BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES, PUDUCHERRY.

R.P. No.4/2013

Present : **Tmt. P. PRIYTARSHNY,**
Registrar of Co-operative Societies
Puducherry.

R. Tamizhkumaran
Junior Clerk
Kothapurinatham Primary Agricultural
Co-operative Credit Society
Kothapurinatham
Puducherry – 605 102 .. Petitioner

Vs.

The Administrator
Kothapurinatham Primary Agricultural
Co-operative Credit Society
Kothapurinatham
Puducherry – 605 102 .. Respondent

ORDER

(Issued under Section 141 of the Puducherry Co-operative Societies Act)

The gravamen of grievance of the petitioner sought to be redressed through this revision petition, filed under Section 141 of the Puducherry Co-operative Societies Act, 1972, is twofold, viz., (i) he should be regularized in the post of Junior Clerk in the Kothapurinatham Primary Agricultural Co-operative Credit Society Ltd., No. P. 130 (for easy reference the 'society') and (ii) in case the society is ordered to be wound up he should be provided with alternate employment.

CLAIMS OF THE PETITIONER

2. The thumbnail sketch of the germane facts absolutely necessary for disposal of this revision petition, as unfurled from his revision petition is that he is working as Junior Clerk on daily wages for the last six years. He has

not been regularized in the said post though he has made repeated representation for regularization. As provided in the Industrial Disputes Act, 1947 an employee working continuously for 480 days on daily rated basis should be regularized in service and be provided with time scale. Further the Registrar has directed to wind up the affairs of the society as it has not functioned properly. In such a case he might be out of employment. To mitigate his suffering, he should be provided alternate employment in any other society maintaining his seniority in this society. He prayed to direct the respondent to provide these two reliefs.

RESISTENCE OF THE RESPONDENT

3. Resisting the claims of the petitioner the respondent would pyramid his submissions which would be succinctly and precisely be set out thus:

3.1 The petitioner was appointed by the then committee of management without sanctioned strength. No appointment order was issued to him and there is no recruitment rule for the said post. Three junior clerks are working in the society on daily rated basis and above the petitioner there is one Junior Clerk on daily rated basis.

3.2 The petitioner was found highly irregular in attending his duties and he did not report for duty from September 2011. He was permitted to resume duties from 8th April 2013 on humanitarian grounds.

3.3 The activities of the society is next to nothing for the last two years and even to pay salaries to the daily rated employees, the society has to strain much. The Registrar has constituted a committee to study the chances of revival of the society.

3.4 No communication was issued to him that he would be out of employment. When the society is working on loss and without any activities regularizing the petitioner would be out of question. Further he cannot be provided with any re-employment in some other society.

3.5 On the above premises, the respondent sought to dismiss the revision petition.

THE REJOINDER

4. Refuting the counter affidavit filed by the respondent, in his rejoinder, the petitioner submitted that it is the fault of the management in not seeking sanctioned strength from the Registrar. There is ample scope for the development of the society and regularizing his services in the society. He requested to allow the revision petition.

THE MOOT QUESTION

5. The revision petition came up for hearing on 5th September 2013. The petitioner was present and pleaded that he may be regularized considering his long years of daily rated service. Taking into consideration the rival submissions of the parties and on perusal of the records the spinal issue that has spiraled for determination in this revision petition is whether the claim of the petitioner to seek regularization in the post of Junior Clerk and for re-employment in any other society in case the society is ordered to be wound up is justified.

RESOLVING THE QUESTION

6. It is not disputed by the petitioner that he was appointed without any appointment order, nor was he appointed against any sanctioned strength. Though he claimed that it was not his fault in not to be appointed with the approval of the Registrar the fact remains that his appointment is not regular.

7. The question of regularizing employees who were appointed on irregular basis came to be decided by the Constitution Bench of the Hon'ble Supreme Court of India in *Secretary, State of Karnataka and others vs. Umadevi and others, 2006(4) SCALE 197 : (2006) 4 SCC 1.* The said issue has been elaborately dealt with in the judgment. It was, inter alia, held as follows:

> "*While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain -- not at arm's length -- since he*

might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible. Given the exigencies of administration, and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment, moreover when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for Public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution [Paragraph 36 in SCALE]."

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences

of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post [Paragraph 38 in SCALE]". Underlined to add emphasis

8. In *(1997) 2 SCC 1 (Ashwani Kumar and others vs. State of Bihar and others)* the Hon'ble Supreme Court observed that "If the initial entry itself is unauthorised and is not against any sanctioned vacancy, the question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration".

9. In *Arun Kumar Rout and others vs. State of Bihar and others, AIR 1998 SC 71,* it was held by the Hon'ble Apex Court that "If the initial appointment was 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 regularized".

10. From the aforesaid decisions it is clear as crystal that for regularisation, the first precondition is that there must be a post or vacancy. There cannot be a direction by the Court for regularization without a post or vacancy, merely because the daily rated employees have put in work for more than 240 days, as it is beyond the capacity of any Government in India, to comply with such direction, *vide Paragraph 28(iv) – Division Bench of the Hon'ble High Court of Madras* in *Union of India and others vs. Ilango, 2004 WLR 434.*

11. *In B.T. Krishnamurthy vs. Sri Basaveswara Education Society and others, AIR 2013 SC 1787,* the Hon'ble Apex Court observed that in absence of appointment letter in favour of the respondent there cannot be any legitimate expectation for his continuing in service.

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12. The command is imperative and categorical that the petitioner has not disclosed a cause of action to maintain his plea that he can claim regularization of his services as Junior Clerk in the society as a matter of right.

13. The next facet which is to be dwelled upon is that petitioner has approached this forum on mere apprehension that he would be out of employment as daily rated clerk mistaking the order of appointment of a committee to study the revival of the society as an order of winding up of the society. As rightly pointed out by the respondent there was no communication to the petitioner that he would be out of employment and there is no order of winding up of the society. The prayer of the petitioner that there should be a direction to the respondent to re-employ him in any other society, maintaining his seniority in employment, in case his society is wound up, is farfetched and cannot be countenanced at all. The respondent has no such power and it would be beyond his scope. Further when his first prayer of regularization in service itself is not maintainable in the facts and circumstances of the case and in the light of the dictums quoted above, his second request for re-employment is totally out of question. Both his requests can be heard only to be rejected.

THE OUTCOME

14. In view of the aforesaid analysis, I repel the contentions raised by the petitioner and as a fall out of the same, the revision petition, being sans merit, stands dismissed, without any order as to costs.

Dated, the 18th day of September 2013.

OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES • PUDUCHERRY •

P. Priytarshny

[P. PRIYTARSHNY]
REGISTRAR OF CO-OPERATIVE SOCIETIES

To

The parties