



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2018

CORAM:

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P(MD)No.15092 of 2015
and
M.P(MD)No.1 of 2015

The Management,
MD 107, Tamil Nadu State
Transport Corporation,
Employees Cooperative Thrift and Credit Society,
Natham Road,
Dindigul Post & District.
Rep. its President.

...Petitioner

Vs

1.The Appellate Authority under the
Tamil Nadu Shop and Establishment Act
(Deputy Commissioner of Labour),
Nehruji Nagar,
Dindigul Post & District.

2.E.Habeeb

..Respondents

PRAYER: Writ Petition is filed, under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records from the first respondent's impugned orders passed by the first respondent made in T.N.S.C. Appeal No.6/2012, dated 27.11.2014 and quash the same as illegal.

For Petitioner	: Mr.C.G.Pethanaraj
For R1	: Mr.Aayiram K.Selvakumar Additional Government Pleader
For R2	: Mr.Ajay Khose for Mr.S.Arunachalam

ORDER

The Prayer sought for in the writ petition is for a Writ of Certiorari, to call for the records from the first respondent's impugned orders passed by the first respondent made in T.N.S.C. Appeal No.6/2012, dated 27.11.2014 and quash the same as illegal.

2.The second respondent herein was appointed as a Clerk in the DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul on 23.11.1991. He was later sent on deputation to the Tamil Nadu Ranimangammal Transport Corporation Employees Co-operative Thrift



and Credit Society Ltd., Dindigul. The second respondent wanted to continue in that deputed society itself. Therefore, the said Tamil Nadu Ranimangammal Transport Corporation Employees Co-operative Thrift and Credit Society Ltd., Dindigul wrote a letter to the DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul for relieving the second respondent herein. Subsequently, the second respondent wrote a letter of resignation to the DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul. By proceedings, dated 28.02.1995 the parent Society accepted the second respondent's resignation and relieved him from service. Thereafter, the Special officer of the Tamil Nadu Ranimangammal Transport Corporation Employees Co-operative Thrift and Credit Society Ltd., Dindigul by proceedings dated 28.02.1995 appointed the second respondent as a Clerk, on daily wages basis.

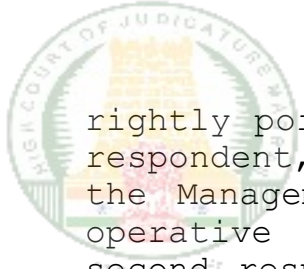
3. Subsequently, dispute arose between the second respondent and the Management of Ranimangammal Transport Corporation Employees Co-operative Thrift and Credit Society Ltd., Dindigul. The second respondent raised an Industrial Dispute in I.D.No.129 of 2000 before the Labour Court, Trichy. The Labour Court passed an award, dated 09.10.2001 in favour of the second respondent. The Management filed a writ petition in W.P.No.13244 of 2002 before the High Court of Madras. The said writ petition was dismissed by order, dated 20.04.2009. The said order was also duly complied with by the Management by proceedings, dated 16.09.2009 calling upon the second respondent to assume duty. While so, the Management, which has now been renamed as Tamil Nadu State Transport Corporation Employees Cooperative Thrift and Credit Society relieved the second respondent from deputation service on 29.02.2012. The same was questioned by the second respondent by filing an appeal under Section 41(1) of the Tamil Nadu Shops and Establishment Act. The Appellate Authority allowed the appeal by order, dated 27.11.2014 and the same is challenged in the writ petition at the instance of the Management.

4. Heard the learned counsel for the Management/writ petitioner as well as the learned counsel appearing for the workman/second respondent.

5. The contention of the Management is that the second respondent, who was originally appointed as Clerk in the DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul, was taken as an employee of the writ petitioner Society only on deputation on foreign service. The request of the second respondent for regularisation in the deputed Society was not accepted by the Competent Authority. He has since filed a writ petition and the same is still pending. Therefore, the order passed by the Management on 29.02.2012 cannot be construed as one of termination or dismissal. It is only an order relieving the second respondent from service. Therefore, the appeal under Section 41(1) of the Tamil Nadu Shops and Establishment Act is not maintainable.

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6. I am unable to agree with the said submission and as



rightly pointed out by the learned counsel appearing for the second respondent, it was the writ petitioner Management, which wrote to the Management of the DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul asking them to permanently relieve the second respondent so that he could be absorbed permanently in the writ petitioner's Society itself. In fact, the said request was accepted and the parent society relieved the second respondent from their service. In fact, the second respondent also submitted a formal letter of resignation, which was also accepted by the DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul, society on 28.02.1995. What clinch as the issue is the proceedings, dated 28.02.1995 passed by the then Special Officer of MD 107, Management of Ranimangammal Transport Corporation Employees Co-operative Thrift and Credit Society Ltd., Dindigul. By the said order, the second respondent herein was taken as a Clerk on a daily wages basis. In fact that is the finding rendered in I.D.No.129 of 2000, on the file of the Labour Court, Trichy (Camp at Dindigul) and the order, dated 20.04.2009 in W.P.No.13244 of 2002. In these circumstances, it can no longer can be contended that the second respondent is not an employee of the writ petitioner society. Since the person sent on deputation, has a lien on the parent department, the said deputation will not last beyond a few years. The second respondent has been serving in the writ petitioner society atleast from 28.02.1995 onwards. The order impugned in the writ petition was passed in the year 2011. Thus for the last 17 years he has absolutely nothing to do with DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul. Therefore, the second respondent will not have lien in the service of DD-393 Postal and Telegraph Employees Co-operative Store, Dindigul, society. There is no merit in the writ petition and the same stands dismissed.

7.The writ petitioner Management shall also disburse the consequential benefits to the second respondent as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Appellate Authority under the
Tamil Nadu Shop and Establishment Act
(Deputy Commissioner of Labour),
Nehruji Nagar,
Dindigul Post & District.

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+1cc to M/S.R.Saravanan Advocate in SR.No.98713



+1cc to Special Government Pleader, SR.No.99247

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