



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2713, 2714, 3503 to 3509 of 2015
and

MP(MD)Nos.1, 1, 1, 1, 1, 1, 1 of 2015

WP(MD)Nos.2713 & 2714 of 2015 :

G.Deivanayagam ... Petitioner in WP(MD)No.2713 of 2015
K.Joy ... Petitioner in WP(MD)No.2714 of 2015

Vs.

1.The President,
Arumanai Primay Agricultural
Co-operative Credit Society,
Arumanai Post,
Kanyakumari District.

2.The Labour Inspector,
Nagercoil, Kanyakumari District. ... Respondents in both cases

COMMON PRAYER IN WP(MD)Nos.2713 & 2714 OF 2015 : Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first respondent to implement the order passed by the second respondent in his proceedings in Na.Ka.No.1086 & 1085 of 2014, respectively dated 28.08.2014.

WP(MD)Nos.3503 to 3509 of 2015 :

P.Natarajan

functioning as
Y.47, Arumanai Primary Agriculture
Cooperative Credit Society Ltd,
Arumanai, Arumanai Post,
Kanyakumari District. ... Petitioner in all writ petitions

Vs.

1. The Inspector of Police,
Nagercoil,
Kanyakumari District. ...1st respondent in all writ petitions
2.K.Joy ...2nd respondent in WP(MD)No.3503 of 2015
3.C.Deivanayagam ...2nd respondent in WP(MD)No.3504 of 2015
4.C.Mary ...2nd respondent in WP(MD)No.3505 of 2015
5.P.Jayanthi ...2nd respondent in WP(MD)No.3506 of 2015
6.M.Usha Rani ...2nd respondent in WP(MD)No.3507 of 2015
7.D.Anand Kumar ...2nd respondent in WP(MD)No.3508 of 2015
8.L.Latha ...2nd respondent in WP(MD)No.3509 of 2015

respective

For Petitioner : Mr.N.Mohamed Asif
For Respondents : Mr.B.Christopher for R1
Mr.K.Saravanan,
Government Advocate for R2

For Petitioner	
in all cases	: Mr.B.Christopher
For Respondents	: Mr.K.Saravanan,
	Government Advocate
	for R1 (in all cases)
For R2 in WP(MD)No.3503/2015	: Mr.M.Dennis Joe
For R2 in WP(MD)No.3504/2015	: Mr.Mohamed Asif
For R2 in WP(MD)Nos.3505 to	
3509/2015	: Mr.S.Bharathy Kannan

The management of a registered co-operative society is the writ petitioner in WP(MD)Nos.3503 to 3509 of 2015. In the said writ petitions, the orders dated 28.08.2014 passed by the Inspector of Labour, Nagercoil conferring the status of permanency on the private respondents herein is challenged. Two of the employees have filed WP(MD)Nos.2713 and 2714 of 2015 seeking implementation of the orders passed by the authority constituted under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. It is not in dispute that the workmen concerned have been employed for a period of 480 days in 24 consecutive calendar months. In other words, the employees concerned fulfil the requirements set out in Section 3 of the said Act.

2. The learned counsel appearing for the workmen would point out that as per the bye-laws, the society concerned can have upto 11 employees. But, the fact remains that as on date, the society is having only a cadre strength of 9 persons. It is true that the society has passed resolutions in favour of the workmen.

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strength is less than 10. The Act is therefore not applicable. The authority concerned ought not to have entertained the applications submitted by the employees.

4.A Division Bench of this Court in the decision reported in 2002 (4) CTC 385 (L.Justine vs. Registrar of Co-operative Societies), held that appointments cannot be made beyond the permissible cadre strength. It also held that neither the Permanency Act of 1981 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 man-days, be it 480 or 240 prescribed under the above statutes. It was categorically held that if the appointments itself is illegal, then the Act 46 of 1981 cannot be invoked. This Division Bench decision has been consistently followed.

5.In this view of the matter, it has to be necessarily held that there is lack of jurisdiction in entertaining the applications filed by the employees under Section 5 of the Act 46 of 1991 r/w rule 3 under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. In this view of the matter, the orders passed by the Inspector of Labour, Nagercoil, Kanyakumari District are quashed. WP(MD)Nos.3503 to 3509 of 2015 stand allowed while WP(MD)Nos.2713 and 2714 of 2015 filed by the employees stand dismissed. It is however made clear that it would not foreclose the rights of the employees concerned to workout their rights as per law if the cadre strength of the said society is revised.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Inspector of Police,
Nagercoil, Kanyakumari District.

+2CC to Mr.B.CHRISTOPHER, Advocate, SR.No. 51034

+2CC to Mr.M.DENNIS JOE, Advocate, SR.No.51373

W.P(MD)Nos.2713, 2714, 3503 to 3509 of 2015

and MP(MD)Nos.1, 1, 1, 1, 1, 1, 1 of 2015

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