

(2010) 06 P&H CK 0050

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 10307 of 2009

Bank of Baroda

APPELLANT

Vs

Presiding Officer, Central
Government Industrial Tribunal
and Another

RESPONDENT

Date of Decision: June 30, 2010

Citation: (2010) 4 LLJ 439

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: B.B. Bagga, for the Appellant; Nitya Nandan, for the Respondent

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

Middle pass needy Jai Kishan (Respondent No. 2) had applied for post of Peon with Bank of Baroda through his application submitted in February 2000. On being found eligible, Respondent No. 2 was appointed as a Peon during March 2000. He had hardly been into the service, when a complaint was received by the Bank alleging that Respondent No. 2 had concealed his actual academic qualifications to get this appointment. The allegation was not that Respondent No. 2 did not have the requisite educational qualification or that he had misled the Bank in any manner. The complaint was that he was in fact more qualified being matriculate but has mentioned his qualification to be 8th standard pass. This was construed to be a misconduct on his part and enquiry ordered against him. Finding, the complaint to be correct, the Petitioner Bank acted against Respondent No. 2. It was revealed that Respondent No. 2 had appeared in the matriculation examination in the year 1991-92 but had not qualified. Strangely, the Bank still decided to charge sheet Respondent No. 2 for making false statement and for concealing material facts regarding his qualifications.

2. Was this a misconduct committed by Respondent No. 2 and serious enough to charge sheet him and ultimately to dismiss him from service? This question would certainly agitate any right thinking mind. This would be so when concededly, Respondent No. 2 had even not passed matriculation. He had only appeared in examination but had not passed. By no stretch of imagination he could be said to have passed matriculation to allege that he had made any false representation. Indeed Respondent No. 2 was only 8th Class pass and had disclosed so in the documents submitted by him with the Bank. Insensitive to the situation, the Bank and the Enquiry Officer held the charge proved. Equally Insensitive, Disciplinary Authority imposed highly excessive and shock conscious punishment of dismissal and so a poor peon lost his livelihood.

3. One would wonder as to how any misconduct could be urged against Respondent No. 2, considering the facts as noticed. Indeed, Respondent No. 2 was 8th Class passed, which he had so stated. He apparently was not under any obligation to disclose that he had appeared in the matriculation examination and had not qualified there at. In any case, how this would amount to a chargeable misconduct, was a question, which perhaps did not invite attention of either the Bank or the Enquiry Officer. Respondent No. 2 must have rightly felt agitated and aggrieved against this highly whimsical and arbitrary action against him, leading to his dismissal. Losing a job for a person, who was working as a Peon, would certainly have been a cause of great hardship to survive. The competent Appellate Authority also failed to see reason and had rejected the appeal.

4. Respondent No. 2 was, thus, left with no alternative but to seek reference of an industrial dispute. When the conciliation failed, the Central Government referred the dispute in regard to termination of Respondent No. 2 for adjudication to the Labour Court. The Labour Court saw sense and has set-aside the order of termination directing reinstatement of Respondent No. 2 vide an award passed on August 6, 2007. Unsatisfied Petitioner-Bank has chosen to file the present writ petition to impugn the said award.

5. At the outset, learned Counsel appearing for the Bank was asked to justify as to under what provisions of the Regulation, the allegation would reveal any misconduct as alleged against Respondent No. 2. The counsel could not show any provision of the Bipartite Agreement, under which the allegation made against Respondent No. 2 would lead to any misconduct. The only response which he could make was that Respondent No. 2 had provided a misleading information while seeking the employment and had filed an affidavit also, which was false and as such, the misconduct was enough to order his dismissal.

6. Learned Counsel appearing for Respondent No. 2 is justified in making reference to the portion of award where this factual aspect of the allegation regarding supplying the information about qualification has been discussed. The Labour Court in this regard has observed as under:

There is no doubt that the workman had given his qualification as middle pass on the day he applied for the post and also appeared in the interview although he had appeared in the matriculation examination and was placed in compartment. The workman, therefore, withheld the facts from the Management and had he disclosed the same he would not have been considered for appointment on the post he was appointed. The fact, however, remains that by appearing in the matric exam and failing, the workman had not added any qualification to his credit. Although his statement that he had not studied after 8th standard was a wrong statement but it could be out of ignorance since matric fail was as 8th pass. There is no evidence to show that it was an intentional act of the workman to suppress the facts. His thinking that by having appeared in the matric exams he could not be considered more than having passed an 8th standard, could also be the reason. This fact could be clarified in the inquiry which I have said was farce and not proper. It is also a fact that by giving wrong statement about his qualifications he might have usurped the rights, of his co-contestants but by his action he did not cause to any loss economical or otherwise, to the Management. There has come no evidence on record to show that during the period he served the Management, he committed any misconduct in the performance of his duties. It is his sheer ill luck that a co-worker named Nandi Lal made a complaint against him that the workman has secured the employment by mis-stating the facts to the Management, otherwise they had no complaint about his working.

Besides, it was also noticed by the Labour Court that in a similar case, the management while awarding punishment to the workman had taken a lenient view and case against another workman was disposed of by awarding stoppage of two increments with cumulative effect.

7. The counsel for the Petitioner-Bank had highlighted the information given by Respondent No. 2 in his affidavit that he had not studied beyond 9th Class and never took admission or appeared in 10th Class from any school or Board. It is nowhere pointed out that Respondent No. 2 had taken admission or had appeared from any school to say that the information submitted in the affidavit was false, thus, could not have been established. It has rightly been observed by the Labour Court that even if it be so that this information was false but it was of no consequences to the Petitioner-Bank. In order to get employment, Respondent No. 2 had disclosed that he was 8th Class passed, which was factually an accurate information. Respondent No. 2 was not a matriculate, though may have appeared for the examination but had not qualified in the said examination. The information about the qualification as supplied, thus, could not be termed as false to urge that he had committed any misconduct. It could not be shown that the misrepresentation, if any, has led to any harm or such consequences for the Petitioner-Bank. In any case, Respondent No. 2 was having a bit better position than the minimum requirement. How this could be considered to his disadvantage or as disqualification for employment is hard to understand. The Bank was totally

unjustified in proceeding against Respondent No. 2 and then to dismiss him from service. In any event, the punishment is highly excessive which in itself may be an indication of bias. All the above noted and relevant consideration while dealing with the case were ignored by the authority. The Bank, in my view, has not acted in a fair and just manner against a poor employee, who has been dragged to this Court and, thus, made to spend substantial sum of fortune. A poor peon has been made to fight an unequal battle by the Bank without any justifiable cause. There is no merit in the writ petition and the same deserves to be dismissed with exemplary costs for making the poor person to come upto this Court. The writ petition is accordingly dismissed with costs of Rs. 25,000/-.