

(2010) 06 MAD CK 0140

In the Madras High Court

Case No : Writ Petition No's. 8059 and 18310 of 2008

The Management Vellore Co-operative Primary Agricultural
and Rural Development Bank Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and V.M. Vijayakumar

V.M. Vijakumar Vs The Presiding Officer, Labour Court
and The Management Vellore Co-operative Primary
Agricultural and Rural Development Bank Ltd.

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Income Tax Act, 1961 — Section 97

Citation : (2010) 4 LLJ 493

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P.S. Shivashanmugasundaram, in W.P. No. 8059/2008 and Balan Haridas, in W.P. No. 18310/2008, for the Appellant; Balan Haridas, for R. 2 in W.P. No. 8059/2008 and P.S. Shivashanmugasundaram in W.P. No. 18310/2008 for R. 2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The first writ petition is filed by the Management of Co-operative Society represented by its Special Officer, challenging the Award passed by the first respondent Labour Court, Vellore in I.D. No. 190 of 2002 dated 06.12.1997. By the impugned Award, the Labour court held that the termination of the second respondent/workman was illegal and he was eligible to be reinstated with 20% of the backwages.

2. The writ petition was admitted on 02.04.2008. Pending the writ petition, this Court granted an order of interim stay on condition that the petitioner Society deposits 20% of the backwages as ordered by the Labour Court to the credit of I.D. No. 190 of 2002. A further direction was also given to comply with Section 17B of the Industrial Disputes Act by paying the last drawn wages to the workman. The workman was directed to file an affidavit that he was not gainfully

employed elsewhere. On a vacate stay application being filed by the workman, this Court by a further order dated 23.11.2009 held that already a sum of Rs. 91,399/- was deposited to the credit of the Industrial Dispute and the last drawn pay has also been duly paid to the workman and the application was closed. However, the Workman was given liberty to withdraw the amount. Once again the Workman took out another interim application for withdrawal of the amount lying in deposit. This Court by a further order dated 16.12.2009 permitted the Workman to withdraw Rs. 30,000/- from out of the deposit made with the Labour Court. The balance amount was directed to be deposited in a nationalised bank for a period of three years and to be renewed from time to time.

3. Subsequent to the writ petition filed by the Management of the Co-operative Society, the Workman also filed another writ petition being W.P. No. 18310 of 2008, challenging that portion of the Award which had denied him the benefit of 80% of the backwages.

4. The writ petition was admitted on 31.07.2008 and was directed to be posted along with the earlier writ petition filed by the Management.

5. For the sake of convenience, parties are referred to as the Management and the Workman respectively.

6. In the writ petition filed by the Workman, the Management has filed a counter affidavit dated 03.11.2009. In the counter affidavit, in paragraph 3, it was stated that the workman as against the original order of termination dated 31.07.2001 filed a writ petition in W.P. No. 14781 of 2001. That writ petition was not entertained in view of the larger bench judgment holding that no writ petition will lie against the cooperative Society. However, while dismissing the writ petition by an order dated 21.09.2001, this Court in paragraphs 3 and 4 held as follows:

3. However, considering the facts and circumstances of the case, it is suffice to permit the petitioner to make a representation to the first respondent and the first respondent shall on receipt of such representation pass appropriate orders, on merits, within twelve weeks from the date of receipt of such representation, invoking Section 153 of the Tamil Nadu Co-operative Societies Act and till then, the respondent shall not fill the vacancy caused due to the termination of the petitioner.

4.If the petitioner is still aggrieved by the order of the Registrar of Co-operative of Societies, he is at liberty to approach the competent Labour Court raising an industrial dispute u/s 2A of the Industrial Disputes Act and seek appropriate relief before the competent authorities invoking the provisions of the Industrial Disputes Act.

7. Taking advantage of the order passed by this Court, the Workman preferred a revision petition u/s 153 of the Tamil Nadu Co-operative Societies Act before the Joint Registrar of Co-operative Societies, Vellore. The said revision petition was entertained as R.C. No. 11824/2002/A2. The revisional authority held as follows:

I have given due consideration to the arguments of the both the petitioner and respondent and upon perusal of the records it was noticed that the petitioner was not appointed by a Committee as was required in G.O.(D) No. 112, Cooperation, Food and Consumer Protection Department dated 4.5.98. Besides his appointment was purely on temporary basis as is seen from the appointment order of the President of the Respondent Bank dated 8.3.2001. As such the petitioner who was in the Services of the respondent bank for a period of 145 days only was terminated, as his services were no longer required in the respondent bank. Taking all these facts into consideration, I am of the opinion that termination of the services of the Petitioner is valid and there is no merit in the revision petition.

8. Subsequent to the rejection of the statutory revisional order, the workman did not challenge the same in a writ petition but took recourse to raising an Industrial Dispute u/s 2A(2) of the Industrial Disputes Act, 1947. The dispute raised before the conciliation Officer ended in failure. On the strength of the failure report dated 10.05.2002, the workman filed his claim statement before the Labour Court. The claim statement was registered as I.D. No. 190 of 2002. The contention of the workman was that after his Revision Petition, he had approached the Labour Court because of the observation made by this Court vide order dated 21.09.2001. On receiving notice from the Labour Court, the Management filed their written statement dated Nil. In the written statement, they had also contended that the Workman was not appointed in terms of the statutory rules found under Rule 149(2) read with G.O.Ms. No. 112 Cooperation dated 04.05.1998. Even otherwise there was no necessity to appoint any new person in the Society as the Society was recurring loss. The workman had only worked 145 days and he was not eligible for any relief. They had also raised the contention that since the statutory revision filed by the workman was rejected, he cannot have a second round of litigation before the Industrial Disputes Act and the jurisdiction under I.D. Act is barred. In the written brief filed by them, they had also stated that since the workman was employed only for 145 days, he is not eligible for any relief including relief of alleged violation of Section 25F of the I.D. Act.

9. Before the Labour Court, on behalf of the workman, he examined himself as W.W.1. The failure report given by the Labour Officer to him was marked as Ex.W1. On the side of the Management, 5 documents were filed and they were marked as Exs.M1 to M5. Ex.M4 is the order of the High Court and Ex.M5 is the revisional order passed by the joint registrar.

10. The preliminary objection raised by the Management with regard to the lack of jurisdiction was not dealt with by the Labour Court. However, the Labour Court held that since the workman was temporarily appointed as a Supervisor and he had not claim or right to be in the post. The argument based upon some judgments of the Supreme Court may not apply. Likewise, the workman's case for continuous employment for more than 240 days in a year also would not

apply. But however, it held that his termination was unreasonable and therefore, he is eligible for reinstatement. But so far as backwages was concerned, the Court ordered only 20% of backwages.

11. Mr. P.S.Shivashanmugasundaram, learned Counsel for the Management contended that the approach of the Labour Court was erroneous. The Labour Court having found that the workman had worked only 145 days ought not to have granted any relief to him. Inasmuch as the employment was only for a short period, it could have given some compensation. He also submitted that the Labour Court was wrong in not considering that the Industrial Dispute itself was not maintainable since the workman had pursued his statutory remedy under the Cooperative Societies Act and that order having become final, the Labour Court cannot entertain a second round of litigation.

12. In the present case, the order passed by this Court in the earlier writ petition merely observed that the workman if he fails in his revisional order can approach the appropriate Labour Court u/s 2A. That observation was made without reference to any legal provisions involved herein. In this context, it is necessary to refer to the judgment of the Division Bench of this Court in P. Eswaramoorthy and Others Vs. R.J.B. Leoraj and Others, . After referring to the relationship between the Cooperative Society and Industrial Disputes Act decided by the Supreme Court in various cases in paragraphs 24B and C, it observed as follows:

24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:

24(b). Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority u/s 153 to call for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted u/s 75(3) of the 1983 Act. Therefore, the employees of a Co-operative Society can approach the Registrar or any competent authority u/s 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

24(c) There is no implied ouster of the jurisdiction of the power of the Labour Court/Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

13. Subsequently, the Supreme Court in Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commr. (2007) 11 SCC 756 dealt with the question whether the Labour Commissioner appointed under the U.P. Industrial Disputes Act, 1947 has power to deal with the question of ex gratia payment contrary to the statutory directions issued under the provisions of the U.P. Cooperative Societies Act, 1965 and whether there was an ouster of jurisdiction in view of Sections 70 and 71 of

the U.P. Cooperative Societies Act providing for arbitration of such dispute. In that context, the Supreme Court in paragraph 78 held as follows:

78. In view of the aforesaid legal provisions and the reply furnished by the petitioner, Respondent 1 had no jurisdiction to adjudicate the matter of employees with regard to the payment of ex gratia amount which runs contrary to Regulation 42 of the Service Regulations, 1975 as well as the circulars issued by the Registrar, Cooperative Societies, U.P. and the Additional Registrar (Banking), Cooperative Societies, U.P. and the only forum for adjudication for sake of arguments and without admitting that the matter ought to have been referred to the Labour Court for adjudicating the aforesaid matter, and that too, if the industrial laws are made applicable to the provisions of the U.P. Cooperative Societies Act, 1965.

Therefore, in the light of the above, it cannot be held that there was an implied ouster of the jurisdiction of the Labour Court only on the ground that the workman had lost out his revision petition.

14. Even though the Labour Court did not deal with the said issue, this Court is of the opinion that the objections raised by the Management before the Labour Court and once again reiterating before this Court cannot be accepted. On the question of Labour Court granting relief to the workman, it must be stated the Labour Court found that the workman had worked only for 145 days but only on the ground of illegal termination, he was directed to be reinstated. That approach seems to be an easy way out rather than deciding the issues raised before the Labour Court.

15. Though Mr. Balan Haridoss learned Counsel for the Workman contended that there is a difference between illegal appointment and irregular appointment. In the present case, the workman was only irregularly appointed. Therefore, he ought not to have been sent out on the plea of irregular appointment. For this purpose, he placed reliance upon the judgment of the Supreme Court in *Municipal Corporation, Jabalpur Vs. Om Prakash Dubey*, . It is not clear as to how the judgment will have any relevance to the case of the workman.

16. On the contrary, it was contended by the Management that the Workman was terminated on the ground that he was not appointed as per the committee constituted in terms of G.O.Ms. No. 112 and therefore, his initial appointment itself was without jurisdiction. The Labour Court having found the termination of the workman was after a period of 145 days and he was also not covered by the provisions of the Section 25F ought not to have granted the relief of reinstatement that too with 20% of the backwages. Even if there was a violation of Section 25F r/w Section 2(oo) of the I.D. Act the Supreme Court in *Rajasthan Lalit Kala Academy v. Radhey Shyam* (2008) 13 SCC 248 has held that though in case of violation of aforesaid provisions, the normal rule may be one of reinstatement with backwages. But while doing so, the Court must take into account several factors such as the whether the employee was engaged on adhoc

basis or daily wages or temporary basis. Since the Workman had only put in 145 days there was no violation of Section 25F of the I.D. Act. But on the other hand, the Labour Court's direction ordering reinstatement with 20% of the backwages was wholly illegal. If at all the workman was liable to get some compensation in view of the finding of illegal termination. The Labour Court though recorded that it was unreasonable to terminate the services of the workman, did not specify reason for holding the Management's action as unreasonable.

17. In view of the above, this Court is constrained to interfere with the impugned Award challenged in both the writ petitions. Hence, W.P. No. 8059 of 2008 will stand allowed and W.P. No. 18310 of 2008 will stand dismissed. No costs. Under the peculiar circumstances of the case, the amounts paid by way of interim orders of this Court viz., last drawn wages u/s 17B of the I.D. Act as well as the lumpsum withdrawal of Rs. 30,000/- shall not be recovered from the workman. However, the Management is entitled to withdraw the balance amounts lying in the credit of the Industrial Dispute from the Labour Court.