



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.17955 of 2016

and

WMP (MD) No.12951 of 2016

The Management,
A.3099, Tamil Nadu Transport
Corporation Employees
Co-operative Store Limited,
No.27, Pasumpon Nagar,
Madurai - 625 003.

... Petitioner

Vs.

1.The Labour Inspector,
Office of the Labour Inspector,
T.N.H.B Office Building,
Ellish Nagar, Madurai - 625 002.

2.K.Thirumurugan

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records from the first respondent's impugned order made in E/4457/2015 CPS No.12/2015 dated 24.03.2016 and quash the same.

For Petitioner	: Mr.C.G.Pethanaraj
For Respondents	: Mrs.S.Srimathi, Spl.Govt.Pleader for R1 Mr.A.Rahul for R2

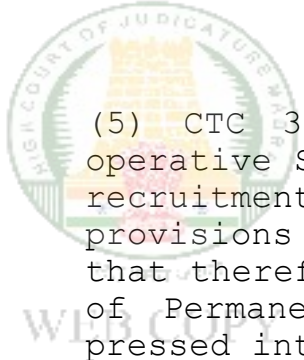
ORDER

Heard the learned counsel on either side.

2.The second respondent was engaged by the petitioner's society on a contract basis in the year 2001. He has been working as a Computer Operator ever since. The learned counsel appearing for the second respondent/employee would submit that though the name Computer Operator has been given, it is actually a Clerk post. Since he had worked for a period of 480 days in 24 consecutive calendar months, he filed an application before the Statutory Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The application was allowed by order dated 24.03.2016. The said order is challenged in this writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel appearing for the petitioner placing reliance on the Full Bench decision of this Court reported in 2007



(5) CTC 369 (R.Rathakrishnan vs. The Deputy Registrar of Co-operative Societies, Dindigul Circle, Dindigul) pointed out that the recruitment of the second respondent herein was in violation of the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and that therefore the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 could not have been pressed into service.

4.This Court finds considerable force in the said submission. However, as rightly pointed out by the learned counsel for the second respondent, the post of Clerk in which the petitioner has been appointed would come within the cadre strength. It is also not in dispute that the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 would apply even in the case of Co-operative Societies. Therefore, the only point to be noted is whether the second respondent was sponsored by the Employment Exchange or not.

5.It is also seen that the special bye-laws have been amended on 27.08.2012. As per the amended bye-laws, possession of the Diploma in Cooperative Training is not necessary. The amended bye-laws state that possession of degree or diploma is sufficient to be appointed as a Clerk. It is also seen from the materials on record that the case of the second respondent was recommended by the Society and that it was the Deputy Registrar who rejected the said recommendation. It is also seen that the second respondent is in the service of the petitioner society for the past 18 years.

6.Considering all these aspects, this Court is of the view that the order passed by the first respondent need not be upset. But, then the question is from which date the second respondent workman can be made permanent. It is fairly admitted that originally the qualification prescribed for this post included possession of Diploma in Cooperative Training. This requirement was done away with only in the year 2012 when the bye-laws were amended.

7.Therefore, this Court would be acting contrary to law if the order of permanency is granted in favour of the second respondent herein even when he was not possessed of the requisite eligibility qualifications. Therefore, this Court modifies the order passed by the first respondent. The second respondent will be entitled to be conferred with the status of permanent employee of the petitioner society with effect from 27.08.2012.

8.This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/



To
The Labour Inspector,
Office of the Labour Inspector,
T.N.H.B Office Building,
Ellish Nagar,
Madurai - 625 002.

+1CC to Mr.R.Saravanan, Advocate, SR.No. 53146
+1CC to Mr.A.Rahul, Advocate, SR.No. 52774

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