

(2001) 12 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No's. 41649 to 41651 and 44260 to 44262 of 2001

Sri. M.G. Ravindra and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 F, 70

Citation : (2002) 1 KCCR 661

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : K.G. Shanthappa, for the Appellant; Rosa Paremal, Government Pleader for Respondents 1 and 3 and L.M. Chidanandhaiah, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Heard the Counsel for the Petitioners Sri K.G. Shanthappa and Sri L.M. Chidanandhaiah, learned Counsel appearing for the Common Cadre Authority and Smt. Rosa Paremal, Government Pleader.

2. The Petitioners in Writ Petition Nos. 44260-62 of 2001 were appointed on 8.2.1996, 1.3.1999 and 9.3.1996 in terms of Annexure "H" by the 4th Respondent, Harapanahalli Taluk Co-operative Agricultural and Rural Development Bank Limited. The Petitioners submit that they were appointed on daily wage basis and they have referred the details in the petition. They also say that their work was satisfactory and the Bank was fully satisfied with their work. Their wages were also raised from time to time. The Petitioner states that they made a request for their confirmation in the service. The Respondents issued a notice dated 15.1.2001 with regard to the termination of the Petitioners in terms of Annexure "J". Subsequently, there was some correspondence between the parties. In terms of Annexure "N", a Resolution was passed by the Bank. Annexure "P" is another Resolution with regard to the discontinuation of the services of the Petitioners. Thereafter, another Resolution dated 31.10.2001 was

passed by the 4th Respondent duly signed by the Management. The Petitioners state in terms of Annexure "Q" dated 31.10.2001, that the services of the Petitioners were terminated with immediate effect. The Petitioners question the same. The Petitioners in these cases are seeking for the following prayers:

a) a writ in the nature of certiorari or any other appropriate writ or order or direction quashing the impugned order dated 31.10.2001 in No. HA.THA.SA.KRU.GRA.A. BANK.NI/738/2001-2002 passed by the 4th Respondent terminating the Petitioners 1 to 3 from service produced at Annexure-R and all further proceedings in pursuance thereof in so far as the Petitioners are concerned.

b) A writ in the nature of mandamus or any other appropriate writ or order or direction directing the Respondents 1 to 4 to consider the case of the Petitioners 1 to 3 to regularise their services in the post of Accountant/Typist and Peon respectively; with all benefits attached thereto in the 4th Respondent-Bank on par with the other employees;

c) To direct the Respondents 1 to 4 to continue the Petitioners 1 to 3 in their services and to reinstate them, if they are relieved with all benefits attached thereto pursuant to the impugned order at Annexure-R.

d) To pass such other order or direction as deemed fit under the circumstances of the present case and to allow the writ petitions with costs in the interest of justice and equity.

3. The Counsel for the Petitioners, at the time of arguments, states that the termination of the Petitioners is at the instance of the Common Cadre Authority and therefore the same is unsustainable in law. The Counsel also says that they are working with the Bank honestly, sincerely and that there are no complaints against them. The Counsel also says that without any enquiry, what so ever, their services have been dispensed with by the Bank. He finds fault with the order dated 31.10.2001, Annexure "R" with regard to the termination of the services by the Bank. The Counsel for the Petitioners says that in these circumstances, appropriate directions are to be issued for regularising the services, not only by the Bank but also by the Common Cadre Authority.

4. Per contra, Sri L.M. Chidanandaiah, learned Counsel, submits that in terms of Section 128A of the Act, the power to recruit, after Constitution of Common Cadre Authority vests in the Common Cadre Authority for appointments made in contravention of Section 128A is nothing but an illegal entry in to the service. Such entries are not to be encouraged. He also relies on a recent Judgment of mine in identical circumstances in Writ Petition No. 8530 of 2001.

5. After hearing the Counsel, I have carefully perused the material on record.

6. Writ Petition Nos. 41649-651 of 2001 is again the petitions filed by the employees of the very same Society namely Harapanahalli Taluk Co-operative Agricultural and Rural Development Bank Limited, which is the 4th Respondent in

the earlier petitions. Here again the first and the second Petitioners are appointed on 31.7.1998, and the 3rd Respondent was appointed on 6.7.2000. The facts are same in the connected Writ Petitions. In these cases also in terms of Annexure "M", the services have been dispensed with at the instance of the Common Cadre Authority. The grounds raised in these petitions are also same/similar. The contentions urged by the Counsels are also same/similar.

7. After hearing the Counsel on either side, this common order is passed justifying these petitions.

8. The admitted facts reveal that all these Petitioners were appointed subsequent to the birth of Common Cadre Authority. Section 128A of the Act categorically provides a power in favour of the Common Cadre Authority, after its birth in the year 1993. Section 128A provides for a Constitution of a Common Cadre and the said Common Cadre has necessary power and jurisdiction with regard to the power of appointment, transfer and disciplinary action in respect of the employees of that class of Co-operative Societies.

9. In the case on hand, admittedly, all the Petitioners have been appointed by the Bank contrary to Section 128A of the Act. Therefore, this appointment is nothing but an illegal entry into the service contrary to the Statute. Any such entry should not only be deprecated but also to be destroyed in the larger interest of maintaining the sanctity of Section 128A of the Act. The arguments of the Counsel that they should be regularised or that they should be issued notice does not appeal to me in the light of the clear provision of law in terms of Section 128A. In identical circumstances, I have, in my Judgment in Writ Petition No. 8530 of 2001, ruled that such appointments cannot be encouraged. The findings of the said Judgment is equally applicable to this case as well. It is also necessary for me to refer to a Bench decision of this Court in ILR 2001 Kar 1178 (State of Karnataka and Ors. v. Karnataka Casual and Daily Rated Workers Union, Hubli). Though that case was about regularisation of the Daily Wage employees, the Court has considered the illegal entry in para 51. The Court has said that any initial entry in service, if tainted with illegalities the Court has no jurisdiction to direct for the regularisation in the said Judgment. The said observation was made after noticing the various Judgments of the Supreme Court in the said case. The said observations of this Court in ILR 2001 Kar 1178 is equally applicable to the facts of this case. In that case, the very initial entry in to service is tainted with illegalities and therefore this Court cannot come to the rescue of these employees. In these circumstances, I do not find any justification to grant any relief to these Petitioners in these petitions in the light of Section 128A and in the light of the Judgment referred to by me in the course of this order.

10. The Counsel for the Petitioners, however, relies to me two Judgments, one of this Court and one of the Supreme Court. The Judgment in AIR 2001 SCW 2433 (Agra District Co-operative Bank Limited v. Prescribed Authority, Labour Court, U.P. and Ors.) is a case of recruitment and subsequent dispute in terms of

Section 70 of the said case. In that case, the employees were working for more than 20 years and more over that was a case with regard to jurisdiction of the Labour Court for want of jurisdiction. That Judgment is factually and legally not applicable to the facts of this case.

11. In so far as the 2nd judgment is concerned, that again is a matter that arose in terms of Section 70 and in terms of Section 25F of the Industrial Disputes Act. In the said case, the matter was taken before the Labour Court and the Court considered the scope of Section 70 and Section 25F of the Industrial Disputes Act. That Judgment has also no application. On the other hand, the subsequent Division Bench Judgment referred to by me is clearly applicable to the facts of this case. In these circumstances, I do not find any justifiable grounds to interfere with an order based on Statute.

12. Petitions stand rejected. Parties to bear their respective costs.

13. Sri L.M. Chidanandhaiah, learned Counsel is given four weeks time to file his vakalath.