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(2004) 6 ALD 838 : (2005) 2 ALT 283

Andhra Pradesh High Court

Case No: Writ Petition No. 15219 of 2004

B. Krishna	APPELLANT
Vs	
Vasavi Co-operative Urban Bank Ltd. and Another	RESPONDENT

Date of Decision: Oct. 14, 2004

Acts Referred:
Constitution of India, 1950 â€" Article 12, 226#Industrial Disputes Act, 1947 â€" Section 25B#Vasavi Bank Service Rules â€" Rule 11(v)(i)

Citation: (2004) 6 ALD 838 : (2005) 2 ALT 283

Hon'ble Judges: G. Yethirajulu, J

Bench: Single Bench

Advocate: T. Surya Karan Reddy, for the Appellant; Ashok Anand Kumar, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G. Yethirajulu, J.
The petitioner was appointed as a daily wage sub-staff in the respondent Bank for a period of 89 days w.e.f. 20-12-

1993. He continued as such with a break of one day for every 90 days of the service till he was regularly selected and appointed through the

proceedings dated 21-8-1996. He was appointed as a sub-staff-cum-Peon-cum-Driver in the pay scale of 1450-2430. He was required to be on

probation for a period of one year w.e.f. 21-8-1996 along with the other persons appointed on regular basis. He belongs to B.C.-A community

and as per the Roster he is entitled to be placed at the 4th vacancy and 20th vacancy in a Roster of 100 points. He is entitled to be shown at

S.No.4 in the seniority list dated 19-8-2004 or at least at S.No.13 by taking the date of regular appointment. The services of the petitioner were

confirmed w.e.f. 26-8-1997. Thus, he became a permanent employee of the first respondent Bank. While the matter stood thus, the first

respondent Bank went into a financial crunch and thereby to revalidate the Bank, the second respondent in his proceedings dated 13-5-2004

directed reduction of the staffing pattern and in respect of Cadre VII posts the number was reduced from 40 to 23. In view of the said reduction in

the cadre strength, the first respondent is contemplating to remove the sub-staff from S.Nos.24 of the seniority list dated 19-8-2004. The

respondents are also contemplating to remove the petitioner by showing his place at S.No.26. The petitioner submitted objections on 23-8-2004,

but the first respondent did not consider the same. As per the service rules, the regular service shall only be taken into consideration for the

purpose of seniority and the temporary service, if any, as daily wage sub-staff shall not be counted for the purpose of seniority. The petitioner

therefore approached this Court seeking a direction to the first respondent to follow the ranking in the selected list and the rule of reservation

provided at the time of regular recruitment for the purpose of fixation of seniority and consequently to direct the first respondent to continue the

services of the petitioner by fixing seniority on the basis of the regular appointment.

2. The first respondent filed a counter-affidavit resisting the petition, which reads as follows:

3. The cadre strength of the sub-staff as approved by the second respondent is 40. It was enhanced from 40 to 54 through the proceedings dated

22-10-1996. It was further enhanced by the second respondent from 54 to 78 through the proceedings dated 14-11-1997. By the date of the

notification for regular appointment on 21-9-1995, the petitioner continued to serve the first respondent as a temporary Peon-cum-Driver with

service breaks. Several other employees who were appointed prior to the appointment of the writ petitioner were also continued with service

breaks. The petitioner was appointed on 26-8-1996. The first respondent Bank is a registered Society under the A.P. Cooperative Societies Act

being run on the basis of the share capital contributed by its members. Therefore, it does not come within the definition of ""State"" as defined under

Article 12 of the Constitution of India. Rule 11 of the Service Regulations clearly contemplates that seniority should be fixed on the basis of the

date of joining the post. Rule 11 does not contemplate that the temporary service should not be counted for the purpose of seniority; therefore, the

contention of the petitioner that the seniority alone should be counted from the date of regular appointment is not correct. The first respondent took

the date of joining the post into consideration for determining the seniority irrespective of the fact whether the services are temporary or on daily

wages or on probation. The Rule clearly leads to only one interpretation that the date of joining the post is the criteria for determining the inter se

seniority. The principles of fixing the inter se seniority under the service law cannot be imported to fix the seniority of the workmen under the

provisions of the A.P.S.E. Act, 1988 or Industrial Disputes Act, 1947 ignoring Section 25-B of the I.D. Act. The service on temporary basis

counted for the purpose of retrenchment compensation cannot be ignored for fixing seniority. The writ petition deserves no consideration and it is

liable to be dismissed.

4. In the light of the contentions raised by both parties, the following are the points for consideration:

1) Whether the first respondent is entitled to fix the seniority of the sub-staff by counting it from the initial appointment as daily wage workers and

instead of the date of regular appointment?

2) Whether the respondent bank which was registered under the A.P. Cooperative Societies Act, 1964 is a State within the definition of Article 12

of the Constitution of India and whether the writ petition is maintainable against the respondent bank under Article 226 of the Constitution of India?

Point No.1:

5. The petitioner is contending that the seniority of the sub-staff shall be counted on the basis of the date of their appointment on regular selection

and the service, if any, rendered prior to the regular selection either on temporary or on daily wage basis cannot be counted for the purpose of

seniority. It is an undisputed fact that the petitioner was regularly appointed along with others on 21-8-1996. The petitioner contends that if the

seniority is counted from 21-8-1996, he would be at S.No.20 of the selection list and would have been at S.No.13 as per the existing cadre. The

grievance of the petitioner is that the first respondent by adding the temporary service pushed him to S.No.26 when the cadre strength has been

reduced to 23.

6. The first respondent, on the other hand, contends that the sub-staff are entitled to get the service on temporary basis or on daily wages added to

the regular service. Accordingly they worked out the seniority and fixed the place of the petitioner at S.No.26 in the seniority list prepared on 19-

8-2004.

7. As per Rule 11 (v) (i) of the Vasavi Bank Service Rules, in the case of persons appointed by direct recruitment to a post in one batch, the

seniority shall be determined in accordance with the order of preference specified by the appointing authority on the results of the test taken at the

time of making the appointment and as per the Roster system prescribed in G.O.Ms.No.55, F & A, dated 1-2-1977. There is no provision in the

service rules of the first respondent Bank to count the service of the period of casual employment or daily wage employment for the purpose of

seniority. The appointment of the petitioner was made subsequent to the service rules came into force. Therefore, the first respondent is expected

to count the seniority as per the service rules. Though the first respondent asserted in the counter-affidavit that the service rendered on temporary

basis or on daily wages has to be added to the regular service for the purpose of fixing the seniority, it holds no water.

8. In the light of the above discussion, I hold that the first respondent is not entitled to fix the seniority of sub-staff by counting the period of daily

wage service and the seniority has to be fixed from the date of regular appointment only.

Point No.2:

9. The learned counsel for the first respondent contended that the first respondent is a registered society under the provisions of the

A.P.Cooperative Societies Act, 1964. The members of the first respondent bank contributed their share capital and the Government does not give

any aid or assistance to the first respondent. It is not an institution working under the direct supervision of the Government of Andhra Pradesh. The

banking activities are not carried on behalf of the Government. The Government does not appoint any representatives of the Board of Directors.

The members conduct elections and elect the Board of Directors; therefore, the writ petition against the first respondent is not maintainable as it is

not a State or an authority under Article 12 of the Constitution of India. He therefore requested to hold that the writ petition is not maintainable

against the first respondent. In support of the above contentions, the learned counsel relied on the following judgments:

10. In V. Narasing Rao v. Prudential Co-op. Urban Bank1 a Division Bench of this Court held that the respondent bank is not a statutory

corporation, it is a Co-operative Society registered under the A.P.Cooperative Societies Act, 1964. Its capital is not contributed by the State. The

control of the State over it is neither deep nor pervasive. The only control the State exercises is the one provided by the Act and the Rules made

thereunder, which cannot be called deep and pervasive control. The respondent-bank is not an authority falling within the definition of ""State"" in

Article 12. A Co-operative society does not satisfy the requirements of an ''authority''. Neither it exercises quasi-governmental, nor can its revenue

be called public revenue. It cannot be said that the Board of Directors of the respondent Co-operative Bank is a body of persons of public

character, nor can it be said their act is an act of Government. Therefore, the writ petition under Article 226 of the Constitution is not maintainable.

11. In Sri Konaseema Co-op. Central Bank Ltd., v. N. Seetharama Raju2 a Full Bench of this High Court held that the main object of the Co-

operative Central Bank registered under the A.P. Cooperative Societies Act of raising funds to finance its members cannot be characterized as a

State"" within the meaning of Article 12. The bye-laws which merely constitute terms of a contract between a society and its employees do not

have or do not gain the force of law even where such a society can be characterized as State within the meaning of Article 12. Unless the functions

of the bank are of public importance and closely related to governmental funds, it cannot be characterized as ""State"" within the meaning of Article

12.

12. In General Manager, Kisan Sahkari Chini Mills Ltd., v. Satrughan Nishad3 the Supreme Court held that whenever there is a question whether

a cooperative society is an instrumentality or agent of the Government, it has to be decided on the basis of the status of the body with respect to

deep and pervasive control of the Government over the society or corporation.

13. In Federal Bank Ltd., v. Sagar Thomas4 the Supreme Court held that the six factors enumerated in Ajay Hasia v. Khalid Mujib5 have to be

taken into consideration to test whether a body is an instrumentality or an agency of the State within the definition of Article 12 of the Constitution

of India. The following are the six factors enumerated in Ajay Hasia (5 supra):

1) Whether the share capital of the bank is held by the Government;

2) Whether any financial assistance is provided by the State;

3) Whether it is an institution having State protection;

4) Whether the affairs of the bank are managed by the Board of Directors elected by its shareholders and whether no governmental agency or

officer is connected with the affairs of the appellant bank or is any one of them a member of the Board of Directors? Whether in the normal

functioning of the private banking company, there is any perspective or interference of the State or its authorities.

5) Whether the activities of the bank are falling in the category of discharging duties or functions of a public nature.

6) Whether the activity, which is being carried on by the bank is the one, which was earlier carried on by the Government and transferred to the

bank.

14. In Federal Bank Limited (4 supra) the Supreme Court further held that the six factors enumerated in Ajay Hasia (5 supra) and approved in

Ramana Dayaram Shetty v. International Airport Authority of India6 and Pradeep Kumar Biswas v. Indian Institute of Chemical Biology7 (seven

Judge Bench) may be applied to the facts of a case to see whether those tests apply to the bank or not. The Supreme Court also held that even if it

may be presumed that one or the other tests as provided in Ajay Hasia (5 supra) may be attracted, that by itself would not be sufficient to hold that

it is an agency of the State or a company carrying on the functions of public nature. The Supreme Court while making the above observations

referred to the observations made in para No.40 of the judgment in Pradeep Kumar Biswas (7 supra) and they read as follows:

40. The picture that ultimately emerges is hat the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one

of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be - whether in the

light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the

Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article

12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

15. The Supreme Court also observed that one of the important factors to be considered is that if it is a statutory corporation, an instrumentality or

an agency of the State or a company owned wholly or partially by a share capital floated from a public exchequer, it gives indicia that it is

controlled by and under the authority of the appropriate government. It is this factor, which brings in the public element.

16. In G. Bassi Reddy v. Indistrial Crops Research Institute and another8 the Supreme Court held that in order to test whether an organization is a

State or authority under Article 12 of the Constitution, the tests laid down by the Constitution Bench in Pradeep Kumar Biswas (7 supra) have to

be applied.

17. In Gayatri De v. Mousumi Cooperative Housing Society Ltd.,9 the Supreme Court held that in a case where the cooperative society is under

the control of a Special Officer, a writ would lie. It was further held that the Special Officer appointed under the provisions of the Cooperative

Societies Act is a statutory authority, therefore, where the subject matter of writ is an order passed by the Special Officer in discharge of his

statutory functions, the writ petition is maintainable.

18. In the case covered by the above decision a Special Officer was appointed by the High Court to discharge the functions of the Society,

therefore, the Supreme Court held that he should be regarded as a public authority and hence the writ petition is maintainable.

19. In A. Umarani v. Registrar, Coop. Societies10 a three Judge Bench of the Supreme Court held that when the action of cooperative society is

violative of mandatory statutory provisions the writ petition under Article 226 of the Constitution of India is maintainable.

20. In V.Bhasker Reddy v. Managing Director, Tirupathi Cooperative Urban Bank, Tirupathi11 a learned single Judge of this Court while

considering the question regarding the maintainability of the writ petition under Article 226 of the Constitution of India against a Cooperative Bank

held as follows:

There is no material available on record regarding the financial contribution made by the State, the nature of the control exercised by the State and

the nature of the functions discharged by the society. The Apex Court repeatedly pointed out that it is the duty of the person invoking the

jurisdiction of the State to clearly plead as to why a particular society or organization should be characterized as a State or an authority. It is not as

if in this case there are any features emerging so boldly and prominently so as to characterize the first respondent society as an authority of the

State. In such view of the matter, a broad view of the matter has to be taken and a discerning mind has to be applied keeping the realities and the

human experience in view so as to reach a reasonable conclusion. Having given any anxious considerations to all the facts and issues that arise for

consideration, I hold that the first respondent cooperative society is neither an agency nor an instrumentality of the State so as to characterize the

same as ""other authority"" within the meaning of Article 12 or 226 of the Constitution of India.

21. Though the legal position on the definition of State or other authority under Article 12 of the Constitution of India is clear from the above

judgments, certain special circumstances have to be taken into consideration and it has to be decided as to whether this particular bank comes

within the definition of ""the State"" under Article 12 of the Constitution of India.

22. In Pinapatruni Nagabhushanam v. Government of A.P.12 a learned single Judge of this Court while dealing with a writ petition filed questioning

the order of the reinstatement passed by the officer-in-charge in respect of an employee of a cooperative society superseding the earlier order of

termination passed by the elected body of the society under the bye-laws of the society and confirmed by the District Collector held that the bye-

laws of the society have statutory flavour, therefore, the writ petition is maintainable, though the cooperative society is not an instrumentality of the

State. The learned Judge further observed as follows:

The special bye-laws governing the service conditions of a Secretary, are required to be and have been issued by the society after having been

framed by the Registrar as required under Rule 72 (3) of the Rules. As these Rules have been framed by the Registrar in exercise of powers

available under the Statutory Rules, these Rules must be characterized as instruments having a statutory flavour and statutory underpinnings.

Consequently, these Rules create rights and enjoin duties, which are enforceable and adjudicable in public law fora. On this analysis, specific

service conditions, rights and liabilities of Secretaries of the Cooperative Societies allotted to such Societies under the decaderised disposition of

Section 116(AA) of the Act and in whose regard Rules have been framed by the Registrar under Rule 72 (3) of the Rules and have been adopted

by the societies, are amenable to adjudication under public law parameters, including under Article 226 of the Constitution of India.

23. The petitioner is agitating that the seniority list was not prepared according to the existing rules and it was prepared as per the likes of the

management of the first respondent Bank to shield certain persons who are in their good looks by inducting the method of adding the service

rendered prior to the appointment made under due process of law. The rule of reservation is also incorporated in the bye-laws of the Bank, which

is being generally made applicable to the Government or the instrumentalities of the State or other authorities. The Bye-laws framed by the State

were approved by the Registrar of Co-operative Societies in exercise of the powers available under Cooperative Societies Act giving statutory

flavour, which can be characterized as instruments playing very vital role under the service jurisprudence. Therefore, they can be made amenable to

adjudication under the public law by bringing them to test under Article 226 of the Constitution of India. In the event of infringement of the right

regarding the rule of reservation guaranteed under the bye-laws, the aggrieved party would be without an effective remedy for the injustice done to

him. Whenever it comes to the notice of the Court that there is flagrant violation of the mandate of the rules or the bye-laws of a particular

institution, the Court is empowered to issue necessary directions by invoking the jurisdiction under Article 226 of the Constitution of India. In the

light of the peculiar circumstances of this case, I am inclined to hold that the writ petition is maintainable under Article 226 of the Constitution of

India. This point is accordingly answered in favour of the petitioner.

24. In the result, the writ petition is allowed. The seniority list dated 19-8-2004 is set aside. The first respondent is directed to revise the seniority

list by taking into consideration the seniority of sub-staff from the date of their appointment on selection according to the service rules, fix the place

of the petitioner in the seniority list and take further steps as per revised seniority list.