



WEB COPY



W.A. No. 1770 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 1770 of 2021

A.R. Murthy

..Appellant

Vs.

1. The Special Officer,
Chennai Central Co-operative
Bank Ltd.,
Prakasam Road, Broadway,
Chennai – 600 108.

2. The Presiding Officer,
I Additional Labour Court,
Chennai – 600 104.

..Respondents

Prayer: Writ Appeal as against the order dated 20.04.2018 passed in

W.P. No. 4534 of 2012.

For Appellant :: Mr.C. Venkatesan

For Respondents :: Mr.A. Praveenkumar for
Mr.P. Anbarasan for R1
R2 Court



W.A. No. 1770 of 2021

J U D G M E N T

WEB COPY **S. VAIDYANATHAN,J.**

AND

R. KALAIMATHI,J.

The present appeal has been preferred against the order passed in W.P. No. 4534 of 2012 by which the award of the Labour Court passed in I.D. No. 52 of 2007 was set aside.

2. The case of the appellant herein was that he was engaged as an Attender by the Manager of Co-operative Bank, Triplicane Branch and that he was paid Rs.50/- per day and he was terminated from service on 10.05.2005. The appellant's demand to reinstate him on 24.05.2005 did not yield any result, which resulted in the employee approaching the Conciliation Officer by raising a dispute under Section 2A of the Industrial Disputes Act, 1947 (in short "I.D.Act") and upon failure, the dispute was taken up by the Labour Court in I.D. No. 52 of 2007. During the pendency of the industrial dispute, an application was filed for production of documents and the 1st respondent Management had filed their counter stating that they have not been maintaining records as stated by the appellant and that the application needs to be rejected. It is further stated by



W.A. No. 1770 of 2021

the Management that there was no legal obligation cast upon them to maintain records in respect of those engaged for casual work and in the absence of the same, the application seeking production of documents needs to be rejected. However, the Management admitted in the counter dated 10.10.2008 before the Labour Court that the appellant was employed as a casual labour. The appellant/employee had filed six documents apart from examining himself. The employee contended that he had worked for 240 days in a period of 12 calendar months and that the employer failed to comply with Section 25-F of I.D.Act and that he is entitled to be reinstated in service with continuity of service and other attendant benefits.

3. The 1st respondent has denied the averments of the workman stating that the Management has no power to appoint any person much less the appellant. In terms of the bye-laws, only the Managing Director is empowered to appoint a person. That apart, in terms of Rule 149 of Tamil Nadu Co-operative Societies Rules, 1983, the employer will have to follow certain procedure for recruiting employees and that there cannot be any appointment through backdoor entry.



W.A. No. 1770 of 2021

4. The Labour Court, after analysing the evidence of the parties came to the conclusion that the employee was working as a daily wager.

The Labour Court has also observed that pursuant to order in I.A. No. 315 of 2008, the 1st respondent did not produce any document. Hence, the Labour Court drew an adverse inference and came to the conclusion that the employee had worked for more than 240 days. The Labour Court has also observed that the 1st respondent being a Co-operative Bank, the employee should have been either sponsored through Employment Exchange for appointment or should have been appointed by the Managing Director. However, the Labour Court held that since the employee has completed more than 240 days of work, the case of the employee needs to be considered, as and when vacancy arises.

5. Heard both sides.

6. The finding of the Labour Court was that as and when vacancy arises, the case of the employee should be considered. Eventhough the industrial dispute was allowed in part, the Labour Court has not set aside the termination order and granted any relief except stating that the case of the employee should be considered as and when vacancy arises. A reading of



W.A. No. 1770 of 2021

paragraph No.11 of the award would make it very clear that it is in favour of the employer and the same is extracted hereunder:

"11. இறுதியாக, இம்மனு பகுதியாக அனுமதிக்கப்படுகிறது. மனுதாரருக்கு எதிர்மனுதாரர் பணியிடம் காலியாகும்போது, எதிர்மனுதாரர் வேலைக்கு ஆள்எடுக்கும்போது மனுதாரருக்கு முன்னுரிமை வழங்கி, மனுதாரருக்கு மீண்டும்பணி மனுதாரர் செய்த வேலையை வழங்க வேண்டும் என தீர்வம் வழங்கப்படுகிறது. மனுதாரர் மனுவில் கோரியுள்ள இதர பரிகாரங்கள் பொறுத்து இந்த மனு தள்ளுபடி செய்யப்படுகிறது. செலவுத்தொகை இல்லை."

However, the employer has filed the writ petition challenging the award which was allowed by the learned Single Judge on the ground that the award of the Labour Court in directing the Management to consider the employee for future employment is unimplementable and the same cannot be countenanced both in law and on facts. The learned Single Judge has held that the Labour Court has exceeded its jurisdiction in granting the relief and thus, set aside the direction of the Labour Court to the Management to consider the claim of the workman for any future employment in the category of substaff. A glance at Rules 149(1) and 149(2) of Tamil Nadu Co-operative Societies Rules, 1983, which are extracted below, would make it very clear that recruitment to the Bank needs to be in accordance with the Rules:



W.A. No. 1770 of 2021

"149. Conditions of service of paid officers and servants of societies. - (1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Registrar a special by-law covering the service conditions of its employees. The special by-law shall, inter-alia, prescribe the following:

- (i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such post.
- (ii) The method of recruitment for each such post.
- (iii) The scale of pay and allowances for each such post.
- (iv) Conditions of probation for each such post.
- (v) Duties and responsibilities for each such post.
- (vi) Leave of various kinds admissible and the conditions thereto for each such post.
- (vii) The penalties that may be imposed upon, the procedure for taking the disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.
- (viii) Conditions relating to acquisition and disposal of movable and immovable property:

.....



WEB COPY



W.A. No. 1770 of 2021

(2) *No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the society and also of the affiliated societies, inviting application from the eligible employees of such societies. When the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State:..."*

7. In the present case on hand, there is no evidence before the Labour court to hold that the employee has completed 240 days in 12 calendar months except drawing an adverse inference. Though adverse inference was rightly drawn for non-production of documents, the relief granted by the Labour Court cannot be implemented which has been rightly observed by the learned Singel Judge. Hence, we are of the view that the order of the learned Single Judge setting aside the award of the Labour Court need not be interfered with. If the appellant is otherwise eligible to be considered for appointment, when an advertisement is issued, in terms of Rule 149 of Tamil Nadu Co-operative Societies Rules, 1983, he can make necessary application and depending upon selection process, his case will have to be considered by relaxing the age limit alone. We find no error in



WEB COPY



W.A. No. 1770 of 2021

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

nv

the order of the learned Single Judge. Accordingly, the writ appeal stands disposed of. No costs.

nv

(S.V.N.J.) (R.K.M.J.)
15.02.2023

To

The Special Officer,
Chennai Central Co-operative
Bank Ltd.,
Prakasam Road, Broadway,
Chennai – 600 108.

W.A. No. 1770 of 2021