

(2010) 10 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 7436 of 2003

The Management, Periyakalvarayan Malaival Makkal Perum
Palnokku Co-operative Soceity Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and R. Chennakesavn

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 25(F)

Citation : (2011) 2 LLJ 53

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : P. Hehru, for the Appellant; S. Arunachalam, for S. Girija, for R2, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—The Petitioner seeks to quash the award of the first Respondent dated 19.09.2001 in I.D. No. 168 of 2000. By

the impugned award, the first Respondent directed the second Respondent to reinstate the Petitioner with all back wages, continuity of service and

all other attendant benefits.

2. The second Respondent joined the services of the Petitioner as mini lorry Driver on 20.12.1996. His services were regularised with effect from

01.11.1998 based on the resolution of the Petitioner dated 28.11.1998. The benefits of the settlement reached u/s 18(1) of the Industrial Disputes

Act were extended to the second Respondent. According to the second Respondent, on 09.06.1999, without any rhyme or reason, he was issued

with an order of termination. It is stated that at the time of termination, his salary was Rs. 2,980/-. The Petitioner does not dispute the above facts.

The only contention of the Petitioner was that under Rule 149(2) of the Co-

operative Societies Rules, no one could have been employed except through the Employment Exchange and since the second Respondent was employed in violation of the said Rule, his appointment itself was illegal.

It was then contended that at the time of the appointment of the second Respondent, the Petitioner-society had two vehicles and since one of the vehicles broke down, there was no need for a second driver and therefore, the second Respondent's services came to be terminated. When the issue was taken before the first Respondent-Labour Court by way of an industrial dispute in I.D. No. 168 of 2000, the first Respondent, by the impugned award, after relying upon the decisions reported in A. Senthilkumar Vs. The Deputy Registrar of Co-operative Societies, Sivaji Nagar, Thanjavur - 9 and two others, ; 2001 (1) L.L.N. 542 (Kovilpatti Co-operative Marketing Society v. Labour Court) and ILR 1996 Mad 1003 : 1996 (I) LLN 647 (The president, Sri Rangam Co-operative Urban Bank Limited v. The Presiding Officer, Labour Court, Madurai and Anr.) and after finding that there was no infirmity in the appointment of the second Respondent and the further fact that there was violation of Section 25F of the Industrial Disputes Act, held that the termination of the services of the second Respondent was not justified and consequently directed the Petitioner to reinstate the second Respondent with all back wages and continuity of service.

3. The award came to be passed on 19.09.2001 and subsequent to the award when the Petitioner preferred the present writ petition, by way of interim order dated 07.03.2003, the Petitioner was directed to pay the last drawn wages of the second Respondent from the date of the award.

Further, since the Petitioner expressed its willingness to reinstate the second Respondent, such direction to pay the last drawn wages was restricted to the date of filing of the writ petition. The said order was subsequently modified by order dated 21.03.2003 directing the Petitioner to pay 17-B wages till the second Respondent was reinstated. As aforementioned, the Petitioner also offered reinstatement of the second Respondent by its communication dated 04.04.2003 and he was ultimately reinstated on 25.06.2003, as disclosed by the second Respondent in his letter dated 11.08.2003. Another order came to be passed on 06.10.2003 in WPMP No. 9577 of 2003 in W.P. No. 7436 of 2003 directing the Petitioner to

pay wages to the second Respondent commensurate with his nature of work or on par with others doing work of similar nature. It is stated that the

Petitioner preferred a writ appeal in W.A. No. 2357 of 2003 and the order dated 06.10.2003 was stayed. It is further stated that on 19.08.2006,

the writ appeal itself came to be disposed of with a direction to dispose of the writ petition on merits. In the said circumstances, the subsequent

development had taken place, by which the second Respondent has been reinstated by the Petitioner on and from 25.06.2003. In the above stated

back ground, challenge has been made to the impugned award.

4. Mr. P. Nehru, learned Counsel for the Petitioner strenuously contended that when the initial appointment of the Petitioner itself was illegal, his

termination cannot be held to be unjustified. The learned Counsel further contended that the reinstatement awarded by the first Respondent-Labour

Court with back wages and continuity of service was in any case not justified.

5. As against the above submissions, Mr. S. Arunachalam, learned Counsel for the second Respondent would contend that the first Respondent-

Labour court had only applied the ratio of the Division Bench decision of this Court in the impugned award, while directing the reinstatement of the

second Respondent and the contention of the Petitioner contrary to the principles laid down in the Division Bench decision cannot be sustained.

The learned Counsel further contended that since subsequent to the award, the second Respondent has been reinstated in service and is working

for the past nearly seven years, the award should be implemented and the service should be continued with a direction to pay the entire back

wages and confer the benefit of continuity of service. In support of his submission, the learned Counsel for the Petitioner relied upon the decisions

reported in A. Senthilkumar Vs. The Deputy Registrar of Co-operative Societies, Sivaji Nagar, Thanjavur - 9 and two others, ; 2001 (II) LLJ 190

(Krishnamurthy K.R. and Ors. v. Management of Madurai Sourashtra Co-operative Bank Ltd. and Anr.) and The Special Officer, Palayamkottai

Urban Co-operative Bank Limited Vs. The Presiding Officer, Labour Court,).

6. Having considered the submissions of the learned Counsel for the Petitioner as well as the second Respondent and having perused the impugned

award, I find that the conclusion of the first Respondent-Labour Court cannot be interfered with. Based on the facts narrated earlier, it has come

out that the second Respondent was appointed as a Driver i.e. in a post for driving a mini lorry owned by the Petitioner. After his initial

appointment on 20.12.1996, his services came to be regularised with effect from 01.11.1998 by the resolution of the Board dated 28.11.1998.

The benefits of the settlement between the Petitioner and its employees reached u/s 18(1) of the Industrial Disputes Act was also extended to the

second Respondent. He was fitted in a scale of pay applicable to the post of Driver and was getting salary of Rs. 2980/- per month. Keeping the

above facts in mind, the first Respondent-Labour Court applied the decision of this Court reported in 2001 (1) L.L.N 542 (Kovilpatti Co-

operative Marketing Society v. Labour Court). The very same contention, viz., that the employee was appointed contrary to the rules, that he was

not recruited through the Employment Exchange and that his services was not continuous, were all the points raised in the case covered by the

above decision. However, this Court, after considering the above facts, by relying upon an earlier decision reported in 1996 (I) LLN 647 : ILR

1996 Mad 1003 (The president, Sri Rangam Co-operative Urban Bank Limited v. The Presiding Officer, Labour Court, Madurai and Anr.), held

that where there was non-compliance of the statutory requirement u/s 25(F) of the Industrial Disputes Act, the relief of reinstatement awarded by

the Labour Court cannot be interfered with. The Division Bench reiterated that Section 25(F) of the Industrial Disputes Act does not make any

difference, whether the appointment was made in accordance with law or not and what was relevant for the legality was the factum of employment.

The Division Bench having held that non-compliance of the requirement u/s 25(F) of the Industrial Disputes Act would vitiate the order of

termination, the order of termination in that case was set aside and the consequential relief for reinstatement with all back wages and continuity of

service was granted. Having regard to such categorical pronouncements in the above Division Bench decisions of this Court, the first Respondent-

Labour Court, taking note of the fact that the second Respondent's service came to be terminated in total violation of the statutory prescriptions

contained in 25(F) of the Industrial Disputes Act, held that non-employment was not justified. In fact, it is also not established by the Petitioner

before the Labour Court that the appointment of the second Respondent was not made through proper channel. On behalf of the second

Respondent, Exs.W1 to W5 were marked. On behalf of the Petitioner, no evidence was let in. Therefore, in support of its stand that the second

Respondent was employed in violation of Rule 149(2), no supporting material was produced before the first Respondent- Labour Court. In any

event, since the first Respondent-Labour court has only applied the law laid down by this Court in the reported decisions, having regard to the

facts relating to the employment of the second Respondent and the unceremonious manner in which his employment came to be terminated by the

Petitioner, I do not find any illegality or perversity in the impugned award of the first Respondent-Labour Court warranting interference. The award

of the first Respondent-Labour Court directing reinstatement of the second Respondent with all back wages, continuity of service and other

attendant benefits cannot be faulted.

7. However, as far as the decisions relied upon by the learned Counsel for the Petitioner, all the three decisions are clearly distinguishable. As far

as the decision reported in A. Senthilkumar Vs. The Deputy Registrar of Co-operative Societies, Sivaji Nagar, Thanjavur - 9 and two others, is

concerned, that was a case where the employee concerned approached this Court directly by way of writ petition with a prayer to quash the

proceedings dated 26.03.2000 and the learned Judge, having found that the appointment of the Petitioner was in violation of Rule 149(2) of the

Tamil Nadu Co-operative Societies Rules, 1988, declined to grant any relief holding that the said appointment was contrary to the statutory

provisions and therefore, no opportunity need be given to him on the principles that there cannot be estoppel against the statutory provision.

8. In the decision reported in 2001 (II) LLJ 190 (Krishnamurthy K.R. and Ors. v. Management of Madurai Sourashtra Co-operative Bank Ltd.

and Anr.), the facts mentioned therein disclose that those Petitioners were working as call boys, which is an unskilled work in the Co-operative

Society and that such work was also for 480 days intermittently. The relief claimed therein was that since as call boys they had performed the

work for 480 days, they were entitled for the relief of reinstatement and continuity of service, which was denied by the Labour Court. This Court,

finding that on such an uncertain basis, when a claim was made in respect of an employment in the status as call boys, denial of relief by the Labour

Court cannot be held to be unjustified. Having regard to the peculiar facts involved therein, the said decision cannot also have any application to the facts of this case.

9. In the decision reported in *The Special Officer, Palayamkottai Urban Co-operative Bank Limited Vs. The Presiding Officer, Labour Court*, it has been noted that the second Respondent therein was appointed as a last grade servant by the Co-operative society on daily wages. Initially the daily wages was Rs. 22/-, which was subsequently increased to Rs. 35/-. While working on a daily wage basis, the order of removal from service was passed, though such work was stated to have lasted for six years, seven months and eight days continuously. In the peculiar facts of that case, when the Labour Court directed the reinstatement with full back wages, continuity of service and attendant benefits, the learned Judge thought it fit not to sustain the award.

10. Since the above three decisions are distinguishable to the facts in the case on hand, where the initial appointment of the second Respondent came to be regularised by a conscious decision of the Board of Directors of the Petitioner society, there being no evidence on record to substantiate the stand that the appointment of the second Respondent was illegal or contrary to Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, it will be travesty of justice if this Court interfere with the award and deny the relief granted to the second Respondent. That apart, since the second Respondent was reinstated as per the letter dated 25.06.2003 and has been fitted in the regular scale of pay, it would not be appropriate for this Court to deny the relief granted by the first Respondent-Labour Court that too at this distant point of time, i.e. nearly after seven long years, to unsettle the settled position and put the livelihood of the second Respondent and his family members to peril. However, the learned Counsel for the Petitioner was strenuously contending that the Petitioner had since abandoned the use of one of its two vehicles it is not in a position to provide the second Respondent employment as driver. In such circumstances, any direction for payment of full back wages would cause serious prejudice to the Petitioner. Considering the said stand of the Petitioner and in order to bring a lasting solution to this dispute, I feel that on this aspect, some relief can be granted by moulding the relief granted by

the first Respondent-Labour Court. The first Respondent-Labour

Court has directed the Petitioner to pay the second Respondent, his last drawn wages only for the period between the date of the award viz.,

19.09.2001 and 25.06.2003, the date of reinstatement of the second Respondent. Even such last drawn wages shall be paid by the Petitioner in

15 equal monthly instalments along with the regular wages. It is needless to state that the Petitioner is liable to pay current wages to the second

Respondent from the date of his reinstatement viz., 25.06.2003.

11. With the above modification with regard to payment of back wages and payment of current wages, in all other respects, the award of the first

Respondent-Labour Court stands confirmed. The writ petition stands disposed of as stated above. No costs.