



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)No.1027 of 2018
and
C.M.P(MD)No.7190 of 2018**

The Management,
A/3099, Tamil Nadu Transport Corporation
Employees Cooperative Store Limited,
No.27, Pasumpon Nagar,
Madurai – 625 003.

... Appellant/Writ Petitioner

.Vs.

1.The Labour Inspector,
Office of the Deputy Commissioner of Labour,
TNHB Office Building,
Ellisnagar,
Madurai – 625 002,
Madurai.

2.K.Thirumurugan

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside the order of this Court made in W.P.No.17955 of 2016, dated



WEB 2.3.2018.

For Appellant : Mr.S.Kumar

For Respondent-1 : Mr.D.Sachiikumar
Addl.Govt. Pleader

For Respondent-2 : Mr.A.Rahul

JUDGMENT

(Order of the Court was made by **P.VELMURUGAN.,J**)

The Writ Appeal is directed against the order of the learned Single Judge this Court made in W.P.No.17955 of 2016, dated 2.3.2018.

2.The second respondent gave an application before the first respondent for regularization of his service and the first respondent also considering his application, passed an order in E/4457/2015 CPS NO.12 of 2015, dated 24.3.2016. The Writ Court, after considering the case of both the Petitioner and respondent, partly allowed the Writ Petition and modified the order passed. Challenging the said order of the Writ Court, the Management has filed the present Writ Appeal.



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3. The case of the appellant is that the appellant is a Cooperative institution registered under the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder. The appellant is having registered bye-laws with regard to the constitution, member, object and other affairs of the stores and also having special bye-laws relating to service conditions of the employees of the stores. If any application is made in the appellant store to obtain cadre strength of the vacant place, it should be filled up only through Employment Exchange and Committee prescribed under the provisions of the Act herein. The second respondent is a qualified diploma Engineer and he was engaged as a daily wage employee as Computer Operator on 27.1.2001. Later on, he was working on contract basis and he was receiving the salary on consolidated basis. Hence the appointment of the second respondent was illegal and came to service by back door entries as against the special bye-laws and Rule 149 of the above Rules and without any qualification of degree in Cooperative Training and there is no post of Computer Operator/Typist approved by the Management. Subsequently, the erstwhile Board of Directors period was over and a Special Officer was appointed by the department and they are looking after the day-to-day affairs and did not ratify the defects and the appointment of the second respondent was



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illegal and irregular without necessary qualification and without approved cadre strength of typist in the appellant store and the second respondent has no right to claim permanency in the appellant store. Though the second respondent filed petition before the first respondent and the first respondent directed to confirm and regularize his post of Computer Operator, since he was working continuously for 480 days in 24 calendar months under the provisions of the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to Workmen) Act, 1981.

4.The case of the second respondent is that the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to Workmen) Act, 1981 is applicable to the appellant herein. The appointment of the second respondent was not illegal and based on the resolution passed by the appellant, he was appointed.The Deputy Registrar has not disapproved his appointment and directed his permanency at any point of time. Only he was denied regularization. The appellant admitted about the exploiting of work and payment of low wages to the second respondent, which is unfair labour practice as per Section 25(T) of the Industrial Disputes Act and contrary to the provisions of Minimum Wages



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Act. The post of Computer Operator held by the second respondent falls under the Industrial Disputes Act. The statutory remedy was rightly invoked by the second respondent and the first respondent has rightly appreciated the oral and documentary evidence and passed an order which is impugned in the Writ Petition.

5.The learned counsel for the appellant would submit that the second respondent was appointed in an irregular manner and without proper Committee constituted under the Act and without necessary qualification. The appointment of the second respondent is not valid and he came to service by back door entry and he has completed 480 days in two years on 12.3.2001 and hence G.O.Ms No. 86, dated 12.3.2001 is not applicable as per the ***Justine's case reported in (2002) 4 CTC 385 and Umarani's case reported in reported in 2004 (VII) SCC 112.*** The employees of the Cooperative Societies are covered under the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to Workmen) Act, 1981 and the Act does not apply to the illegal appointment. The name of the second respondent was not referred to by Employment Exchange from qualified persons and hence the order of the first respondent is liable to be set aside. Further, he



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would submit that there is no legal sanctity in respect of the first respondent to confer permanency in the post of Computer Operator of the second respondent, which is unsustainable and hence the same is liable to be set aside. Further he would submit that the second respondent was engaged on daily wage basis and he was only engaged on 27.1.2001 and he has not completed 240 days in 24 calendar months and therefore, he is not entitled to get any permanency as a matter of right and therefore, the first respondent failed to consider the peculiar nature of the facts and circumstances of this case and has erroneously held and the first appellate Court has also modified the order passed by the first respondent. Further the first respondent failed to consider that the second respondent entered into service by back door entry which is also not a sanctioned post and further he has not completed 240 days and therefore the management is before this Court by way of this intra-Court Writ Appeal.

6.The learned counsel for the second respondent would submit that the second respondent was engaged as a Computer Operator without any break w.ef. 27.1.2001 to till today and he is a workman covered under the Act and he made representation, dated 15.12.2011 to the Deputy Registrar of Cooperative



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Societies, Madurai seeking for regularization of his service. Even the appellant also made a recommendation by proceedings, dated 30.6.2015 to the Deputy Registrar seeking to regularize his service after passing a resolution. Since the Deputy Registrar did not come forward to pass an order on his application for regularization and hence, the second respondent was constrained to approach the first respondent for getting remedy under the statute. Though the appellant herein filed a reply, dated 12.1.2016, admitted that the second respondent was continuously employed from 24.8.2001 and also further admitted that the second respondent completed 499 days within the period from 27.1.2001 to 15.10.2022 and he completed more than 14 years of service. The Board of Directors of the appellant passed a resolution recommending for his regularization. The first respondent based on the materials placed before him, held that the second respondent is entitled to get his service regularized from the date of his completion of 480 days. Accordingly, the first respondent has passed the impugned order. Further he would submit that although a resolution was passed for regularizing the service of the second respondent, the second respondent has not completed the adequate training in cooperative training but subsequently in the year 2012, he qualified himself and therefore the Writ Court also rightly



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observed that from the date of the qualification prescribed for his post for his post including the possession of Diploma in Cooperative Training, his claim for permanency came into force and therefore there is no perversity in the order of the Writ Court.

7.Heard the learned counsel appearing on either side and perused the records placed before this Court.

8.Admittedly, the appellant is a registered store constituted under the provisions of Tamil Nadu Industrial Establishments(Conferment of Permanent Status to Workmen) Act, 1981.Though the second respondent was initially appointed from 27.1.2001, however, his name was not recommended by the Employment Exchange and also at the time of his appointment there was no vacancy and also there was no post of Computer Operator. Therefore, initial entry of the second respondent was not legal and the same was a back door entry. Further even prior to completion of 240 days, the second respondent himself had entered into a contract of service with the appellant Management. Even the Resolution passed by the appellant, dated 24.8.2001 clearly states that the



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Special Officer of the appellant and the second respondent entered into a contract of service. Further the contract period is only for six months from 1.9.2001 to 28.2.2002. The Resolution, dated 24.8.2001 reads as follows:

தீர்மானம் 6:

பண்டகசாலை மின்கணிணி பணியாளர் ஒப்பந்தம்
மேற்கொள்ளுதல் சம்மந்தமாக.

மதுரை மாவட்டம், ஏ.3099 தமிழ்நாடு அரசு
போக்குவரத்துக்கழகத் தொழிலாளர்கள் கூட்டுறவு பண்டகசாலை லிட்.,
27, பசும்பொன்நகர், புறவழிச்சாலை, மதுரை-3, தனி அலுவலர் - 1.

மதுரை மாவட்டம், வாடிப்பட்டி வட்டம், அழகாபுரி உட்டை
புதுப்பட்டி, கே.திருமுருகன் த-பெ.ஏ.பி.கருப்பணப்பிள்ளை நபர் -2.

இரண்டு நபர்களும் சேர்ந்து எழுதிக்கொண்ட மின்கணிணி
வேலை ஒப்பந்தப்பத்திரம்.

இந்த ஒப்பந்தம் 01.09.2001 முதல் 28.02.2002 வரை ஆறு
மாதங்களுக்கு மட்டும் கீழ்க்கண்ட அடிப்படையில் ஒத்துக்கொள்ளப்படுகிறது.

1. நம்மில் 1வது நபருக்கு சொந்தமான மின்கணிணி மற்றும் அதனை சார்ந்த உபகரணங்களால் 2-வது நாள் கீழ்க்குறிப்பிட்ட பணியினை மேற்கொண்டு முடித்துக்கொடுக்க கீழ்க்கண்ட விபரப்படி ஒப்பந்தம் மேற்கொள்ளப்படுகிறது.
2. மேற்படி ஒப்பந்தம் ஆறு மாத காலத்திற்கு மட்டும் மேற்கொள்ளப்படும்.
3. முதலாவது நபர் விரும்பினால் மேலும் ஆறு மாத காலத்திற்குள் ஒப்பந்தத்தை நீடித்துக்கொள்வது எனவும்,
4. இந்த ஒப்பந்த காலத்தில் மேற்கொள்ளப்படும் பணிக்காக மாதம் ரூ.2800-வழங்குவது என்றும் (ரூபாய் இரண்டாயிரத்து எண்ணூறு மட்டும்) மேற்படி சம்பளம்



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பிரதி மாதம் ஐந்தாம் தேதிக்குள் வழங்குவது எனவும், இரண்டு நபர்களும் சேர்ந்து எழுதிக்கொண்ட ஒப்பந்தம்□

9.The second respondent is working as daily wage basis not in regular vacancy or sanctioned post and further at the relevant point of time, there was no post of Computer Operator. The Resolution itself shows that the second respondent was engaged as a contract labour, that too, only for a specific period. Further the second respondent was not a qualified person for regularizing the post of Clerk and even the resolution referred to by the second respondent itself shows that he was engaged as a contract labour and only for a specific period for specified work as indicated in the resolution. Further as pointed out by the learned counsel for the appellant, at the relevant point of time, there was no vacancy in the post of Clerk and even the Sub Registrar of Cooperative societies also passed an order on 27.2.2015 that his employment cannot be confirmed or regularized. There is no provision for regularizing his service and even as per the resolution passed by the appellant on 24.8.2001, the second respondent was engaged only as a contract labour between 1.9.2001 to 28.2.2002.Subsequently his period was extended on contractual terms. Even prior to that period, his name was not sponsored by the Employment Exchange and therefore, if at all the



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second respondent was engaged on daily wages and his appointment was also not legal and further he did not prove the fact that he was working for more than 480 days continuously, since the contractual period cannot be computed for the continuity of service. Further the learned Single Judge made an observation in paragraph No.5 of his order that the special bye laws was amended on 27.8.2012 and as per the amended bye laws, possession of the Diploma in Co-operative Training is not necessary. The said bye-law referred to by the learned Single Judge was not approved by the Board and it was only a proposal since bye law was not amended on 27.8.2012 and the regularization from the date of 27.8.2012 is not sustainable. As stated above, the entry to the appellant by the second respondent is not proper, which is not legal and at the relevant point of time, there was no vacancy and there was no sanctioned post or no regular vacancy and further he was engaged only as contract labourer and not as daily wage basis and he also did not prove that before he entered into a contract with the appellant, he was working on daily wage basis continuously for more than 480 days in 24 calendar months and therefore, in these circumstances the order passed by the first respondent and also the order of the learned Single Judge is liable to be set aside.



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10. Accordingly, the Writ Appeal is allowed setting aside the order passed by the first respondent in E/4457/2015 CPS NO.12 of 2015, dated 24.3.2016 as well as the order of the learned Single Judge, dated 2.3.2018. No costs. Consequently, connected Miscellaneous Petition is closed.

[P.V.,J.] [K.K.R.K.,J.]
02.09.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

The Labour Inspector,
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