



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) Nos.15168, 15170, 15171, 15172, 15173, 15174, 15175,
15176, 15177, 15178, 15179, 15180, 15181, 15182, 15183, 15184,
15185, 15186 & 15187 of 2016

and

W.M.P. (MD) No.11171, 11172, 11173, 11174, 11175, 11176, 11177,
11178, 11179, 11180, 11181, 11182, 11183, 11184, 11185, 11186,
11187, 11188 & 11189 of 2016

and

W.P. (MD) Nos.15169 & 15188 of 2016

K.SUBRAMANIAN	...PETITIONER IN WP (MD) NO.15168/2016
E.MANICKAVEL	...PETITIONER IN WP (MD) NO.15169/2016
R.MARIAPPAN	...PETITIONER IN WP (MD) NO.15170/2016
R.ARUMUGASAMY	...PETITIONER IN WP (MD) NO.15171/2016

J.ROSARI ALBERT	...PETITIONER IN WP (MD) NO.15172/2016
S.VIJAYAKUMAR	...PETITIONER IN WP (MD) NO.15173/2016
A.RAJA	...PETITIONER IN WP (MD) NO.15174/2016
A.AMALADOSS MONSING	...PETITIONER IN WP (MD) NO.15175/2016
A.AROCKIADOSS KENNEDY	...PETITIONER IN WP (MD) NO.15176/2016
M.PALANIVELU	...PETITIONER IN WP (MD) NO.15177/2016
P.MARULASANKARAN	...PETITIONER IN WP (MD) NO.15178/2016
P.SOMASEKAR	...PETITIONER IN WP (MD) NO.15179/2016
P.ANNADURAI	...PETITIONER IN WP (MD) NO.15180/2016
R.IMMANUVEL SEKAR	...PETITIONER IN WP (MD) NO.15181/2016
P.JAYASIMHAN	...PETITIONER IN WP (MD) NO.15182/2016
A.JAYASEELAN	...PETITIONER IN WP (MD) NO.15183/2016
A.JOSEPHRAJAN	...PETITIONER IN WP (MD) NO.15184/2016
S.LAWRANCE AROCKIARAJ	...PETITIONER IN WP (MD) NO.15185/2016
R.MANAVALAN	...PETITIONER IN WP (MD) NO.15186/2016
A.AROCIKADOSS	...PETITIONER IN WP (MD) NO.15187/2016
S.JOSPHIN MARY	...PETITIONER IN WP (MD) NO.15188/2016

-VS-

1.THE REGISTRAR
DEPARTMENT OF COOPERATIVE SOCIETIES
NO.170, PERIYAR EVR SALAI
KILPAUK, CHENNAI-600 010

2.THE JOINT REGISTRAR
DEPARTMENT OF CO-OPERATIVE SOCIETIES
TRICHY REGION, TRICHY-620 020



3. THE DEPUTY REGISTRAR
DEPARTMENT OF CO-OPERATIVE SOCIETIES
TRICHY REGION
TRICHY-620 020

WEB COPY

4. THE MANAGING DIRECTOR (DGM/FINANCE/BHEL)
(THE SECRETARY)
B.H.E.EMPLOYEES CO-OPERATIVE BANK LTD., (ECB)
BHEL TOWNSHIP, KAILASAPURAM
TRICHY-620 014

5. THE SECRETARY (DGM/HR/BHEL)
(THE SPECIAL OFFICER)
B.H.E.L COMPLEX CO-OPERATIVE LABOUR
CONTRACT SOCIETY LTD. (LCS)
NO.Y.T.11, DR.AMBEDKAR NAGAR
R-SECTOR TOWNSHIP
KAILASAPURAM, TIRCHY-620 014 ...RESPONDENTS IN ALL THE CASES

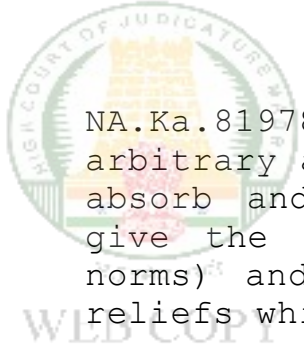
PRAYER (in W.P.(MD) No.15168, 15170 TO 15187 of 2016): Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records of the first respondent in his proceedings in review petition order NA.KA.81959,81960,81961,81962,81963, 81964,81965, 81966,81967,81968,81969,81970,81971,81972,81973,81974,81975,81976, 81977/2015/sabal, dated 15.02.2016 and quash the same as arbitrary and illegal and further direct the respondents herein to absorb and regularize the petitioner services and along with time scale of pay and all other attendant and monetary benefits and other reliefs, which the petitioner is entitled to.

Prayer in WP(MD). 15169/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings in review petition order Na.Ka.81979/2015/sabal dated 15.02.16, and quash the same as arbitrary and illegal and further direct the respondents herein to absorb the petitioner's services and to give the notional appointment with pensioner benefits (as per ECB norms) and all other attendant and monetary benefits and other reliefs which the petitioner is entitled to and pass such further or other orders as this Honble Court may deem fit.

Prayer in WP(MD). 15188/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorified Mandamus to call for the records of the 1st respondent in his proceedings in review petition order



NA.Ka.81978/2015/sabal dated 15.02.16, and quash the same as arbitrary and illegal and further direct the respondents herein to absorb and regularize the petitioner's husband services and to give the notional appoint with pensioner benefits (as per ECB norms) and all other attendant and monetary benefits and other reliefs which the petitioner's husband is entitled to.

For Petitioners : Mr.K.M.Boopathy
(in all W.Ps)

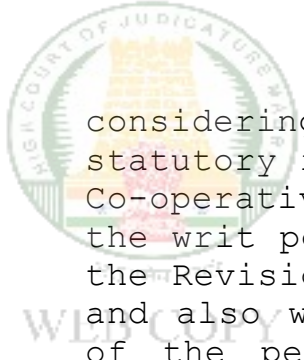
For Respondents : Mr.M.Rajarajan
(in all W.Ps) Govt. Adv., for R1 to R3
Mr.K.Prabhakar for R4
Mr.T.Sakthi Kumaran for R5

C O M M O N O R D E R

Since the relief sought for in all these writ petitions are similar in nature, they are taken up together for disposal by this common order.

2. The prayer in all these writ petitions is for issuance of a writ of certiorarified mandamus to quash the impugned orders, dated 15.02.2016, passed by the first respondent and to direct the respondents to absorb the petitioners in service and regularize their service with time-scale of pay and all other attendant and monetary benefits.

3. According to the petitioners, they and the husband of the petitioner in W.P.(MD) No.15188 of 2016 are unskilled contract labours under the control of the respondent Bharat Heavy Electrical Employees Co-operative Bank Ltd., Trichy, for more than 20 years. Though they are unskilled labours for various kinds of unskilled jobs, the Management has been extracting all kinds of works from them. Since their service has not been regularized, the petitioners gave representations, dated 20.12.2014, to the respondents 1 to 4 seeking absorption and regularization of their service. But, the respondents 1 to 4 had not taken any action on their representations, which accelerated the petitioners to approach this Court by way of filing separate writ petitions in W.P.(MD) Nos.1794 to 1814 of 2015. This Court, by a common order, dated 13.02.2015, directed the respondents 1 to 4 to consider the petitioners' representations, dated 20.12.2014, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of that order. But, the fourth respondent vide proceedings dated 09.04.2015 and the second respondent vide proceedings dated 20.04.2015, had rejected the petitioners' claim on the ground that they are contract labours and there is no master-servant relationship between the petitioners and the Management. Grievied by the rejection of their claim, the petitioners had once again knocked at the doors of this Court by filing W.P.(MD) Nos.14189 to 14209 of 2015 and this Court,



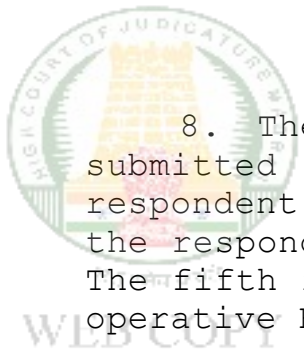
considering the fact that there has been more effective and statutory remedy of revision is available under Section 153 of the Co-operative Societies Act, by orders dated 11.08.2015, dismissed the writ petitions with a direction to the petitioners to approach the Revisional Authority, namely, the Registrar / first respondent and also with a direction to the Revisional Authority to dispose of the petitioners' revision to be filed on merits preferably within a period of four months from the date of receipt of a copy of those orders. Based on the direction given by this Court, they filed revision petitions before the Revisional Authority / first respondent. But, the first respondent, without considering the facts and circumstances of the case in a proper perspective manner, by the impugned orders, dated 15.02.2016, dismissed the petitioners' revision petitions in a biased manner. Aggrieved by the dismissal of their revisions, the petitioners are before this Court.

4. The learned counsel appearing for the petitioners has vehemently contended that pursuant to the orders, dated 11.08.2015, passed by this Court in W.P.(MD) Nos.14189 to 14209 of 2015, the petitioners approached the Revisional Authority / first respondent and the first respondent, instead of re-appreciating the facts and circumstances of the case, has simply rejected their claims without considering the contentions raised by the petitioners..

5. The learned counsel for the petitioners further submitted that in terms of G.O.(Ms) No.74, Personnel and Administrative Reforms (F) Department dated 27.06.2013, the petitioners are entitled to regularization of service as the said Government Order authorizes regularization of service of the employees, who have completed ten years of service as on 01.01.2006.

6. The learned Government Advocate appearing for the respondents 1 to 3 submitted that appointments in Co-operative Societies in Tamil Nadu have to be made by following statutory procedure and regularization and there is no mode of recruitment under the Statute to allow these petitioners to enter into service through back door entry. But, in the present case, the petitioners are simply trying to tweak the existing law and to enter into the service of Co-operative Bank by giving wrong and fictitious facts.

7. The learned counsel appearing for the fourth respondent submitted that there is no privity of contract between the petitioners and the fourth respondent and there is no genuine contract system between them and the petitioners are not the direct employees of the fourth respondent as contended by them. He fairly submitted that the plea of jurisdiction has not been raised <https://www.seecourtsonline.in/for-services> at the stage of revision before the first respondent or before this Court in the earlier writ petitions.



8. The learned counsel appearing for the fifth respondent submitted that the petitioners have been supplied to the fourth respondent by the fifth respondent and there is a contract between the respondents 4 and 5 with regard to supply of contract labours. The fifth respondent supplied contract labours not only to the Co-operative Bank, but also B.H.E.L.

9. Heard both sides and perused the materials produced before this Court.

10. The core issue to be decided in this case is whether there is a genuine contract system existing between the petitioners and the fourth respondent or not?

11. On perusal of the documents, it is seen that the petitioners are unskilled contract labours under the control of the fourth respondent through the fifth respondent herein. They have been working for more than 20 years. On 20.12.2014, they gave representations to the respondents 1 to 4 seeking absorption and regularization of their service. Since their representation had not been considered, they had approached this Court and this Court, by a common order, dated 13.02.2015 in W.P.(MD) Nos.1794 to 1814 of 2015, directed the respondents 1 to 4 to consider their representations and pass appropriate orders. But, the respondents 2 and 4 had rejected their claim on the grounds that the petitioners are not direct employees of the fourth respondent and there is no master-servant relationship between the petitioners and the Management. Aggrieved by the same, when the petitioners approached this Court once again, this Court by orders, dated 11.08.2015 in W.P.(MD) Nos.14189 to 14209 directed the petitioners to avail the effective and statutory remedy of revision available under Section 153 of the Co-operative Societies Act. Accordingly, the petitioners filed revision petitions before the first respondent, which came to be rejected vide orders impugned herein.

12. At this juncture, it would be more relevant to refer Section 153 of the Co-operative Societies Act, which is extracted hereunder:

153. Revision.- (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152 or himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made



therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly.

Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit.

13. A perusal of Section 153 of the Co-operative Societies Act, would show that the first respondent herein is not a competent authority and he is a non-quasi judicial authority insofar as deciding the dispute exists between the petitioners and the fourth respondent with regard to abolition of contract labour system and also directing regularization of their service by usurping the jurisdiction of the Industrial Disputes Forum under the provisions of the Industrial Disputes Act. Therefore, the petitioners have to seek remedy before the Industrial Disputes Forum under the Industrial Disputes Act or the Authority under the Contract Labour (Regulation and Abolition) Act, 1970.

14. Even though the plea of jurisdiction has not been taken before the first respondent in the revision or before this Court when the earlier writ petitions came up for hearing, since it is a legal issue, this Court does not find fault with the fourth respondent in taking the plea of jurisdiction in his counter affidavits filed in the present writ petitions.

15. Accordingly, these writ petitions are disposed of with the following directions:

- (i) If the petitioners raise dispute before the the Industrial Disputes Forum with regard to abolition of contract labour system, through their Union, the Industrial Disputes Forum shall go into the aspect of regularization of their services.



(ii) If the Industrial Disputes Forum comes to the conclusion that the contract labour system is sham and nominal, the Industrial Disputes Forum has got powers to order reinstatement apart from regularization of service.

(iii) If the Industrial Disputes Forum comes to the conclusion that the contract labour system is genuine, the Industrial Disputes Forum shall direct the petitioners to approach the Authority under the Contract Labour (Regulation and Abolition) Act, 1970.

(iv) Since the petitioners are already suffering without knowing that under whom they are employees and some of the petitioners are almost at the verge of retirement, they should not be made to suffer endlessly. Hence, incase the petitioners raise industrial dispute, as mentioned supra, the Conciliation Officer is expected to conciliate and refer the dispute with regard to regularization of the petitioners under the fourth respondent to the appropriate Forum and the appropriate Forum shall decide the status of the employees and incase, it comes to the conclusion that the petitioners are employees of the fourth respondent, it can order to grant the relief sought for and in case it comes to the conclusion that they are contract employees, it can direct the petitioners to approach the Authority under the Contract Labour (Regulation and Abolition) Act, 1970 seeking abolition of the Labour Contract System. However, the service of the petitioners as on date shall not be disturbed and they shall be allowed to continue until a final decision is taken in this matter. Status quo as on date to be maintained till the issue come to a logical conclusion.

(v) It is open to the petitioners to raise industrial dispute within a period of one month from the date of receipt of a copy of this order and the petitioners are expected to co-operate for early disposal of their dispute before the Industrial Disputes Forum and incase of reference, the Authority under the Contract Labour (Regulation and Abolition) Act, 1970 is expected to dispose of the dispute within a period of six months thereafter. It is needless to say that the observations made hereinabove, touching the merits of the matter would not stand in the way of the parties from putting forth their pleas before the appropriate Forum effectively and it would not influence the Authority concerned in coming to the conclusion independently.



(vi) Before parting with the matter, if there is a dispute raised under Section 2(k) of the I.D.Act, the Government is expected to take into account Section 10(1) of the said Act apart from the principles laid down in the decision of this Court in Ramakrishna Mills (Coimbatore) Ltd., vs. Government of Tamil Nadu, reported in (1984) II LLJ 259 Mad. The procedure indicated under Section 12 of the I.D.Act is not a bar for the appropriate Government to examine its power under Section 10(1) of the said Act. Without a failure report, during the pendency of conciliation, the Government is empowered to invoke Section 10(1) of the said Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
07/02/2017

/True Copy/

***For Being Mentioned**

These petitions have been listed today under the caption "For being Mentioned" at the instance of the petitioners.

2.Learned counsel for the respondents would submit that the Management has already made interim arrangement regarding transfer and the place of work would be normally 2kms from the present place of work. It is further submitted that there are branches, in which the petitioners will have to work and there will be no change in service conditions, as directed by this Court.

3.It is represented by the petitioners that the new place of work is situated beyond 30 to 50 kms and in order to victimize the petitioners, such transfers are being effected.

4.In reply to the above, the respondents would contend that the petitioners are going to be transferred within the radius of 5 kms from the existing place of work only and not to the far off place and the petitioners will not be posted in a different place situated beyond 5 kms. It is open to the respondents to transfer the employees within 5 kms from the present place of work.

5.In view of the above submission made by the respondents, no further order is necessary in this regard. However, it is made clear that if there is any superannuation, this order will not preclude the respondents from superannuating those persons and the superannuation will be without prejudice to the rights of workers to claim relief, if any granted in the disputed.

Sd/-
Assistant Registrar(CS III)



To:

(*)To be substituted for the order already despatched.

- 1.The Registrar,
Department of Cooperative Societies,
No.170, Periyar EVR Salai,
Kilpauk, Chennai-600 010.
- 2.The Joint Registrar,
Department of Co-operative Societies,
Trichy Region, Trichy-620 020.
- 3.The Deputy Registrar,
Department of Co-operative Societies,
Trichy Region, Trichy-620 020.

+1CC to M/S.K.Prabhakar, Advocate, SR.No. 7072
+1CC to M/S.T.Sakthi kumaran, Advocate, SR.No. 7073
+1CC to the Special Government Pleader, SR.No. 6914
+3cc to Mr.K.M.Boopathy, Advocate Sr.No.12206

W.P.(MD) Nos.15168, 15170, 15171, 15172,
15173, 15174, 15175, 15176, 15177,
15178, 15179, 15180, 15181, 15182,
15183, 15184, 15185, 15186 & 15187 of
2016
and
W.M.P.(MD) No.11171, 11172, 11173,
11174, 11175, 11176, 11177, 11178,
11179, 11180, 11181, 11182, 11183,
11184, 11185, 11186, 11187, 11188 &
11189 of 2016
and
W.P.(MD) Nos.15169 & 15188 of 2016
07.02.2017

AM/PM PN/SAR-3/15.02.2017/8P/7C
sm:MSA:SAR 3:09/03/2017:9P/10C