

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.1.2019

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.25737 of 2011  
and M.P.No.1 of 2011

The Management Pomboor Primary  
Agricultural Co-operative Society  
Rep. by its Secretary Mr.S.Selvam ... Petitioner

Vs.

1 G.Rajendran  
2 The Presiding Officer,  
Labour Court,  
Cuddalore. .... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the award in I.D.No.25 of 2002, dated 4.5.2011 on the file of the second respondent and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram, Spl.G.P.

For Respondent No.1 : Mr.C.Prakasam

ORDER

According to the petitioner, petitioner was appointed as Salesman in the respondent Management on 1.3.1998 and he was paid Rs.1200/- per month as his last salary. Petitioner was removed from service on 2.8.2001 by way of retrenchment order, dated 2.8.2001 under Rule 149(1) of the Tamilnadu Co-operative Societies Rules, for the reason that the petitioner's appointment was illegal and the same is contrary to rules. The respondent has filed a claim petition in I.D.No.25 of 2002 before the Labour Court, Cuddalore, by raising a ground that no enquiry was conducted by the respondent before passing the impugned order. Therefore, dismissal of the petitioner from service is illegal and the same is liable to be set aside.

2. The petitioner Management has filed counter affidavit before the Labour Court wherein it is stated that the petitioner was removed from service on 2.8.2001 by way of retrenchment order, dated 2.8.2001 and no person was appointed in the place of the petitioner. The respondent sent a cheque for Rs.4277/- i.e. Rs.1200/- as notice salary, Rs.1800/- as compensation and Rs.1277/- as salary for July 2001 and two days salary in August 2001 to the petitioner. But the petitioner stated that he received the salary for July 2001 and two days salary in August 2001 only and returned the other amounts to the respondent through a cheque was not received by the respondent Management. The petitioner was not appointed as per rules if any vacancies arises in future, the petitioner will be appointed as per rules.

3. The Labour Court set aside the impugned order passed by the petitioner Management herein, for the reason that there is no enquiry was conducted by the petitioner Management and without paying any compensation. Challenging the aforesaid order, the petitioner Society has filed the writ petition before this Court.

4. According to the learned Spl. Govt. Pleader appearing for the petitioner Society, the Labour Court has lost at sight by not considering the fact that the petitioner was not appointed through procedure as contemplated under Tamilnadu Co-operative Societies Rules, 1988. Therefore, the appointment itself is illegal and the respondent is not entitled for regularisation of service under the petitioner society. Further, it is submitted that the impugned order passed by the petitioner society itself indicates that the appointment of the petitioner violates the procedure as contemplated under the Rules. The petitioner was not appointed through employment exchange and without requisite educational qualifications and other eligibility criteria. Therefore, in the light of the decision of the Division Bench of this Court in the case of L.JUSTINE AND ANOTHER VS. THE REGISTRAR OF CO-OP. SOCIETIES, CHENNAI - 10 AND TWO OTHERS [2002(4) CTC 385] wherein the Hon'ble Supreme Court while considering, as to whether the State had the requisite authority to direct regularisation of services of the employees of the Cooperative Societies by reason of the impugned G.O.Ms.No.86, dated 12.3.2001 has held that those who come by back door should go through that door and held that no regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India, if the appointments have been made in contravention of the statutory rules and it was held that if the State had no power to issue the said G.O.Ms.No.86, dated 12.3.2001, the same must be held to be a nullity. Based on the decision of the Hon'ble Supreme Court in Uma Rani case, the Government in G.O.Ms.No.301 Co-operation, Food and Consumer Protection Department, dated

17.10.2007 has withdrew the order permitting the Regional Joint Registrars to regularise the services of the irregular appointments. Yet another decision of this Court reported in 2007(5) CTC 369 [R.RADHAKRISHNAN VS. DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES] the Division Bench of this Court held as under:

"20. In the present case, though it has been brought to our notice that about 26,000 employees of Co-operative Societies have been regularized in the service after the judgment rendered in L.Jusine's case, the question of their legality and propriety of their regularization, being not challenged in these cases, nor such question having been referred and in absence of those employees, we are not expressing any opinion with regard to such regularization, which may be determined by the Competent Authority or a Court of competent jurisdiction, if such question is raised."

5. Heard the learned counsel for the petitioner Society, learned counsel for the respondent/employee and perused the materials available on record.

6. The learned counsel for the respondent/employee would submit that the petitioner Society passed an order under Section 25-F of Tamilnadu Co-operative Societies Rules retrenching the respondent/ employee from service and thereafter, reinstated in service. Therefore, the Labour Court has rightly allowed the claim petition and the respondent/ employee was rightly reinstated in service.

7. It is not disputed that the respondent herein was appointed by violating rules as contemplated under Rule 149(2) of the Tamilnadu Co-operative Societies Rules, 1988. The order passed by the Division Bench of this Court had been challenged before the Hon'ble Supreme Court in A.UMARANI VS. REGISTRAR, COOPERATIVE SOCIETIES AND OTHERS [(2004) 7 SCC 112] wherein the Hon'ble Supreme Court held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and in ignorance of essential qualifications, the same would be illegal and cannot be regularised by the State and the State cannot exercise statutory power conferred under Article 162 of the Constitution of India to regularise such appointments.

8. This court in the decision reported in (2002) 4 CTC 385 [L.Justine Vs. Reg of Cooperative Societies], has held as follows:-

" But the theory of principles of natural justice cannot be put in a straightjacket and it

is not an absolute rule that in each and every adverse order, there should be a strict adherence to the principles of natural justice. One such exception to audi alteram partem rule is absence of any legal right to defend the impugned action and in fact, such cases are covered by the 'useless formality theory' propounded by the Supreme Court in ALIGARH MUSLIM UNIVERSITY v. MANSOOR ALI KHAN(AIR 2000 SC 2783). Even for availment of the alternative remedy, a legal right should subsist and there may be some cases like the instant one where there is no right accrued even at the time of entry into service and when the top administrative authority, i.e. the Government, has already taken a stand, it serves no purpose to drive a party to avail of the alternative remedy as there is absolutely no discretion for the subordinate officers of the Government to take any decision contra to the view taken by the Government. Further, when interpretation of the provisions of the Statute, Rules framed thereunder and the Governmental Orders are involved, it is for the High Court to embark upon enquiry to adjudicate the matter and cannot be left to the subordinate officers of the Government, who are named as the statutory authorities. Added to that, having regard to the magnitude of the problems and the bulk of cases, it serves no purpose in driving the parties to approach the statutory authorities as it is bound to bounce back again to this Court resulting in multiplicity of proceedings creating a fluid situation without concretisation of the legal principles. Having regard to these factors, we are of the considered view that the matter should be set at rest by laying down the definite and clear-cut legal principles so that the statutory authorities can be left only with the task of fact finding and then give a quietus to the situation.

"

9. Therefore, in the light of the decision of Hon'ble Supreme Court as well as this Court, the petitioner Society rightly removed the respondent/employee from service on the ground that his appointment is illegal and contrary to byelaws of the Society. It has been clearly held that any illegal appointment made by the Society without following the procedure as contemplated under Rules and the removal of service by following useless formality theory, not entitled for regularisation of service. Therefore, there is no force in the

contention of the learned counsel for the petitioner and the same is liable to be rejected. Hence, the impugned order passed by the Labour Court is liable to be set aside.

10. In the result, the impugned award passed by the Labour Court, Cuddalore in I.D.No.25 of 2002, dated 4.5.2011 is set aside. Consequently, writ petition is allowed. No Costs. Connected miscellaneous petition is closed.

11. It is brought to the notice of this Court that contempt proceedings is pending before this Court. It is open to the parties to agitate the issue before the concerned Court.

Sd/-  
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Vaan

To

The Presiding Officer, Labour Court, Cuddalore.

+1cc to Mr.C.Prakasam, Advocate SR.No.1621

+1cc to Mr.L.P.Shanmugasundram, Advocate SR.No.591

W.P.No.25737 of 2011  
and M.P.No.1 of 2011

VSN II (CO)  
GMY (13/02/2019)

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