

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

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

W.P. Nos.18463 to 18466 of 2003
and WPMP Nos.23069 to 23072 of 2003

The Management
0.947, Madura Coats Workers Co-operative
Stores Ltd.
79, Beach Road
Tuticorin-1. Petitioner in all W.Ps.

vs.

1.The Deputy Commissioner of Labour/
Appellate Authority
under Shops and Establishment Act
Tirunelveli. R1 in all W.Ps.

K.Ganesan.R2 in W.P.18463/2003

J.John WellingtonR2 in W.P.18464/2003

S.BabuR2 in W.P.18465/2003

A.PrakashR2 in W.P.18466/2003

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records in pursuant to the impugned order passed by the 1st respondent in TNSE Nos.12,13,10 and 11/2001 respectively dated 30.04.2003 and quash the same.

For petitioner Mr.R.Prem Narayan
For R1 Mr.V.Jayaprakash Narayanan
Special Government Pleader
For R2 Mr.V.Govardhanan
in all Wps for Mr.D.Chandrasekar

COMMON ORDER

Since the facts and legal issues involved in these four writ petitions are identical, they are considered and decided by this common order.

2. These writ petitions have been filed to call for the records pursuant to the impugned order passed by the 1st respondent in TNSE Nos.12,13,10 and 11/2001 respectively dated 30.04.2003 and quash the same.

3. It is the case of the individual respondents/workmen that they had joined as Salesmen in 0.947 Madura Coats Workers' Cooperative Stores Ltd. (which is a cooperative society registered under the Tamil Nadu Cooperative Societies Act, 1983) and that their services were illegally terminated by the Management, pursuant to which, all the four, filed individual appeals under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 (for short "the Shops and Establishment Act") and the Appellate Authority had set aside their order of termination, challenging which, the cooperative society had filed the present four writ petitions.

4. Heard Mr.R.Prem Narayan, learned counsel for the petitioner/Management, Mr. Jayaprakash Narayanan, learned Special Government Pleader appearing for the first respondent and Mr.V.Govardhanan, learned counsel for Mr.D.Chandrasekar, learned counsel-on-record for the individual workmen.

5. It is the case of the individual respondents/workmen that they were appointed as Salesmen in the cooperative stores on various dates, viz., Ganesan, the second respondent in W.P. No.18463 of 2003 on 01.02.1997, John Wellington, the second respondent in W.P. No.18464 of 2003 on 01.11.1997; Babu, the third respondent in W.P. No.18465 of 2003 on 01.09.1992 and Prakash, the second respondent in W.P. No.18466 of 2003 on 01.02.1997 and that all of them, along with others, had filed petitions before the Labour Officer, Tuticorin, under Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, [for short "the Industrial Establishments (Conferment of Permanent Status to Workmen) Act"], seeking permanent employment in the cooperative stores on the ground that they had continuously worked for 480 days in two calendar years. While their petitions before the Labour Officer were pending, the Management of the cooperative stores illegally terminated them from service on 17.09.2001 and therefore, they were forced to file appeals under Section 41(2) of the Shops and Establishment Act before the Appellate Authority to set aside their illegal termination.

6. The Management of the cooperative stores entered appearance before the Appellate Authority and contended that the four workmen were not appointed as Salesmen, but, they were working as Packers on daily wages of Rs.45/-. According to the Management, Ganesan was working from 01.04.1999, John Wellington

was working from 01.08.1999, Babu was working from 01.05.1999 and Prakash was working from 01.08.1999 and not from the dates claimed by them in their appeal petitions. The Management further contended that the four workmen were not employed through the employment exchange and therefore, their appointments cannot be regularised in terms of the Industrial Establishments (Conferment of Permanent Status to Workmen) Act.

7. Each of the workmen examined himself as witness in their appeals and did not mark any document. No witness was examined nor any document was marked on behalf of the Management of the cooperative society.

8. However, the Management placed strong reliance on a Division Bench judgment of this Court in L. Justine and another vs. the Registrar of Cooperative Societies [2002 (4) CTC 385] and contended that neither the provisions of the Industrial Establishments (Conferment of Permanent Status to Workmen) Act nor the ID Act would apply for an employee working in a cooperative society and therefore, they are not entitled to seek conferment of permanent status.

9. The Appellate Authority relied upon the said judgment cited by the Management and held that since the Management has failed to produce any material to show the cadre strength of their workmen, the said judgment cannot be pressed into service.

10. Mr.R.Prem Narayan, learned counsel for the Management placed the proceedings dated 15.03.2000 of the Deputy Registrar of Cooperative Societies, wherein, it is stated that the four workmen had not joined the cooperative stores through the employment exchange and therefore, their services should not be continued further. Pursuant to the said directions, the cooperative stores, by order dated 07.04.2000, discontinued the services of the four workmen from 31.03.2000. Therefore, the learned counsel for the Management contended that these four workmen were not illegally terminated on 17.09.2001, as contended by them in their petitions before the Appellate Authority, but, their services were dispensed with from 31.03.2000, pursuant to the directions issued by the Deputy Registrar of Cooperative Society on 15.03.2000.

11. Mr.Govardhanan, learned counsel for Mr.D.Chandrasekar, learned counsel on record for the individual workmen, refuted the contentions of the learned counsel for the Management.

12. This Court gave its anxious consideration to the rival submissions.

13. It is admitted by both sides that the four workmen were not sponsored by the employment exchange. But, according to the four workmen, they joined as Salesmen, whereas, according to the Management, they joined as Packers on daily wages of Rs.45/-. The four workmen also admitted that they were paid Rs.45/- as wages and therefore, there is no quarrel on this aspect. The four workmen have not produced any material evidence to show that they were working as Salesmen and therefore, the Appellate Authority has rightly rejected that plea, but, has held that they were employed as Packers on daily wages of Rs.45/-, as admitted by the Management. This Court has no reason to interfere with this finding of the Appellate Authority.

14. Before proceeding further, it may be necessary to extract the relevant paragraph from the Division Bench judgment of this Court in L. Justine's case (supra), that was strongly relied upon by the learned counsel for the Management.

"19 (vii) that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 9.7.1980 to 11.3.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.3.2001 onwards."

15. Mr. Govardhan, learned counsel appearing for the workmen also relied upon the same paragraph of the judgment in L. Justine's case (supra) to show that the parameters laid down therein will not apply to the facts of the case at hand.

16. On a careful reading of the aforesaid paragraph, it is seen that the Division Bench has held that the provisions of the Industrial Establishments (Conferment of Permanent Status to Workmen) Act, the ID Act or settlement entered into under the ID Act shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 09.07.1980 to 11.03.2001.

17. Admittedly, in this case, all the four workmen were appointed as Packers by the Management from 09.07.1980 to 11.03.2001 though not on the dates asserted by them, but, on different dates, as could be seen from the proceedings dated 15.03.2000 of the Deputy Registrar of Cooperative Societies, viz., Ganesan on 01.04.1999, John Wellington on 01.08.1999, Babu

on 01.05.1999 and Prakash on 01.08.1999. Accepting this assertion, it is obvious that the four workmen worked as Packers from 09.07.1980 to 11.03.2001. But, the Management has failed to produce even a shred of evidence before the Appellate Authority to show what their cadre strength for the period from 09.07.1980 to 11.03.2001 was. In fact, the Management had the opportunity to adduce evidence, which, they failed to avail of, for the reasons best known to them. That apart, the proceedings before the Appellate Authority under the Shops and Establishments Act commenced on 15.10.2001 and was pending when the Division Bench judgment in L. Justine's case (supra) was pronounced, i.e. on 24.10.2002. In fact, as stated above, the Management produced a copy of the judgment before the Appellate Authority and relied upon clause no.(vii) in order to justify their ouster. The Management failed to read clause no.(vii) in a proper perspective and it proceeded on the premise that the Division Bench had given a carte blanche to them to oust any person who was not appointed via employment exchange between 09.07.1980 and 11.03.2001. The Appellate Authority, while negating the plea of the Management, has rightly interpreted the law laid down by the Division Bench in L. Justine's case (supra) and therefore, there is no necessity for this Court to set aside the impugned orders.

18. However, it may be relevant to extract the direction no. (v) in paragraph no.19 in L. Justine's case (supra) which is as under:

"19. (v) direct that within two months of the approval of the special bye-laws under sub-rule (1) of the Rule 149 of the Rules, the respective Deputy Registrars of Cooperative Societies having jurisdiction over the cooperative societies in their Divisions, shall enquire, by issuing notice to the entire staff recruited from 9.7.1980 to 11.3.2001, and decide as to whether the said recruitment is in conformity with the special bye-laws approved by the Registrar of the Cooperative Societies and terminate the services of such staff members, whose appointments are in contravention of the special bye laws so approved by the Registrar of Cooperative Societies; it is made clear that while considering the validity or otherwise of the appointment of the staff cooperative societies, the requirement of notifying the vacancies to employment exchange shall not be taken cognisance of."

19. In view of the above, it is always open to the Management to take action as per direction no.(v), extracted above, after giving employment to these four workmen.

20. It is also seen that at the time of admission of these

writ petitions, this Court had passed the following order on 04.07.2003:

Interim stay on the following conditions:

i) The petitioner shall pay the arrears under Section 17-B of the Industrial Disputes Act from the date of award till date to the second respondent directly, within four weeks from today; and

ii The petitioner shall continue to pay the last drawn wage under Section 17-B of the Industrial Disputes Act on or before 5th of every month to the second respondent, provided the second respondent files an affidavit of non-employment before this Court.

In default of either of the above condition, the interim stay granted shall stand vacated automatically.

Notice."

It is not known as to whether the Management had complied with the aforesaid order. If the Management has not complied with the aforesaid order, it is open to the workmen to take appropriate proceedings for recovery of the amount in accordance with law. Further, the petitioner is directed to reinstate the four workmen within 90 days from the date of receipt of a copy of this order.

With the above observation and direction, these writ petitions stand dismissed. No costs. Connected, miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

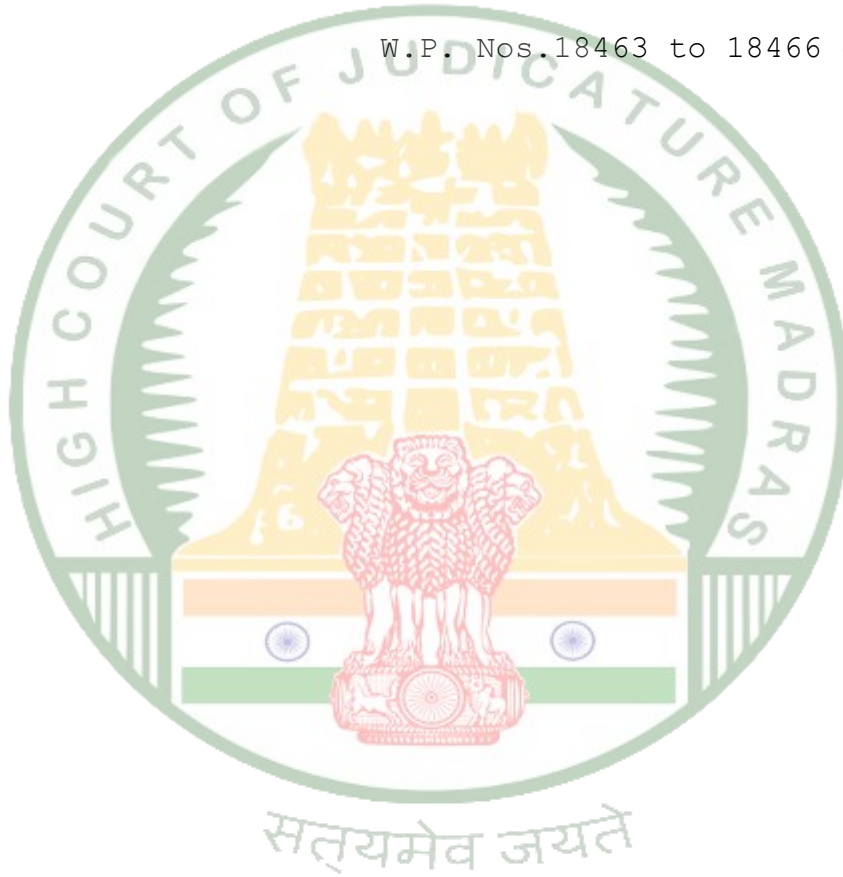
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To
The Deputy Commissioner of Labour/
Appellate Authority
under Shops and Establishment Act
Tirunelveli.

+4cc to Mr.R. Prem Narayan, Advocate, S.R.No.4610 (24/02/2017) (-3)
+1cc to the Government Pleader, S.R.No.4926

GMI (CO)
md(09/02/2017)

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