



WEB COPY

W.A(MD).No.853 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.853 of 2017

and C.M.P(MD) .No.5786 of 2017

N.Kavitha

... Appellant/3rd Party

Vs.

1.The Presiding Officer,
Labour Court, District Court Buildings,
Thiruchendur Road,
Palayamkottai.

2.The General Secretary,
Tirunelveli Kattabomman, Chidambaranar
District Central Co-operative Bank
Oozhiyargal Sangam,
23/Tli, 7 Nadu Street,
Sindhupondurai, Tirunelveli.

... R1 & R2 /R1 & R2

3.The Management,
Chidambaranar District Central
Co-operative Bank Limited,
(Now Thoothukudi District Central
Co-operative Bank Limited)
109/5-D, Ettayapuram Road,
Pol Pettai, Thoothukudi-628 002. ... 3rd Respondent/ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P(MD).No.5721 of 2009 dated 20.03.2017.

For Appellant : Mr.C.M.Arumugam

For Respondents : No appearance (for R1 & R2)

Mr.D.Shanmugaraja Sethupathy (for R3)

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

This appeal by the third party is directed against the order in W.P(MD).No.5721 of 2009, dated 20.03.2017 filed by the Management of Chidambaranar District, Central Co-operative Bank Ltd., Thoothukudi. The said writ petition was filed challenging the award of the Labour Court in I.D.No.6 of 2001, dated 26.09.2007, by which, the Labour Court held that the appellant before us viz., N.Kavitha ought to have been appointed as Assistant and not Office Assistant, when she



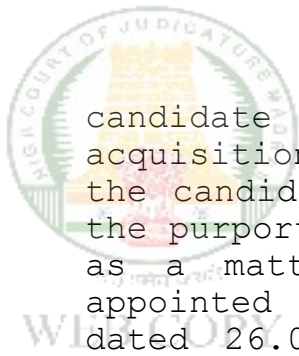
appointed on compassionate ground.

2.Before the Labour Court four issues were framed. First of the issue is being whether the Sangam, which raised the dispute on behalf of the appellant/N.Kavitha, represented by General Secretary, who is retired employee of the Management, is entitled to maintain the claim petition. The second issue was whether the appellant/N.Kavitha should have been accommodated in the post of Assistant, to which, she has possess the qualification. The issue Nos.3 and 4 are also related to the second issue. By referring to the circular issued by the Registrar of Co-operative Society, dated 07.10.1996, whether the respondent Management ignored the circular. The Labour Court on considering the circular recommendation of then Managing Director of the Society and the qualification held that the appellant was entitled to be appointed as an Assistant and not as Office Assistant, which is the basic post. Aggrieved by such award with regard to competency of retired employee, who represented the Sangam, which raised the dispute on behalf of the appellant, the Labour Court held in favour of the Sangam, the Management filed the writ petition, which was allowed only on the ground that the retired employee of the respondent Society cannot represent the Sangam and maintain the industrial dispute. The other question as to whether the appointment of the appellant as Office Assistant was correct or not and whether the award of the Labour Court was justified, was not contested by the learned Writ Court. Since the Sangam was held to be not permitted to represent the appellant, appellant filed a third party appeal, which is before us.

3.We have heard Mr.C.M.Arumugam, learned counsel for the appellant and Mr.D.Shanmugaraja Sethupathy, learned counsel appearing for the third respondent/Management.

4.In our considered view that we need not go into the aspect as to whether the Sangam was entitled to raise the dispute or not, because with the leave of the Hon'ble Division Bench, the appellant has been permitted to file the appeal to sustain the award which was ruled in her favour i.e., she should have been appointed as an Assistant instead of Office Assistant. Therefore, we leave the said issue is open as it has become academic, in this appeal, which is pursued by the concerned employee N.Kavith.

5.After elaborately hearing the learned counsel on either side and carefully perused the materials placed on record, we find that the stand taken by the Labour Court is not tenable. Firstly, the appellant did not possess the requisite qualification for being appointed as Assistant and she had passed +2 and though she underwent diploma course training, she would not pass in the course. It is evident from the recommendation made by the Managing Director of the third respondent Society vide communication dated 26.02.1999. Apart from that, the basic principles of service prudence is,
 https://hcservices.mca.gov.in/hcservices/



candidate will be appointed in the entry level post subject to acquisition of qualification under the relevant Rule, which enable the candidate to progress in his/her career in this regard that is the purport of Circular, dated 27.03.1998. Therefore, the appellant as a matter of right cannot claim that she should have been appointed as Assistant, in fact, the Managing Director in letter dated 26.02.1999 admits that the appellant did not possess the requisite qualification, but seeks to grant relaxation and give her two years time to acquire qualification. Ignoring this aspect, the Labour Court passed an award, which calls for interference and though the learned Writ Court did not consider this aspect, the award of the Labour Court was interfered on some other ground. Accordingly, the award of the Labour Court is set aside on the ground that the appellant is not entitled to be appointed as Assistant on the date of her first appointment and the Society was right in appointing her in entry level post, as of now, the appellant has progressed and she has been promoted as Assistant.

6.For the above reason, the Writ Appeal is dismissed. Consequently, the award of the Labour Court is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

Rmk

+1 CC to M/s.D. SHANMUGARAJA SETHUPATHI, Advocate (SR-102015[F]
+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-102312[F]

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SMA/29/01/2020/3P/3C