

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.09.2017

Delivered on : 13.10.2017

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

W.P.Nos. 25109 & 21299 of 2010, 10119 &
22441 of 2011 & 27482 of 2012

M.P.Nos. 1 of 2010, 1 of 2011, 1 of 2012

W.P.No.25109 of 2010:

The Management,
Salem District Central Co-operative Bank Ltd.,
Cherry Road,
Salem-636 001.

.. Petitioner

versus

1. Inspector of Labour Authority
under Section 4 of the Tamil Nadu
Industrial Establishments (Conferment of
of Permanent Status to Workmen) Act 1981,
Namakkal.

2. V.P.Perumal Chetty
3. K.Karikalan
4. K.Duraisamy
5. V.Duayachandran
6. M.Sundararajan
7. K.K.Raju
8. P.Ponnusamy
9. A.Subramaniam
- 10.M.Sivakumar

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue Writ of Certiorari, to call for the records in Na.Ka.2561/2008 on the file of the Inspector of Labour, Authority under Section 4 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, Namakkal, the first respondent, quash the order passed therein dated 24.3.2010.

W.P.No.10119 of 2011:

The Management,
Salem District Central Co-operative Bank Ltd.,
Cherry Road,
Salem-636 001.

.. Petitioner

versus

1. Inspector of Labour Authority
under Section 4 of the Tamil Nadu
Industrial Establishments (Conferment of
of Permanent Status to Workmen) Act 1981,
Salem-636 007.

2. P.Vaidyalingam

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue Writ of Certiorari, to call for the records in Na.Ka.895/2007 on the file of the Inspector of Labour, Authority under Section 4 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, Salem, the first respondent, quash the order passed therein dated 30.11.2010.

W.P.No.27482 of 2012:

The Management,
Salem District Central Co-operative Bank Ltd.,
Cherry Road,
Salem-636 001.

.. Petitioner

versus

1. Inspector of Labour Authority
under Section 4 of the Tamil Nadu
Industrial Establishments (Conferment of
of Permanent Status to Workmen) Act 1981,
Salem-636 007.

2. K.A.CHANDRASEKARAN
3. A.SINGARAVELU
4. P.RATHINAVEL
5. R.SANTHI
6. N.MADHU
7. A.BASKARAN
8. G.SUBRAMANIAM
9. R.THIRUMOORTHY
10. A.GANESAN
11. E.MATHIVAZHAGAN
12. P.SAAMBU
13. T.ANANTHAKUMAR
14. R.VENKATACHALAM
15. S.BALAKRISHNAN
16. V.G.VENKATESWARAN
17. SARAVANAN
18. S. RANJINI
19. K. KAMAKSHI
20. S.DHANANJAYAN
21. M.MOHANAVALLI

R-18 to R-21 are substituted as LRS of
deceased R-8/G. Subramaniam as per Order
dated:20.01.2016 in MP.2/2013 in WP.27482/2012.

22 N.SANGEETHA
 24 R.SANJAY KARTHICK
 25 R.RAMYA PRIYANKA
 26 ALAMELU

R-22 to R-25 are substituted as LRS of
 deceased R-4/P. Rathinavel as per Order
 dated:20.01.2016 in MP.1/2014

in WP.27482/2012.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue Writ of Certiorari, to call for the records in Na.Ka.5490/2008 on the file of the Inspector of Labour, Authority under Section 4 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the first respondent, quash the order passed therein dated 15.12.2010.

W.P.NO.21299 OF 2010:

V.P.Perumal Chetty

.. Petitioner

versus

1. The Management,
 Salem District Central Co-operative Bank Ltd.,
 Cherry Road,
 Salem-636 001.

2. Inspector of Labour Authority
 under Section 4 of the Tamil Nadu
 Industrial Establishments (Conferment of
 of Permanent Status to Workmen) Act 1981,
 Namakkal District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue Writ of Mandamus, to direct the first respondent to implement and confer permanent status to the petitioner with effect from 20.12.1988 i.e. from the date of completion of 480 days as directed by the second respondent in his proceeding in Na.Ka.No.2561/2008, order dated 24.03.2010 and permit the petitioner to join the duty and to pay the salary from 20.3.2009 to the petitioner within time frame.

W.P.NO.22441 OF 2011:

1. A.Singaravelu
2. R.Santhi
3. N.Madhu
4. A.Baskaran
5. R.Thirumoorthy
6. A.Ganesan
7. E.Mathivalagan
8. P.Sambu
9. T.Anandakumar
10. R.Venkatachalam

.. Petitioners

versus

1. State of Tamil Nadu,
rep. by the Secretary to Government,
Department of Co-operatives,
Food and Consumer Protection,
Fort St.George,
Chennai-600 009.

2. The Registrar of Co-operative Societies,
170, E.V.R. Periyar High Road,
Kilpauk, Chennai-600 010.

3. The Special Officer,
Salem District Central Co-operative Bank Ltd.,
Cherry Road, Salem. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue Writ of Mandamus, to direct the respondents to take appropriate steps to implement the order of the Inspector of Labour, Salem (Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 bearing Na.Ka.No.Aa/5490/2008 dated 15.12.2010 forthwith by granting permanency to the petitioners with effect from the date they completed 480 days of continuous service in the third respondent bank with all consequent and attendant benefits.

For Petitioners : Mr.M.R.Raghavan in
W.P.Nos.25109 of 2010,
10119 of 2011 & 27482 of 2012

For Petitioners : Mr.Yashod Vardhan, SC for
M/s.Ramapriya Gopalakrishnan
in W.P.Nos.21299 of 2010 &
22441 of 2011

For Respondents : Mr.T.M.Pappiah, Spl.G.P. For
R1 in W.P.Nos.25109/10,
10119/11, 22441/11, 27482/12
and R2 in W.P.21299 of 2010

Mr.L.P.Shanmughasundaram,
Spl.G.P. for R2 in
WP 22441 of 2011
Mr.M.R.Raghavan for R3 in

WP22441 of 2011 and for
R1 in W.P.21299 of 2010
Mr.Yashod Vardhan, SC for
M/s.Ramapriya Gopalakrishnan
for R2 in WP 10119 of 2011 &
R2 to R5 and 7 to 10 in
WP 25109 of 2010
R6- No appearance in WP 25109
of 2010; and
R2 to R6 and R7 to R17-
No appearance &
R18 to R28-Notice returned in
WP 27482 of 2012

COMMON ORDER

Since in all five Writ Petitions, identical grounds and issues have been raised in respect of the grievances of the workmen as against the management, they are clubbed together and being disposed of by this common order.

2. For the sake of convenience, the parties are referred to as the petitioner/management and the respondents/workmen.

3. The facts necessitating to the filing of the present writ petitions are stated hereunder:

3.1. The respondents/workmen were appointed as Jewel Appraisers in the petitioner/management, which has several branches in Salem Corporation, Namakkal District. They were appointed on various dates spanning from 1986 onwards and they have completed several years of service as on date. Many of them have retired on attaining the age of superannuation. These respondents/workmen who had been recruited by subjecting them to some kind of selection, continued in service uninterruptedly without any break and the work extracted from them was continuous and regular. As such, according to the respondents/workmen, they were full time employees like any other bank employees who were otherwise employed by the petitioner/management in other cadres.

3.2. According to the respondents/workmen, they had completed more than 480 days of service within a period of two years and therefore, they were entitled to permanent status in their employment under the provisions of the Tamil Nadu Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short, 'the Act, 1981'). In 2002 and the

subsequent period, some of the aggrieved respondents/workmen had approached the authority constituted under the Act, 1981, seeking permanent status, as having completed 480 days of service within a period of two years. Their application under the Act, 1981 was adjudicated by the Inspector of Labour and after consideration of all the materials available and on the basis of evidence let in, the Inspector of Labour had granted the relief of permanent status to all the respondents/workmen by orders dated 31.10.2002 and 15.3.2006.

3.3. The petitioner/management herein, aggrieved by the orders of the Inspector of Labour, who was arrayed as one of the respondents herein, has approached this Court in W.P.No.3274 of 2004 and 32593 of 2007 etc. This Court, vide order dated 25.9.2008 disposed of said batch of Writ Petitions, permitting the parties to let in evidence in respect of various aspects highlighted in the judgment of the Hon'ble Supreme Court of India in the matter of "**General Manager, Indian Overseas Bank versus Workmen, All India Overseas Bank Employees Union**" reported in (2006) 3 SCC 729. This Court has also directed to

consider the issue whether the Jewel Appraisers satisfied the definition of 'workman' under the provisions of the Act, 1981. On remand, the parties had let in extensive evidence and produced materials in advancing their respective cases. After having satisfied with the materials produced on behalf of the respondents/workmen, the Inspector of Labour, ultimately held that the Jewel Appraisers were 'workmen' satisfied the definition under the provisions of the Act, 1981. Thereafter, the Inspector of Labour proceeded further and held that the workmen concerned, had made out a clear case for grant of relief as they satisfied all the criteria as laid down by the Hon'ble Supreme Court of India in the afore said decision reported in (2006) 3 SCC 729. Three identical orders were passed by the Inspector of Labour in identical matters in respect of the petitioner/management on 24.3.2010, 30.11.2010 and 15.12.2010. These orders passed by the Inspector of Labour are put to challenge in the Writ Petitions filed by the petitioner/management, viz., W.P.Nos.25109 of 2010, 10119 of 2011 and 27482 of 2011. The other two Writ Petitions, namely, 21299 of 2010 and 22441 of 2011 are filed by the

respondents/workmen concerned, seeking to issue Writ of Mandamus, to implement the orders of the Inspector of Labour dated 24.3.2010 and 15.12.2010 respectively.

4. Shri M.R.Raghavan, learned counsel appearing for the petitioner/management would assail the orders passed by the Inspector of Labour on various grounds, particularly, that the Jewel Appraisers are not regular workmen and they do not satisfy the definition of 'workman' under the provisions of the Act, 1981. Even they are construed to be 'workmen' under the Act, they cannot invoke the jurisdiction of the Act, 1981 since they were not working against any sanctioned posts and they were not given any benefits enjoyed by the regular employees employed by the petitioner/management. According to the learned counsel, the service conditions of the Jewel Appraisers, nature of work, their recruitment process, qualifications, hours of work, pay and allowances are all completely different from that of regular employees and therefore, they cannot seek any comparison with the regular employees for the purpose of getting any relief of permanent status under the Act, 1981.

5. Shri M.R.Raghavan, learned counsel appearing for the petitioner/management would further submit that by no stretch of legal standards, the employment of Jewel Appraisers on commission basis, can be said to be a regular employment for the purpose of attracting the provisions of the Act, 1981. He would submit that these Jewel Appraisers were recruited locally by the Branches without any sanction from the Government and such recruitment cannot be a valid recruitment in the eye of law and therefore, the grant of benefit of permanent status in the case of Jewel Appraisers, cannot be countenanced both in law and on facts. He would assail the orders passed by the Inspector of Labour, stating that without any supporting and sufficient materials, the Inspector of Labour had erroneously concluded in favour of the workmen for the purpose of grant of relief under the provisions of the Act, 1981. For the persons who were recruited outside the scope of bye laws/rules, cannot be conferred with permanent status under the Act, 1981. He would therefore, submit that despite of number of factual and legal submissions raised on behalf of the petitioner/management, the Inspector of Labour had passed

orders in favour of the workmen granting them the benefit of permanent status. According to him, there was no proper and due consideration of the issues and the same does call for interference of this Court.

6. Per contra, Mr.Yashod Vardhan, learned senior counsel would contend that all the objections which were sought to be raised before this Court were raised before the Inspector of Labour and each one of the legal and factual objections has been well considered and overruled before the final orders were passed by the Inspector of Labour. According to the learned senior counsel, the Inspector of Labour had given finding in respect of each one of the factual aspects and only after taking note of the fact that the respondents/workmen satisfied by the criteria laid down by the Hon'ble Supreme Court in the matter of "**General Manager, Indian Overseas Bank versus Workmen, All India Overseas Bank Employees Union**" reported in (2006) 3 SCC 729, the Inspector of Labour allowed the claim of the respondents/workmen. Since every factual objection has been held in favour of the workmen by rendering a clear finding, such

finding of fact by the lower authority, cannot be re-appreciated by this Court which is exercising its power of judicial review under Article 226 of the Constitution of India. He would submit that unless the findings are completely perverse, irrational or not supported by any evidence, the same cannot be interfered with.

7. The learned counsel Shri Yashod Vardhan would further add that even as regards the legal objections raised on behalf of the petitioner/management, the same have been met quite considerably by the Inspector of Labour and answered in favour of the workmen, ultimately. According to the learned senior counsel, the order passed by the Inspector of Labour quite conclusively established that the employees of the petitioner/management were 'workmen' under the provisions of the Act, 1981 and they fully satisfied the criteria, namely, status of regular workmen employed by the petitioner/management in respect of other cadres. Therefore, he would submit that no interference is called for from this Court, as the orders passed by the Inspector of Labour are well considered.

8. Both the learned counsels Shri M.R.Raghavan and Shri Yashod Vardhan, took pains to refer to entire orders passed by the Inspector of Labour, particularly in respect of each of the findings rendered by the Inspector of Labour. This Court's attention was also drawn to each aspect and the basis of conclusion arrived at by the Inspector of Labour.

9. As could be seen from the detailed orders passed by the Inspector of Labour that in respect of each criteria laid down by the Hon'ble Supreme Court in (2006) 3 SCC 729 (cited supra), the Inspector of Labour, on the basis of material evidence available on record, had come to a definite conclusion in favour of the workmen. The Inspector of Labour, after elaborate discussion, had given clear and lucid finding in respect of each of 10 criteria laid down by the Hon'ble Supreme Court, for concluding that the respondents/workmen were entitled to relief of permanent status.

10. According to the Inspector of Labour, the workmen were appointed with prescribed age and qualification and that they

were recruited through Employment Exchange barring a few. The Jewel Appraisers were also employed for fixed hours in a day as regular employees and they were also paid monthly wages. They were also subjected to disciplinary control of the management and their work has been constantly supervised by the superiors and work has been allocated to them by his superiors. The wages paid to the workmen by the bank and they were also sought to be retired on attaining age of superannuation like that of regular employees. The Jewel Appraisers are subjected to transfer to other branches of the petitioner/management and there is also a bar for their employment in any other occupation during their period of service under the petitioner/management. All these criteria which held in favour of the workmen, would unequivocally and unambiguously establish the factum of employment of each Jewel Appraiser as a regular workman under the petitioner/management.

11. The Inspector of Labour has also given a clear finding in regard to the definition of 'workman' as contained in Section 2(4) of the Act, 1981, by holding that these Jewel Appraisers were

'workmen' satisfying the definition of the Act. In fact, the Inspector of Labour has also relied on the order passed by the learned single Judge of this Court in W.P.No.9286 of 1986 dated 25.4.1991 which is reported in 1992 L&J 197. The legal finding rendered by the Inspector of Labour, cannot be faulted with as the facts would establish that these Jewel Appraisers were employed as regular workmen in the petitioner bank and by no stretch of legal standards, they can be excluded from the definition of 'workmen' as defined under the Act, 1981. Therefore, this Court is perfectly in agreement with the finding of the Inspector of Labour regarding the status of the workmen.

12. As regards the grant of ultimate relief to the workmen, i.e. grant of permanent status, this Court is unable to persuade itself as to how the clear and lucid finding rendered by the Inspector of Labour in respect of each objections raised on behalf of the petitioner/management to come to a different conclusion from that of the Inspector of Labour. Although, Shri M.R. Raghavan, learned counsel for the petitioner/management attempted to assail the findings of the Inspector of Labour, he is

unable to produce any sterling or clinching material to demonstrate before this Court as to how the findings rendered by the Inspector of Labour are erroneous, perverse or completely different from any contra evidential material. Such being the case, as rightly contended by the learned senior counsel appearing for the respondents/workmen, this Court, while exercising its power under Article 226 of the Constitution of India, cannot re-appreciate or upset the findings of the Inspector of Labour unless the same are shown as perverse or warranted to be interfered with, in the circumstances. In this case, no such circumstances have been remotely existing to take a different call on the findings rendered by the Inspector of Labour.

13. Be that as it may, Shri M.R.Raghavan, learned counsel for the petitioner/management would draw support from the following decisions, viz.,

a) "2006 LAB I.C. 1641 (***General Manager, IOB versus Workmen, All India Overseas Bank Employees Union***)", which decision is also relied upon by Shri Yashod Vardhan,

learned senior counsel for the respondents/workmen. In the said decision, the Hon'ble Supreme Court has held that in order to treat the Jewel Appraisers as 'workmen' and regular employees of the bank, various criteria have to be satisfied as laid down in catena of decisions. In para 18 of the judgment, it has been held as under:

"18. At this juncture the distinction between jewel appraisers and the regular employees of the bank can be noted:

<i>Regular Employees</i>	<i>Jewel Appraisers</i>
1. Subject to qualification and age prescribed	1. No qualification/age
2. Recruitment through Employment exchange/ Banking Service Recruitment Board.	2. Direct engagement by the local Manager.
3. Fixed working hours	3. No fixed working hours
4. Monthly wages	4. No guaranteed payment, only commission paid
5. Subject to disciplinary control	5. No disciplinary control
6. Control/supervision is exercised not only with regard to the allocation of work, but also the way in which the work is to be carried out.	6. No control/supervision over the nature of work to be performed
7. Wages are paid by the bank	7. Charges are paid by the borrowers
8. Retirement age	8. No retirement age

<i>Regular Employees</i>	<i>Jewel Appraisers</i>
9. Subject to transfer	9. No transfer
10. While in employment cannot carry on any other occupation	10. No bar to carry on any avocation or occupation.

The learned counsel appearing for the petitioner/management would submit that as held by the Hon'ble Supreme Court in the aforesaid case, since the Jewel Appraisers did not satisfy the criteria, they cannot be treated as workmen. On the other hand, the learned senior counsel appearing for the respondents/workmen would submit that the Inspector of Labour had gone into each of ten criteria as set out by the Hon'ble Supreme Court in the aforesaid decision and given findings in favour of the workmen and such findings of the Inspector of Labour were well founded and considered on the basis of unimpeachable evidence let in before him and such findings of fact do not require any interference from this Court.

b) 2010-III-LLJ 371 (Mad) (***All Bank Appraisers' Federation, Tamil Nadu versus Government of India and others***)", wherein, a learned single Judge of this Court held that

the Jewel Appraisers appointed in the banks, not on regular process of appointment, but without any rule of recruitment nor any specific time of employment nor there was any disciplinary control over them, are not employees of the bank.

14. In the present case, there is a finding of fact in favour of the workmen regarding their service conditions etc., However, the learned counsel relied upon the same for resisting the claim of the workmen herein.

15. The learned counsel Mr.M.R.Raghavan, would draw attention of this Court to the decision of a Division Bench of this Court reported in " 2003-I-LLJ (***Justine L. and another versus Registrar of Co-operative Societies, Chennai & others***)", particularly, paragraphs 16 and 19 of the order, which are extracted herein below:

"16. Coming to the application of Permanency Act of 1981 or the [Industrial Disputes Act](#), 1947, de hors G.O. Ms. No.86, the said enactments are not applicable to the appointments made in an illegal manner. There is

a lot of difference between irregularity and illegality. The appointments here are not irregular but illegal. Irregular is something which is done in an authorised manner but while doing so, there is some procedural irregularity. Illegality is altogether different. An action is illegal if it is contrary to law. The law in the instant case is so clear that the appointments cannot be beyond the permissible cadre strength. The rule mandates the fixation of the cadre strength. In fact, amendment of Rule 149 by G.O. Ms. No.212 was only made with that object obligating the societies to fix the cadre strength per force. Government has felt that the general criteria for fixation of the educational qualifications or the executive instructions fixing the cadre strength with expenditure not exceeding 2 to 3% of the working capital, need to be emphasised in a more clear and effective manner. For that reason, the Government brought forth amendment to Rule 149, particularly sub-Rule (1) thereof, by which, every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the approval of the Registrar of Cooperative Societies, a special bye-law covering the service conditions of its employees and also enumerated the same, which are as stated below:

"(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 an 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 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 the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts."

Most of the societies have not followed the mandate of this Rule. The arguments of the learned counsel for the appellants/ petitioners are to the effect that the fault lies

with the cooperative societies, which did not adopt the special bye-laws and for that reason, they should not be punished. We are unable to accept this contention for the reason that the illegal appointees cannot have more rights than the cooperative societies themselves. The cooperative societies were totally prevented from making any appointments until the compliance of the mandate of the above Rule adopting a bye-law containing the particulars specified. Even thereafter, the appointments were to be only strictly as per the approved special bye-laws and not otherwise. Compassion cannot displace the essential legal requirements and as already stated above, essential legal requirements are the cadre strength and the qualifications and these cannot be by-passed and any infraction in observance of the said essential requirement, makes the action of the Appointing Authority illegal. Neither the Permanency Act of 19 81 nor the Industrial Disputes Act, 1947, imply that regardless of the illegal nature of appointments even at the entry stage, statutory protection is afforded under the above Acts after the completion of the mandays, be it 480 or 240 prescribed under the above statutes. The above two enactments have to be read and understood in the context that if only the appointments are authorised and the employees continued even in temporary positions beyond the respective mandays prescribed, the workmen get right to continue further on the legal presumption that the temporary posts are allowed to be treated as permanent. But if the appointment itself is illegal, then the Permanency Act of 1981 or the Industrial Disputes Act, 1947 cannot be invoked at all.

“17.

“18.

“19. In view of the authoritative pronouncement of the Supreme Court, which is the law of the land under [Article 141](#) of the Indian Constitution, and as the facts of this batch of cases clearly attract the legal principles enunciated by the Supreme Court, we hold that the appointments of the staff made to the cooperative societies by the elected bodies or the officers in charge, in violation of the cadre strength or the prescriptions of the educational qualifications, cannot stand and are held to be null and void. As already stated above, the Permanency Act of 1981 or [Industrial Disputes Act, 1947](#), cannot be pressed into service. Non-obstante clause in the above enactments have to be read down to be in consonance with the legal principles enunciated by the Supreme Court in ASHWINI KUMAR's case (supra). Hence, the settlements entered under [Sections 12 or 18](#) of the [Industrial Disputes Act](#), have got to no statutory force and are unenforceable. Promotions effected also fall to ground.”

16. In the above decision, the learned Division Bench has adverted to various decisions of the Hon'ble Supreme Court and came to the conclusion that the appointment of the staff made to

the societies by the elected bodies or the officers in-charge, in violation of the cadre strength or the prescription of the educational qualifications, cannot stand and are held to be null and void and such persons cannot invoke the jurisdiction of Act, 1981. The learned counsel for the petitioner/management would heavily place reliance upon the above said judgment of the Division Bench and would contend that in the instant case, appointment of the workmen is out side the sanctioned strength and no due process was followed in their appointment and therefore, they are not entitled to invoke the provisions of the Act, 1981 for the purpose of grant of benefit of permanent status to their employment. According to the learned counsel, the Inspector of Labour had completely overlooked the legal position and allowed the claim of the workmen which claim cannot be sustained in law.

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17. The learned counsel for the petitioner/management has also relied upon a decision reported in "2004(4) LLN 8 (***A.Umarani versus Registrar, Co-operative Societies and others***)", wherein, the Hon'ble Supreme Court has held that the

Government has no power to order regularization of appointments made without notifying the vacancies to the Employment Exchange and made in violation of mandatory provisions of the Act and Rules applicable to all those employees who had completed 480 days of service in two years under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The learned counsel would also heavily place reliance of the said judgment, stating that in view of the categorical statement of law laid down by the Hon'ble Supreme Court of India, the claim of the workmen cannot be countenanced both in law and on facts.

18. He would also rely upon the decision of the Hon'ble Supreme Court reported in "(1992) 3 SCC 323 (***M/s.Puri Urban Cooperative Bank versus Madhusudan Sahu and another***)" wherein, it has been held that Jewel Appraisers were not workmen since they were engaged by the bank purely on commission basis and the termination of service was held to be valid.

19. Lastly, the learned counsel would rely upon the decision of the Calcutta High Court, reported in "1976 LAB I.C.202 (**Swapan Das Gupta and others versus The First Labour Court of West Bengal and others**)" wherein, the High Court of Calcutta has held that the burden is on the workman to prove that he was employee of the bank, since a person who asserts has to prove the basis of his assertion. He would, therefore, submit that the workmen in the present case, did not establish that they were indeed employees of the petitioner bank before the Inspector of Labour and therefore, the very substratum of the claim by the workmen goes and hence, they are not entitled to any relief much less the relief of grant of permanent status under the Act, 1981.

20. Per contra, Shri Yashod Vardhan, learned senior counsel would contend that 10 criteria laid down by the Hon'ble Supreme Court in its decision in the matter of "**General Manager, Indian Overseas Bank versus Workmen, All India Overseas Bank Employees Union**" reported in (2006) 3 SCC 729, had been clearly satisfied by the workmen in the case on hand since the

Inspector of Labour, while allowing the claim of the workmen, has given well considered finding in respect of each one of the aspects which formed basis of the criteria laid down by the Hon'ble Supreme Court. Such finding of fact, unless the same is unsupported by any evidence or the same is found to be perverse or irrational, it cannot be altered, disturbed or interfered with by this Court. According to the learned senior counsel, the findings are fully supported by the evidence as could be seen from the detailed orders passed by the Inspector of Labour.

21. This court has given its anxious consideration to the rival submissions made by the learned counsels appearing for the petitioner/management and the respondents/workmen and perused the entire materials and the pleadings placed on record. This Court has also given its anxious consideration to the legal objections raised by the learned counsel and is of the view that although there cannot be any quarrel in the legal statements put forth by the learned counsel appearing for the petitioner/management in regard to decisions rendered by the Hon'ble Supreme Court and this Court, however, the said

decisions cannot be made applicable to the factual matrix of the present case. Firstly, as per the special bye laws relating to the service conditions of the employees of the petitioner bank in Chapter II, it is clearly stated that the Jewel Appraisers is part of the cadre strength of the bank and since the post of the Jewel Appraisers is part of the various cadre strength of the bank, it cannot be contended by the petitioner bank that the Jewel Appraisers fall outside the cadre strength of the petitioner/management. Such contention is contrary to the factual position and also contrary to their own bye laws. Secondly, the staff, namely, the workmen had been sponsored by the Employment Exchange, except a few, and were subjected to selection like regular employees before their eventual appointment. Moreover, the workmen were interviewed before their appointment which fact is borne out through call letters issued to all the workmen before their recruitment. It appears from the record that the respondents/workmen had been appointed like any other regular employees and their service conditions are same as that of regular employees in all respects, however, they were sought to be treated differently for the

purpose of denying them the regular benefits as enjoyed by the regular employees. In fact, one of the documents filed on behalf of the petitioner/management would show that the Jewel Appraisers were treated as Assistants when they were not on job of Jewel Appraisers and the work is extracted as that of Assistants. That being the case, all the judgments relied upon by the learned counsel appearing for the petitioner/management, cannot be of any help to him for upsetting the claim of the respondents/workmen and for over turning the impugned orders passed by the Inspector of Labour in favour of the workmen. This Court is entirely in agreement with the submissions made by the learned counsel appearing for the respondents/workmen that the Inspector of Labour has passed detailed orders on the basis of materials available on record and such finding of the fact by the Inspector of Labour does not call for any interference by this Court.

22. The Inspector of Labour has given findings not only on the factual aspects of the case, but also on legal objections raised in regard to the respondents/workmen as defined by the Act

1981. This Court endorses the finding of the Inspector of Labour holding that these persons satisfied the definition of 'workman' as per the Act, 1981 and there cannot be any two opinion on the said aspect.

23. In the light of the above narrative and discussion, this Court has no hesitation in dismissing the Writ Petitions filed by the petitioner/management and allow the Writ Petitions filed by the respondents/workmen.

24. Accordingly, the Writ Petitions in W.P.Nos.25109 of 2010, 10119 of 2011 and 27482 of 2012 filed by the petitioner/management are dismissed. The Writ Petitions in W.P.Nos.21299 of 2010 and 22441 of 2011 filed by the respondents/workmen are allowed. Consequently, the petitioner/management is directed to forthwith implement the impugned orders passed by the Inspector of Labour dated 24.03.2010, 30.11.2010 and 15.12.2010 by granting permanent status to all the respondents/workmen on their completion of 480 days of service in two years with effect from the date of their

initial appointment and grant all attendant service benefits as admissible to them as regular employees. The said direction shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are closed.

Suk

13-10-2017

Index: Yes/No

Internet: Yes/No

To

1. Inspector of Labour Authority
under Section 4 of the Tamil Nadu
Industrial Establishments (Conferment of
of Permanent Status to Workmen) Act 1981,
Namakkal.
2. Inspector of Labour Authority
under Section 4 of the Tamil Nadu
Industrial Establishments (Conferment of
of Permanent Status to Workmen) Act 1981,
Salem.

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V.PARTHIBAN, J.

suk



Pre delivery Common order
in W.P.Nos.25109 & 21299 of 2010, 10119
& 22441 of 2011 & 27482 of 2012

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13-10-2017