

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18-09-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.23000 of 2004

And

W.P.M.P.No.27825 of 2004

The Management of Kallakurichi Taluk
Cooperative Rural Housing Society Limited,
S.A.Hsg.50, Represented by its Special Officer,
Kallakurichi-606 202,
Villupuram District.

.. Petitioner

vs.

1.The Presiding Officer,
Labour Court Cuddalore,
Cuddalore.

2.A.Kaliaperumal

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, calling for the concerned records from the first
respondent, quash the Award passed by the first respondent dated
17.11.2003 in I.D.No.210 of 1992.

For Petitioner : Mr.Balan Haridas

For Respondent-1 : Labour Court

For Respondent-2 : No Appearance

O R D E R

The Award dated 17.11.2003 passed in I.D.No.210 of
1992 is under challenge in the present writ petition.

2. The writ petitioner Society is Kallakurichi Taluk
Cooperative Rural Housing Society Limited, which is registered
under Tamil Nadu Cooperative Societies Act, 1981. The second
respondent-workman was engaged as a casual labourer on need
basis. There was no proper appointment order issued by the writ
petitioner-Management in compliance with the provisions of the

bye-laws or the Tamil Nadu Cooperative Societies Act and the Rules. Thus, the initial appointment of the second respondent-workman was irregular. The writ petitioner states that during September 1996, the second respondent on his own volition stopped reporting for work and resigned his job on 27.09.1986. Thereafter, the petitioner raised an industrial dispute with an allegation that the writ petitioner-Management denied employment and orally the second respondent-workman was terminated from service on 28.09.1986. The dispute was raised in I.D.No.210 of 1992.

3. The learned counsel for the writ petitioner states that there were many changes in the management of the writ petitioner-Society. On account of the change of elected Board and due to that records relating to I.D.No.210 of 1992 was lost and the pendency of the above dispute was not known to the management due to efflux of time. Thus, the writ petitioner-Society was not represented in I.D.No.210 of 1992 and an ex parte award was passed on 05.07.1996, directing the writ petitioner-Society to reinstate the second respondent-workman with backwages, continuity of service and other benefits.

4. The writ petitioner-Society filed a petition to set aside the ex parte order and a condone delay petition was also filed. However, the Labour Court refused to receive the application on the ground that the ex parte award had already been published in the Gazette and therefore the Labour Court has no jurisdiction to entertain the application to set aside the ex parte order. The second respondent, based on the ex parte award, has filed a claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947. Under those circumstances, a writ petition in WP No.21622 of 2000 is filed. The said writ petition was allowed by this Court by an order dated 18.03.2002 and the petitioner was directed to pay the cost of Rs.10,000/- to the second respondent-workman. The first respondent therein conducted an adjudication on merits and passed an Award on 17.11.2003 in I.D.No.201 of 1992.

5. The learned counsel for the writ petitioner reiterated that the second respondent was engaged as a casual labourer and his initial appointment was irregular and not in accordance with the Recruitment Rules in force. The very engagement of the second respondent-workman is contrary to the provisions of the Tamil Nadu Cooperative Societies Act and the Rules. Thus, the Labour Court Award is in violation of the judgment of the Division Bench of this Court in the case of L.Justin [2003 (1) LLJ 284], which was confirmed by the Supreme Court in the case of Uma Rani [(2005) 1 MLJ 6(SC)].

6. The learned counsel appearing on behalf of the writ petitioner states that the irregular and illegal

appointments in Cooperative Societies were adjudicated by the Hon'ble Division Bench of this Court in the case of L.Justine and another Vs. The Registrar of Co-operative Societies, Chennai - 10, reported in 2003 (1) LLJ 284 and 2002 (4) CTC 385, which was taken by way of an appeal before the Hon'ble Supreme Court of India in the case of A.Umarani V. Registrar of Cooperative Societies, reported in (2005) 1 MLJ 6(SC), the Courts held that the irregular appointees are not entitled for regularization or permanent absorption and only if their initial appointments were made in accordance with the procedures contemplated, then alone the benefit of regularization or permanent absorption can be given. Accordingly, the process of identifying the regular appointments were undertaken by the competent authorities of the Cooperative department and those employees, who were appointed in accordance with the rules, their services were regularized and the services of all other irregular employees were dispensed with.

7. Citing the above judgments, the learned counsel for the writ petitioner states that the Labour Court ought not to have considered the case of the second respondent employee in view of the fact that no documents were produced, established that the second respondent was appointed by following the procedures as contemplated under the Rules.

8. This Court is of the considered opinion that the writ petitioner society is a Cooperative Society, registered under the provisions of the Tamil Nadu Cooperative Societies Act and the said Act will prevail over the general law. Rule 149 of the Tamil Nadu Cooperative Societies Rules contemplates the procedures for appointments and the service conditions. Pursuant to Rule 149 of the Tamil Nadu Cooperative Societies Rules, Special Bye-laws were approved by the competent authorities of the Cooperative department. Thus, appointments are to be made strictly in compliance with the recruitments enunciated in Rule 149 of the Tamil Nadu Cooperative Societies Rules.

9. This being the legal principles to be followed, the Labour Court proceeded on the basis that the second respondent-workman was engaged by the writ petitioner-management for more than 240 days of service and therefore, he is entitled for permanent absorption. When the Hon'ble Division Bench passed an order dealing with irregular appointments in Cooperative Societies, which was confirmed by the Apex Court of India in the case of A.Umarani V. Registrar of Cooperative Societies, reported in (2005) 1 MLJ 6(SC), Labour Court cannot take a contra view than that of the principles settled by the Apex Court, which became the law of the land under Article 141 of the

Constitution of India.

10. This apart, the learned Single Judge of this Court also had an occasion to deal with the similar issue in the case of Special Officer, Palayamkottai Urban Co-operative Bank Limited, Vs. Presiding Officer, Labour Court, Tirunelveli, reported in (2009) 4 MLJ 186 and the relevant paragraphs 10 to 14 are extracted hereunder:

"10. Even otherwise the Labour Court had failed to take into account Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, 1988 (which were brought into effect from 13.04.1988) mandatorily provides for recruitment through employment exchange in case of regular appointment by a Co-operative Society.

11. When a question came up whether such appointments can be regularised through a Government Order, a Division Bench of this Court vide its judgment in L. Justine v. Registrar of Co-operative Societies reported in 2002 (4) CTC 385, negatived such a contention. In Para 19(vii), it has been held at p.299 of LLJ as follows:

"19(vii) that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the co-operative societies appointed without adequate qualifications or beyond the cadre strength for the period from 09.07.1980 to 11.03.2001. This is equally applicable to the staff appointed to the co-operative societies, otherwise than through employment exchange, for the period from 12.03.2001 onwards."

12. When the said judgment was taken on appeal, the Supreme Court confirmed the judgment of the Division Bench vide its judgment A. Umarami v. Registrar of Co-operative societies, AIR 2004 SC 4504 : (2004) 7 SCC 112: (2005) 1 MLJ 6 : 2004-III-LLJ-780. The supreme Court held that invalid appointments cannot be regularised.

13. Once again the said question was re-agitated before another Full Bench of this Court in R. Radhakrishnan v. The Deputy Registrar of Co-operative Societies, Dindigul reported in 2007 (6) MLJ 455. In paragraph 13, after referring to A. Umarani's case, (cited supra), the Full Bench presided by S.J. Mukhopadhyaya J. observed as follows:

"13.In view of such finding of Supreme Court in A. Umarani v. Registrar of Co-operative Societies

(supra), the observations, findings and directions given by Division Bench of this Court in L. Justine v. Registrar of Co-op Societies, Chennai (supra) at paragraph 19(i), last portion of paragraph 19(v) and the finding with regard to regularisation of service of employees recruited prior to 12.03.2001, stand overruled.

14. The Labour Court without any materials before it and brushing aside the non-sponsorship from the employment exchange and appointment being contrary to the bye-laws had directed the reinstatement of the second respondent with all benefits. Even with reference to the appointment of Sivaraman, alleged to be a junior to the second respondent, the Labour Court failed to take into account the effect of Ex.M3 and M4 which clearly showed that the said Sivaraman was appointed after being sponsored by the Employment Exchange."

11. On a perusal of the award passed by the Labour Court, this Court is of the considered opinion that the second respondent-workman was not appointed in accordance with the Recruitment Rules in force and therefore, the initial engagement of the second respondent-workman by the writ petitioner-management as a daily wage employee was an irregular appointment and therefore, regularization or permanent absorption cannot be granted.

12. Even, the Constitution Bench of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others Vs. Umadevi and others, reported in (2006) 4 SCC 1, settled the legal principles, by holding that all appointments are to be made in accordance with the recruitment rules in force. The benefit of regularization or permanent absorption cannot be granted in violation of recruitment rules in force.

13. This Court is of the opinion that equal opportunity in public employment is the constitutional mandate. All persons, who all are eligible and aspiring to secure public employment, must be provided with an opportunity to participate in the open competitive process and any appointment made in violation of the rules, then an inference is to be drawn that the equality clause enunciated in the Constitution is violated. Lakhs and Lakhs of young people of this great Nation are burning their midnight lamp for securing public employment by working hard. Thus, the Constitutional rights of those persons, who all are aspiring to secure employment cannot be infringed by making irregular or illegal appointments. All those competent

authorities, who are attempting to indulge in appointing the persons in public services in an illegal or irregular manner, all such actions are to be initiated against the authorities. The persons, who entered into public services through backdoor must be allowed to go from the door which they actually entered.

14. This being the concept and principles to be followed, this Court is of an opinion that the award of the Labour Court, granting the benefit of permanent absorption is not only in violation of the provisions of the Tamil Nadu Cooperative Societies Act and the Rules as well as in violation of the legal principles settled by the Constitution Bench of the Apex Court of India as well as the Hon'ble Division Bench of this Court in the case of L.Justine and another Vs. The Registrar of Co-operative Societies, Chennai - 10, reported in 2003 (1) LLJ 284.

15. For all these reasons, the Award of the Labour Court is infirm and not in consonance with the well settled principles. Thus, the Award dated 17.11.2003 passed by the Labour Court in I.D.No.210 of 1992 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Svn

To

The Presiding Officer,
Labour Court Cuddalore, सत्यमेव जयते
Cuddalore.

+1cc to Mr.Balan Haridas, Advocate SR.80363

AR(J)
CB(18/10/2019)

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