**(2015) 02 MAD CK 0184**

**In the Madras High Court**

**Case No :** Writ Petition(MD) Nos. 7741, 5434 and 9717 of 2009 and M.P.(MD) Nos. 1 and 1 of 2009 and 1 and 2 of 2012

Sholavandan Co-operative Primary Agricultural and Rural Development Bank Ltd. — APPELLANT

Vs

Deputy Commissioner of Labour and Others — RESPONDENT

**Date of Decision :** 10-02-2015

**Acts Referred:**
- Constitution of India, 1950 — Article 14, 141, 16, 162
- Tamil Nadu Co-operative Societies Act, 1983 — Section 149, 153, 82, 87, 88
- Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 51

**Citation :** (2015) WritLR 193

**Hon'ble Judges :** V.M. Velumani, J.

**Bench :** Single Bench

**Advocate :** S. Seenivasagam, for the Appellant; M. Murugan, Government Advocate, Advocates for the Respondent

# Judgement

V.M. Velumani, J.—Since common issues are involved in these writ petitions, they are heard together and disposed of by this common order.

2. W.P.(MD) No. 7741 of 2009 has been filed seeking a Writ of Certiorari to call for the records relating to the impugned order of the first respondent, in his file TNSE No:47/01 and quash the order, dated 15.10.2001.

W.P.(MD) No. 5434 of 2009 has been filed seeking a Writ of Mandamus, to direct the respondents to reinstate the petitioner in service as Supervisor of A.1224, Sholavanthan Primary Co-operative Agricultural and Rural Development Bank Ltd., Sholavanthan, Madurai District, based on the order, dated 15.10.2001, passed by the Deputy Commissioner of Labour, Madurai, in T.N.S.E. Appeal No. 47/2001.

W.P.(MD) No. 9717 of 2009 has been filed seeking a Writ of Mandamus, to direct the respondents 1 to 3 herein to appoint the petitioner as Supervisor/Secretary in the third respondent Bank i.e., Sholavandan, A.1224 Sholavandan Primary Co-operative Agricultural and Rural Development Bank Ltd., Sholavandan, Madurai District, in the retirement vacancy of one Thiru. A. Kaliappa Pandian.

W.P.(MD) No. 7741 of 2009:

3. The case of the petitioner is that it is a Co-operative Institution duly constituted under the provisions of the Tamil Nadu Cooperative Societies Act and the Rules framed thereunder. The Registrar of Co-operative Societies is the ultimate authority in the administration of all the Co-operative Institutions. The predominant object of the petitioner bank is to extend credit and such other facilities to its members to augment their agricultural produce. The elected Board of Directors is to run the Management in accordance with the powers vested on it under the said Act and Rules as well as the registered Bye-laws of the bank and registered special Bye-laws relating to the service conditions of the staff of the bank. As per various directions and circulars issued by the Registrar, the appointments should be made only within the cadre strength that too with prior approval and permission of the Deputy Registrar. Vacancies, if any, should be filled up from those surplus/retrenched employees of similar Banks of that region or from the state-wide list. Only after exhausting the entire waiting list, recruitment has to be made to any post by calling the list of eligible candidates from the Employment Exchange, or by adopting other modes, if the Employment Exchange certifies that there were no eligible candidates. Communal rotation also has to be followed.

4. The Elected Board of the petitioner came to power on 01.11.1996. It took steps to get the cadre strength approved by the authorities. Accordingly, the Regional Joint Registrar of Co-operative Societies, Madurai, through his proceedings dated 18.11.1997, approved the cadre strength with one Secretary, six Supervisors and one Office Assistant. The Joint Registrar further directed therein that new appointments should be made by adopting the redeployment.

5. Contrary to the above norms, the Board engaged the second respondent on daily wage basis from 20.10.1999 on consolidated wage basis as Supervisor. His appointment was neither made in a vacancy within the approved cadre strength nor by properly following the recruitment procedures. The Deputy Registrar of Co-operative Societies, Madurai, ordered for an inspection under Section 82 of the Tamil Nadu Co-operative Societies Act. Consequently, a report filed under Section 82 revealed that the appointment of the second respondent and a few others were contrary to the recruitment procedure.

6. Therefore, proceedings under Section 87 of the said Act was initiated against the Board of Directors by serving a notice to show-cause as to why Surcharge Proceedings should not be initiated against the Board. The Joint Registrar, Madurai, also issued a notice under Section 88 of the said Act proposing super-session of the Board for the said irregularities. Anticipating stringent action against the board, the then President of the Board passed an order on 07.02.2001, terminating the service of the second respondent and four others.

 

7. Aggrieved against the said order, the second respondent preferred an appeal under Section 41 of the Tamil Nadu Shops and Establishments Act [hereinafter referred to as "the TNSE Act"] before the first respondent in TNSE No. 47/01 with an application to condone the delay in filing the appeal. The petitioner contested the same on the ground that the appointment of the second respondent is contrary to the Bye-laws, Circulars and the instructions of Registrar of Co-operative Societies, Provisions of Co-operative Societies Act and Rules and over and above approved cadre strength and the second respondent is not an employee as defined by the provisions of the TNSE Act.

8. The petitioner has also filed an appeal under Section 51 of the TNSE Act before the Commissioner of Labour in TNSE No. 2/2001 contending that the second respondent is not an employee as defined by the TNSE Act.

9. The appellate authority condoned the delay in filing the appeal filed by the second respondent under Section 41 of the TNSE Act and allowed the appeal filed by the second respondent setting aside the order of termination passed by the petitioner, dated 15.10.2001. Subsequently, the Commissioner of Labour, Chennai, dismissed the appeal filed by the petitioner under Section 51 of the TNSE Act.

10. The second respondent did not pursue the order of the appellate authority, dated 15.10.2001, setting aside the order of termination, dated 07.02.2001. Instead he filed Revision under Section 153 of the Tamil Nadu Co-operative Societies Act before the Joint Director of Co-operative Societies, Madurai-2, belatedly on 12.01.2007, seeking reinstatement and regularisation of his service. The Joint Director of Co-operative Societies, by order dated 20.08.2008, in Na.Ka. No. 626/2007/Sa.Pa., dismissed the revision petition.

11. The petitioner has filed this writ petition challenging the order of appellate authority, dated 15.10.2001, allowing the appeal of the second respondent filed under Section 41 of the TNSE Act, whereby the order of termination, dated 07.02.2001, was set aside.

12. The second respondent filed counter affidavit contending that the writ petition is liable to be dismissed on the following grounds:

"(a) On the ground of delay.

(b) No special Bye-laws were framed and hence, Section 149 of the Tamil Nadu Co-operative Societies Act, is not applicable.

(c) His services were terminated contrary to the Rules and Regulations.

(d) Even now there are vacancies in the petitioner Bank.

(e) The impugned order of appellate authority is valid and legal."

13. The learned counsel appearing for the petitioner submitted that as on 18.11.1997, the approved cadre strength of the petitioner society in the cadre of

 

Supervisor was only 6. When the petitioner was appointed as Supervisor on 20.10.1999, his appointment was beyond such cadre strength. Even assuming that the appointment was within the cadre strength, such appointment is bad as the same was not made through redeployment as contemplated by various directions and circulars issued by the Registrar of Co-operative Societies.

14. He further contended that as the appointment of the second respondent was not made through Employment Exchange the same is against Rule 149 of the Tamil Nadu Co-operative Societies Rules.

He further contended that no communal rotation was also followed.

15. The learned counsel further contended that the appellate authority did not consider this aspect, but allowed the appeal filed by the second respondent solely on the ground that one month salary in lieu of notice was not given.

16. It is further contended by the learned counsel that the special Bye-laws have to incorporate the procedure contemplated under Rule 149. Whether there was any special Bye-laws or not, the recruitment should be made only by following Rule 149 and such procedure cannot be ignored or deviated. He also submitted that proceedings of the Joint Registrar of Cooperative Societies, Madurai, dated 28.02.2000 and 08.09.2000 would show and prove that the appointment of the second respondent was beyond the cadre strength. The learned counsel submitted that the Labour Court had wrongly concluded that the appointment of the second respondent was within the cadre strength.

17. In support of his submission, the learned counsel for the petitioner relied on the following decisions:--

"1. 2002 (4) CTC 385 (Justine, L. v. The Registrar of Cooperative Societies)

2. (2004) SCC Labour and Service 198 (Umarani v. The Registrar, Cooperative Societies and others)

3. 2007 (4) LLN 868 (R. Rathakrishnan v. Deputy Registrar of Co-operative Societies, Dindigul)

4. State of U.P. Vs. Desh Raj,

5. State of Karnataka and Others Vs. Sri G.V. Chandrashekar, "

18. Per contra, the learned counsel appearing for the second respondent submitted that the appointment of the second respondent was well within the cadre strength. In any event, as the petitioner did not frame any Bye-laws, the provision of Section 149 of the Tamil Nadu Cooperative Societies Act is not applicable and even if his appointment was beyond the cadre strength, the same is valid. The guidelines issued by this Court in Justine''s case reported in 2002(4) CTC 385, is not applicable to the facts of the present case. One E. Velmurugan was also terminated along with the second respondent, was reinstated by the petitioner Bank on 20.04.2013 and he is working as Supervisor. Now, only three

 

persons are employed in the petitioner Bank and persons working on transfer are continued beyond three years is contrary to the directions of the Registrar. As there is a vacancy, he is entitled to redeployment.

19. Heard the learned counsel on either side.

20. The second respondent was appointed as a Supervisor by the petitioner Bank on 20.10.1999 and he was terminated from service on 07.02.2001. It is seen that such order of termination was challenged by the second respondent before the Appellate Authority under the TNSE Act, by filing an appeal and the said order of termination was set aside by the appellate authority on the ground that no notice or pay in lieu of such notice was given to the second respondent.

21. It is the contention of the learned counsel for the petitioner that the second respondent''s appointment was beyond the cadre strength. It is stated that the Elected Board came to power on 01.11.1996 and thereafter, it had taken steps to get the cadre strength approved by the Regional Joint Registrar of Co-operative Societies. A perusal of the proceedings, dated 18.11.1997, issued by the Regional Joint Registrar of Co-operative Societies substantiate such contention and shows that only six Supervisor posts were sanctioned to the petitioner Bank and that any vacancy should be filled up only by redeployment.

22. Thus, from the said proceedings, it is established that the petitioner Bank was approved with a cadre strength of 6 Supervisors and that any vacancy arising therefrom can be filled up only by redeployment. When such is being the position, the appointment of the second respondent made on 20.10.1999 was certainly not in accordance with the said proceedings, dated 18.11.1997 issued by the Joint Registrar of Cooperative Societies. Therefore, it is the contention of the petitioner that such appointment of the second respondent was beyond the cadre strength. On the other hand, the learned counsel appearing for the second respondent contended that the second respondent''s appointment was well within the cadre strength. But a perusal of the other proceedings issued by the Joint Registrar of Co-operative Societies, Madurai, dated 28.02.2000 and 08.09.2000 would show that there were eight Supervisors working as against the sanctioned cadre strength of six. Such proceedings of the competent authority issued subsequent to the appointment of the second respondent would only show that his appointment was certainly beyond the cadre strength. Even assuming that the said appointment was not beyond the cadre strength, still the said appointment cannot be made directly without following the procedure of redeployment from the other surplus retrenched employees of the similar Bank of that region or from the persons waiting in the state-wide list.

23. Rule 149(2) of the said Rules, contemplates the procedure for making direct recruitment. Under the said Rule, it is clearly stated that no appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from Employment Exchange and also by giving due publicity by means of announcement in the notice board of the society inviting application

 

from the eligible employees of such bank. It is further contemplated therein that when the Employment Exchange issues a Non-availability Certificate, the Society shall invite applications by giving advertisement in more than one daily newspapers. Thus, from the facts and circumstances, it is certain that the second respondent''s appointment was not within the cadre strength, but also not made by following either the process of redeployment or the procedure contemplated under Rule 149(2) of the said Rules.

24. No doubt, the learned counsel for the second respondent contended that no special Bye-laws were framed fixing the cadre strength as contemplated under Rule 149(1) and in the absence of any special Bye-laws, there is no necessity to follow Rule 149(2). I am unable to appreciate and accept the said submission for the following reasons:--

"First of all, a person who was appointed against well established norms, procedures and prescribed laws cannot be permitted to canvass the correctness or otherwise of certain procedural irregularities or technical lapses, even assuming that those irregularities and lapses exist in a given case. The second respondent''s appointment is one such invalid and illegal appointment. Even otherwise, it is categorically stated by the petitioner in the affidavit in support of the writ petition at paragraph 8 that the Board came to power in the year 1996 and the Board, in accordance with the Bye-laws, took steps to approve the cadre strength and the Regional Joint Registrar of Co-operative Societies, through his proceedings dated 18.11.1997, sanctioned the cadre strength with six Supervisors. Such averments made by the petitioner were not denied or disputed by the second respondent. The other proceedings of the same official dated 28.02.2000 and 08.09.2000 indicating that the society exceeded the cadre strength were also not disputed by the second respondent." 25. On the other hand, the learned counsel for the second respondent only submits that there was no Bye-laws framed. When the petitioner had specifically stated that the cadre strength was fixed in pursuance of the Bye-laws framed by the Bank and the same was also approved by the said authority on 18.11.1997, the second respondent cannot be permitted to question the jurisdiction of the said authority in fixing the cadre strength in these proceedings without challenging the said proceedings dated 18.11.1997. Therefore, the second respondent''s contention with regard to the cadre strength has to be rejected.

26. Apart from the above said facts, it is also an admitted case that the second respondent''s appointment was made without following any of the procedure contemplated under Rule 149(2). Consequently, the said appointment is in violation of Rule 149(2). At any event, when the proceedings dated 18.11.1997 of the said authority directed the filling up of vacancy only by way of redeployment, the second respondent''s appointment made contra to such direction, is bad and cannot be sustained. At this juncture, it is useful to refer to the decisions relied on by the learned counsel for the petitioner.

27. In 2002 (4) CTC 385 (cited supra), the Hon''ble Division Bench of this Court

 

at paragraph 19 has held as follows:--

"19. In view of the above authoritative pronouncement of the Supreme Court, which is the law of the land under Article 141 of the Indian Constitution, and as the facts of this batch of cases clearly attract the legal principles enunciated by the Supreme Court, we hold that the appointments of the staff made to the cooperative societies by the elected bodies or the officers in charge, in violation of the cadre strength or the prescription of the educational qualifications, cannot stand and are held to be null and void......"

(emphasis supplied)

28. A perusal of the said decision of the Hon''ble Division Bench would only show that any appointment made in violation of the cadre strength or the prescription of the educational qualifications, is to be held as null and void. No doubt, the learned counsel for the second respondent also relied on clause 3 and 5 of paragraph 19 of the said Judgement by contending that procedures as directed therein were not followed by the bank. A perusal of those two clauses only show that the same can be applied only in cases where cadre strength was not fixed. As I have already found that the cadre strength was fixed through the proceedings of the Joint Registrar of Co-operative Societies, dated 18.11.1997, I find no substance in the contention raised by the learned counsel for the second respondent to rely on clauses 3 and 5 of paragraph 19 of the said judgment of the said Rules.

29. Next decision relied on by the learned counsel for the petitioner is reported in A. Umarani Vs. Registrar, Cooperative Societies and Others, , in which, the Hon''ble Supreme Court has observed that no appointment can be made in deviation of or departure from the procedure laid down under Rule 149 of the said Rules.

30. The learned counsel for the petitioner further relied on the decision reported in 2007 (4) LLN 868 (cited supra) wherein the Hon''ble Full Bench of this Court at paragraphs 19 and 20 has held that the State Government cannot exercise jurisdiction under Article 162 of the Constitution of India to direct regularisation of service of any employee including employees of a Cooperative Society, if the appointments have been made in contravention of the Statutory Rule or constitutional mandate.

31. The learned counsel for the petitioner further relied on the decision of the Hon''ble Supreme Court reported in State of U.P. Vs. Desh Raj, to substantiate his contention that the appointment made in violation of Rules is illegal and void ab initio. The Hon''ble Apex Court has observed that the appointments, if made in violation of the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India, would be rendered illegal and, thus, void ab initio. It was further held that no regularisation rules, therefore, could have been made in derogation of the statutory or constitutional scheme.

 

32. The learned counsel relied on another decision of the Hon''ble Apex Court reported in State of Karnataka and Others Vs. Sri G.V. Chandrashekar, to contend that when the very initial recruitment itself is illegal and contrary to constitutional scheme, the regularisation also cannot be granted. In the said Judgment, the Hon''ble Apex Court has observed that initial recruitment being wholly illegal and contrary to the Constitutional scheme, the Judgment of the High Court therein cannot be upheld, whereby the regularisation was granted to persons, who have been appointed on ad hoc basis.

33. From the perusal of the above case laws relied on by the learned counsel for the petitioner, it is crystal clear that any appointment made in contravention of the Statutory Rules cannot be held valid. In this case, when the appointment of the second respondent was made beyond the cadre strength and not by following the redeployment procedure as contemplated under the proceedings of the Joint Registrar of Cooperative Societies, dated 18.11.1997, such appointment is bad and illegal.

34. The appellate authority did not consider any of these aspects. Further, the second respondent filed revision on 12.01.2007 before the Joint Registrar of Co-operative Societies, Madurai Region, Madurai-2, for reinstatement and regularisation. The said revision was dismissed by order, dated 20.08.2008. The second respondent has not initiated any further proceedings. Hence, the said order has become final.

35. Considering all the facts and circumstances of the case, I am of the view that the impugned order of the appellate authority under the TNSE Act is unsustainable. Accordingly, the same is set aside. At the same time, it is to be seen that it is not the fault of the second respondent in getting his employment otherwise than by the Rules. It is only the petitioner''s Bank made such illegal appointment. No doubt, the second respondent had been discharged, but at the same time, even according to the petitioner''s stand such discharged employees are entitled to be considered for redeployment in the needy vacancy as per the proceedings of the Regional Joint Registrar of Co-operative Societies, dated 18.11.1997. Therefore, if the present cadre strength of the petitioner society is having any vacancy in the post of Supervisor, or if there is any needy Society, the second respondent can be considered in the said vacancy and accordingly, suitable orders can be passed thereon by taking note of the fact that the second respondent is out of employment for more than 13 years. Accordingly, the second respondent is directed to make a representation to the petitioner as well as to the Registrar of Co-operative Societies, within a period of two weeks from the date of receipt of a copy of this order. If such representation is received, the same may be considered either by the petitioner or by the Registrar of Co-operative Societies and orders shall be passed on merits and in accordance with law within a period of four weeks thereafter.

36. With the above observation, Writ Petition (MD) No. 7741 of 2009 is allowed. In view of the order passed in W.P.(MD) No. 7741 of 2009, W.P.(MD) Nos. 5434

 

and 9717 of 2009 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.