

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 27/07/2015

DATED : 30/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.24801 of 2014

and

M.P.Nos.2 of 2014 and 2 of 2015

The Management,
The Salem District Co-operative
Milk Products Union Limited,
Sithanur, Thalavaipatti (Post),
Salem-636 302.
Rep. by its Managing Director Petitioner

vs.

1.The Labour Inspector,
Authority under the Tamil Nadu
Industrial Establishment (Conformant of
Permanent Status to Workmen) Act 1981,
Salem-636 007.

2.S.Balchandran Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records pertaining to the award of the first respondent dated 01.02.2014 passed in I.D.No.109 of 2009 and to quash the same.

For Petitioner: Mrs.G.Devi

For Mr.V.Raghupathi

For Respondents: Mr.P.Sanjay Gandhi
Spl. Govt. Pleader for R1
Mrs.D.Nagasaila for R2

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O R D E R

The petitioner is a District level Co-operative Society involved primarily in procurement and distribution of Milk and Milk Products. The petitioner had formed the co-op society in accordance with the provisions of the Tamil Nadu Co-operative Societies Act and service by various conditions of the employees and governed by the provision of the Co-operative Societies Act. The By-law of the Co-operative Society which provides for service conditions will have to be registered by the Registrar before they could be implemented in the Society. A personal committee is constituted under the by-laws which makes its recommendations for alerting the service conditions, increasing the cadre strength etc. On the basis of the recommendations of the personnel committee, proposals are sent to the Registrar / Commissioner for Milk Production and Dairy Development, Chennai seeking regularization of the employees and in cadre strength etc., The employees / cadre strength is fixed by the Commissioner for Milk Production and Dairy Development, Chennai on the basis of various materials pertaining to the scope of employment, nature of activity carried on by the Society, financial capacity of the Society. Further, recruitment is also regulated by the Rules framed under the Co-operative Societies Act.

2. The petitioner/Management has further submitted that the second respondent herein was employed in the petitioner firm as a casual labourer. He has filed application under Section 5 of the Tamil Nadu Industrial Establishments (Conformant of Permanent & Status of Workman) Act, 1981 seeking permanent status on the ground that he has completed 480 days of service in 24 continuous calendar months. The petitioner/Management has filed reply, furnished necessary details and also marked documents. Without considering the materials on record, the Labour Inspector by order dated 15.05.2001 directed the petitioner/Management to confer permanent status on the second respondent from 21.08.1999. Aggrieved against the order, the petitioner has filed a writ petition in W.P.No.23842 of 2001 before this Court. By the order dated 13.04.2010, the writ petition was dismissed. The writ petitioner has filed a writ appeal in S.R.No.90579 of 2013 in M.P.No.2 of 2013, for condoning the delay and notice was ordered on 10.01.2014 and it is pending.

3. The petitioner has further submitted that the second respondent was initially employed as casual labourer from 1986 and not through the Employment Exchange. Subsequently, the District Employment Exchange in the year 1992 has recommended the name of the second respondent along with other candidates. When the interview was conducted on 12.02.1992, the second respondent has already completed 32 years. Hence, he was not given appointment order as casual labourer. However, the second respondent has made application to the petitioner/Management requesting to give him appointment order considering his age as per Rule 50 of Tamil Nadu State and Subordinate Service Rules. Accordingly, his application

was considered and he was appointed as casual labourer recommended by the Employment Exchange. He was given Rs.110/- per day, whenever he worked. As per the By-laws of the petitioner/Management, on the basis of recommendation of the personal committee, proposals for regularizing the second respondent has to be sent to the Commissioner for Milk Production and Dairy Development, Chennai and only after getting approval from the Government, regularization can be made.

4. The petitioner has further submitted that the second respondent has voluntarily stopped from the work from 30.07.2006 without informing the petitioner/Management. By petition dated 27.01.2007, the second respondent has informed that due to viral fever and swelling in the legs, he was under medical treatment. He has also admitted that not obtaining leave for the absence period was wrong and requested to pardon him and give work. Though he has not attended the work for about 181 days without informing this petitioner, he was allowed to join the work. His name was also recommended and included in the list for regularizing the casual labourers and sent to the Commissioner of Milk Production and Dairy Development, Chennai. On 03.06.2007, it was found that he was keeping excess Milk Packets in his vehicle which was more than intended for delivery. He has informed the supervisors that he had brought an assistant to help him who has kept the excess milk packets in his vehicle without his knowledge. Since he was the only casual labourer, from 08.06.2007 onwards, he was not permitted to work.

5. The petitioner has further submitted that the Society is functioning not only with profit motive yet incurred loss about Rs.2922.84 lakhs from 1981 to 2003-04. The petitioner has so far regularized the service of the 200 casual labourers as per the By-law and procedure. But, in the case of the second respondent, the petitioner has lost confidence about his performance. Hence, it was informed on 20.06.2007 to the Commissioner of Milk Production and Dairy Development, Chennai that his name was not recommended to the Government. He was not given work from 08.06.2007. Aggrieved against that, the second respondent has raised an Industrial Dispute. The Dispute was referred for adjudication in I.D.No.109/2009. Without properly appreciating the materials on record, the first respondent has passed an Award dated 17.02.2014, directing the petitioner/Management to give reinstatement of the second respondent with 50% of back wages. Hence, the petitioner has filed the above writ petition.

6. The learned counsel appearing for the petitioner has submitted that, during 1986, the second respondent herein had been appointed as a casual labourer directly. Subsequently, the District Employment Exchange, Salem, had sent a list of candidates during 1992, wherein the second respondent's name had also been included. On 12.02.1992, personal enquiry was conducted. On that day, the second respondent was 32 years old. Therefore, he had not been selected. However, he made an application to the Management and the Management had appointed him as a

casual labourer. Therefore, he is not eligible for a permanent post. The second respondent had filed a case before the first respondent and prayed that he has to be appointed as a permanent employee. The same was accepted by the first respondent and the Management was directed to appoint him as a permanent employee. In such circumstances, he took unauthorized leave from 30.07.2006 to 21.07.2007. Subsequently, considering the apology tendered by the second respondent, the Management permitted him to join the duty. Thereafter, his name had been recommended to the Commissioner, Milk Development Society. Subsequently, since he was possessing extra milk packets on his milk-vehicle, his name had been recommended for removal from permanent list. Further, he had committed many irregularities fraudulently for his personal gain. On 03.06.2007, the employee had transported milk packets on the lorry, which had more than the actual quantity. Hence, he was dismissed from service for committing fraud. The same was admitted by him on 05.08.2008 before the Labour Officer, Salem. The allegation that he was in possession of excess milk packets in his vehicle, more than intended for delivery was proved. Therefore, the dismissal from service is appropriate as the employee had committed a fraud for his personal gain.

7. The learned counsel appearing for the second respondent has submitted that the second respondent had been appointed as a casual labourer during 1986. Subsequently, he had been appointed on 28.01.1998 through Employment Exchange. He was continuously working with the Management for more than 480 days as on 21.08.1999. Further, the competent officer attached to the Management had recommended his name to be made permanent. Subsequently, based on the false allegations, the Management had removed the second respondent's name from the list. Hence, he made an application before the Labour Inspector, who had conducted a comprehensive enquiry in the presence of employer and employee and passed an order on 21.08.1999 and confirmed the permanency of the second respondent's employment. Against the said order, the Management has filed a writ petition and challenged the impugned order of the first respondent herein. In the meanwhile, the Management had informed the second respondent not to join duty as he was dismissed from service. The Management made false allegations against the second respondent and dismissed him from service without conducting any enquiry. As such, the Management has violated the principle of natural justice. Hence, the learned counsel has entreated the Court to dismiss the writ petition.

8. Further, the learned counsel has disclosed the current factual position that this Court has granted an order of interim stay on condition that the Management shall deposit 50% of the backwages before the Labour Court.

9. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, it is seen that the second respondent has been appointed

during 1986 as a casual labourer. Subsequently, he has been made permanent as per Order, dated 15.05.2001. The same was confirmed by this Court in W.P.No.35217 of 2001, on 12.08.2001. Further, the Management had not framed any charges against the second respondent and not conducted any enquiry. As such, the allegations levelled against the employee can only be treated as own opinion of the Management. In such circumstances, the writ petition does not generate sufficient force to allow it and hence it is liable to be dismissed.

10. In the result, the writ petition fails and it is dismissed. The petitioner / Management is directed to comply with the impugned order, dated 01.02.2014, passed by the first respondent, within a period of eight weeks from the date of receipt of a copy of this Order, subject to deduction of earlier payment deposited before the Labour Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

r n s / krk

To:
The Labour Inspector,
Authority under the Tamil Nadu
Industrial Establishment (Conformant of
Permanent Status to Workmen) Act 1981,
Salem-636 007.

+1 CC to M/S.Nagasaila, Advocate SR.No.53133

CO-MG
ths : 03.02.2016

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and
M.P.Nos.2 of 2014 and 2 of 2015

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