

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.11213 of 2004

&

W.P.M.P.No.13153 of 2004

The Management,
Q-837, Muhavoor Ulavar Pani Co-operative Society Ltd.,
Rajapalayam Taluk, Virudhunagar District,
rep. by its Special Officer.
... Petitioner

Vs

1.The Appellate Authority,
Tamil Nadu Shops & Establishments Act,
Madurai.

2.P.Ganesan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for issuance of writ of certiorari to call
for the records of the first respondent made in TNSE No.14/02
dated 17.08.2003 and quash the same.

For Petitioner : Mr.S.Silambanan, Senior Counsel
for Mr.N.Umapathi

For Respondent 1 : Mrs.K.Bhuvaneshwari,
Additional Government Pleader

For Respondent 2 : No appearance

O R D E R

This petition has been filed to quash TNSE No.14/02
dated 17.08.2003 on the file of the first respondent.

2. Heard, learned Senior counsel for the petitioner.
Though the matter was listed on 08.04.2019 and 23.04.2019, there
were no representation for the second respondent and hence, the
matter was adjourned today i.e., on 25.04.2019. Today, also
there was no representation for the second respondent. Hence, it
can only be inferred that the second respondent has no remarks
to offer.

3. The learned Senior counsel for the petitioner submitted that the second respondent was appointed as salesman on 04.08.2000 and subsequently, he was dismissed from service on 02.02.2002. The petitioner herein is a cooperative institution registered under the Tamil Nadu Cooperative Societies Act and therefore, any appointment made therein can be done only through District Employment Exchange. The second respondent herein was not in the regular employment of the petitioner herein. As such, he could not claim any rights, since his appointment itself is improper. In support of his contention, the learned Senior counsel referred to a decision of the Honourable Supreme Court in the case of State of Karnataka & others vs. Umadevi & others reported in (2006) 4 SCC 1.

4. Apart from the aforesaid submissions, the learned Senior counsel submitted that pending the writ petition, the second respondent had voluntarily received the security deposit lying before the petitioner society on 15.12.2018 and in support of the same, the learned Senior counsel produced a copy of the receipt which is signed by the second respondent herein.

5. It is seen from the records that the second respondent had not been appointed through the Employment Exchange and since the petitioner is a cooperative institution registered under the Tamil Nadu Cooperative Societies Act, such an appointment can only be deemed to irregular. Moreover, since the second respondent had not completed two years of service, he cannot seek the benefits of a regular employee. Above all, when the writ petition was pending, the second respondent had approached the petitioner society to receive security deposit, from which conduct, it can be inferred that the petitioner had chosen to have his account full and finally settled.

6. The first respondent herein had not taken into account the irregular appointment of the second respondent and the number of years of service put forth by him and as such, the order itself cannot be sustained.

7. For the foregoing reasons, the order of the first respondent passed in TNSE No.14/02 dated 17.08.2003 is hereby set aside. Consequently, the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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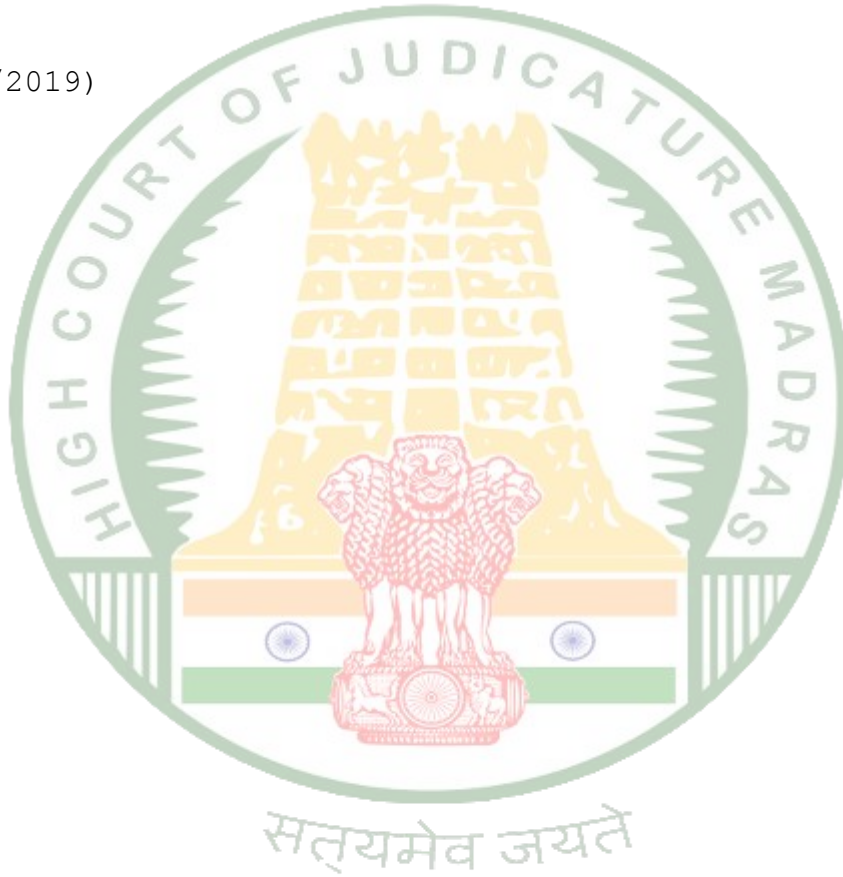
To

The Appellate Authority,
Tamil Nadu Shops & Establishments Act,
Madurai.

+1cc to Government Pleader SR.No.40666

W.P.No.11213 of 2004

CP (CO)
GMY (26/06/2019)



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