division Bench in the writ appeal. It was more so because the Bank eventually suffered adverse order without hearing them. Substantial justice demands that a litigant is entitled for a right to be heard before any order is passed against him. (See *Sangram Singh vs. Election Tribunal, Kotah*¹)

13. In view of the forgoing discussion, the appeals succeed and are accordingly allowed. Impugned orders are set aside. The case is remanded to the Division Bench for deciding the writ appeal out of which these appeals arise afresh on merits in accordance with law. Needless to say, the appellant- Bank would be entitled to raise all pleas in their appeal before the High Court while prosecuting the appeal.

14. Since the matter is quite old, we request the High Court to decide the appeal as expeditiously as possible preferably within six months without being influenced by any of our observations because having formed an opinion to remand the case to the High Court, we did not consider it proper to go into the merits of the controversy.

Judgment Referred.

¹AIR 1955 SC 0425