

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-10-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34046 of 2004

And

W.P.M.P.No.523 of 2007

A.Chinnu Goundan

Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,
Pakkanadu Sakthi Primary Agricultural
Co-operative Bank Limited, 1690,
Pakkanadu,
Jalakandapuram,
Edappadi Taluk,
Salem District,
Salem-636 501.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the Award dated 21.04.2004 in I.D.No.506 of 2001, quash the same and issue directions to the second respondent to reinstate the petitioner in service with all consequential benefits such as continuity of service, back wages etc.

For Petitioner : Mr.M.Ravi

For Respondent-1 : Labour Court

For Respondent-2 : Mr.M.R.Raghavan

O R D E R

The Award of the Labour Court dated 21.04.2004 made in I.D.No.506 of 2001, is under challenge in the present writ petition.

2. The writ petitioner-workman states that he is a certified and recognised Goldsmith as per the certificate dated 26.12.1989 issued by the Superintendent of Central Excise, Mettur Range II, Mettur Dam, Salem District. The writ petitioner had successfully completed the course on 'Gold Appraiser' in March - April 2002, conducted at Continuing Education Cell, S.S.M. Institute of Technology at Komarapalayam, by the State Project Co-ordination Unit established under the Canada India Institutional Cooperation Project, Directorate of Technical Education, Government of Tamil Nadu.

3. The writ petitioner-workman further states that he was appointed as a Jewel Appraiser in Pakkanadu Sakthi Primary Agricultural Cooperative Bank Limited, Pakkanadu, which is a Registered Society under the provisions of the Tamil Nadu Cooperative Societies Act, 1983. The writ petitioner states that initially he was appointed as daily wage employee/commission basis. Subsequently, the writ petitioner-workman was paid with the time scale of pay. The services of the writ petitioner-workman was regularised in the post of Jewel Appraiser and he had completed 240 days of services. Under these circumstances, without any prior notice, the writ petitioner-workman was terminated from service. Thus, the writ petitioner-workman raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 before the Labour Officer and the conciliation ended in failure and thus, the writ petitioner-workman filed I.D.No.506 of 2001 before the Labour Court, Salem and the Labour Court rejected the petition filed by the writ petitioner-workman. Thus, the writ petitioner-workman is constrained to move the present writ petition.

4. The learned counsel appearing on behalf of the writ petitioner-workman states that the writ petitioner-workman was appointed as a Jewel Appraiser and he was receiving the time scale of pay. This apart, the services of the writ petitioner was regularised and therefore, the Award of the Labour Court is perverse and the termination of the writ petitioner-workman was also illegal as the procedures contemplated were not followed.

5. The learned counsel appearing on behalf of the second respondent-management contended that initial appointment of the writ petitioner-workman was irregular and he was not

appointed in accordance with the Recruitment Rules in force. The appointment of the writ petitioner-workman was not approved by the competent authority of the Cooperative Department and in respect of irregular appointments in Cooperative Societies, the Hon'ble Division Bench of this Court settled the principles in the case of L. Justine and another vs. Registrar of Co-operative Societies [2002 (4) CTC 385], and the relevant paragraph-11 reads as under:-

"In view of the rival contentions, following issues arise for consideration:

(i) whether the writ petitions are maintainable?

(ii) whether the cooperative societies are covered by the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 as also the Industrial Disputes Act, 1947?

(iii) whether G.O. Ms. No. 86, dated 12.3.2001 aims at regularising all the staff appointed to cooperative societies regardless of any defect or any violation of the Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988, as amended in 1995?

(iv) in the alternative, are the illegal appointees entitled for statutory protection of regularisation and permanent status by virtue of Section 3 of the Permanency Act subject to their completion of 480 man days in a continuous period of 2 years? and

(v) whether personnel not covered by clause (iv) are entitled for protection under the Industrial Disputes Act, 1947?"

6. The Labour Court also considered all these aspects and paragraph-7 of the findings of the Award of the Labour Court categorically enumerates as follows:-

"7. Ex.P-1 is the 18(1) Settlement dated 21.03.2001. Ex.P-2 is the resolution passed by the respondent. Ex.P-2 resolution was passed on 30.03.2001. After the 18(1) Settlement dated 21.03.2001, Ex.P-2 resolution was passed. As per Ex.P-2 resolution, the petitioner's service was regularised considering the completion of 240 days of service in a year and the

petitioner's salary was fixed, with reference to the 18(1) Settlement. According to the respondent, the petitioner was appointed as a jewel appraiser on commission basis. The petitioner was an employee of the respondent society only from 21.03.2001. The petitioner's service was terminated as stated by the petitioner on 27.06.2001. So on the respondent side, it was contended that the petitioner has not completed 240 days of service in a year. Initially, the petitioner was appointed as a jewel appraiser on commission basis only. Ex.R-2 is the copy of resolution dated 28.04.2000. In Ex.R-2 resolution, it has been stated that the petitioner was appointed only on commission basis. The respondent has produced Ex.R-1 series vouchers. Ex.R-1 would show that the petitioner has received the commission amount. So that the petitioner has received the commission amount for doing the jewel assessment work. The Deputy Registrar of Co-operative Societies directed the respondent to cancel the appointment order of the petitioner and also the pay fixed by the respondent. As per Ex.R-6, the Deputy Registrar ordered the respondent to take action against the petitioner. Before his service was regularised, the petitioner was engaged as a jewel appraiser on commission basis. --- that the Ex.P-2 resolution is true, the petitioner was given appointment as an employee of the society only 01.03.2001. It appears from the records that the petitioner has not completed 240 days of service in a year. It is for the petitioner to prove the fact that the petitioner has completed 240 days of service in a year."

7. The Labour Court considered the judgment of the Hon'ble Division Bench of this Court and arrived a conclusion that the writ petitioner is not entitled for reinstatement. The Labour Court found that the appointment of the writ petitioner-workman was illegal and such an illegal appointee cannot have any legal right. Further a direction was issued to fill up the vacancy in the manner as stated in Rule 149 of the Tamil Nadu Co-operative Societies Rules.

8. This being the findings, this Court is of an opinion that there is no perversity or otherwise in respect of the Award passed by the Labour Court. All appointments in Cooperative Societies are to be done strictly in accordance with the Recruitment Rules which all are contemplated under Rule 149 of the Tamil Nadu Cooperative Societies Rules as well as the Special Bye-Laws approved by the Registrar of Cooperative Societies. Irregular appointments cannot be regulated and further the appointments made to persons, who were appointed in violation of the Rules, cannot claim any right for permanent appointment in view of the settled principles enunciated in the case of L.Justice (cited supra).

9. This being the principles to be followed, the Labour Court has rightly proceeded with the case by following the principles laid down by the Division Bench of this Court and there is no infirmity as such. However, the Labour Court though made a finding that the appointment of the writ petitioner was illegal and such an illegal appointee cannot have any legal right and awarded compensation of Rs.5,000/-. Once the Labour Court came to the conclusion that the appointment is illegal and the appointee cannot have any right in appointment and such an illegal appointment cannot be granted. Thus the Award of compensation of Rs.5,000/- by the Labour Court, stands quashed as the same is beyond jurisdiction and in respect of all other aspects, the Award of the Labour Court dated 21.04.2004 in ID No.506 of 2001 stands confirmed.

10. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

Svn
To

The Presiding Officer,
Labour Court,
Salem.
+1cc to Mr.Raghavan, SR.88061/19

W.P.No.34046 of 2004

VGI (CO)
CB(18/11/2019)