

(2011) 03 MAD CK 0452

In the Madras High Court

Case No : Writ Petition No. 3678 of 2005

Syndicate Bank, Regional Office

APPELLANT

Vs

The Presiding Officer, Central Government Industrial Tribunal,
Labour Court and The General Secretary, Syndicat Bank
Employees Union

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

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

Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 3

Industrial Disputes Act, 1947 — Section 25F

Citation : (2011) 03 MAD CK 0452

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Karthick, for T.S. Gopalan and Co, for the Appellant; S. Vaidyanathan, for R2, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner-Syndicate Bank, after being aggrieved by the award passed by the Central Government Industrial Tribunal, Chennai, in I.D. No. 86/02 directing reinstatement of one Smt. E. Amutha as permanent employee with effect from 09.12.2000 with continuity of service, back wages and other benefits, filed the present writ petition under Article 226 of the Constitution of India challenging the correctness of the said order.

2. The Petitioner-Syndicate Bank is having a branch office at Annan Nagar, Chennai. One Smt. E. Amudha's husband C. Elumalai belonging to the 2nd Respondent union, while serving as Attender, was terminated from service in April 1991 on the ground that he voluntarily left the service of the bank. Subsequently, he died on 30.10.1996. Later on, the Petitioner-Bank, after negotiation with the 2nd Respondent Union, provided employment to Smt. E. Amudha, wife of C. Elumalai, as part time sweeper at Anna Nagar branch, Chennai. Since then, she was continuously working as Sweeper from February,

1999 to December, 2000 and on 09.12.2000, Smt. E. Amudha's services were discontinued as per the orders of the Bank. Challenging the correctness of the termination of one Smt. E. Amudha on the ground that the Petitioner-Bank failed to comply with Section 25F of the Industrial Disputes Act, the impugned termination for non-compliance of mandatory provisions made the order of termination as ab initio void, since Smt. E. Amudha worked as Class IV employee for more than 480 days in two calendar years. Though the said claim of one Smt. E. Amudha was opposed by the Petitioner-Bank before the Labour Court on the ground that the Bank maintained a panel of temporary part-time sweepers to engage during the temporary vacancies of regular part-time sweepers and during the vacancy of regular part time sweeper, one of the temporary sweepers in the panel will be engaged in his place. When an irregular engagement is made against the vacancy of a part-time sweeper, the Head Office will step in and will order removal of such person so as to ensure that all the branches strictly follow the guidelines issued in the matter of engaging temporary part-time sweeper against leave vacancy.

3. Mr. Karthick, learned Counsel appearing for the Petitioner submitted the following points to set aside the impugned award passed by the Industrial Tribunal/the 1st Respondent herein.

Firstly, the Petitioner-Bank is maintaining the panel of temporary part-time sweepers to engage during the leave vacancy of regular part-time sweepers and during the vacancy of regular part time sweeper, one of the temporary sweepers in the panel will be engaged in his place and as per the guidelines of the Petitioner-Bank, under no circumstance, leave vacancy of part-time sweeper can be filled up by any one other than from the panel of temporary part-time sweepers and when any irregular appointment is made against the vacancy of a part-time sweeper, the Head Office will step in and will order removal of such person so as to ensure that all the branches strictly follow the guidelines issued in the matter of engaging part-time sweeper against leave vacancies of regular part-time sweepers. In the present case, having seen that the said Amudha was not found in the panel of temporary part time sweepers, but wrongly appointed all of a sudden, she was terminated from service.

Secondly, it is admittedly a case of direct appointment, without even sponsorship from the employment exchange. Since the said Amudha was not sponsored through the employment exchange, she was not entitled to be appointed in the post and the appointment made by the management was irregular. Therefore, the permanency of the irregular appointment cannot be questioned in any legal forum.

Thirdly, it was contended that even if the said Amudha was found terminated without compliance of Section 25F of the Industrial Disputes Act, the fact of non-compliance of Section 25F will not make her getting reinstatement.

4. In support of his argument, he has also relied upon a judgment of the Apex

Court in the case of *Employers, Management of Central P and D Inst. Ltd. v. Union of India* CDJ 2005 SC 112, wherein it has been held that it is not mandatory for the courts to order reinstatement in cases where there has been violation of Section 25F of the Act, which can be substituted for good reasons by awarding compensation.

He has also relied upon yet another judgment of this Court in the case of *Union of India (UOI), Union Territory of Pondicherry and The Editor of Debates, Legislative Assembly Department Vs. Ilango*, for a proposition that if the initial appointment is illegal on account of not following the procedure for appointment, the incumbent obtaining appointment without following due procedure cannot claim as a matter of right to be regularised.

5. Per contra, Mr. S. Vaidyanathan, learned Counsel appearing for the 2nd Respondent contended that the Petitioner-Bank has discharged the workman, namely, Smt. E. Amudha by way of victimisation and not in good faith and she had worked for more than 657 days and since the sponsorship from employment exchange is not applicable to Class IV employees, which was held as such by the Supreme Court as well as High Courts in number of cases, it cannot be said that only employment exchange sponsored candidates alone are to be appointed as Class IV employees. The action of the Petitioner-Bank in discharging the services of the workman concerned amounts to termination and admittedly, the Petitioner-Bank has not complied with the mandatory provisions of Section 25F of the Act, hence, the termination is ab initio void.

6. In his further argument, it was contended that the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, is applicable to the said Amudha in this case, since the said Amudha has completed more than 480 days of continuous service in a period of 2 years and therefore, she has attained the permanent status as per the said Act and on that basis, he prayed for dismissal of the present writ petition.

7. Heard the learned Counsel appearing on either side and perused the materials available on record.

8. It is the admitted case of both sides that Late Elumalai/husband of the temporary part-time sweeper Smt. E. Amudha was employed as attender in the Petitioner-Bank, George Town branch and due to his continuous absence, his services were terminated in the year 1991 and subsequently, the 2nd Respondent Union represented to the Petitioner-Bank to consider the appointment of the concerned workman for temporary part-time sweeper by reason of employment of her deceased husband. It is also admitted that husband of Smt. E. Amudha, namely, Elumalai, was not in service at the time of his death and she could not be considered for compassionate appointment. Again, only on the representation of the 2nd Respondent Union, Smt. E. Amudha was appointed on temporary basis for three months by an order dated 03.03.1999. When the said Amudha has already completed 480 days of continuous service as a

temporary part-time sweeper, the Industrial Tribunal/the 1st Respondent herein has found that at the time of appointment of said Amudha, the Petitioner's Head Office was very well aware of the fact that she was not appointed on compassionate ground, but she was appointed only on the direction of the Head Office. Therefore, the appointment of the said Amudha cannot be considered as irregular. Hence, the findings of the 1st Respondent cannot be brushed aside, for the reason that the said Amudha's husband Late C. Elumalai, while serving in the Petitioner's bank was dealt with in a departmental action on the ground of his continuous absent and thereupon, his services were also terminated.

9. With regard to the compassionate appointment, the Industrial Tribunal/the 1st Respondent herein by complying with the conditions mentioned in Section 25F, has correctly held that the appointment of the 2nd Respondent was not on the compassionate ground, because, only after the direction of the Head Office, the said Amudha came to be appointed and after such appointment, she has completed for more than 480 days of continuous service in a period of two calendar years and as a result, she has attained permanent status as per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, which is applicable to the concerned workman in this case. On that basis, the 1st Respondent herein by applying the said Act, granted the benefit to the said Amudha, who has completed 480 days of continuous service within two calendar years. Therefore, the said Amudha getting permanent status cannot be questioned by the management and as such, the said judgments cited by the learned Counsel for the Petitioner cannot be made applicable in the present case, for the reason that the Petitioner-Bank had admittedly terminated the service of the said Amudha, who had completed 480 days continuous service, without complying the conditions mentioned in Section 25F of the Act.

10. Further, it is useful to refer to a judgment of this Court in the case of Hindustan Petroleum Corporation Ltd. v. The Presiding Officer, Central Government Labour Court cum Industrial Tribunal 2008 (4) CTC 819, wherein paragraphs 34 and 35 hold in favour of the 2nd Respondent, which are extracted as under:

34. Admittedly, the workmen were all either sweepers or scavengers or cleaners. u/s 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, any employment to do unskilled office work has been exempted from the purview of the said Act. It is also not shown that the workmen were not appointed by the Appropriate Authority.

35. A Division Bench of this Court in School Committee, Tilak Vidyalaya Higher Secondary School, Kallakurichi v. District Educational Officer, Tirunelveli 1991 TLNJ 1, has held that an Officer Helper need not come through the Employment Exchange and his appointment cannot be considered to be in violation of the 1959 Act.

A mere reading of the above said judgment clears that as per Section 3 of the

Act, any employment to do unskilled office work has been exempted from the purview of the said Act. Therefore, the said Amudha, who was appointed as a part-time sweeper, cannot be even termed to be irregular appointment. Secondly, as per the ratio laid down by the Division Bench of this Court in School Committee's case(supra), an Office Helper need not come through the Employment Exchange, hence, the said Amudha's appointment cannot be considered to be in violation of the 1959 Act.

11. Further, it must also be that the constitutional validity of the Tamil Nadu Act 46 of 1981 was upheld by the Supreme Court vide its judgment in State of Tamil Nadu and Others Vs. Nellai Cotton Mills Ltd. and Others, . Therefore, once there is a valid State enactment providing for relief to such of those workmen deemed permanency to those who had completed 480 days of service within a period of two calendar years, then such workmen getting permanent status cannot be questioned by any Management and such conferment of permanent status to the said Amudha cannot be labelled as violation of Articles 14 and 16 of the Constitution of India.

12. Therefore, in view of the aforesaid reasons, I do not find any merit in the writ petition and accordingly, the same is dismissed. No Costs. Consequently, all the connected miscellaneous petitions are closed.