

(2002) 01 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 18949 of 1995

Peroorkada Service Co-operative Bank	APPELLANT
Vs	
Sheena	RESPONDENT

Date of Decision : 15-01-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(OO)

Citation : (2002) 95 FLR 1137 : (2002) 3 LLJ 459

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : C. Kochunny Nair and N. Unnikrishnan, for the Appellant; P. Ramakrishnan, P.C. Sasidharan and A. Jayasankar, for the Respondent

Final Decision : Allowed

Judgement

M.R. Hariharan Nair, J.—Can the termination of service of Clerks engaged on daily wages on completion of the particular work for which they were engaged in a Co-operative Bank be taken as "retrenchment" justifying interference by the Labour Court? This is the main question that arises for decision in the present case.

2. The 1st respondent herein was engaged by a Branch Manager of the petitioner - Bank (Peroorkada Service Co-operative Bank Ltd., Thiruvananthapuram) for casual works relating to audit and finalisation of annual accounts on daily wages for the period from 16.4.1986 till 27.6.86 and from 16.10.1987 to 13.3.1989. The 2nd respondent worked likewise during the period from 16.4.1986 to 5.7.1986 and from 16.10.1987 to 11.3.1989. They were not allowed to work for further periods. Aggrieved by the denial of work, they approached the Labour Court, Kollam and as per Ext. P4 award passed in I.D. No. 90/90 the Manager's contentions were turned down and it was directed that the said respondents be reinstated without backwages; but with continuity in service.

3. The learned counsel for the petitioner submits that there is no question of

retrenchment in the instant case in so far as there was no regular appointment at all given to the said respondents. They were called in for a specific work which was to last for a certain period only and that too without recourse to mode of selection prescribed under the Kerala Co-operative Societies Act and Rules which governed such appointments. It is also pointed out that for giving appointment to any post in Cooperative Societies, the appointing authority is the Board of Directors and that the temporary work on daily wages that the respondents did was not based on any such resolution of the Board of Directors; but only at the instance of Managers who had to complete the particular clerical work within a time frame. The contention therefore is that there was neither any regular appointment nor retrenchment within the definition of the term as given in the Industrial Disputes Act, 1947 and that the direction contained in the impugned order of the Labour Court would tantamount to appointment of persons unqualified to hold the post through the back door. It is also pointed out that when regular recruitment was notified earlier, these respondents applied for the post; but failed to get through in the selection process.

4. According to the learned counsel for the respondents, they come within the meaning of the term "workmen" and their termination of service certainly tantamounts to retrenchment in which case the order of the Labour Court is fully justified.

5. The petitioner - Bank is certainly governed by the provisions of the Kerala Cooperative Societies Act and Rules. Under Rule 88, there is a staff pattern applicable to the Society and there is a mode of selection also prescribed under Rule 82. The respondents have no case that they came in after undergoing the selection process or that they were given any appointment order as such. The respondents also have no case that they were appointed pursuant to any particular decision of the Director Board which is the only authority competent to make appointments. Their only case is that they were given work on daily wages for intermitted periods, the total of which exceeds 240 days.

6. The first question that arises for decision in the case is whether the respondents can be called workmen within the meaning of Section 2(s) of the I.D. Act which reads as follows: ,

"2(s) "workman" means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act; 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature."

Thus one of the essential conditions for a person to be a workman is that he should be employed, expressly or impliedly to do the work in an industry. It follows that there should be a valid employment of the claimant by the employer and there should be the relationship of master and servant subsisting between them. Unless a person is employed as above, it appears, there can be no question of his being a workman within the definition thereof contained in Section 2(s).

7. Kuravilangad Service Co-op. Bank v. State of Kerala (1982 KLT 648) is authority for the proposition that the mere fact that a person is employed in an establishment is not enough to attract the definition of the term "employee" u/s 2(6) of the Kerala Shops and Commercial Establishments Act. It has to be further proved that he was principally or wholly employed in or in connection with that business. u/s 3(1)(b) of the Shops and Commercial Establishments Act canvassers and persons whose names do not appear in the muster rolls are beyond the provisions of that Act. That was also a case where under the bye-laws of the Society, all appointments in the Co-operative Bank should have been made only by the Board of Directors and the President who made the appointment in his individual capacity had no such authority. The person employed as canvasser by the President approached this Court with a claim that he had been appointed later as a Clerk by an Administrator. This Court found that in the circumstances there was no scope for interference in the termination of service; the reason being that there was no evidence to show that he was wholly or principally employed in connection with the service or business under the Society and there was no regular, appointment by the Board of Directors. The Court noted that, in fact, the subsequent appointment made by the Administrator as Clerk was only to clear some arrears of work for a period of 30 days and upheld the validity of the termination made on expiry of the said period.

8. In order that the Labour Court could validly interfere, it should be established that there was retrenchment within the meaning of Section 2(oo) of the I.D. Act which reads as follows:

"2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a) xxx xxx xxx xxx (b) xxx xxx xxx xxx (bb) termination of the service of the

workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or

(c) xxx xxx xxx xxx"

In view of this position, termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein could not be taken as retrenchment,

9. In the instant case, as already mentioned, there was no regular appointment and the appointment was only on day-to-day basis. When the Manager, who wanted the services of the respondents, found that there was no further work to be done by them, he refused to renew the contract on daily employment. In such case, it cannot be said that there was any retrenchment attracting the jurisdiction of the Labour Court.

10. The fact that the respondents had appeared in the test conducted for regular appointment and failed is an admitted fact. It is also not disputed that a regular selection process is a must for securing an appointment in the petitioner - Bank. Urakam Service Co-operative Society v. Sujatha (1988 (2) KLT 26) dealt with a case where an employee appointed in violation of Rule 188 of the Kerala Co-operative Societies Rules sought regularisation of the appointment. The Deputy Registrar had declined the approval to the appointment and the Society terminated the services of the employee. On a consideration of the question, this Court found that in view of the deviation from Appendix III to the Kerala Co-operative Societies Rules, the appointment made without the prior approval of the Registrar was totally invalid. The Society was called upon to terminate the service of the employee by the Deputy Registrar. It was in such circumstances that the services of the employee was terminated. This Court found that in these circumstances, the Labour Court was in error in holding that the termination of the employee was bad and illegal and in directing reinstatement.

11. A Bench of this Court had occasion to consider a similar case in Koodaranji Service Co-op. Bank Ltd. v. Lissy (1993 (2) KLT 706). There also appointment made by a Co-operative Society in violation of rules was terminated on the basis of instructions issued by higher authorities. The question considered was whether such termination of service amounted to retrenchment attracting jurisdiction of the Labour Court. This Court found that all retrenchments would result in termination of service of a workman; but all termination of service would not fall within the definition of "retrenchment". The termination of service, so as to tantamount to retrenchment, should be from a post in which he could have continued as a matter of right. If the post was such that its continuance was not possible, then the termination of service of the workman from that post cannot amount to retrenchment as defined under the I.D. Act. The appointment of the employee therein was against the rules as such was illegal. In such a case there

was no question of existence of any master and servant relationship between the Society and the employee. The Court found that in such circumstances, the employment can be validly terminated as directed by the authorities under the Kerala Co-operative Societies Act and that it would not fall under the definition of "retrenchment" attracting the jurisdiction of the Labour Court.

12. Navodaya Vidyalaya Vs. K.R. Hemavathy, dealt with a case where an employee was given temporary appointment for a fixed period. The Karnataka High Court found that the contention that termination of service after the fixed period amounted to retrenchment cannot be accepted.

13. Eranalloor Service Co-op. Bank Ltd., v. Labour Court and Ors. (1986 KLT 801) is yet another case involving a Co-operative Bank. There also the employee was appointed contrary to the provisions of the Statute and there was termination of service. Here again this Court found that the person was totally unqualified to hold the post; that there was bypassing of qualification and violation of Rule 186 of the Kerala Co-operative Societies Rules and that the appointment was also made without obtaining prior approval of the Registrar of Co-operative Societies. In the circumstances, it was found that there was no justification for allowing the candidate to continue in service. This Court reiterated that while all retrenchment is termination of service, the vice versa is not always true and if the termination is consequent upon orders passed by the superior authorities on finding that there was violation of the relevant rules, there was no justification for invoking the jurisdiction of the Labour Court. In very clear terms it was mentioned that only a person who is validly appointed in the service of the employer can claim reinstatement and that the service must be capable of being continued until any of the, events envisaged under Clauses (a), (b) and (c) of Section 2(oo) happens. He has to establish that he has a right to continue in service and that his service was terminated without complying with the requirements of law.

14. This being the position of law, the respondents who did not undergo the selection process and did not even get an appointment order from any one cannot at all approach the Court stating that there was retrenchment of service within the meaning of the I.D. Act justifying application of jurisdiction of the Labour Court. Upholding the order of the Labour Court would lead to opening a Pandora's box for back door appointments violating all provisions of law.

15. During hearing, reliance was placed on the decision in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, and D.K. Yadav Vs. J.M.A. Industries Ltd., by the learned counsel for the respondents. I have perused the decisions and they are not at all cases of similar facts. In fact, they were cases where appointments made were regular and there was invalid termination of the employment. In the circumstances, the said decisions have no application to the facts of the present case.

16. The Labour Court has proceeded on erroneous grounds to conclude that there was violation of the provisions in the I.D. Act justifying reinstatement. The order cannot be sustained in so far as there was no retrenchment at all within the meaning of the I.D. Act in the present case.

17. This Original Petition is hence allowed and Ext. P4 order of the Labour Court is set aside.

18. It was mentioned during arguments that pursuant to an interim order of this Court, the respondents 2 and 3 were granted some monetary benefits. In the nature of this case, I do not think it necessary to direct the respondents to repay the amounts already received by them.

The Original Petition is allowed as above.