

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22161 of 2004

B.Bheman

..Petitioner

vs

1.The Special Officer,
Nilgiri District Central Co-operative Bank,
Charing Cross, Udhagamandalam,
The Nilgiris.

2.The Branch Manager,
Nilgiri District Central Co-operative Bank,
Kotagiri Branch,
Kotagiri,
The Nilgiris.

3.The Presiding Officer,
Labour Court,
Coimbatore.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent pertaining to his proceedings in I.D.No.268/98 and quash the award dated 19.10.2001 and consequently direct the first and second respondents to reinstate the petitioner in service along with the backwages and all other attended benefits.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.M.Sriram for R1 & R2
R3 - Labour Court

O R D E R

The Award dated 19.10.2001 passed in I.D.No.268 of 1998 by the third respondent is sought to be quashed in the

present writ petition.

2. The writ petitioner states that he was engaged as a Jewel Appraiser and was attending the 2nd respondent Bank everyday. Agricultural Jewel loans and other jewel loans are being transacted in the respondent Cooperative Bank on day-to-day basis. The petitioner states that in view of the fact that large number of agricultural jewel loans had been disbursed by the 2nd respondent Central Cooperative Bank, the post of Jewel Appraiser must be made permanent and the writ petitioner, who was engaged as a Jewel Appraiser on commission basis, must be permanently absorbed.

3. Admittedly, the Jewel Appraisers in the Central Cooperative Bank are engaged on commission basis. Based on the Jewel loan transactions, the commissions are fixed and accordingly, the same was paid to these Jewel Appraisers.

4. The learned counsel appearing on behalf of the respondents 1 and 2 states that there is no sanctioned post of Jewel Appraiser in the Central Cooperative Bank and therefore, no possibility to absorb the writ petitioner in the Post of Jewel Appraiser on permanent basis.

5. In order to substantiate the said ground, the learned counsel for the respondents 1 and 2 cited the judgment of the Hon'ble Supreme Court in the case of Indian Overseas Bank Vs. Workmen, reported in (2006) 3 SCC 729 and the relevant paragraphs are extracted hereunder:

"17. The inferences culled out from the reading of those judgments can be summed up as follows:

(a) Where the contractors were substantially responsible for the main and sole business, they would be treated as workers.

(b) One exception is that where in such cases flexibility of the contract was at variance with the normal worker's contract, the contractors would not be treated as workers.

(c) Where the contractor is in the nature of supplier of goods and services, they are to be treated as supplier contractors and not workmen.

18. At this juncture the distinction between jewel appraisers and the regular employees of the

Bank can be noted.

Regular employees	Jewel appraisers
1. Subject to qualification and age prescribed.	1. No qualification/age.
2. Recruitment through employment exchange/Banking Service Recruitment Board.	2. Direct engagement by the local Manager.
3. Fixed working hours.	3. No fixed working hours.
4. Monthly wages.	4. No guaranteed payment, only commission paid.
5. Subject to disciplinary control.	5. No disciplinary control.
6. Control/supervision is exercised not only with regard to the allocation of work, but also the way in which the work is to be carried out.	6. No control/supervision over the nature of work to be performed.
7. Wages are paid by the Bank.	7. Charges are paid by the borrowers.
8. Retirement age.	8. No retirement age.
9. Subject to transfer.	9. No transfer.
10. While in employment cannot carry on any other occupation.	10. No bar to carry on any avocation or occupation.

Therefore, the jewel appraisers are not employees of the Bank."

6. The Hon'ble Supreme Court of India carved out certain comparisons and distinctions in respect of the regular employment of Jewel Appraiser. While considering the distinct and different nature of work, the Hon'ble Supreme Court found that the Jewel Appraisers are not employees of the Bank.

7. Adding the said principles, further ground is available in the present writ petition in view of the fact that the 1st respondent is a Central Cooperative Bank, which is a Society registered under the provisions of the Tamil

Nadu Cooperative Societies Act. Only in the event of the availability of sanctioned Post of Jewel Appraiser, the procedures as contemplated for appointment is to be followed, with reference to the statute and the rules in force.

8. This apart, the respondent Management is a Cooperative Bank, which is a Society registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. The service conditions of the employees of the Cooperative societies are governed under Rule 149 of the Tamil Nadu Cooperative Societies Rules 1988. Thus, the service conditions are stipulated under Rule 149 and under the Special By-laws, which all are approved by the Registrar of Cooperative Societies. This being the statute and the Rules, appointments are to be made strictly in accordance with Rule 149 read with the Special By-laws, if any, which is approved by the Registrar of Cooperative Societies.

9. Admittedly, the writ petitioner was not engaged or appointed through the District Employment Exchange concerned. Thus, his appointment was irregular.

10. In respect of the irregular appointments made in the Cooperative Societies registered under the Tamil Nadu Cooperative Societies Act, 1983 across the State of Tamil Nadu, the Hon'ble Division Bench of this Court in the case of L. Justine and another Vs. The Registrar of Co-operative Societies, Chennai - 10, reported in 2003 (1) LLJ 284 and 2002 (4) CTC 385, which was upheld by the Apex Court of India in the case of A. Umarani V. Registrar of Cooperative Societies, reported in (2005) 1 MLJ 6(SC), held that such irregular appointments can be regularized only if the appointments were made through the District Employment Exchange concerned and subject to the fulfillment of the educational qualifications and other criteria fixed by the competent authorities.

11. This being the legal principles settled by the Hon'ble Division Bench, which was confirmed by the Apex Court, the initial engagement of the writ petitioner as temporary employee cannot be a ground to claim permanent status or observation in violation of Rule 149 of the Tamil Nadu Cooperative Societies Rules as well as the legal

principles settled by the Constitutional Courts.

12. In view of the fact that the Labour Court also found that the writ petitioner was not an employee of the Bank and he was engaged as a Jewel Appraiser on commission basis, the Labour Court arrived a conclusion that the petitioner is not a workman as defined under Section 2(s) of the Industrial Disputes At.

13. Beyond the fact that the writ petitioner is not a workman with the definition of ID Act, this Court is of the considered opinion that the writ petitioner was engaged on commission basis without reference to the recruitment rules in force as contemplated under Rule 149 of the Tamil Nadu Cooperative Societies Act as well as Special By-laws of the respondent Bank.

14. This being the factum, this Court has no hesitation in coming to the conclusion that there is no perversity or illegality in respect of the Award passed by the Labour Court. Consequently, the Award dated 19.10.2001 passed in I.D.No.268 of 1998 by the third respondent is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kak

To

1.The Special Officer,
Nilgiri District Central Co-operative Bank,
Charing Cross, Udhagamandalam, The Nilgiris.

2.The Branch Manager,
Nilgiri District Central Co-operative Bank,
Kotagiri Branch, Kotagiri, The Nilgiris.

3.The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.R.Sivakumar , Advocate SR.No. 79571

+1cc to Mr.M.Sriram , Advocate SR.No. 79502

W.P.No.22161 of 2004

A.SK(17/10/2019)