

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

W.P. Nos.9014 & 9043 of 2003

The Management of
Tirunelveli District Central
Cooperative Bank Ltd.
Tirunelveli - 3
represented by its General Manager
A. Rajasekaran Petitioner in both the WPs

vs.

- 1 The Inspector of Labour Court
Tirunelveli R1 in both the WPs
- 2 P. Mariappan R2 in W.P. No.9014 of 2003
- 2 M. Murugan R2 in W.P. No.9043 of 2003

Prayer in W.P. No.9014 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the first respondent made in Petition No.6526/1998 dated 10.04.1999 under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and quash the same.

Prayer in W.P. No.9043 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the first respondent made in Petition No.6526/1998 dated 10.04.1999 under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and quash the same.

For petitioner	Mr. Babu Barveez
in both the WPs	for M/s.Silambanan Associates
R1	
in both the WPs	Labour Court
For R2 in	Mr. V. Gangatharan
both the WPs	

COMMON ORDER

These writ petitions are filed seeking a writ of certiorari to call for the records of the first respondent made in Petition No.6526/1998 dated 10.04.1999 under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and quash the same.

2 Mariappan (the second respondent in W.P. No.9014 of 2003) and Murugan (the second respondent in W.P. No.9043 of 2003) were working as Scavengers in the Tirunelveli District Central Cooperative Bank Ltd., the petitioner herein (for brevity "the Management"). Concededly, the Management terminated them from service on 24.02.1997, pursuant to which, they filed appeals under Section 41(2) of the Tamil Nadu Shops and Establishments Act, challenging their termination. The Appellate Authority under the Shops and Establishments Act held that they were illegally terminated from service and directed their reinstatement, pursuant to which, they were reinstated on 21.04.1998. They filed petitions under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, before the Inspector of Labour against the Management seeking conferment of permanent status to them. They also filed separate petitions under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, claiming backwages for the period they were out of service pursuant to the order of termination passed by the Management.

3 It is seen that the Management did not enter appearance before the Inspector of Labour who was dealing with the petitions under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, on account of which, ex parte orders were passed by the Inspector of Labour on 10.04.1999. On receipt of the order dated 10.04.1999, the Management filed review applications before the Inspector of Labour which were dismissed on 05.08.1999. Challenging the two orders dated 10.04.2009 passed by the Inspector of Labour, the Management has filed these two writ petitions.

4 Heard Mr. Babu Barveez, learned counsel for the Management and Mr. V. Gangatharan, learned counsel for the second respondents.

5 The fact remains that Mariappan and Murugan were reinstated in service pursuant to the order passed by the Appellate Authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act. As regards the claim of permanent status, the same cannot be done without proper adjudication, especially in the light of Rule 149 of the Tamil Nadu

Cooperative Societies Rules, 1988, which prescribes the manner in which recruitments to various posts should be made.

6 Rule 149 (1) and (2) of the Tamil Nadu Cooperative Societies Rules reads as under:

"149 Conditions of service of paid officers and servants of Societies:

1 Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Registrar, a Special by-law covering the service conditions of its employees. The special by-law shall, inter alia, prescribe the following:

i Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.

ii The method of recruitment for each such posts.

iii The scale of pay and allowances for each such posts.

iv Conditions of probation for each such posts.

v Duties and responsibilities for each such posts.

vi Leave of various kinds admissible and the conditions thereto for each such posts

vii The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on a employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

viii Conditions relating to acquisition and disposal of movable and immovable property:

Provided that in the case of the post, other than the post of Manager, Superintendent and above, a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that no person shall be eligible for appointment to the post of Manager, Superintendent and above by promotion, unless he has completed at least one year of satisfactory service in the category of post in which he is working and not less than six years of satisfactory service in the category of posts in which he is working and the feeder category of post to which he is working combined together.

Provided also that the Cooperative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

(2) No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the society and also of the affiliated societies, inviting application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State:

Provided that the above stipulation shall not apply--

i to the appointment made on compassionate grounds;

ii for the absorption of surplus employees of other Cooperative Societies;

iii to the posts for which a Recruitment Bureau has been constituted under Section 74 of the Act or in respect of which a common cadre of service has been constituted under Section 75 of the Act."

7 All these aspects were not considered by the Inspector of Labour, before passing the ex parte orders.

In view of the above, these writ petitions are allowed and the impugned orders passed by the Inspector of Labour, are set aside and the matters are remanded to the Inspector of Labour, Tirunelveli, for fresh disposal in accordance with law, after hearing both the parties. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

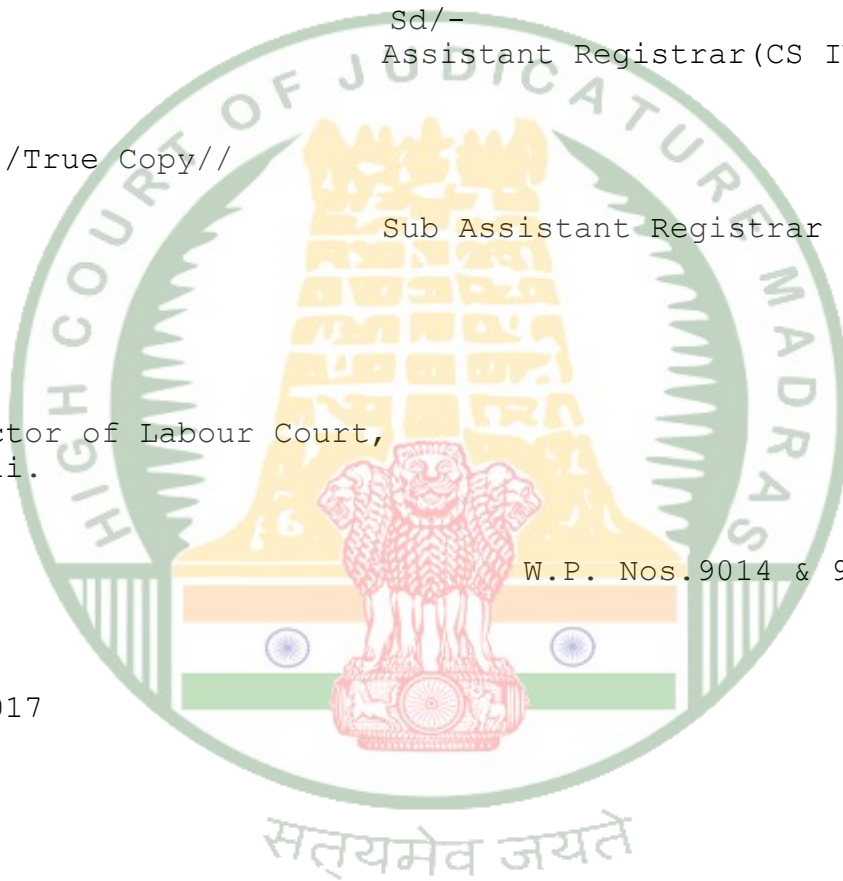
Sub Assistant Registrar

cad
To

The Inspector of Labour Court,
Tirunelveli.

W.P. Nos.9014 & 9043 of 2003

rj[co]
srg 7/3/2017



WEB COPY