

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1523 of 1995

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1. The Chapra Dist. Central Co-Operative Bank Ltd. Chapra through its Managing Director, P.S. Chapra, Dist. Saran (Chapra).
 2. The Managing Director, the Chapra District Central Co-operative Bank Ltd., Chapra, P.S. Chapra, Dist. Saran (Chapra).

.... Petitioner/s

Versus

1. The Presiding officer, Labour Court Chapra, P.S. Chapra, Dist. Saran (Chapra).
2. Shri Jai Prakash Rai, S/o not known resident of Village Chapra, P.S. Chapra, Dist. Saran (Chapra).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjiv Kumar, Adv.

For the Respondent/s : Mr. Anisul Haque, AAG-9

For the Pvt. Resp. : Mr. Umesh Kumar Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 29-01-2015

Heard learned counsel for the petitioner and learned counsel for the State as also learned counsel for the respondent no.2.

2. In this writ application, the prayer of the petitioner District Central Co-operative Bank Ltd. (hereinafter to be referred to as 'the Bank') is to quash the award dated 26.6.1993 passed by the Labour Court in Reference Case No. 4 of 1991.

3. Learned counsel for the petitioner, assailing the aforementioned award, has straightway questioned the findings of the Labour Court in the impugned award directing for reinstatement of the respondent no.2 with back wages on the ground that as a matter of fact the respondent no.2 was never appointed in the Bank much less in the prescribed manner and that the story of appointment introduced by



respondent no.2 was never proven by him. He further submits that the Bank, being a cooperative society within the meaning of Bihar and Orissa Cooperative Society Act, was bound to make appointment only by following the provisions as laid down by the State Government but there was not even an iota of evidence led by the respondent no.2 to show that the alleged appointment had ever been made as per the prescribed norms. Learned counsel for the Bank, in this regard has sought to seek support from the judgment of the Full Bench of this Court in the case of *Kameshwar Rai & Ors. Vs. The State of Bihar & Ors.* reported in reported in *2009(2)PLJR 1017*.

4. Learned counsel for the petitioner Bank had next contended that in any event, the order of the Labour Court, directing the petitioner Bank to reinstate the respondent no.2 with back wages, was also in teeth of the law laid down by the Apex Court and in this Court holding that reinstatement is not the only remedy even if termination of service is found to be unjustified. In this regard, he has referred to a recent judgment of the Apex Court in the case of *B.S.N.L. Vs. Bhurumal* reported in *2014(1) PLJR (SC) 230 ~ 2013(4) BBCJ 386*

5. Mr. Umesh Kumar Mishra, learned counsel for the respondent no.2, on the other hand, has submitted that it will be too late in the day to assail the appointment of the respondent no.2 because there are impeachable evidence including the order of appointment of the respondent no.2 issued by the Secretary to the



Cooperative Society as also notes of inspection of the Managing Director of the Bank which will definitely go to show that not only the petitioner was appointed in the Bank on the post of Cashier but was also found to be working. He would, therefore, submit that such findings of fact recorded by the Labour Court cannot be interfered by this Court in exercise of power under Article 226 of the Constitution of India specially when there is no perversity in the award of the Labour Court.

6. In the considered opinion of this Court, the issue which will go to the root of the matter is with regard to establishment of the claim of the respondent no.2 of his being appointed in the Bank. The Bank is a cooperative society and the appointment has to be made as per the norms laid down by the State Government. Whatever was brought by the respondent no.2 by way of alleged appointment letter and that too its photocopy could not have gone to hold that the respondent no.2 was actually appointed in the service of the Bank. In any event, the photocopy of the document could not have been admitted in evidence and, to that extent, the reliance placed by the Labour Court by making that photocopy an exhibit is absolutely perverse and unsustainable in the eye of law.

7. Similarly, the Labour Court in the impugned award has completely misdirected itself in relying on the alleged photocopy of the appointment letter of the respondent no.2 as a gospel truth even



when the maker of the document, namely, Hira Lal Rai, Secretary who had made the alleged appointment, was not examined. There is nothing on record to show that though an application was filed for examination of Hira Lal Rai and yet he did not appear so as to draw adverse inference against the Bank in the matter of appointment of the respondent no.2.

8. This Court would find that there is similar fatal error committed by the Labour Court even in exhibiting and relying on alleged notes of inspection of the Managing Director (Exhibit W/5). Whatever was allegedly written in the Exhibit W/5 being a matter of personal knowledge of the Director Shiv Narayan Sharma, its contents could have been proved only by way of deposition of Shiv Narayan Sharma. There is again nothing on record to show as to how the Labour Court had accepted the report of Shiv Narayan Sharma the Director when the same was not proved either by him, being the maker of the document or by anyone else acquainted and aware of such report.

9. In any event, what the Labour Court has not taken into consideration is the law on the subject which lay down that there would be a world of difference between an illegal appointment and appointment void ab initio. In the case of appointment void ab initio, there would be no case of termination of service because such appointment in fact never came into existence. It is this aspect of the

matter which has been accept by this Court in the case of Kameshwar Rai (supra) wherein it was held as follows:-

*"13. In our view, the contention raised by the learned counsel for the workmen cannot be accepted as there was no valid appointment. The appointment was null and void. In such a situation, the employer cannot keep them in service. The co-operative societies can appoint employees only in accordance with the law. Since they were appointed without undergoing the selection process by a selection committee, the appointment was held to be null and void by the Division Bench and the same was affirmed by the Supreme Court also. Therefore, we are of the view that it cannot be stated that their termination of service is retrenchment and they are entitled to compensation. If their appointment itself is null and void, there is no necessity for issuing even a termination order and they cannot be reinstated in service also. Section 25G of the ID Act deals with „the procedure for retrenchment“. Only junior-most workman can be retrenched on the principle of „first come last go“. If after invalid appointment juniors are appointed validly, Section 25G cannot be applied. That also shows that termination of service on the ground that the initial appointment itself was declared void stands on a different footing and it cannot be retrenchment. Section 25H of the ID Act deals with re-employment of retrenched workmen“. Since the appellant was not validly appointed, the question of giving him re-employment does not arise. It shows that the termination on the ground that the appointment itself is ab initio void will not amount to retrenchment as defined in Section 2(oo) of the ID Act so as to attract the procedure under Section 25F. The Division Bench in **Teja Prasad's case** (supra) held that the appointment being null and void, it cannot be said to be cancellation of appointment or termination of service. It is ab initio void from the very beginning. Consequently if*



*appointment is made, there cannot be termination of service much less retrenchment and since there is no retrenchment, the question of complying with the provisions of Section 25F does not arise. Here, in this case, the notification was issued by the Government restraining the co-operative societies from making appointments. Therefore, appointment cannot be made and there exists no right in law. In **State of Punjab v. Jagdeep Singh** (AIR 1964 SC 521), a Constitution Bench of the apex Court held that when an order is void, the authority who had issued it, had no power to make it and cannot override any legal rights. In **M.P Housing Board and another v. Manoj Shrivastava** (2006(2) SCC 702), it was held that if an appointment is made contrary to the provisions of the statute, the effect would be that no legal right is derived by the employee. The said legal position is made clear in **Dhampur Sugar Mills Ltd. V. Bhola Singh** (2005(2) SCC 470). Hence, we overrule the decision in **Mithilesh Kumar Singh's case** (supra) and hold that if the initial appointment is illegal and void, especially in view of the statutory mandate under Section 66B (2) of the Societies Act, the termination of service of the workmen on that ground will not be retrenchment and they will not be entitled to any relief, on the principle that those who come through back door shall go through the back door."*

10. Here, when the petitioner has sought to make out a case in the written statement that respondent no.2 was never appointed in the Bank and that the alleged appointment being claimed by the respondent no.2 was void ab initio, inasmuch as, no process of selection was undergone in the alleged appointment of the petitioner,, the Labour Court had to at least find out some evidence to record its findings that such appointment was made in a legal and prescribed manner. A Photocopy of the appointment letter whose maker was not

examined can never be a clinching evidence for recording a finding of appointment of respondent no.2.

11. Having regard to the first issue answered in favour of the petitioner, this Court is not required to go into the second aspect as to whether the Labour Court ought to have not passed an order of reinstatement even it had found the termination of the services of the respondent no.2 to be bad.

12. Thus, in the result, this writ application is allowed and the impugned award dated 26.6.1993 is quashed.

13. This Court, to meet the end of justice, therefore would find it necessary to remit the matter back to the Labour Court for re-consideration of the case of both the parties afresh.

14. The Labour Court shall give opportunity to both the parties to lead their respective evidence as also hearing them before making its fresh award in accordance with law preferably in a period of six months by taking up this case on priority basis and conducting its proceedings on day to day basis.

(Mihir Kumar Jha, J)

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