
(2002) 11 KL CK 0036
In the High Court Of Kerala
Case No : O.P. No. 3816 of 1994 (D)

Government Servants" Co-operative Society Ltd.	APPELLANT
Vs	
Industrial Tribunal and Another	RESPONDENT

Date of Decision : 08-11-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 95 FLR 1142 : (2003) 1 LLJ 236

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : P. Ramakrishnan and A. Jayasankar, for the Appellant; M.J. Rajasree, G.P.T for Respondent No. 1 and H.B. Shenoy, for the Respondent

Final Decision : Allowed

Judgement

R. Rajendra Babu, J.—Petitioner, Government Servants Co-operative-Society Limited No. 130, Wadakkancherry, filed this original petition for an order quashing Exhibit P1 award passed by the Industrial Tribunal, Alappuzha in I.D. No. .49/90.

2. Petitioner is a co-operative society registered under the provisions of the Kerala Co-operative Societies Act. It was alleged that the above society had got an authorised staff pattern and the employees were appointed in the clerical cadre in accordance with the qualifications prescribed under the Statute. The second respondent Smt.C.S. Shakeela Begum was engaged as an apprentice with effect from January 4, 1978 and she was continuing as such. In 1982 the Reserve Bank of India in its Inspection Report objected the engagement of the second respondent. Accordingly she was terminated front service with effect from October 1, 1982. The above order was challenged by the second respondent by filing an arbitration case and the above case was dismissed. She filed an appeal before the Co-operative Tribunal challenging the above order and the appeal also was dismissed on June 24, 1998. Thereafter the second respondent raised an industrial dispute and ultimately the same was referred to

the first respondent, the Industrial Tribunal, for adjudication. Both parties entered appearance and evidence also was let in. After considering the evidence and the pleadings, the Tribunal found that the second respondent was entitled to be reinstated with back wages from November 1 1988 and passed Exhibit P1 award. Aggrieved by the above order, the society filed this original petition for an order quashing Exhibit P1 award.

3. Heard the learned counsel for the petitioner and the second respondent.

4. The main argument advanced by the learned counsel for the petitioner was that the second respondent was not at all an employee of the society, but she was employed only as an apprentice and she continued to be so till her service was terminated. It was further submitted that she was not qualified to be appointed in the clerical cadre and the staff pattern to the clerical cadre was governed by the Statute and the above procedure was not at all followed in appointing her. The second respondent had produced Exhibit W1 certificate issued on October 1, 1982 when her service was terminated, which also would reveal that she was working as an apprentice clerk from January 4, 1978 onwards. The Industrial Tribunal, after considering the longevity of her service in the society for four years of continuous service till she was terminated from service on October 1, 1982, directed to reinstate her with back wages. The appointment order was not produced by the second respondent. The certificate issued on October 1, 1982 to the second respondent would show that she was accommodated only as an apprentice clerk and, the appointment was not to the regular clerical cadre. It was further in evidence that the Reserve Bank of India had made an inspection and in Exhibit M1. Inspection Report it was noted that the service of the second respondent was objectionable and it required rectification. It was on the above objection raised by the Reserve Bank, her service was terminated. When the Rules fixed the staff pattern and prescribed the procedure for making appointment to the post, it was incumbent on the part of the society to follow the procedure. If the same procedure had been followed, the second respondent ought not have been appointed, as she was not possessing the required qualification. The second respondent had no case that she was qualified to be appointed to the post of clerical cadre when she was appointed as an apprentice clerk. In fact, there was absolutely no reliable evidence to show that she was eligible to be appointed in the clerical cadre. On the other hand, the available evidence would clearly show that she was not qualified to be appointed to the clerical cadre.

5. On July 17, 1981, the Registrar of Co-operative Societies, issued a circular directing the societies to regularise the irregular appointments made prior to June 30, 1980 in the primary co- operative societies on certain conditions. One of the conditions in the above circular was that the incumbent should have been continuing in service on the date of the circular, namely, on July 17, 1981 and the irregular appointment should have been made prior to June 30, 1980. But, so far as the second respondent was concerned, the appointment was not

regularised though the above circular was issued as early as on July 17, 1981. The non-regularisation of the service of the second respondent is a clear indication that the society was not interested in regularising her appointment and to treat her as a regular employee of the society. If there was any vacancy and the society wanted to regularise her in the clerical cadre, in the ordinary course, they should have passed an order regularising the appointment to the regular cadre in view of the above circular. The Tribunal itself had held that the second respondent cannot have the benefits of the above circular at this long distance of time.

6. The Tribunal had taken the view that there was no valid retrenchment from service in accordance with Section 25-F of the Industrial Disputes Act. Reliance was placed on an unreported decision of this Court in Koodaranji Service Co-operative Bank Ltd. v. Lissy. But, the above decision of the single Bench was overruled by a Division Bench of this Court and it was reported in Koodaranji Service Co-op. Bank Vs. M.M. Lissy and Others, . There the Division Bench held at p.p. 99 & 100 pf LLJ:

"All retrenchments will result in termination of service of a workman by the employer. But, all terminations of service of a workman by the employer will not fall within the definition of retrenchment. What all categories of termination of service of a workman will come within the purview of retrenchment as defined under the Act? It must be the termination of the service of a workman by his employer. This shows that there must be a valid relationship of master and servant between the employer and the workman.

A retrenched workman is entitled to re-employment in preference to others when the employer proposes to take into his employ any other person, as per the provisions contained in Section 25-H of the Act, This shows that the termination of service of the workman should have been from a post to which he could "have been continued. If the post is such that its continuance is not possible, then the termination of service of the workman from that post cannot amount to retrenchment as defined under the Act.

In the instant, case, the appointment of Ms. Lissy was against the statutory rules. As a result of that engagement, there was no legal relationship of master and servant between the bank and Ms. Lissy. Consequent on the coercive action and orders passed by the authorities under the Co-operative Societies Act, Ms. Lissy could not be continued in the employment of the Bank. So her services had to be terminated. It was in fact so terminated not as a result of any voluntary act of the bank. It was the result of the directives given by the authorities of the Cooperative Department, over which the bank had no control".

In view of the above decision of the Division Bench, the -finding of .the Tribunal cannot be upheld, as the alleged appointment of the second respondent was against the Rules and as such there was no valid master and servant relationship between the society and the second respondent. When there was no such master

and servant relationship between the parties, there could not be a retrenchment as defined under the Act. Hence, the order of the Tribunal cannot be sustained. The procedure adopted by the society in terminating the service of the second respondent, who was working only as an apprentice clerk, should not have been interfered with by the Tribunal. Hence, Exhibit PI award passed by the Tribunal is liable to be quashed.

7. In the result, this original petition is allowed. Exhibit PI award passed by the Industrial Tribunal Alappuzha in I.D. No. 49/90 is set aside and the termination of the second respondent from the service of the society is upheld.