
(2010) 11 MAD CK 0256

In the Madras High Court

Case No : Writ Petition No. 8069 of 2002

The Management, Varaganeri Co-operative Bank Limited

APPELLANT

Vs

The Appellate Authority under Tamil Nadu Shops and
Establishments Act and Mrs. N. Mekala

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (2010) 11 MAD CK 0256

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : M.R. Raghavan, for the Appellant; No appearance, for the
Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The writ petition has been filed by the Petitioner, the Co-operative Society, challenging the Order of the first Respondent passed in TNSS 4/2000 dated 23.07.2001 whereby, the appeal filed by the second Respondent was allowed by exercising the power u/s 41(2) of the Tamil Nadu Shops and Establishments Act.

2. Heard. Mr. R. Raghavan, learned Counsel for the Petitioner, and there is no appearance for the second Respondent, even though the matter has been adjourned on last four occasions for the appearance of the second Respondent's counsel. It is also seen from the records that the matter was posted on 29.10.2010, 02.11.2010, 03.11.2010 and 22.11.2010 specifically for appearance of the second Respondent's counsel.

3. The second Respondent herein was appointed as a Casual and temporary employee as Junior Assistant with the Petitioner on 03.03.1995. Thereafter, she was removed by the Petitioner dated 30.11.1997 and a dispute was raised before the Conciliation Officer by the second Respondent and thereafter, a settlement

was rendered u/s 12(3) of the Industrial Disputes Act.

4. The second Respondent was appointed in pursuant to the settlement on 09.06.1998. The Petitioner by order dated 20.04.2000, has removed the second Respondent from service on the ground that her appointment was irregular being contrary to Section 149 of the Tamil Nadu Co-operative Societies Act, in as much as she was not recruited through the Employment Exchange and her appointment is beyond the cadre strength and the settlement has not got approval of the competent authority. Challenging the same, the second Respondent filed a suit in O.S. No. 591 of 2000 before the District Munsif Court, Trichy and also simultaneously filed an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act. The suit filed by her was withdrawn and the appeal filed before the second Respondent was allowed and hence the present writ petition is filed by the Petitioner- Co-operative Society.

5. Mr.M.R. Raghavan, learned Counsel for the Petitioner-Society submitted that the sanctioned strength originally was three, which was increased to 5 by the proceedings of the Joint Registrar to the 05.03.1997. Therefore, only in accordance with law, the Order was passed by the Petitioner on 20.04.2000 informing the second Respondent that her appointment was contrary to Section 149 of TNCS Act. The second Respondent was also paid the amount of one month's salary before removal.

6. The first Respondent committed an error in allowing the appeal by holding that the sanctioned strength was only 3 and there were 2 persons working in excess to the cadre strength and while that is the position, the statement made by the first Respondent that the second Respondent was in excess of the cadre strength, has no factual basis.

7. The learned Counsel further submitted that the first Respondent has committed a factual error in not appreciating that the second Respondent was admittedly appointed beyond the cadre strength. The initial appointment of the second Respondent made on 09.06.1996 itself was contrary to the Rules and the statement made does not have binding force which is contrary to Section 149 of the Tamil Nadu Co-operative Act.

8. The learned Counsel also submitted that the fact that the second Respondent was appointed contrary to the Rules and beyond the sanctioned cadre strength, has not been disputed in the cross-examination and no finding has given by the first Respondent to that effect. The learned Counsel hence submitted that the writ petition has to be allowed.

9. This Court finds that considerable force in the argument of the learned Counsel for the Petitioner. The records perused indicates that for the post of Junior Assistant, originally 3 posts have been sanctioned, which had been enhanced to 5, by the proceedings of the Joint Registrar on 05.03.1997. The second Respondent was appointed as the 6th person without specific instructions and not through the Employment Exchange. Her appointment was not ratified by

the competent authorities under the Tamil nadu Co-operatives Rules and Act. Admittedly her appointment was contrary to Section 149 of the Tamil Nadu Co-operative Societies Act. There was no prior approval of the appointment of the second Respondent which has been made contrary to the cadre strength and her appointment was not made through Employment Exchange and the settlement entered u/s 12(3) of the Industrial Dispute Act also did not get the required approval. This Court reported 2002 (4) CTC 385 L. Justine and Anr. v. The Registrar of Coop. Societies 2002 (4) CTC 385, Chennai - 10 and two others has held that any employment made contrary to Section 149 of the TNCS Act cannot be allowed to continue. In fact, a direction had been issued to remove such of those appointments made by the Co-Operative Societies. Therefore, Section 149 being mandatory, any appointment made contrary to the same cannot have any legal force. The first Respondent has committed a serious error in holding that there were 3 sanctioned posts. It is no doubt true that originally there was three sanctioned posts, which had been increased to 5 by the proceedings dated 05.03.1997. Further, it is to be seen that it is nobody's case that the second Respondent's post was within the cadre strength.

10. Admittedly, second Respondent was the 6th employee appointed out of the 5 sanctioned posts in the Cadre Junior Assistant. The first Respondent committed an error in coming to a wrong finding that there is discrepancy made by the Petitioner with the proceedings of the Joint Registrar 05.03.1997. As discussed above, there is no discrepancy as stated by the first Respondent and even assuming that there is discrepancy that will not enable the second Respondent to get any relief in as much as her appointment was contrary to Section 149 of the Tamilnadu Co-operative Society Act.

11. Therefore, in view of the above said findings and discussions made above, the writ petition will have to be allowed and the same is allowed. The impugned order passed by the first Respondent is hereby set aside. No costs.