



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.24720 of 2010

and

M.P.No.1 of 2010

The Management,
Salem District Co-operative Milk
Producers Union Ltd.,
Sidhanur, Thalavaipatty, Salem. ... Petitioner

-vs-

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

2.V.Jaganathan ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records pertaining to the award in I.D.No.152/2006 dated
16.04.2009 passed by the 1st respondent.

For Petitioner : Mr.V.Raghupathi

For Respondents : R1 - Labour Court

: R2 - No appearance

ORDER

The award dated 16.04.2009, passed by the 1st respondent,
Labour Court, Salem, in I.D.No.152/2006 is under challenge in
the present writ petition.

2.The petitioner is Management of Salem District Co-
operative Milk Producers Union Limited.

3.The learned counsel for the writ petitioner Management
made a submission that the 2nd respondent was appointed as a
Casual Labourer. The 2nd respondent workman refrained from
reporting for duty with effect from 29.01.2002, and thereafter,



he was continuously in unauthorised absence. After a lapse of about four years of continuous absence, the 2nd respondent raised an industrial dispute for reinstatement with back wages.

4.The learned counsel for the petitioner Management further made a submission that the 2nd respondent had not submitted any leave application or applied for Medical Leave along with Medical Certificate. This apart, the 2nd respondent was engaged as a Casual Labourer on daily wage basis and further, he was not appointed by following the recruitment rules in force. The initial appointment of the 2nd respondent was not through the District Employment Exchange and therefore, it was an irregular appointment. Accordingly, the award of the Labour Court is liable to be scraped.

5.The Labour Court mainly relied upon the fact that earlier, the 2nd respondent had raised an industrial dispute in I.D.No.199 of 1996 and in that industrial dispute, the Management had not taken a stand that the 2nd respondent was not appointed through Employment Exchange and therefore, such a stand cannot be taken in the present writ petition. The Labour Court proceeded on the ground that the 2nd respondent was wrongly terminated ignoring the procedures for retrenchment under Section 25(F) of the Industrial Disputes Act, 1947.

6.As far as the Cooperative Societies registered under the provisions of the Cooperative Societies Act is concerned, the appointments are regulated under Rule 149 of the Tamil Nadu Cooperative Societies Rules. Thus, the appointments made in accordance with the recruitment rules alone can be granted with the permanent absorption or regularisation. This apart, in respect of irregular appointments, a Division Bench of this Court in the case of L.Justine and Another vs. Registrar of Cooperative Societies, Chennai reported in 2002 (4) CTC 385 (hereinafter referred to as "Justine Case"), held that the appointments made in violation of recruitment rules, which all are irregular and illegal, cannot be regularised. The Division Bench imposed certain terms and conditions for grant of regularisation or reinstatement in respect of the terminated employees, who were appointed in violation of the recruitment rules in force. Accordingly, the eligible persons were reinstated and their services were regularised. However, the appointments made irregularly or illegally were not considered for regularisation and permanent absorption or reinstatement.

7.As far as the Justine case is concerned, the same was upheld by 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. Thus, reinstatement of the irregular appointees would not arise, as the principles laid down by the Division Bench in Justine Case are to be followed, which were



admittedly not followed by the Labour Court while deciding the issues.

8. As far as the Cooperative Societies Act is concerned, the same is a Special Act in respect of the Cooperative Societies registered under the said Act. Thus, the general law may not be applicable, as far as the cooperative societies are concerned. Even in such cases, the provisions of the Cooperative Societies Act would prevail over the General Act. When Rule 149 of the Tamil Nadu Cooperative Societies Rules contemplates terms and conditions for appointment and recruitment, then the said Rule alone would prevail over and the appointments made in violation of such rules cannot be held as proper or legal appointments.

9. In the present case, the 2nd respondent was engaged as a Casual Labourer on daily wage basis. His initial appointment was not made in accordance with the recruitment rules in force. Therefore, the provisions of the Industrial Disputes Act, 1947 cannot save the irregularity committed with reference to the Tamil Nadu Cooperative Societies Act, which is a Special Act and prevail over the General Act. When there is a special provision to the Tamil Nadu General Act and Rules for appointment and regularisation or reinstatement, then the said provision alone would be applicable and by referring to the provisions of the Industrial Disputes Act, 1947, the provisions of the Tamil Nadu Cooperative Societies Act cannot be violated.

10. Special Act would prevail over and under these circumstances, the reliance placed by the Labour Court with reference to the provisions of the Industrial Disputes Act, 1947 would not be applicable at all. This apart, in respect of irregular appointments in cooperative societies, the Division Bench laid the principles and based on the principles, the eligible appointees were regularised or reinstated. Under these circumstances, the 2nd respondent is not entitled for any relief. This apart, he was authorisedly absent for more than four years. He did not submit any leave application or medical certificate for availing the leave. Therefore, the action of the writ petitioner Management in terminating the services of the 2nd respondent on the ground of unauthorised absence is valid and even in case, the 2nd respondent is aggrieved from and out of the actions of the writ petitioner, it is left open to him to approach the competent authorities under the provisions of the Tamil Nadu Cooperative Societies Act with reference to the principles settled by the Hon'ble Division Bench in Justine Case. Contrarily, the industrial dispute cannot be entertained, as far as the irregular appointments or the temporary appointments are concerned, more specifically, when cooperative societies are covered under the Tamil Nadu Act.



11. Accordingly, the order passed by the Labour Court is perverse. Thus, the award dated 16.04.2009, passed by the 1st respondent in I.D.No.152 of 2006 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
The Labour Court, Salem.

+1cc to M/s.V.Raghupathi, Advocate Sr.93523

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srg 26/12/2019