

(1985) 08 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1147, 1148, 1149, 1150, 1162 and 1406 of 1985

Shiv Lal Solanki and Others

APPELLANT

Vs

The Jalore Central Co-operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 19-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (1985) WLN 246

Hon'ble Judges : Ashok Kumar Mathor, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Mathor, J.—In all these writ petitions identical question arises for consideration, therefore they are being disposed of by one single Judgment. For the convenience sake facts of one case are given. The petitioner Shiv Lal Solanki, applied for the post of Clerk/Cashier in pursuance of advertisement issued by the Jalore Central Cooperative Bank Ltd., Jalore, (here in after referred as the respondent Bank). It is alleged that the petitioner was interviewed and he was selected for the post of Clerk/Cashier. Thereafter Executive Committee of the respondent Bank approved appointment of the petitioner and issued order Exbt. 1 dated 28th December, 1981. Thereafter a seniority List was also assigned vide order dated 13th October, 1983 (Annexure-A). It is alleged that on 14th August, 1982 petitioner's services were also terminated vide Annexure-2, but on very day the Chairman of the Bank cancelled the termination order and restored the petitioner back to his post. Since then he continued on the post till this impugned order was passed. It is alleged that a communication dated 29th May, 1985 was received from the Registrar, Cooperative Societies, Jaipur, respondent No. 2 by the Managing Director of the respondent Bank purporting to have been issued under Sub-section (7) of Section 70 of the Rajasthan Cooperative Societies Act (here in after referred as the Act) after holding enquiry wherein it is found that

the appointment of petitioner and other persons similarly situated was irregular and therefore the: services of the such irregular appointees should be terminated. In pursuance of the order dated 29th May, 1985 order dated 4th July, 1985 has been issued whereby a notice has been given to the petitioner informing the petitioner that after expiry of one month period his services will be deemed to have been terminated as his appointment on the post was irregular. Aggrieved against this the petitioner made representation to the respondent No. 2. However the petitioner has also filed this writ petition challenging the aforesaid notice.

2. The respondent Bank has filed reply and taken the position that appointments of all these persons was in violation of the procedure laid down by the respondent No. 2, therefore the appointments of these persons was void ab initio and petitioner cannot avail benefit therefrom. In this connection learned counsel for the respondent has invited my attention to Rule 41 of the Rajasthan Cooperative Societies Rules, 1966(here in after referred as the Rules) Under Rule 41a power has been given to the Registrar to lay down the procedure for recruitment in all over the Banks in Rajasthan. A detailed procedure is contained in Annexure R/6. According to the procedure laid down by the Registrar a selection shall be made by a committee consisting of 4 members and the minimum quorum for transacting the business has been provided as three. The members of the Committee are as under:

1- v/;{k iz"kkld] dsfUnz; lgdkjh cSd fy0 ps;jeSu 2- iz/kku O;oLFkkid]]]]]]]]]] lnL; 3- [k.M+h; la;qDr mi jftLV?kj lg- lfefr;k]]]]] 4- izcU/kd lapkyd] jktLFkku LVsV dkSVjsfVo cSd t;iqj vFkok muds nokjk euksuhr "kh"kZ lgdkjh cSd dksbZ vf/kdkjh lnL;

3. In the last para of Exbt. R/6 it has also been mentioned that quorum for transacting the business should be three. The relevant extract from Exbt. R/6 in this regard reads as under:

;g Hkh Li"V fd;k tkrk gS fd mijksDr xBr p;u desVh es ;s ;fn dksbZ Hkh ,d inkf/kdjH mifLFkr ugh gks rks ckdH p;u desVh ds rhu vf/kdkjh p;u es l{ke gksxs A

Thus according to the respondents at the time when the petitioner and like other persons were selected only two persons participated and as such there is a serious violation of the procedure for recruitment laid down by the Registrar. Therefore the appointment of these persons by such an illegal committee is void ab initio and the petitioner cannot derive any benefit out of such an illegal appointment order. Mr. Mridul has however submitted that Section 25F of the Industrial Disputes Act (here in after referred as the Act of 1947) shall be complied with while retrenching these persons.

4. The learned counsel for the respondent Bank Mr. Bhoot has raised preliminary objection that since the petitioner wants to invoke Section 25F of the Act of 1947, he should be asked to approach the Industrial Tribunal under the Act of 1947 and in this connection he has cited the case of Bhanwar Lal v. RSRTC and

Ors. 1984 RLR 619.

5. The learned counsel for the petitioner has raised two contentions for my consideration. First that the order dated 29th May, 1985, suffers from the vice of the breach of principles of natural justice and second that the order of termination is bad being violative of Section 25F of the Act of 1947. It has been contended that the order of the Registrar dated 29th May, 1985 should be quashed and the Registrar should be directed to pass an appropriate order after hearing the petitioner. In this connection learned counsel has cited the case of Union of India (UOI) and Another Vs. Avtar Singh and Another, and Arjun Chaubey v. Union of India 1984(2) SLR 16. I am afraid these two cases cited by the learned counsel are of no avail to the petitioner.

6. In the case of Union of India (UOI) and Another Vs. Avtar Singh and Another, the Hon'ble Supreme Court has held as under:

In a petition for a writ of certiorari it is not proper to look into equities evaluating the facts and evidence of the case. Further, in the impugned decision the facts as appearing from the record and submissions made by the claimants were exhaustively dealt with and no case for interference was made. There were relevant considerations creating doubt on the claim of oral partition. Once the allegation of the oral partition is rejected, the respondents are not entitled to any consideration even on equitable grounds.

7. Thus the facts of the above case have no semblance to the case in hand.

8. Similarly in the case of Arjun Chaubey v. Union of India 1984(2) SLR 16, the Hon'ble Supreme Court has held as under:

The main thrust of the charges against the appellant related to his conduct qua respondent No. 3. Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own testimony is true.

9. This case also does not help the petitioner because here also facts are quite distinguishable.

10. It is admitted fact that at the time of selection only two persons participated in selection and selected the petitioner and thereafter appointment order has been issued, if the appointment of the petitioner is ex facie illegal and is in violation of the rules this Court will not enter or exercise its extra ordinary jurisdiction to perpetuate the illegality.

11. The learned counsel for the petitioner has submitted that Exbt. R/6 is an administrative order laying down the procedure for recruitment, any violation of such order cannot render the appointment of the petitioner void. But this is not so because as already observed above that under Rule 41 a power has been conferred on the Registrar for laying down the procedure for recruitment in such institutions and this is of a statutory character and not merely administrative in

nature. Since the procedure laid down by Registrar is statutory in character therefore it was not open for the respondent Bank to violate the same in recruiting the candidates. The learned counsel at one point of time endeavoured to show that these rules are beyond the provisions of the Act. But in view of the decision of this Court reported in Phool Chand v. State of Rajasthan 1985 RLR 365, where in the Division Bench of this Court has categorically laid down that the Registrar is competent authority to lay down the procedure for recruitment under Rule 41 of the Rules. As such this contention of the learned counsel for the petitioner is rejected.

12. Thus, it was mandatory on the part of the respondent Bank to follow this procedure while recruiting the candidates.

13. The learned counsel for the respondent Bank has also invited my attention to the case of B.S. Minhas Vs. Indian Statistical Institute and Others, wherein their Lordships of the Hon"ble Supreme Court has held as under:

In view of pronouncement of this Court on the point it must be held to be obligatory on the part of the respondent No. 1 to follow the bye-laws, if the bye-laws have been framed for the conduct of affairs to avoid arbitrariness. Respondent No. 1 cannot; therefore escape the liability for not following the procedure prescribed by bye-law.

14. The learned counsel for the respondent has invited my attention to the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, Gani Mohammed v. State Transport Appellate Tribunal RLW 1976 201 , Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another, and Bhera Ram v. State of Rajasthan 1984 RLR 995. The Division Bench of this Court in Bhera Ram v. State of Rajasthan has held as under:

(c) Constitution of India, Article 226 Extraordinary powers of High Court cannot be availed of for restoring wrong order even when such order was set aside by authority not competent--Land Acquisition Officer passed order on review of its Award--LAO not competent to review its Award--Such order of LAO set aside by authorities not competent--Held, although orders of authorities setting aside Award of LAO were without jurisdiction as no appeal or revision lay against order of LAO but illegal order of LAO cannot be restored by High Court under Article 226.

15. from these facts it clearly transpires that the petitioner and like other persons were selected by a committee consisting of two persons whereas minimum quorum was of three persons. Thus when the mandatory requirements as contained in Exbt. R/6 have been violated, therefore appointment of petitioner and like him stand vitiated. When the appointment of these persons was void ab initio therefore even if they have not been heard by the Registrar that would not render the termination invalid.

16. The learned counsel for the petitioner does not dispute this fact that the

selection committee was consisted of only two persons. This court cannot enter into academic exercise that if the petitioner has been given an opportunity he would have changed the factual aspect. I called upon the counsel for the petitioner to cite any point which could merit consideration so as to set aside the order of the Registrar passed without hearing him. But on this factual aspect the learned counsel could not dispute and there is no averment to the contrary in the petition. Thus no useful purpose would be served to set aside the order of the Registrar and remand the case back to him, rather by doing so I would have perpetuate the illegality by giving a premium to such illegal order under garb of breach of principles of natural justice. Thus, I hold that the appointments of these persons was illegal and this court would not enforce any illegal selection in its extra ordinary jurisdiction.

17. So far as the second question regarding breach of Section 25F of the Act of 1947 is concerned, I need not go into this question because Mr. Bhoot has submitted at the out set that Section 25F will be complied with and this also relieves me to decide the preliminary objection raised by Mr. Bhoot regarding alternative remedy under the Act of 1947.

18. Mr. Bhoot has also contended that the petitioner has no right to post and in this connection he has referred to the cases of Shanker Mali v. State of Rajasthan RLW 1980 584, Tejbhan Singh v. State of Rajasthan 1982 RLR 361 , Nepal Singh Vs. State of U.P. and Others, and K.C. Joshi Vs. Union of India (UOI) and Others, Since I have already held that the appointments of petitioner and others were void ab initio, therefore this court should not perpetuate the illegality as such, I need not to go in this question.

19. In the result, I do not find any merit in these writ petitions and they are dismissed without any order as to costs.