

(2012) 09 MAD CK 0130
In the Madras High Court
Case No : Writ Petition No. 42104 of 2002

C. Murugan

APPELLANT

Vs

Special Officer, The Nilgiris District Plantation Workers Co-operative Credit Society Limited and Another

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 2 MLJ 638

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : R.M. Devaraj, for the Appellant; Duraisolaimalai, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The writ petition has been filed by the petitioner challenging the award passed by the second respondent in letter No. 29531/D2/2000-1, dated 25.7.2001, quash the same and consequently, direct the first respondent to reinstate the petitioner with all attendant benefit and backwages. The petitioner is having M.A., M.Ed., degree along with Diploma in Co-operative Training Course. He received a interview letter on 13.2.1996 from Nilgiris District Employment Exchange and attended interview conducted on 4.5.1996, hence, he was selected through the said interview and appointed as clerk in the first respondent society on 8.5.1996 at Gudalur. Subsequently, he was transferred from Gudalur Branch to Pandalur Branch. While he was serving in the Pandalur Branch, he was issued with an order terminating him from service on 7.9.1996 without any valid reasons. The only reason assigned in the order is administrative reasons. As against the same, the petitioner preferred an appeal before the Deputy Registrar on 14.9.1996 and the said appeal was also dismissed. Therefore, the petitioner was constrained to approach the second respondent Labour Court, Coimbatore for setting aside the termination order dated 7.9.1996. After considering the case of the petitioner, the Labour Court

dismissed I.D. No. 45 of 1998, by citing one another petition, which was filed by a similarly placed person like the petitioner in I.D. No. 265 of 1998 and was dismissed. Aggrieved by the award passed by the Labour Court, Coimbatore, the present writ petition has been filed challenging the correctness of the award passed by the second respondent Labour Court, Coimbatore.

2. It was contended by the learned counsel for the petitioner that in response to the interview letter dated 13.2.1996 received from Nilgiris District Employment Exchange, the petitioner has attended the interview conducted on 4.5.1996 and through the said interview, he was rightly selected as clerk in the first respondent society. He joined in the first respondent society as clerk on 8.5.1996 at Gudalur Branch. His time scale of pay was fixed as 1200-30-1560-2040. Subsequently, he was transferred from Gudalur Branch to Pandalur Branch. While he was working in the first respondent society, without holding any enquiry or without any notice, he was issued with a termination order dated 7.9.1996 just stating due to administrative reasons.

3. It was further contended that when the petitioner was selected among 52 candidates after attending the proper interview conducted on 4.5.1996, the termination order issued by the first respondent Society without holding any enquiry is illegal and without jurisdiction. The Labour Court has failed to see that no proper enquiry was conducted before passing the termination order, therefore, when no enquiry was conducted before passing the termination order, he pleaded the said termination order has violated the principles of natural justice as enunciated under Article 14 of the Constitution of India. When the award passed by the Labour Court, Coimbatore, also cited one another petition filed in I.D. No. 265 of 1998 by another person, who is similarly placed person like the petitioner, was dismissed by earlier order passed by this Court and hence, the present petition i.e. I.D. No. 45 of 1998 was also to be dismissed, such kind of approach of the Labour Court is totally unsustainable in law.

4. In any event, the learned counsel for the petitioner has further contended that though the petitioner was selected by an appropriate appointing authority, after proper written examination followed by the interview, the first respondent society passing termination order stating that he was not given any mark in the written examination, but as he was appointed without mentioning any marks obtained in the written examination, is against the principles of natural justice. Hence, as the participation of the petitioner in the written test and the interview was proper, without following the minimum requirement of law, the termination order passed by the first respondent against the petitioner without giving any notice or without conducting any enquiry ought to have been set aside but the Labour Court has completely forgotten this basic principle while passing the award. Therefore, the writ petition may be allowed by setting aside the impugned order of termination.

5. A detailed counter affidavit has been filed by the first respondent. Mr. Durai Solaimalai, learned counsel appearing for the first respondent, while supporting the impugned order passed by the first respondent, has submitted that to fill up

the vacancies of the first respondent Society, interview cards were sent to several candidates. The petitioner along with other 52 candidates appeared and wrote the written examination for filling up of four vacancies of clerical posts, which remained vacant at that time. Since the written examination carried 20 marks and the remaining 30 marks were earmarked for oral interview, marks were to be allotted to the candidates depending upon their performance in the written examination as well as in the oral interview. Since 52 candidates have appeared for the written examination, the selection committee has to necessarily consider the marks obtained by each individual candidate in the written examination and add the same with the marks obtained by the candidates in the interview.

6. In the case of the petitioner, it was found that no mark was allotted to the petitioner for written examination. Therefore, when there was a serious flaw in the appointment of the selected candidates including that of the petitioner, as the papers of the written exams of the petitioner and other candidates excepting the four, who were selected, were not corrected, the selection committee could not have taken into account the marks obtained by the remaining 47 candidates in the written exams. That apart, some of the candidates, who also participated in the written examination and interview, have made written complaints to various authorities including the Hon'ble Chief Minister, State of Tamilnadu and other officers, who are in-charge of the first respondent society. In response to the said complaints, an enquiry was ordered. Only in that enquiry, it was found that some of the candidates were appointed for without subjecting them to written examination, however the respondents finally came to know that there had been very serious flaw in the appointment of the selected candidates including that of the petitioner as papers of the written exam of the other candidates excepting the four who were selected were not corrected and therefore, selection committee could not have taken into account the marks obtained by the remaining 47 candidates in the written examination. Only on this basis, the appointments of four candidates without correcting the written exam papers of the other candidates was held invalid and irregular. Hence, the first respondent society rightly passed the impugned order terminating the service of the petitioner, such a reasoned order, he pleaded, should not be interfered with. I fully accept these submissions. Besides, the order of appointment dated 8.5.1996 makes it clear that the petitioner was provisionally selected on 8.5.1996 and the petitioner is under probation for a period of two years and under the relevant rules of the Tamil Nadu Co-operative Societies Rules, the appointing authority is competent to terminate the services of probationer before the expiry of six months, if the work or conduct of the probationer is not satisfactory. Hence, no notice needs to be issued when the employee is in probationary period. Therefore, the submission made by the learned counsel for the petitioner that the entire selection process cannot be wrongly cancelled and the petitioner should be given notice followed by the proper enquiry, cannot be accepted. That apart when the petitioner challenged the termination order before

the learned Labour Court, Coimbatore by filing I.D. No. 45 of 1998, the learned Labour Court, after considering both sides, has come to the conclusion that the termination order did not suffer from any illegality, as the recruitment, process itself suffered from illegality, hence the award passed by the Labour Court is just and equitable and the same does not deserve any interference by this Court. Therefore, the writ petition is dismissed. There is no order as to costs.