Bank Of Baroda vs Ghemarbhai Harjibhai Rabari on 17 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2799, 2005 (10) SCC 792, 2005 AIR SCW 1817, 2005 LAB. I. C. 2279, (2005) 2 ALLMR 492 (SC), (2005) 5 ALL WC 4270, (2005) 3 JCR 62 (SC), (2005) 3 JT 312 (SC), 2005 (4) SRJ 278, 2005 (2) UJ (SC) 1020, 2005 UJ(SC) 2 1020, 2005 (2) ALL MR 492, 2005 (3) SCALE 353, 2005 LAB LR 443, (2005) 31 ALLINDCAS 719 (SC), 205 (3) SLT 371, 2005 SCC (L&S) 963, (2005) 2 LAB LN 671, (2005) 2 SCT 447, (2005) 2 SCJ 749, (2005) 3 SERVLR 566, (2005) 105 FACLR 383, (2005) 2 LABLJ 475, (2005) 2 SUPREME 628, (2005) 3 SCALE 353, (2005) 3 GCD 1867 (SC), (2005) 2 BANKCLR 12

Bench: N. Santosh Hegde, B.P. Singh, S.B. Sinha

CASE NO.:
Appeal (civil) 4396 of 2003

PETITIONER:
Bank of Baroda

RESPONDENT:
Ghemarbhai Harjibhai Rabari

DATE OF JUDGMENT: 17/03/2005

BENCH:
N. Santosh Hegde, B.P. Singh & S.B. Sinha

JUDGMENT:

J U D G M E N T SANTOSH HEGDE, J.

This appeal arises out of a reference made to the Central Industrial Tribunal, Ahmedabad, in regard to the termination of services of the respondent herein. Said reference culminated in an award directing the appellant herein to reinstate the respondent herein in service at his original post with continuity of service and full backwages. A challenge to the said award made before a learned Single Judge of the Gujarat High Court by way of a writ petition came to be dismissed. A further appeal filed before a Division Bench of the same High Court also came to be dismissed, hence, this appeal.

Before the Industrial Tribunal, the respondent claimed that he was working with the appellant-bank as a driver on a salary of Rs.1,500 p.m. driving a car belonging to the bank allotted to one of its officers by name Mr. Menon. He claimed that he worked in that capacity from June, 1994 to October, 1995, and the salary paid to him was debited to the account of the bank in its books. He

also claimed that from October, 1995 his services were illegally terminated without paying any compensation under Section 25A of the Industrial Disputes Act, (the Act) and in violation of Sections 25G and 25H of the Act and on that basis he claimed his reinstatement with full backwages.

The bank in its turn denied the claim of the appellant that he was employed by it. It took a stand that it was a nationalised bank and under its rules and regulations any appointment that is made, will have to be through a letter of appointment and such appointment has to be made through the Employment Exchange or through an advertisement made by the bank. No such procedure was followed in the appointment of the workman in this case. It took the stand that it has a scheme under which the bank allotted a car to some of its Executives but the bank did not provide a driver for the car and the responsibility of having a driver was that of the concerned Executive, and if such Executive appointed a driver, the employment of the driver came to an end with the Executive's retirement or transfer. Therefore, such drivers were not employees of the bank. It, however, admitted that the amount of salary which is Rs.1,500 in this case paid by the Executive concerned was reimbursed by the bank but that did not make the driver an employee of the bank. According to the appellant-bank, this is a scheme which is applicable in many of the nationalised banks and the drivers of such vehicles are personal employees of the Executives concerned.

The Industrial Tribunal after holding an inquiry came to the conclusion that though there was no letter of appointment produced by the workman, he had produced 3 vouchers Exhibits 14 to 16 which showed that he was paid a sum of Rs.1,500 towards his wages as a driver and also established the fact that he had continuously worked from 17.7.1994 to 10.10.1995. The tribunal also noticed the fact that the bank in turn did not produce any material whatsoever either to establish its scheme as pleaded before the tribunal or to deny or explain the vouchers produced as Exhibits 14 to 16 by the workman to prove that he had received salary from the bank. It is on the basis of the said factual background that there being no material produced by the bank either to establish the existence of a scheme under which the respondent-workman was employed or there being no explanation in regard to the payment vouchers Exhibits 14 to 16 produced by the workman, the tribunal came to the conclusion that in spite of the fact that there was no letter of appointment since the factum of the workman having worked between July, 1994 and October, 1995 was established, the termination of the services of the workman was contrary to the provisions of the Act. Accordingly, it accepted the reference and made the award as stated hereinabove.

As noted above, challenge to the said award by the bank before the learned Single Judge as well as before the Division Bench of the High Court has failed. The Division Bench of the High Court in the impugned order agreed with the finding of the tribunal that the respondent-workman was driving the car of the bank between July, 1994 and October, 1995. It also accepted the genuineness of the vouchers Ex. 14 to 16 which showed the payment made by the bank to the workman, hence, came to the conclusion that such vouchers would not have been issued by the bank if really the respondent-workman was not employed by the bank itself. It also noticed the fact that the signatures of the workman were obtained in the Register maintained by the bank. It further noticed the fact that as against the said evidence produced by the respondent-workman, there was absolutely no evidence led by the bank. Thus, it concurred with the findings of fact arrived at by the tribunal as affirmed by the learned Single Judge.

Before the Division Bench of the High Court the bank had relied on a judgment of this Court in the case of Range Forest Officer etc. v. S. T. Hadimani (2002 (3) SCC 25) which judgment was distinguished by the High Court in the impugned order by holding that unlike in that case, in the present case the employee has by cogent evidence established that he had worked as a driver of the car of the bank for the period from July, 1994 to October, 1995. Even the judgment of this Court in the case of Punjab National Bank v. Ghulam Dastagir (1978 2 SCC 358) was distinguished by the High Court since the ratio laid down in the said case would not apply in view of the established facts of this case. Mr. S.S. Javali, learned senior counsel appearing for the appellant-bank, contended that the bank has a procedure for employing its workmen and the respondent-workman having admittedly, not appointed as per the said procedure and having not produced any letter of appointment, the tribunal and the courts below seriously erred in accepting the oral version of the workman. He also contended that the burden of proof that the workman was employed by the bank being on him, the same has not been discharged, therefore, the labour court and the High Court erred in wrongly shifting the onus on the appellant-bank to disprove a case not established by the workman. He also placed reliance on a judgment of this Court in the case of M.P. Electricity Board v. Hariram (2004 (8) SCC 246).

Dr. Rajeev Dhawan, learned senior counsel appearing for the respondent-workman, supported the findings of the tribunal as well as the labour court and contended that the workman to the extent possible had produced the material that was available with him and even that material has not been rebutted in any manner by the appellant-bank. He further contended that it has even failed to establish that there was a scheme by which the concerned Executive was to employ his own driver. He submitted that in the instant case the vouchers Exhibits 14 to 16 clearly showed that the payment made to the workman was by the bank, hence, these findings being findings of fact, this Court should not interfere with the conclusions arrived at by the labour court and the High Court.

While there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the Executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the Register maintained by the bank. In this factual background, the question of workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank.

As held by the High Court and referred to hereinabove, neither the judgment of this Court in the case of Punjab National Bank (supra) nor in Range Forest Officer (supra) would assist the appellant in this case because of the proved facts of this case. Even the case of M.P. Electricity Board (supra) relied upon by the learned counsel for the appellant, does not help the appellant. Said judgment only lays down that the initial burden of establishing the factum of the workman having continuously worked 240 days in a year, rests with the workman (See para 10). In this case that factum having been established, even that case, as stated, would not assist the appellant in challenging the orders of the courts below.

For the reasons stated above, we are of the considered opinion that the respondent-workman in this case has established his claim as held by the tribunal, and we find no reason whatsoever to interfere with the impugned order. The appeal fails and the same is dismissed with costs.