

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.380 of 2015

and

M.P.No.1 of 2015

Z.376, Nannilam Primary Agricultural
Co-operative Credit Society Ltd.,
Rep.by its President,
Nannilam, Tanjavur District.

..Petitioner

vs

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.R.Raveendran

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the award passed by the 1st respondent
in I.D.No.16 of 2011 dated 21.08.2014 quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : R-1 - Labour Court
R-2 - Mr.D.Prasanna

सत्यमेव जयते
O R D E R

The Award dated 21.08.2014 passed in I.D.No.16 of 2011 is
sought to be quashed in the present writ petition.

2. The writ petitioner is Z.376, Nannilam Primary
Agricultural Cooperative Credit Society Limited. The petitioner
states that the 2nd respondent was not appointed as a Salesman of
the petitioner society on 01.11.2002. He was engaged as a daily
wage employee on need basis. In view of the fact that he was not
appointed in accordance with the Recruitment rules in force, the
petitioner is not entitled for any permanent absorption or
reinstatement. There is no order of appointment was submitted
before the Labour Court nor the 2nd respondent established that

he was appointed by following the due process of law and in consonance with the recruitment rules in force.

3. 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.

4. 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 2nd respondent employee in view of the fact that no documents were produced, established that the 2nd respondent was appointed by following the procedures as contemplated under the rules.

5. 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 By-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.

6. This being the legal principles to be followed, the Labour Court proceeded on the basis that the writ petitioner was engaged 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.

7. 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, negated 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. Umarami'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."

8. On a perusal of the award passed by the Labour Court, this Court is of the considered opinion that the 2nd respondent was not appointed in accordance with the recruitment rules in force and therefore, the initial engagement as a daily wage employee was an irregular appointment and therefore, regularization or permanent absorption cannot be granted.

9. 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.

10. 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 entered.

11. 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 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.

12. For all these reasons, the award is infirm and not in consonance with the well settled principles. Thus, the award dated 21.08.2014 passed in I.D.No.16 of 2011 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

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.M.S.Palaniswamy, Advocate SR.79411

W.P.No.380 of 2015

VGII(CO)
CB(15/10/2019)