

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated :15.11.2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.25641 of 2011
and MP.No.1 of 2011

Administrator,
Kallakuruchi -II Co-operative Sugar
Mills Limited,
Kachirayapalayam 606 207,
Kallakurichi Taluk,
Villupuram District.

... Petitioner

vs.

1. The Deputy Chief Inspector of Factories
Cuddalore District, Cuddalore.

2. D.Padmapriya
3. S. Anandan
4. R. Umamaheswari
5. D. Kavitha

... Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, calling of the proceedings of the 1st respondent in
its No.E/2125/2010 dated 12.1.2011 and quash the same.

Shankar

For Petitioner

: Mr. V.Vijay

For Respondents

: Mr. J.Ramesh,

Addl. Government Pleader [R1]

Mr. R. Rengaramanujam [R2 to R5]

O R D E R

The Writ petitioner is the Kallakurichi -II Co-operative Sugar Mills Limited. The order passed by the Deputy Chief Inspector of Factories under the provisions of the Tamil Nadu Industrial Establishment (conferment of permanent status to workmen) Act, 1981 dated 12.01.2011 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is a Co-operative Sugar Mill registered under the provisions of the Tamil Nadu Co-operative Societies Act. The writ petitioner/sugar mill is engaged in crushing of sugar cane during the harvest times. Thus, it is a seasonal work depending on the harvest of sugar cane for crushing. During the seasons, casual labourers are being engaged by the writ petitioner mill for completion of the job. Thus, the entire activities of the co-operative sugar mill is seasonal based one and many number of employees were appointed on casual basis and on daily wages basis and on need basis during the seasons. The respondents two to five were engaged as daily wage employees (NMR) to perform certain jobs relating to data entry, more specifically, regarding the production sector. During the season, they have to enter the datas regarding every day production activities and other related details. In this regard, the second and fourth respondents were appointed as Typists, the third respondent was engaged as Data Supervisor and the fifth respondent was engaged as Computer Operator (Accounts Wing). All the respondents, two to five were engaged to perform the administrative duties and not connected with the Factory related works.

3. The learned counsel for the writ petitioner reiterated that the order passed by the first respondent Deputy Chief of Factories is perverse on account of the fact that the first respondent has not taken note of the legal ground raised by the writ petitioner Management and passed an order granting permanent status in routine manner and merely based on the days of service rendered by the respondents two to five. In other words, the first respondent arrived a conclusion that the respondents two to five were engaged as NMRs for 480 days and therefore, they are entitled for permanent status. Such a decision arrived is inconsistent with the legal principles, more specifically, in Co-operative Societies registered under the provisions Tamil Nadu Co-operative Societies Act.

4. The learned counsel appearing on behalf of the writ petitioner, even with reference to the conferment of permanent status, urged that as per Section 1(3) of the Act, 'Act' applies

to every Industrial Establishments (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 50 workers were employed or any day of the preceding twelve months. The sugar cane crushing is a seasonal work performed during the harvest season and the respondents two to five were engaged to perform data entry operations regarding the factory activities during the seasonal times. Therefore, the nature of the job is not permanent and under these circumstances, the Act itself is inapplicable to the petitioner establishment.

5. The contentions of the petitioner Management are disputed by the respondents by stating that the respondents two to five were engaged to perform the administrative related works and they have completed 480 days of service and accordingly, the order passed by the first respondent is in accordance with law and there is no infirmity. The respondents two to five are being engaged for a considerable length of time and they are allowed to continue as temporary employees. Under these circumstances, the benefit of regularization is to be granted in their favour. The learned counsel referred the judgment of this Court dated 31.10.2011 passed in W.P.No.14971 of 2009, wherein the Court held that even in seasonal establishments, if the nature of the work is of permanent one, then the permanent status can be awarded.

6. However, on a perusal of the entire judgment, the fact remains that the petitioner in that writ petition is a workers union and the nature of the employment was casual labourers. In other words, the regularization was sought for in respect of casual labourers who served with the establishment, who all are the member of the workers union. Therefore, the grant of permanent status to the casual workers cannot be equated with the NMR, who are engaged to perform the administrative works in a Co-operative society registered under the provisions of the Tamil Nadu Co-operative Societies Act.

7. Regarding the administrative jobs with reference to the sanctioned post, the recruitment Rules are to be followed. In respect of the Co-operative Societies, Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 contemplates the Conditions of Services of paid officers and servants of societies. Accordingly a special bylaw has to be approved by the Registrar of Co-operative Societies for the purpose of Recruitment and governing the service conditions of the paid officers and employees of the Co-operative Society. Irregular or illegal appointments cannot be a ground for grant of

regularization or permanent absorption. Only if the appointments are made by following the procedures contemplated under the Rules as well as the special bylaw, then alone the permanent absorption or regularization can be granted. In the event of not following such procedures of recruitment as well as the Rules, then the circumstances will lead to commission of illegalities, irregularities and corrupt activities.

8. For instance, if NMRs are appointed at the whims and fancies of these authorities and those casual based and those NMRs are allowed to continue for 240 days or 480 days and thereafter, filing a petition and the Inspector of Factories passing an order granting permanent status without considering the legal implications, then the same would result in denial of equal opportunity in employment to all the eligible persons, who all are aspiring to secured employment in institutions or organizations. Equal opportunity in employment is the constitutional mandate. Rule of Reservation are to be followed. Rule regarding priorities are to be implemented. There are many implications and social justice in this regard is of paramount importance. Constitutional schemes are to be implemented in its real spirit to ensure equal opportunity is provided to all the eligible candidates, who all are aspiring to secure employment. Any method of recruitment, which is not in consonance with the constitutional schemes, perspectives or mandates, then all such appointments must be held either as irregular or illegal. Such irregular or illegal appointments would not constitute or provide a right for such employees to claim regularization or permanent absorption. Undoubtedly, such employees may be allowed to continue as NMRs so long as there is a need or circumstances arises and for granting of regularization or permanent absorption, it is to be established that the appointments were made in accordance with the Recruitment Rules in force and by following the procedures contemplated.

9. The circumstances would arise that the officials, who all are in power can indulge in engaging many such NMRs or casual labourers at their choice and thereafter, grant regularization or permanent absorption on extraneous consideration. It is a common factor. Such a racket is identified on many occasions in many organizations and there is a large scale allegations in the public domain. In harsh language, the persons, who all are having godfather can achieve their goal in an illegal means and persons who all are meritorious and aspiring to secure employment through procedures are deprived and denied of their opportunity, which is a constitutional mandate. Therefore, the infringement of the

constitutional rights of those candidates are fatal and the High Court cannot encourage such procedures of granting permanent absorption in an illegal manner by passing the constitutional principles. Therefore, the appointments are to be made strictly in accordance with recruitment Rules in force. The competent authorities, at the time of undertaking the process of selection, must ensure that the Rules are followed scrupulously. The violations of the Recruitment Rules are to be prescribed, the authorities who all are committed illegality in this regard are liable to be punished and such appointments cannot be regularized or regulated so as to grant the benefit of permanent absorption.

10. The practice of engaging persons in an illegal manner and granting permanent absorption is criticized and the principles are also deprived by the Constitution Bench in the case of State of Karnataka Vs. Uma Devi [reported in 2006 (4) SCC 1] . The Supreme Court in unequivocal terms held that all the appointments are to be made under Constitutional schemes and by following the Rules in force. Even the judgments rendered earlier, granting the benefit of regularization or permanent absorption, cannot be followed as a precedent in view of the fact that those judgments denuded to lose its status as legal precedent. Under these circumstances, even citing the earlier judgment of the Supreme Court of India rendered prior to Umadevi's case cannot be relied upon for the purpose of granting regularization or permanent absorption. Even subsequent judgment, if at all delivered granting permanent absorption or regularization by the Supreme Court in violation of the Constitution Bench judgment also denuded to lose its status as precedent. The said decision was clarified by the Supreme of Court of India in paragraph 54 of the Constitution Bench judgment. Therefore, the legal principle settled by the Constitution Bench is a binding judgment and is to be followed under Article 141 of the Constitution of India.

11. As far as the present writ petition is concerned, the writ petitioner is a Co-operative Society and the recruitments are governed under the provisions of the Tamil Nadu Co-operative Societies Act and Rules. In respect of irregular appointments in Co-operative Institutions, the Division Bench of the Madras High Court also settled the principles in the case of L. Justine and anr. Vs. The Registrar of Co-operative Societies [reported in 2002 (4) CTC 385]. The said judgment of the Division Bench of the High Court was confirmed by the Supreme Court of India in the case of Umarani Vs. Registrar, Co-operative Societies [Reported in 2004 (7) SCC 112]. Accordingly, the irregular appointments cannot be a ground to grant permanent absorption

even in respect of such irregular appointments. The Division Bench issued certain guidelines and pursuant to the guidelines, the process of identifying the eligible persons were done and accordingly those eligible persons were granted with the permanent absorption and under these circumstances, the Chief Inspector of Factories cannot simply grant the benefit of permanent absorption merely on the ground that the NMR employee has completed 480 days of service. Such a concept, if permitted, the same would result in denial of not only opportunity, but also amounts to violation of the Recruitment Rules in force and this apart, the special Act will prevail over the general laws.

12. As far as the Co-operative institutions are concerned, it is governed by the provisions of the Tamil Nadu Co-operative Societies Act and Rules. As far as the petitioner establishment is concerned, the Tamil Nadu Co-operative Societies Act is a Special enactment. Thus, the Special Enactment would prevail over the general laws. The conferment of permanent status is a general law as far as the petitioner establishment is concerned and therefore, the said Act would not apply in respect of the employees, who all are engaged in a Co-operative Institutions registered under the Co-operative Societies Act. Even by following the special principles that the special enactment will prevail over the general law, the very application filed before the Chief Inspector of Factories cannot be entertained as the Recruitments are governed under the Special Enactment, Rules as well as the Special bylaws approved by the competent authorities under the Tamil Nadu Co-operative Societies Act.

13. This being the principles to be followed, this Court has no hesitation in coming to the conclusion that the order passed by the first respondent granting permanent status is not in consonance with the established legal principles and accordingly, the order dated 12.01.2011 passed by the first respondent in proceedings No.E/2125/2010 is quashed.

This writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

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Sub Asst. Registrar

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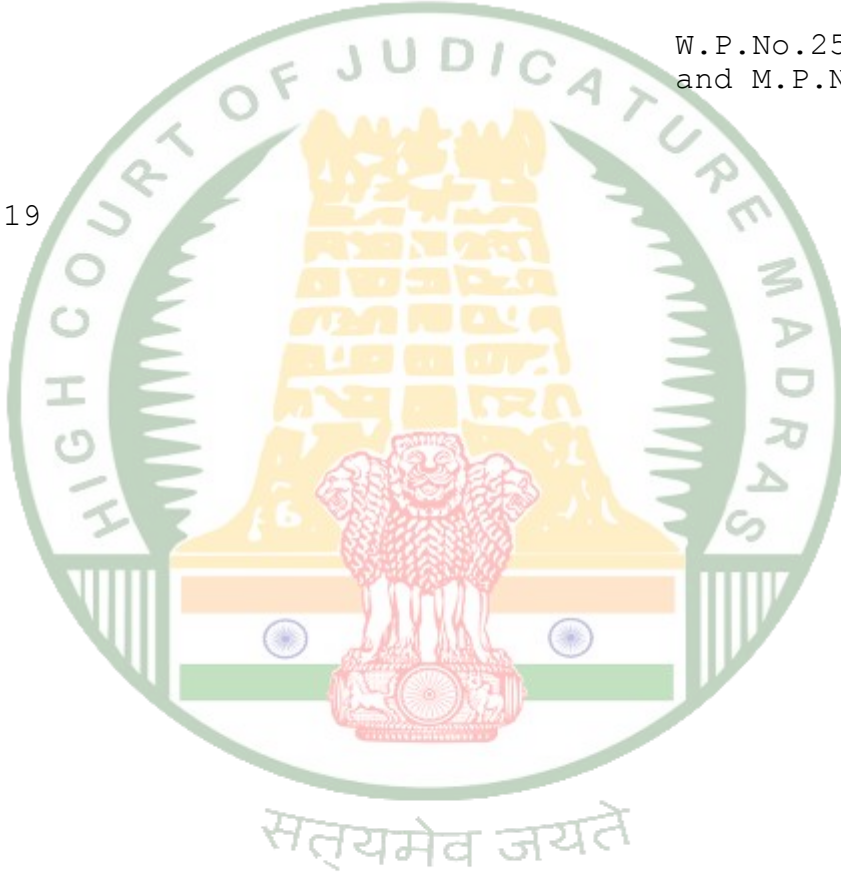
To

The Deputy Chief Inspector of Police,
Cuddalore District, Cuddalore.

+1cc to Government Pleader High Court Madras
sr 96065
+1cc to Mr.V.Vijay Shankar Advocate sr95459
+1 cc to Mr.R.Rengaramanujam Advocate sr95167

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