

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06-11-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10450 of 2017

And

W.M.P.No.11327 of 2017

The Management,
CLSPL 164, Pompoor Primary Agricultural
Co-operative Bank,
Represented by its President,
Pompoor,
Villupuram District.

... Petitioner

vs.

1.P.Manikandan

2.The Presiding Officer,
Labour Court,
Cuddalore.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the passing of the Award in I.D.No.70 of 2002 dated 04.01.2013 on the file of the Labour Court, Cuddalore and quash the same.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondent-1 : Mr.K.M.Ramesh

For Respondent-2 : Labour Court

O R D E R

The Award dated 04.01.2013 passed by the Labour Court in I.D.No.70 of 2002, is under challenge in the present writ petition.

2. The writ petitioner is Pompoor Primary Agricultural Co-operative Bank.

3. The first respondent-employee was appointed as a Salesman in the writ petitioner-Society on consolidated wages of Rs.1,200/- per month from 05.02.1998.

4. The learned counsel appearing on behalf of the writ petitioner-Society states that the appointment of the first respondent-workman in the writ petitioner-Society was purely temporary and the Recruitment Rules were not followed for such an engagement. The said appointment was made in order to meet the contingencies in the writ petitioner-Society and such contingencies ceased to exist and accordingly, the temporary employment of the first respondent-workman was discharged. The first respondent-employee never worked even for a total period of 240 days in a calendar year. The first respondent-workman was engaged as daily wage employee and therefore, he cannot be construed as a permanent employee, so as to grant the benefit of regularisation or permanent absorption.

5. This apart, in order to discharge the services of the first respondent-workman, the writ petitioner-Society had followed the terms and conditions in Section 25-F of the Industrial Disputes Act, 1947 and therefore, there is no infirmity in retrenchment and the retrenchment was done in compliance of the provisions of the Industrial Disputes Act, 1947.

6. The learned counsel appearing on behalf of the writ petitioner-Society made a submission that in respect of the irregular and illegal appointments in Cooperative Societies registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983, a Division Bench of this Court, in the case of L.Justine and another vs. Registrar of Cooperative Societies [2002 (4) CTC 385], held that the irregular appointments cannot be granted with the benefit of regularisation and only the appointments, which were made in accordance with the Recruitment Rules, which can be regularised by following the procedures. In the case of L.Justine (cited supra), the Hon'ble Division Bench of this Court derives certain terms and conditions, enabling the authorities competent to consider the cases for grant of regularisation and permanent absorption. Accordingly, all the eligible persons were regularised and all irregular and illegal appointments were discharged and the said judgment was confirmed by the Hon'ble Supreme Court in the case of A. Umarani v. Coop. Societies

[(2004) 7 SCC 112] and therefore, the Labour Court cannot grant the benefit of regularisation and permanent absorption in violation of all these principles. At the outset, it is contended that the provisions under Section 25-F of the Industrial Disputes Act, 1947 had been complied with and therefore, the Award of the Labour Court is perverse.

7. The learned counsel appearing on behalf of the first respondent-workman disputed the contentions by stating that the writ petitioner-Society had failed to comply with the provisions under Section 25-F of the Industrial Disputes Act, 1947 and in the counter affidavit filed before the Labour Court as well as before this Court, it is stated that one month notice pay in lieu of one month notice and retrenchment compensation amount of Rs.1,800/- is not in accordance with the provisions under Section 25-F of the Industrial Disputes Act, 1947. The first respondent-workman was getting Rs.1,200/- per month as last drawn wages and the first respondent-workman had put in 3 years and 7 months service. Thus the calculation of retrenchment compensation made by the writ petitioner-Society was erroneous and consequently, the writ petitioner-Society had not complied with the provisions under Section 25-F of the Industrial Disputes Act, 1947.

8. The learned counsel appearing on behalf of the writ petitioner-Society cited a recent judgment of the Hon'ble Supreme Court in the case of State of Bihar and Others vs. Devendra Sharma [decided on 17.10.2019 in Civil Appeal No.7879 of 2019], wherein the Supreme Court held in paragraphs-3 and 44, which read as under:-

"3. Brief facts leading to the present appeals are that large number of candidates were appointed against Class III or Class IV posts in the Health Department in Government of Bihar till 1990 or so. The services of such employees were terminated which led to number of writ petitions before the High Court. The first round of cases came to end with the order of three Judge Bench of this Court reported as Ashwani Kumar & Ors. v. State of Bihar & Ors. [(1997) 2 SCC 1]. This Court held that recruitments made by Dr. Mallick were arbitrary, capricious, null and void after considering the Government order dated December 3, 1980 as well as Government resolution dated March 25, 1983. It was also held that none of the appointees have any accrued right in the absence of sanctioned posts. It was held that the whole exercise remained in the realm of an unauthorised

adventure. Nothing could come out of nothing. Ex nihilo nihil fit. Zero multiplied by zero remains zero. It was held that army of employees under the Scheme had got to be cleared lock, stock and barrel so that public confidence in Government administration would not get shattered and arbitrary actions would not get sanctified.

44. In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals were irregular appointments. Such appointments are illegal appointment in terms of the ratio of Supreme Court judgment in Uma Devi. As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were backdoor entries, an act of nepotism and favoritism and thus from any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process."

9. The Supreme Court in unequivocal terms held that such appointments made without any sanctioned post and without following the Recruitment Rules, cannot be validated. This apart, in respect of the very same writ petitioner-Society and another employee, who was retrenched along with the first respondent-employee one Mr.G.Rajendran, this Court passed an order in WP No.25737 of 2011 on 02.01.2019 and in the said order, this Court set aside the Award and the writ petition was allowed.

10. This Court is of the considered opinion that as far as the employees of the Cooperative Societies are concerned, their Service Rules are framed, pursuant to Rule 149 of the Tamil Nadu Cooperative Societies Rules. The said Rule contemplates the service conditions to be followed for the employees of the Cooperative Societies registered under the Tamil Nadu Cooperative Societies Act, 1983 and consequently, the respective Societies are bound to frame Special Bye-Laws, which are to be approved by the Registrar of Cooperative Societies. Thus, the Special Bye-Laws approved by the competent authority under the Act, in consonance with the Rule 149 of the Tamil Nadu Cooperative Societies Rules, are to be followed for the purpose of dealing with the employees of the Cooperative Societies.

11. Under these circumstances, the temporary employees, who were engaged to meet out certain exigencies, cannot claim reinstatement or permanent absorption. If such reinstatement or permanent absorption is given, the same would pave the way for irregular appointments and the same would amount appointments through back door entry.

12. All appointments are to be made strictly in accordance with the Recruitment Rules in force and any such temporary engagements made without following the procedures would not constitute the ground to claim reinstatement or permanent absorption. In the event of granting reinstatement and permanent absorption in such cases, the same would result in denial of equal opportunity in employment to all the eligible candidates, who all are aspiring to secure employments through Open Competitive Process or in accordance with the Recruitment Rules in force.

13. This apart such engagements would deprive the eligible candidates to avail the Rule of Reservation. No merit assessments are made in such temporary engagements the Recruitment Rules are not followed. Thus, the recruitments are undoubtedly in violation of the constitutional mandates and therefore, the Courts cannot grant the benefit of regularisation or reinstatement in such cases where the engagements were made on temporary basis in order to meet out certain exigencies or to complete certain projects or schemes either by the Government or by the organisation or by such Cooperative Societies under the Statute.

14. This being the principles to be followed and the Supreme Court also in unequivocal terms held that irregular or illegal appointments cannot be validated to the retrenchment made in the present case, resulted from and out of the temporary engagements, cannot be validated, so as to grant the benefit of reinstatement.

15. The learned counsel for the first respondent raised an objection that there is a delay in filing the writ petition, however, in respect of other employee of the same writ petitioner-Society, this Court allowed the writ petition by setting aside the Award.

16. This being the factum, the Award dated 04.01.2013 passed by the Labour Court in I.D.No.70 of 2002 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to M/s.L.P.Shanmugasundaram, Advocate Sr.92406

+1cc to M/s.K.M.Ramesh, Advocate Sr.92651

WP No.10450 of 2017

rr[co]
srg 13/12/2019



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