
(2013) 08 MP CK 0247

In the Madhya Pradesh High Court

Case No : Writ Petition No: 15839 of 2005

Manoj Kumar Shukla

APPELLANT

Vs

District Cooperative Central Bank Ltd. and Another

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 15, 55

Citation : (2013) 4 LLN 367

Hon'ble Judges : Vimla Jain, J;Rajendra Menon, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal and Mr. Amit Seth, for the Appellant; M.P. Shukla, Advocate for the Respondents/Bank, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—As challenge in both the petitions are made to a common order dated 11.11.2005 passed by the M.P. State Cooperative Tribunal and as the question of law and the facts involved in both these cases are identical, they are being decided by this common order. For the sake of convenience, documents and material available in W.P. No. 15893/2005 are being referred to in this order. Petitioners herein Shri Manoj Kumar Shukla and Shri Anil Kumar Shrivastava were initially appointed in the establishment by the District Cooperative Central Bank Limited as employees temporary or casual in nature and their initial appointment was on the post of Clerk. As far as petitioner Shri Manoj Kumar Shukla is concerned, he was initially appointed as a Labour and, thereafter, he was appointed as a Clerk vide order Annexure-P1 dated 12.12.1994 in the Pay Scale of Rs. 975-1700. It is said that after working for one year, vide order Annexure-P2 dated 17.12.1996, he was made to resign from the post and after submission of the resignation, his services came to an end as is evident from Annexure-P3 dated 2.4.1996, thereafter, on 22.5.1995 Annexure-P4, he was again appointed on the post of Clerk in the Pay Scale Rs. 975-1700. According to the petitioner, this appointment was made on regular basis. In as much as he

was treated as a regular employee by the Bank, his name was included in the seniority list, which was circulated on 11.8.1997 vide Annexure-P5. He was sanctioned a motor cycle loan vide Annexure-P6 dated 30.6.1997, he was sanctioned consumer loan vide Annexure-P7 dated 11.4.1998 and he was also sanctioned increment in the pay scale from time to time. It is said that he was also extended the benefit availing earn leave and encashment of leave. It is said that in the year 1998, 20 posts were sanctioned for appointment of clerk, instead of appointing the petitioner against these posts on 12.12.1998, petitioners' services were terminated. Feeling aggrieved by this, petitioner Shri Manoj Kumar Shukla raised a disputed u/s 55 of the M.P. Cooperative Societies Act, 1960 before the Dy. Registrar Cooperative Societies, who dismissed the claim by his order dated 22.10.2002. An appeal was filed before the Joint Registrar Cooperative Societies and the said appellate authority vide order Annexure-P12 dated 27.3.2003 set aside the order of termination and directed for his reinstatement. Against this order, an appeal was filed by the Bank before the M.P. Cooperative Tribunal, the said appeal was allowed vide Annexure-P14 and as the termination of the petitioner by this order of the tribunal is upheld, this writ petition is filed.

2. As far as petitioner in W.P. No. 7209/2006 Shri Anil Kumar Shrivastava is concerned, it is said that he was appointed as a Clerk in the Bank vide order Annexure-P1 dated 31.3.1995. After his appointment, the benefit of provident fund under the Employees Provident Fund Scheme was granted to him, his name was also included in the seniority list Annexure-P3 dated 3.10.1996, he was also sanctioned earn leave benefit and encashment of earn leave and he was also treated as regular employee for all purposes. When all of a sudden, vide order Annexure-P7 dated 12.12.1998, his services were terminated, he also challenged the same before the Dy. Registrar, who dismissed the claim vide Annexure-P8 on 22.10.2002 but on an appeal being filed, the appeal was allowed by the Joint Registrar vide Annexure-P9 dated 27.3.2003, however, when the matter was taken up before the M.P. State Cooperative Tribunal by the Bank, vide order Annexure-P10 dated 11.11.2005, as in the case of petitioner Shri Manoj Kumar Shukla, the case of the petitioner Shri Anil Kumar Shrivastava has also been decided on similar lines and as the order passed is said to be not in accordance with law, this writ petition is filed.

3. Shri Sanjay K. Agrawal, learned counsel for the petitioners took us through the documents and material available on record and tried to emphasize that from the initial date of appointment, both the petitioners were treated as regular employees with the Bank in as much as increments, benefit of provident fund, grant of earn leave etc. were granted to them, inspite thereof, treating them to be temporary employees, their services were terminated mainly on the ground that they were appointed contrary to the Rules of Recruitment and without approval of the Registrar.

4. It was emphasized by Shri Sanjay K. Agrawal that before terminating the

services of the petitioners, no proper enquiry was conducted. It is said that when services of the employees were made contrary to the rule or they were incompetent persons, then proper enquiry should be conducted in the matter and it is only after conducting the said enquiry and giving opportunity to the petitioners that their services could be terminated. As the same has not been done, it is argued that the termination is unsustainable. Inviting our attention to the following three judgments, Shri Sanjay K. Agrawal argued that as the appointment of the petitioners are terminated without giving them any opportunity of hearing and without conducting any enquiry to find out as to whether the appointment of the petitioners are not in accordance with the rule. The judgment relied upon by Shri Sanjay K. Agrawal are: Shrawan Kumar Jha and others Vs. State of Bihar and others, , Basudeo Tiwary Vs. Sido Kanhu University and Others, and Jaswant Singh and Others Vs. State of Madhya Pradesh and Others, It was emphasized by Shri Sanjay K. Agrawal that as a proper enquiry into the matter of initial appointment of the petitioners has not been undertaken, the termination is unsustainable.

5. Respondents represented by Shri M.P. Shukla refuted the aforesaid and he took us through the order dated 11th of November, 2005 Annexure-P14 in W.P. No. 15893/2005 passed by the cooperative tribunal, the questions framed for consideration by the cooperative tribunal and emphasized that the petitioners' appointments were without following the Rules of Recruitment they were backdoor enters, appointed dehors the rule, therefore, the action taken is proper and the findings recorded by the tribunal does not call for any interference.

6. Inviting our attention to the principle laid down in the case of the Secretary, State of Karnataka and Others Vs. Umadevi and Others, Shri M.P. Shukla argued that as the induction of the petitioners itself into the department is without following the rules of appointment and is in violation of the requirements of Article 14 of the Constitution, no interference can be made. He accordingly, prays for dismissal of the writ petitions.

7. We have heard learned counsel for the parties and perused the records. From the records it is seen that the petitioners have been appointed to the posts on the dates as indicated hereinabove and in the order of appointment issued with regard to the petitioner, Shri Manoj Kumar Shukla Annexure-P4 dated 22nd of May, 1996, it is clearly indicated that as there are shortage of employees in various branches of the Bank, employees who are previously working and whose services are terminated, they be granted temporary appointment and the temporary appointment shall be subject to approval of the Commissioner, Cooperative Society. It is, therefore, clear from this order of appointment that the appointment of petitioner Shri Manoj Kumar Shukla was only a temporary appointment. Similarly in the appointment of Shri Anil Kumar Shrivastava, petitioner in W.P. No. 7209/2006 Annexure-P1 dated 31.3.1995, it is clearly indicated that his appointment is on temporary basis and he is also appointed as a temporary employee. It is not a case of the petitioners that they were

appointed to the services of the Bank after following any procedure contemplated for appointment to the Bank in question or by following any procedure known to law for appointment into the public service.

8. If the order passed by the cooperative tribunal is taken note of, it is seen that appointments in the Bank are to be made in accordance with requirement of statutory rules, namely the Madhya Pradesh Ke Zila Sahkari Kendriya Bank Karmachari Sewa (Niyojan, Nibandhan Tatha Unki Karya Sthiti) Niyam, 1982. The tribunal after evaluating the entire matter came to the conclusion that the questions involved was as to whether the appointment of the petitioners are after obtaining the permission of the Registrar as contemplated under Rule 10 of the Recruitment Rule, 1982; Whether the requirement of Rule 6 has been followed in appointing them; Whether the vacancies were notified to the Employment Exchange as required under the Rule 11 of the Rule, 1982; Whether the procedure contemplated u/s 15 was followed, i.e. with regard to issuance of advertisement, selection process etc.

9. After taking note of all these aspects of the matter, the findings recorded is that the appointment of the petitioners on the posts in question and their induction into the department is not after following the recruitment rules. It is, therefore, held that their appointments are temporary appointments and as the services are terminated and no more required, the tribunal has refused to interfere into the matter.

10. Petitioners only say that if their appointments were not in accordance with the rule, then a proper departmental enquiry should be conducted, they should have been given the opportunity of hearing and then only their services should be terminated. In support thereof, reliance is placed on the judgments of Basudeo Tiwary (Supra) and in the said case, appointments were made and the termination was ordered in view of Section 35(3) of the Bihar Universities Act wherein a statutory provision was contemplated that if any appointment or promotion is made contrary to the act, the appointment can be terminated. It was the case of the employee before the Supreme Court in the said case that no enquiry was conducted as to whether his appointment was contrary to the rule and, therefore interference is made. It is seen that in the said case, employee came out with a case that his appointment was in accordance with the rule. However, in the present case, the cooperative tribunal has gone through the entire records and it has found that the petitioners' induction into the department is not after following the rules namely, Recruitment Rules, 1982 and after taking note of more than 10 judgments of the Supreme Court, it was found that the employee is appointed dehors the Rules of Recruitment, therefore, they are not entitled for any protection. It is a temporary appointment, which can be terminated in accordance with the requirement of the establishment. The judgments in the case of Jaswant Singh (Supra) relied upon by the petitioners including judgment in the case of Basudeo Tiwary (Supra) has been considered by the cooperative tribunal, and after the matter is assessed in the backdrop of

the statutory rule, findings recorded is that as the appointment of the petitioners is without following any of the procedure as is contemplated in the Recruitment Rules, 1982, it is in violation of the requirement of Article 14 of the Constitution and, therefore, no relief can be granted to the petitioners.

11. Even in the case of Uma Devi (Supra) relied by Shri M.P. Shukla, it has been laid down by the Supreme Court that when a person enters a temporary employment or gets engaged in any department, not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences also and it has been held that the theory of legitimate expectations for being confirmed in the post is not available to such person and the appointments if any made contrary to the relevant rules and if dehors the rule, the same is classified as an illegal appointment, hit by the Article 14 & 16 of the Constitution and if induction of the petitioners to the department or their birth in the department itself is found to be by the illegal methods, we see no error in the order passed by the tribunal refusing to interfere into such a matter. It is not a case of the petitioners before us that their induction into the department initially has been made after following the procedure contemplated under the Recruitment Rules or by following any procedure known to law for appointment into the public service. If the petitioners gained employment into the public service through backdoor entry, the protection of Article 14 of the Constitution and the question of granting them reasonable opportunity of hearing is not required as per se their induction itself is illegal.

12. It is a case, where from the material available on record, it is clearly established that the appointment of the petitioners or their birth in the department itself is without following the rules and procedure prescribed under law and once the petitioners are found to be illegally employed as indicated hereinabove, no further indulgence into the matter is called for.

13. Except for contending that no enquiry with regard to the illegality in the process of recruitment is conducted and no opportunity is granted, petitioners are unable to demonstrate before this Court as to how holding of such an enquiry would change the final outcome or result. It is not the case of the petitioners that they have been appointed by following certain procedure which is permissible under law and therefore, the enquiry should be conducted. Enquiry as a mere empty formality cannot be a ground for interfering into the matter when the overwhelming material available on record does not show that induction of the petitioners to the department was after following some procedure prescribed for recruitment. That being so, simply on the ground that no opportunity was granted or no enquiry was conducted into the manner of appointment, interference is not called for as even if the petition is allowed and an enquiry conducted, it would be nothing but an empty formality as prima facie material to show that induction of the petitioners into the department was by a legal method is not available. The learned Madhya Pradesh Cooperative Tribunal in dismissing the claims of the petitioners and holding that they are only temporary employees

and their services can be terminated in the manner done, has not committed any error, the same does not warrant any interference in these proceedings by this Court exercising jurisdiction under Article 226 & 227 of the Constitution.

Accordingly, finding no ground, both the petitions are dismissed.