

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 21.02.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P(MD)No.5957 of 2016****and****WMP(MD)No.5296 of 2016**

1.The Managing Director
/ Joint Director,
Thirubhuvanam Silk Handlooms
Weavers Cooperative Production
and Sales Society Ltd, Thirubhuvanam.

2.The President,
Thirubhuvanam Silk Handlooms
Weavers Cooperative Production
and Sales Society Ltd,
Thirubhuvanam.

... Petitioners

Vs.

1.The Inspector of Labour,
Authority under Tamil Nadu
Industrial Establishments
(Conferment of Permanent
Status to Workmen) Act, 1981,
Thanjavur.

2.S.Manimaran
3.V.Baskaran
4.T.Ganasekaran
5.R.Singaravadivelu
6.M.Shanmugam
7.K.Rameshkumar
8.K.Ramesh

... 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 of the first respondent herein in his proceedings in Na.Ka.No.CPS Petition No.1/2015 in R.C.No.B/5273/2008, dated 23.05.2015 and quash the same.



For Respondents

: Mr.M.Jeyakumar,
Addl. Government Pleader
for R1
No appearance for R2 to R8

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ORDER

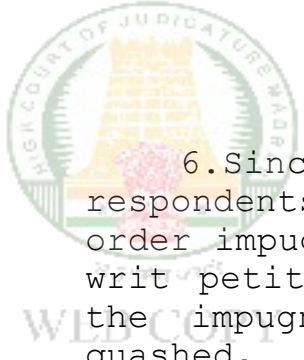
The petitioner-society is a registered co-operative society. Respondents 2 to 8 were employed in the petitioner-society on temporary basis. They filed an application before the first respondent contending that they should be conferred with the status of permanency as they had completed 480 days in 24 consecutive calendar months.

2.The said application filed by the respondents 2 to 8 was opposed by the petitioners herein by pointing out that they are a cooperative society and that only if the appointment is made as per the Tamil Nadu Co-operative Societies Act, 1983 and Rules framed thereunder and the bye-laws of the society, the question of regularization would arise. If the appointment is in excess of the cadre strength, then the same would be clearly illegal.

3.This stand of the petitioner was overcome in the order under challenge by referring to the decision of this Court reported in 2000 (1) LLN P 799 (C&MD TNCSE Ltd, Vs. Inspector of Factories) and the order dated 29.11.1996 in WP.No.16392 of 1992. The first respondent allowed the petition filed by the private respondents herein and directed the petitioners society to confer the status of permanency on them. The said order dated 23.05.2015 is assailed in this writ petition.

4.The learned counsel appearing for the petitioner drew the attention of this Court to the Hon'ble Full Bench decision reported in (2007) 6 MLJ 455 (R.Rathakrishnan v. Dy. Registrar of Co-operative Societies). The Hon'ble Full Bench followed the earlier Division Bench decision in L.Justine case. It was observed by the Hon'ble Division Bench that the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or of Industrial Disputes Act, 1947 cannot be pressed into service when the appointments are ipso facto illegal and unauthorized. Merely passage of time and completion of the stipulated period of 480 days will not confer any an indefeasible right on the employee.

5.In this case, the appointment to the private respondents herein cannot be said to be ipso facto illegal, when the society engaged persons on temporary basis. But there is something called cadre strength in a cooperative society. The respondents have not shown that even if they are given permanency or regularized, they would still come within the cadre strength.



6. Since this aspect of the matter was not established by the respondents 2 to 8 herein, This Court is of the view that the order impugned in the writ petition will have to be quashed. This writ petition is allowed. It is made clear that merely because the impugned order passed by the first respondent has been quashed, it should not result in automatic ouster of the respondents 2 to 8 herein. It is reiterated that the relief of conferment of status of permanency alone has been set aside.

7. With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/TRUE COPY/

Sub Assistant Registrar

+1. C.C. to M/S.K.HEMAKARTHIKEYAN, Advocate SR.No.50379.

+1. C.C. to Special Government Pleader SR.No.50915.

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and
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21.02.2018

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