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C.A.No. 1282 OF 2001
ITEM NO.120

COURT NO. 10

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 1282 OF 2001@@
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KURUKSHETRA CENTRAL CO-OP. BANK LTD. ...APPELLANT

VERSUS

MEHAR CHAND & ANR. ...RESPONDENTS
(With office report)

Date : 27/03/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. Naresh Kaushik, Adv.
Ms. Shilpa Chohan, Adv.
for Ms. Lalita Kaushik, Adv.

For Respondent (s) Mr. S.S. Khanduja, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Heard learned counsel for the parties for 10
minutes.

The appeal is allowed in terms of the signed order,
but with no order as to costs.

.SP1

Sarita (Shelly Sengupta)@@
AA
Court Master@@
AA

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1282 OF 2001@@
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KURUKSHETRA CENTRAL CO-OP. BANK LTD.

...APPELLANT

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O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

The respondent No.1 herein approached the High Court by filing a writ petition seeking regularisation of his services as a full-time employee of the appellant-Bank. He has been working in the same Bank since 1977 on a part-time basis on consolidated pay of Rs.1,100/-, subsequently increased to Rs.1,600/-. This claim of the respondent was based on the letter of the Registrar, Cooperative Societies, Haryana, Chandigarh addressed to the Managing Director of All the Central Cooperative Banks in the State. In the said letter in paragraph 3 it is stated thus :

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"3. Some of the Banks have, from time to time, sought permission for appointment of regular Sweepers. It has therefore been decided that in Central Cooperative Banks, keeping in view the size of the building and quantum of work, appointment of part-time or full time Sweepers is necessary according to his own prudence."

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

The High Court taking note of the fact that the respondent has been working as a Sweeper in the ..2/-

.2.

appellant-Bank on part-time basis since 1977, held that "admittedly when the respondent is continuously serving the Bank from the date of his joining the post, which by itself proves that the post of Sweeper is a permanent post and is required in the Bank." In this view, gave direction to the appellant by allowing the Writ Petition to move the Authorities for sanction of the post of Sweeper and to consider the case of the respondent for appointment on regular basis as a full-time Sweeper. Hence this appeal questioning the validity and correctness of the order of the High Court.

The learned counsel for the appellant contended that there is no sanctioned permanent post of full-time Sweeper in the Bank; having regard to the volume of the work, size of the building and the activities of the Bank, there is no need of a full-time post of a Sweeper; as such the services of the respondent are continued on a part-time basis; he also submitted that it is clear from the letter of the Registrar and particularly, looking to paragraph 3 of the letter extracted above that it was for the appellant-Bank to consider as to whether the post of

a Sweeper should be a full-time post or a part-time post; a decision was taken by the appellant-Bank to continue the services of the respondent on part-time basis; this ..3/-

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being the position, the High Court was not right in giving direction to move the Authorities for creation of full-time post so as to consider the case of the respondent for appointment on a full-time basis.

In opposition, the learned counsel for the respondent while supporting the impugned order submitted that the appellant should forward the necessary papers and information for sanction of the full-time post of a Sweeper; it is for the Authorities to sanction the post or not. According to the learned counsel, the High Court has not given direction to appoint the respondent on full-time basis; the High Court has only directed the appellant to move the Authorities for sanction of a full-time post of Sweeper.

We find it difficult to sustain the impugned order for the reasons more than one. The High Court has drawn an inference that the post of a Sweeper is a permanent post merely on the basis that the respondent has been continuously working on a part-time basis since 1977. This inference is contrary to the facts inasmuch as neither the appellant nor the respondent has stated that there is a sanctioned full-time post of a Sweeper in the Bank. From the letter of the Registrar, referred to ..4/-

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above, it is clear that it was for the appellant-Bank to consider whether there should be a part-time post or a full-time post of a Sweeper in the Bank. When the appellant-Bank has taken a decision to continue post of part-time Sweeper, the High Court could not give direction to move the Authorities for getting sanction for a full-time post. The contention of the learned counsel for the respondent that the appellant should move the Authorities for sanctioning full-time post cannot be accepted. It is for the appellant-Bank in the first place to take a decision whether they need a full-time post of a Sweeper. If they do not need such a post, it is not for the Court to compel them to create one and then to move the Authorities to give such a post. We have no hesitation in holding that the High Court has committed a manifest error in giving such a direction. In the result, for the reasons stated, the appeal is entitled to succeed; the impugned order is set aside and the appeal is allowed accordingly, but with no order as to costs.

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At this stage, the learned counsel for the respondent states that the work has increased and it is likely to increase further and on a future date the appellant may consider the case of the respondent for full-time appointment. If there is justification and work for full-time post, it is open to the appellant to do so, if need be.

.SP1

.....J.
(SHIVARAJ V. PATIL)

New Delhi,
March 27, 2003.

.....J.
(ARIJIT PASAYAT)