

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.33757 of 2003

S.Narayana Pillai

[Petitioner]

Vs

1. The Presiding Officer,
Labour Court, Tirunelveli.

2. The Branch Manager,
Tamil Nadu Co-operative State
Land Development Bank Ltd.,
Ramavarmapuram,
Nagercoil.

[Respondents]

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the Award dated 23.08.2001 of the first respondent in I.D.No.666/1992 and quash the same and direct the second respondent to reinstate the petitioner with all backwages and all attendant benefits.

For Petitioner : Mr.P.Selvaraj

For Respondents : Ms.S.Varsha for R2

O R D E R

This writ petition has been filed against the award of the Labour Court, Tirunelveli dated 23.08.2001 in I.D.No.666 of 1992 wherein the Labour court refused to recognise the petitioner as employee in the second respondent Bank.

2.The facts in brief, are as follows:

The petitioner's wife was employed as sweeper in the second respondent Bank in the year 1974. She died on 22.05.1986. Thereafter, the petitioner and his daughter were doing the work of sweeper in the second respondent Bank. On 03.02.1989, since the petitioner's daughter got married, she left the job, but the petitioner was continuing as sweeper. He worked as sweeper from 1986 to 2000. From 01.12.2000, even though he was not allowed to

work, he continued to do the work. The petitioner states that since he worked more than 3 years and 7 months, which is more than 240 days, he is an employee and hence he has to be reinstated in regular service. Hence, he filed a claim petition before the Labour Court under the Industrial Disputes Act. On its dismissal, the petitioner is before this Court.

3.The learned counsel for the petitioner would submit that the employment of the petitioner under the second respondent has been proved by Exs.P1 and P2 which would clearly establish that the petitioner was employed in the second respondent bank. Hence, according to the petitioner, denial of employment by the second respondent is against Section 25F of the Industrial Disputes Act and also against the principles of natural justice. Stating so, the learned counsel prayed for allowing this writ petition.

4.The learned counsel for the second respondent would submit that the petitioner's wife was employed in the second respondent bank for 1 year and 3 months alone and thereafter the petitioner was engaged as Security Guard in the year 1989 and from the year 1990 onwards, he was absenting from duty. Stating so, she submitted that since the petitioner was not a permanent employee, the claim under the Industrial Disputes Act, will not arise and hence this writ petition has to be dismissed.

5.The learned counsel for the second respondent has relied upon the following decisions of the Hon'ble Supreme Court in support of her contention:

(1)State of Tamil Nadu v. A.Singamuthu, reported in (2017) 4 SCC 113 and

(2)School Education Department, Chennai v. R.Govindaswamy, reported in (2014) 4 SCC 769.

6.I have heard the learned counsel for the petitioner as well as the learned counsel appearing for the second respondent and perused the materials available on record.

7.It is seen that the petitioner's employment was not a regularised one. Further, the petitioner was not granted employment on compassionate ground, in a proper manner. Furthermore, the petitioner was not employed after obtaining his name from the Employment Exchange and as per the procedures laid down under the Rules governing the Tamil Nadu Co-operative Societies Rules.

8.In State of Tamil Nadu v. A.Singamuthu, reported in (2017) 4 SCC 113, the respondent therein was engaged to fetch water, sweep and other connected menial works for one or two hours a

day as part-time Masalchi, which post was not included in Class IV or V of the Tamil Nadu Basic Service. The part-time Masalchi cannot be treated as equivalent to the post of Masalchi (full-time basis), since the part-time Masalchi does not come under the purview of service rules. Observing so, the Hon'ble Supreme Court held that he was not entitled for regular employment.

9. In School Education Department, Chennai v. R. Govindaswamy, reported in (2014) 4 SCC 769, the Hon'ble Supreme Court relied on its earlier decision in State of Rajasthan v. Daya Lal, reported in (2011) 2 SCC 429 and held that while something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, cannot be regularised and that back door entries, appointments contrary to the constitutional scheme and / or appointment of ineligible candidates cannot be regularised.

10. Admittedly, the petitioner herein was working as sweeper temporarily as part-time employee and he has not established his case as full time employee in the second respondent Bank. Further, the principles enunciated in the above judgments applies to the facts of the present case. In the circumstances, the writ petition is liable to be dismissed and accordingly it is dismissed. No costs.

Sd/-
Asst. Registrar (CS VI)

/true copy/

Sub Asst. Registrar

KM
To

1. The Presiding Officer,
Labour Court, Tirunelveli.
2. The Branch Manager,
Tamil Nadu Co-operative State
Land Development Bank Ltd.,
Ramavarmapuram, Nagercoil.

+1cc to Mr.R.Santhanam, Advocate Sr. 56513

W.P.No.33757 of 2003

PA (CO)
VR(30/8/2017)