

HIGH COURT OF GUJARAT

UNITED COOPERATIVE BANK LTD

Versus

NAYAN R MODI

Date of Decision: 10 September 2012

Citation: 2012 LawSuit(Guj) 928

Hon'ble Judges: [S R Brahmhatt](#)

Eq. Citations: **2012 3 CLR 392**, 2013 1 LLJ 46

Case Type: Special Civil Application

Case No: 11628 of 2002

Subject: Constitution

Acts Referred:

[Constitution Of India Art 227](#), [Art 226](#)

[Apprentices Act, 1961 Sec 18](#)

Final Decision: Petition dismissed

Advocates: [G K Rathod](#), [R C Jani](#)

S. R. Brahmhatt, J.

[1] The petitioner, the Respondent in Appeal (I.C.) No. 7/1995 from the Court of Industrial Tribunal, Ahmedabad, decided on 16/9/2002 has approached this Court under Article 226 and also under Article 227 of the Constitution of India, challenging the order passed by the Industrial Tribunal allowing the appeal preferred by workman/respondent herein and quashing & setting aside the order of the Labour Court dated 23/2/1995 in (T) Application No. 362 of 1988, and directing the petitioner to reinstate the workman with continuity of service and with full backwages with cost of Rs.250/-.

[2] Facts in brief leading to filing this petition as could be culled out from memo of the petition deserve to be set out as under.

The workman-respondent herein had to sent an approach letter through his advocate on 4/8/1988 to the bank inter alia requesting the bank / petitioner herein that the workman was though engaged originally as an apprentice from 31/10/1986 to 31/10/1987 was continued as Clerk from 1/11/1987 till 30/6/1988 and his services were abruptly terminated, hence he is approaching to the bank for seeking reinstatement on account of breach of provision of labour laws. Said notice issued by the workman through advocate was replied by the bank through its advocate and ultimately the bank being governed by the provision of Bombay Industrial Relation Act 1946 (herein after referred to as 'BIR Act' for brevity), Labour Court was approached by way of T. Application No. 362/1988, wherein it was contended on behalf of the workman what the workman's continuance after apprentice period was over would not be termed to be styled as apprenticeship period and hence the termination of the workman being illegal, contrary to the provisions of law the same is required to be declared as such and appropriate direction qua reinstatement and backwages be issued. The bank contended that the workman's apprenticeship period stood extended and looking to the remuneration or wages which were paid to the workman it was not justified in contending that the apprenticeship period was over and he was absorbed as Clerk. The Labour Court accepted this contention and dismissed the (T) Application No. 362/1988 vide order dated 23/2/1995. Being aggrieved and dissatisfied with this order of Labour Court the workman was constrained to file appeal being Appeal No. (I.C.) No. 7 of 1995. The appellate court after hearing the contentions of both the sides came to the conclusion that the order passed by the Labour Court on 23/2/1995 was not justifiable and hence quashed and set aside the same, and directed the petitioner bank to reinstate the respondent workman with full backwages and consequential benefits with cost of Rs.250/-. The said order of the Industrial Tribunal dated 16/9/2002 is assailed in this petition purported to have been filed under Article 226 as well as under 227 of the Constitution of India.

[3] Learned advocate for the petitioner contended that the findings of Labour Court ought not to have been interfered with by the Tribunal as the Labour Court being a court of first instance had an access to appreciate the evidence on record based where upon the court came to the conclusion that the apprenticeship of workman was not entitled to invoke provision of Industrial Disputes Act as such in light of the clear provision in form of Section 18 of the Apprenticeship Act 1961.

[4] Learned advocate appearing for the petitioner bank contended that the decision of the Apex Court in case of [National Small Industries Corporation Ltd Vs. V. Lakshminarayan](#), 2007 1 SCC 214, will have clear applicability of the facts of the present case, in as such as, the Apex Court has clearly held that the apprenticeship are

not governed by provision of Industrial Disputes Act and as such the apprentice ought not to have been treated as workman so as to grant him benefit.

[5] Learned advocate for the petitioner thereafter contended that assuming without conceding that the workman was entitled to some relief on account of breach of provision of labour laws, then also, looking to the original tenure of service of the workman with the bank the order of reinstatement would not be justified in any manner and instead of reinstatement, this Court may substitute with that of awarding compensation so as to meet with the end of justice. Learned advocate for the petitioner submits that a sum of Rs.10,000/- to 15,000/- or the sum that may be deemed fit by the Court be ordered to be paid to the workman in lieu of direction of reinstatement, or else the bank will be fastened with liabilities which may run into very huge amount for no fault on the part of the petitioner bank, as the workman is admittedly out of job since 1988 and his original tenure with the bank was from 31/10/1986 even if the apprenticeship period is taken into account.

[6] Learned advocate for the respondent workman contended that the order passed by the Industrial Tribunal does not require to be interfered with in any manner as the petition is filed under Article 227 of the Constitution, though it is styled to have been filed under Article 226 of the Constitution also but the requisite pleading are not available which would merit consideration of the petition under Article 226 of the Constitution of India.

[7] Learned advocate for the respondent workman further contended that the Tribunal has held that the workman was required to be reinstated on account of clear breach of provision of law and therefore this finding of fact recorded by the appellate court may not be interfered with by this Court under article 227 of the Constitution of India. The reinstatement direction is justified on account of finding that workman remained Clerk after completion of his apprenticeship period which ended on 31/10/1987. The decision of National Small Industries Corpn. Ltd cited at the Bar on behalf of the petitioner bank is of no avail to the petitioner in view of the fact that the facts narrated there under would indicate that the said decision has no applicability to the facts of the present case.

[8] Learned advocate Shri Rathod relying in case of [Textile Traders Co.op Bank Ltd Vs. Jagdishbhai Natwarlal Patel](#), 2000 3 GLH 477, contended that the fact that the workman completed 240 days is not in dispute and when said fact is recorded by the court of the competent jurisdiction, this Court may not interfere with the direction or else it would result into depriving the workman of his benefits arising out of the litigation for no fault on the part of the workman.

[9] This Court heard learned advocates for the parties and perused the petition and the annexures there under. The fact remains to be noted that though the petition is styled as filed under Article 227 also and there is no requisite pleadings which could be said to be making the petition one also filed under Article 226 of the Constitution of India, though the prayers indicate that the writ of mandamus or writ in the nature of mandamus or any other appropriate writ is sought, but that in itself would not be sufficient to make the petition to be maintained under article 226 of the Constitution as in absence of other averments indicating the clear breach of statutory provision and or existence of circumstances warranting issuance of writ and or any other appropriate direction in nature of writ, the petition is required to be treated as one having been filed only under Article 227 of the Constitution of India. Having considered this aspect, the Court is of the view that the petition is required to be treated as one having been filed under Article 227 of the Constitution of India only as had there been the petition was filed under Article 226 of the Constitution, then also in view of the latest decision of Full Bench in case of (The) [Bhagyodaya Co-Operative Bank Limited Vs. Natvarlal K Patel and Anr.](#), 2011 3 GLH 89, non joinder of the tribunal as party would render the petition liable to be dismissed so far as it is filed under Article 226 of the Constitution. Thus the impugned order and award is required to be viewed within the purview of exercise of jurisdiction under Article 227 of the Constitution of India. When the accepted restriction under article 227 of the Constitution are borne in mind for examining the judgment in question, then, one would come to a safe conclusion that the findings recorded by the Tribunal do not appear to be so perverse as to call for any interference as such for the following reasons.

a) The Tribunal has recorded that the workman was continued after the completion of apprenticeship period which was originally from 31/10/1986 to 31/10/1987. The workman's continuation after that period was not shown to be as a result of extension of apprenticeship period or any extension of apprenticeship contract, though the wages remain the same. In light of this finding this Court is of the considered view that the provision of section 18 as placed into service of Apprenticeship Act would be of no avail to the petitioner for assailing the judgment & order of the Tribunal under Article 227 of the Constitution of India.

b) The decision cited at the Bar in case of National Small Industries Corpn. Ltd also will have no applicability as the facts narrated in that judgment would clearly indicate that the Court came to the conclusion on account of the fact that the order of appointment in that case clearly indicate that the appointment was to come on hand on the day when in fact the appointment was brought to an end. Therefore this facts indicate that there was a clear order available on record which clearly indicated the tenure and terms of the appointment. Therefore the Apex Court

observed that the conclusion of the Labour Court there with regard to completion of 240 days was otherwise also not justified as even if the Apprenticeship Act was not available to help the employer, the terms of appointment order which was available on record squarely attract provision of section 2 (oo) (bb). Hence on that count also the view expressed by the Labour Court and confirmed by the High Court was not accepted by the Apex Court.

c) The facts in the present case are factually different than those before the Supreme Court in case of National Small Industries Corpn. Ltd . As in the instant case admittedly the apprenticeship of the workman was ended on 31/10/1987 and workman was thereafter continued is an undisputed fact. The workman's continuance and abrupt change in his service by way of termination would give rise to the workman for legitimately approaching the employer for setting right his grievance. In this facts & circumstance of the case when there exists clear finding qua illegality of termination of the workman this Court under Article 226 of the Constitution would not interfere unless & until non interference would result into miscarriage of justice. Hence the petition is required to be dismissed.

d) The Court is of the considered view that the contention of the learned advocate for the petitioner is not wholly unjustified on awarding of lump sum payment in lieu of reinstatement. But once the Court has come to the conclusion that the award impugned is not required to be interfered with in any manner and when the fact remains to be noted that the petition is pending in this Court and when the workman is deprived of his legitimate rights, the awarding of lump sum payment in lieu of reinstatement would amount to interfering with the award for which there exists no justification. Hence the prayer for awarding lump sum is also not accepted by the Court.

[10] In view of aforesaid discussions, the petition being bereft of merits deserves rejection and is accordingly rejected. Rule discharged. Interim relief granted earlier shall stand vacated. However, there shall be no order as to costs.