

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM**

**WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936**

**WP(C).No. 15541 of 2005 (A)**  
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**PETITIONER(S) :**  
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**THE NVAIKULAM SERVICE CO-OPERATIVE BANK LTD. NO.694,  
NAVAIKULAM P.O., TRIVANDRUM,  
REPRESENTED BY ITS SECRETARY.**

**BY ADVS.SRI.V.G.ARUN  
SRI.T.R.HARIKUMAR**

**RESPONDENT(S) :**  
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- 1. THE LABOUR COURT OF KOLLAM,  
REPRESENTED BY ITS SECRETARY.**
- 2. K.MADHAVA KURUP, MADHAVA VILASOM,  
KADAVOOR, NJARAYIL KONAM P.O., MADAVOOR,  
TRIVANDRUM.**

**R1 BY GOVERNMENT PLEADER SRI.SOJAN JAMES  
R2 BY ADV. SRI.GOPAKUMAR R.THALIYAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

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EXHIBIT P1: TRUE COPY OF THE LETTER DATED 11.07.1992 OF THE BANK.

EXHIBIT P2: TRUE COPY OF THE RESOLUTION NO.3 DATED 13.09.1992.

EXHIBIT P3: TRUE COPY OF THE PROCEEDINGS NO.CRB(1)688/94  
DATED 08.11.1994.

EXHIBIT P4: TRUE COPY OF THE PROCEEDINGS NO.CRP(1)4201/94  
DATED 03.12.1994.

EXHIBIT P5: TRUE COPY OF THE RESOLUTION NO.20 DATED 10.12.1994.

EXHIBIT P6: TRUE COPY OF THE PROCEEDINGS NO.CRP(1)374/95  
DATED 17.03.1995.

EXHIBIT P7: TRUE COPY OF THE CLAIM STATEMENT IN I.D.NO.82/1995  
DATED 05.10.1995.

EXHIBIT P8: TRUE COPY OF THE WRITTEN STATEMENT IN I.D.NO.82/1995  
DATED 16.08.2002.

EXHIBIT P9: TRUE COPY OF THE AWARD IN I.D.NO.82 OF 1995  
DATED 25.01.2005.

EXHIBIT P10: TRUE COPY OF THE LETTER NO.21/85 DATED 25.07.1985.

EXHIBIT P11: TRUE COPY OF THE STATEMENT SHOWING COMMISSION.

EXHIBIT P12: TRUE COPY OF THE STATEMENT SHOWING THE COMMISSIONER  
RECEIVED BY THE PETITIONER.

EXHIBIT P13: COPY OF EXTRACT OF THE GENERAL LEDGER.

RESPONDENT(S)' EXHIBITS

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NIL

//TRUE COPY//

P.A.TO JUDGE.

**C.K.ABDUL REHIM, J**

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W.P.(C). No. 15541 OF 2005

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Dated this the 21<sup>st</sup> day of January, 2015

**JUDGMENT**

The petitioner Co-operative Society is challenging Ext.P9 award passed by the 1<sup>st</sup> respondent, the Labour Court, Kollam, in an Industrial Dispute in which the society was the management. The dispute in question was raised by the 2<sup>nd</sup> respondent herein, who claimed that he is a workman illegally retrenched. Consequent to the failure report submitted by the labour authorities concerned, the Government have referred the matter for adjudication by the labour Court. In the claim statement filed by the 2<sup>nd</sup> respondent before the Labour Court it is contended that he was appointed as a 'Sales Man' in the petitioner society on 1.8.1985 and continued there till 11.7.1992. On that day the management had relieved him temporarily without any reason. But later he was reinstated with effect from 27.8.1992. From 15.9.1992 the 2<sup>nd</sup> respondent was engaged as a 'Collection Agent' with respect to the "Minor Savings Deposits" and while working as such the management, as

per order dated 14.12.1994, terminated his service with effect from 15.12.1994. According to the 2<sup>nd</sup> respondent the termination was made without complying any of the procedure contemplated under 25 F of the Industrial Dispute Act. Hence he prayed for reinstatement with back wages and continuity in service.

2. The petitioner society resisted the claim in a written statement filed, contending that there exists no employer-employee relationship, because the petitioner was never appointed through any recruitment proceedings. According to the society, he was engaged only as a temporary Sales Man on daily wages, at the rate of Rs.10/- in a Textile Depot, which was later closed due to heavy loss. Therefore the 2<sup>nd</sup> respondent was terminated on 12.7.1992. Later as per the decision of the Managing Committee he was engaged in the 'Onam Market' temporarily for a season sale, for a short period. Thereafter on the basis of application submitted by the 2<sup>nd</sup> respondent the Bank had decided to engage him as a Collection Agent

for 'Minor Savings Deposits' on certain basis. He was terminated when the conditions of employment were not complied with and when the administrative department of Co-operative Banks had issued directions to terminate all temporary employees who were engaged without the sanction of the Department. It is further stated that in compliance with the directions issued by the authorities, all the temporary employees were terminated and the Bank was directed to appoint persons by undergoing regular recruitment proceedings. The 2<sup>nd</sup> respondent herein has not applied for appointment to any of the posts, pursuant to the notification issued in this regard. Therefore it is contended that he has no right for getting reinstatement.

3. On the basis of evidence adduced, the Labour Court raised issues as to whether the 2<sup>nd</sup> respondent was a permanent employee of the opposite party (management) or as to whether he was only a temporary worker as alleged by the management. Further, as to whether the 2<sup>nd</sup> respondent is entitled for reinstatement along with back wages. Before

the labour court the 2<sup>nd</sup> respondent had produced Ext.W(1) appointment letter issued during the year 1985, Ext.W(3) the letter by which he was temporarily discharged from service on 11.7.1992, Ext.W(5) by which the management reinstated him on 17.10.1992 and Ext.W(7) the order through which he was terminated from service, along with other documents. The Secretary of the petitioner society deposed before the labour court that the 2<sup>nd</sup> respondent was appointed only as temporary Sales Man on daily wages of Rs.10/- and while so the depot was closed due to loss. It is further stated that the 2<sup>nd</sup> respondent was again appointed as Collection Agent on a stipulation to collect Rs.7,000/- per month on the agreement to pay 4% of the collection charges as commission. It is further stated that he was terminated pursuant to the direction of the Joint Registrar to terminate service of all temporary workman. Ext.M1(2) M12 are the documents produced on behalf of the management. Ext.M8 and M9 are the directions issued by the Joint Registrar on 8.11.1994 and 3.12.1994.

4. On evaluating the evidence on record, the labour court found that in 1985 the 2<sup>nd</sup> respondent was appointed against a permanent post which was duly notified. The above finding was based on Ext.W(1) document which required the 2<sup>nd</sup> respondent to make Security Deposit as required under the notification. Therefore it was found that the appointment was permanent and made on the basis of a due selection process. At the same time, the labour court noticed contentions of the management that the appointment was on temporary basis. However the labour court observed that whatever be the basis of appointment, whether permanent or temporary, when an employee had completed the period of 240 days, the management cannot terminate the worker without compliance of procedure under Section 25F. Therefore the 2<sup>nd</sup> respondent is entitled for reinstatement, is the findings. With respect to contentions raised on behalf of the petitioner society that, the termination was affected on the basis of directions issued by the authorities of the Co-operative Department

and that the continuance of the petitioner was violative of Section 80 (3) of the Co-operative Societies Act, the Labour Court observed that those provisions has no applications with respect to appointments made during the year 1985. Finding that the 2<sup>nd</sup> respondent is not claiming the post of the Collection Agent, but his appointment was to the post of Sales Man, it was observed that he was continuously holding the post of sales man for a long period and he was working in a permanent approved post of the society. Therefore on the finding that he was illegally terminated an Award was passed directing the petitioner society to reinstate him with 50% of the back wages and attendant benefits within one month.

5. Learned counsel for the petitioner contented that the impugned Award is totally illegal, erroneous and incorrect. It is contended that the petitioner was terminated from the post of Sales Man as early as in the year 1992 and that he was engaged from 1992 onwards only as a Collection Agent. Eventhough the above fact was

admitted by the workman in his claim statement, it had omitted notice of the labour court. According to learned counsel even if the labour court had arrived at a conclusion that there is illegal retrenchment in violation of Section 25F, because the workman had completed 240 days of continuous engagement, reinstatement could be ordered only to the post from which he was terminated. In this regard the petitioner had placed reliance on a Division Bench decision of this court in **Koodaranji Service Co-operative Bank v M.M. Lissy and Others, 1993 2 KLT 706**. In the said decision it is observed that, the workman was terminated while she was working as a clerk on daily wages and therefore she can be reinstated, if at all possible only to that category of daily rated employee. In the case at hand, since it is admitted by the workman, that he was terminated while he was working as a Collection Agent, if at all reinstatement can be ordered it can only be to that post is the contention.

6. Learned counsel for the petitioner further contended that the termination was on the basis that the temporary appointment could not be continued on the basis of Section 80 and that the termination was affected based on the directions issued by the Joint Registrar of Co-operative Department. Therefore the workman cannot be continued under the employment of the Bank and his service had to be terminated. Hence the termination of service was not on the basis of any voluntary act on the part of the Bank and it was only on the basis of directives of the authority, over which the Bank had no control. When the service of the 2<sup>nd</sup> respondent as a Collection Agent was not capable of being continued, the reinstatement could not have been ordered by the labour Court is the contention. In **Koodaranji Service Co-operative Bank's case** (cited Supra), the Division Bench held that when a Co-operative Society was directed to terminate service of an employee as the employment was made in violation of the statutory provisions, the society had no alternative but to terminate

service of the employee in compliance with the orders issued. In such case if the engagement was made in violation of relevant statutory provisions under the Co-operative Societies Act and the Rules, such engagement will not create any legal relationship of master and servant between the Bank and the workman. In such case the workman could not be continued under employment of the bank. If the termination was as a result of such supervening impossibility, it will not amount to retrenchment. Learned counsel contended that there is an admission to the effect that the 2<sup>nd</sup> respondent was engaged as a Collection Agent with effect from 15.9.1992 onwards. If such an engagement was against the statutory provisions and if such engagement was terminated on the basis of the directions issued by the authorities, there cannot be any finding of illegal retrenchment and the workman is not entitled for reinstatement with back wages.

7. While considering the above narrated contentions this court is of the opinion that the Labour Court had failed

to consider the legal questions involved in its real perspective. When there is an admission on the part of the workman to the effect that the daily wage engagement was terminated long back and thereafter he was continuing only as a Collection Agent and when it is brought in evidence that such an engagement could not have continued because it became violative of statutory provisions and because of the binding nature of directions issued by the administrative authorities having control over the society, whether it was justified to order reinstatement in the temporary post, from where he was terminated long back. Settled legal position also requires consideration. Therefore it is necessary in the interest of justice to set aside the impugned Award and to remand the matter for fresh disposal by the Labour Court.

8. In the result the writ petition is allowed. Ext.P9 Award passed by the 1<sup>st</sup> respondent/Labour Court is hereby set aside. The matter is remanded to the Labour Court for fresh disposal, on the basis of the evidence on record, on taking note of the legal contentions raised and also taking

note of the settled legal precedents. The Labour Court shall dispose of the matter afresh, after affording an opportunity of hearing to all the parties concerned. A fresh Award will be passed in the matter at the earliest possible, at any rate within a period of 3 months from the date of receipt of a copy of this judgment.

Sd/-  
**C.K. ABDUL REHIM**  
**JUDGE**

SKV/AMG

True copy

P.A. to Judge