



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2021

DATE OF DECISION :13.08.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.179 of 2013

The Management of Palani Agricultural Products
Cooperative Marketing Society Limited,
Palani, Rep. By its Special Officer.

.. Appellant

Vs

1.The Deputy Commissioner of Labour,
(Appellate Authority under the Tamil Nadu
Shops and Establishment Act),
Dindigul.

2.K.Magudeeswaran

.. Respondents

Prayer :

Writ Appeal has been filed under Section 15 of Letters Patent against the order dated 05.06.2012 passed in W.P.No.3144 of 2002 by the learned Single Judge of this Court.

Prayer in W.P.No.3144 of 2002:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the order of the 1st respondent in TNSE Appeal No.5 of 2001 dated 22.03.2001 quash the same.

For Appellant : Mr.R.Parthiban

For R1 : Mr.K.Magesh, Spl.GP

For R2 : No Appearance



JUDGMENT

The Special Officer of the Management of Palani Agricultural Products Cooperative Marketing Society Limited, Palani, has filed this appeal challenging the order passed by the learned Single Judge in W.P.No.3144 of 2002, dated 05.06.2012, confirming the order dated 22.03.2001 passed by the first respondent/the Deputy Commissioner of Labour (Appellate Authority under the Tamil Nadu Shops and Establishment Act), Dindigul, setting aside the order of the termination dated 02.01.2001 passed against the second respondent-workman.

2. Mr.R.Parthiban, learned counsel for the appellant submitted that the second respondent-workman was employed as a salesman in the appellant society in February 1999, and he worked till December 1999, and after the break in service in December 1999, he worked from January 2000, but, his services were subsequently terminated on 02.01.2001. As he was employed on daily wage basis temporarily, he had no right to seek for absorption in service, because, he was neither permanent employee nor appointed through the employment exchange. When he approached the first respondent, it was the claim of the second respondent-workman that more than 20 employees were employed in the appellant society and therefore, the said society is covered under the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, and thus, on that score, he filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act taking a stand that he was terminated from the services without complying with the provisions of the Labour Law. Thereafter, the first respondent took up the appeal in T.N.S.E.Appeal No.5 of 2001 and thereby issued a notice to the appellant society. Immediately, a detailed counter affidavit has been filed by them taking a stand that since the appellant is a cooperative marketing society, they will have to follow the directions issued by the Registrar of Cooperative Societies, besides admitting that the second respondent-workman lastly engaged in the society from December 1999 to 31.12.2000, but, he was not recruited through the employment exchange and he was only a daily wage employee, hence, he cannot claim reinstatement as a matter of right. Secondly, before the first respondent/appellate authority, the second respondent workman himself examined as W.W.1. But, the Appellate Authority found that since the workman had worked for more than 480 days, the order of termination passed against the second respondent following the procedures contemplated under Section 41(1) of the Tamil Nadu Shops and Establishments Act and Section 25-F of the ID Act was legal, which is against the dictum laid down by the Hon'ble Apex Court in State of Karnataka Vs. Uma Devi (3) [2006 (4) SCC 1], as he was not appointed through the employment exchange. Besides, Rule 149 of the Tamil



Nadu Cooperative Society Rules, 1988, says that no appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the employment exchange. Therefore, the finding of the first respondent and the order passed by the learned Single Judge are incorrect.

3. Referring to the judgment of the Hon'ble Apex Court in the case of A.Umarani Vs. Registrar, Cooperative Societies and Ors. [2004 (7) SCC 112], learned counsel argued that no regularization is permissible in exercise of statutory powers conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of statutory rules.

4. Again, referring to the Constitution Bench judgment of the Hon'ble Apex Court in Uma Devi (3) (cited supra), it was argued that there is no fundamental right for those who have been employed on daily wages or temporarily or employed on contractual basis to claim that they have a right to be absorbed in service. Thus, when several judgments are holding against the second respondent workman that if a person is engaged in violation of statutory rules even though he served for more than 240 days, he is entitled only to the benefit of compensation, not the benefit of regularization.

5. Learned counsel for the appellant again taking reliance from the judgment of the Kerala High Court in Koodaranji Service Cooperative Bank Vs. M.M.Lissy and others [1994 (2) LLJ 97] contended that appointment of daily rated employee is against the rules and therefore, termination cannot be considered as retrenchment. Further, referring to another judgment of the Hon'ble Apex Court in Municipal Corporation, Bilaspur and another Vs. Veer Singh Rajput and others [1998 (9) SCC 258], it was argued that adhoc employees cannot be directed to be reinstated as those appointments were made for political considerations.

6. Again, referring to the judgment of this Court in Krishnamurthy K.R. And others Vs. Management of Madurai Sourashtra Cooperative Bank Limited and another [2001 (2) LLJ 1290], learned counsel argued that if the rules for recruitment is ignored in the matter of appointments and person is not sponsored through the employment exchange, then the Court can refuse to grant the relief.

7. By relying on a judgment of the Division Bench of this Court in the case of L.Justine Vs. The Registrar of Cooperative Societies, Chennai [2002 (4) CTC 385], learned counsel contended that G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001, enables the authority to terminate the service of the employee who was appointed after 12.03.2001. Therefore, when the appellant society has followed the law,



nothing wrong can be attributed against them in terminating the service of the second respondent workman. Thus, the impugned order passed by the learned Single Judge confirming the order of the first respondent is liable to be set aside, he pleaded.

WEB COPY

8. Per contra, Mr.K.Magesh, learned Special Government Pleader, appearing for the first respondent, submitted that the appellant being the cooperative marketing society is bound to follow the law laid down by the learned Single Judge confirming the order passed by the first respondent holding that if a workman is retrenched by an oral order or communication or if he simply asked not to come for duty, the employer will be required to adduce tangible and substantive evidence to prove the compliance with Clauses (a) and (b) of Section 25-F of the Act. In the present case, learned Single Judge finding that no one has represented on behalf of the second respondent to contest the case, appointed the Amicus Curie, who, by relying on various judgments of this Court as well as Apex Court, contended that if violation of Section 25-F is made out, even in the case of temporary appointment, the said termination violating Section 25-F of the ID Act is liable to be set aside. Similar is the case in hand. When the second respondent workman was appointed as Salesman in February 1999, he was continuously employed till December 1999. Though the work was extracted from him, he was not paid wages. Therefore, learned Single Judge, taking note of the fact that the second respondent workman had worked for more than one year and that the appellant society has terminated him from service by forcing him to sign in the register, has rightly set aside the order of termination holding that (a) the appellant society took the signature of the second respondent workman without issuing any written order of termination; (b) termination was not on account of misconduct; (c) the second respondent was a graduate and had done Diploma in Cooperative Training; (e) the appellant society, which is covered by the provisions of the Tamil Nadu Establishments (Conferment of Permanent Status to Workmen) Act, 1981, had employed more than 20 employees; and (f) the second respondent workman had completed more than 480 days of service. Therefore, when the legal position is very clear that if an employee/workman employed on a temporary basis is terminated giving a go-by to the mandatory provisions of Clauses (a) and (b) of Section 25-F of the ID Act, the same is liable to be interfered, hence, the impugned order passed by the learned Single Judge confirming the order of first respondent setting aside the illegal termination order passed against the second respondent-workman without complying with the mandatory provisions does not call for interference.

9. Heard the learned counsel appearing on either side and perused the materials available before this Court.



10. The second respondent-workman was a graduate with Diploma in Cooperation Training. Being satisfied with his qualification for the post of Salesman in the appellant Society, he was appointed as Salesman in February 1999, and he continuously worked in the appellant society till December 1999. Though work was extracted from him, after giving artificial break in service, he was again allowed to work from January 2000 till he was orally terminated on 02.01.2001. Thereafter, he approached the appellate authority/first respondent herein by filing an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act.

11. The first respondent, after finding that the second respondent-workman was orally terminated by getting his mere signature in the register sans written order of termination and also finding that there was no misconduct warranting termination of his service, has rightly come to the conclusion that the second respondent was terminated from the services on 02.01.2001 without complying with the provisions of the Labour Law. Besides, the first respondent/appellate Authority, by taking note of the fact that the workman himself examined as W.W.1, but, no witnesses were examined on the side of the appellant society, found that the workman had completed more than 480 days of service and therefore, it has rightly held that the order of termination passed against the second respondent as illegal, as it was passed without following the procedures prescribed either under Section 41(1) of the Tamil Nadu Shops and Establishment Act or under Section 25-F of the ID Act.

12. Moreover, G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001, prescribes that persons who are appointed after 08.07.1980 are eligible to be regularized in the service. Therefore, in the case on hand, since the second respondent workman was appointed as Salesman in February 1999, as per the said G.O., his services ought to have been regularized. Thus, the impugned order passed by the learned Single Judge by rightly appreciating the above said factual aspects holds good.

13. The Hon'ble Apex Court in Executive Engineer, ZP Engg. Division and another Vs. Digambara Rao and others [2004 (8) SCC 262] held that if violation of Section 25-F of the ID Act is made, mere completion of 240 days by itself may not be a ground for regularization. Another judgment of the this Court in the case of Tamil Nadu State Transport Corporation (Coimbatore Division-I) Ltd., Vs. The Presiding Officer, Labour Court, Coimbatore (W.P.Nos.24833 to 24843 of 2001 etc., batch, dated 23.03.2010), holds that if an employee after completing 480 days is found terminated without following Section 25-F of the ID



Act, he is entitled for reinstatement.

14. In yet another decision in Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat, Haryana [2010 (5) SCC 497], the Hon'ble Apex Court held that the burden is always on the employer to disprove the service of its employee. Paragraph 22 of the said judgment is extracted hereunder:-

"22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance with clauses (a) and (b) of Section 25-F of the Act."

The above ratio clearly says that if a workman is retrenched by an oral order or if he is asked not to come for duty, then the employer is required to adduce tangible and substantive evidence to prove compliance with Clauses (a) and (b) of Section 25-F of the ID Act. The said ratio squarely applies to the case on hand, for, admittedly, although the second respondent-workman himself examined as W.W.1 before the first respondent/appellate authority, no steps were taken by the appellant society either to adduce documentary evidence or oral evidence. Thus, they have failed on their part to give proper reasons for terminating the services of the second respondent.

15. One of the submissions of the learned counsel for the appellant is that as per ratio laid down by the Hon'ble Apex Court in Uma Devi(3), the second respondent-workman has no right to claim absorption in service as he was not appointed through the employment exchange and he was appointed temporarily on daily wage basis. In our considered view, the said submission cannot be sustained, for, in dealing with Uma Devi (3) case, the Hon'ble Apex Court held that the prohibition mentioned in Uma Devi (3) case is only for the High Court and the Supreme Court in granting direction under Articles 226 and 32 of the Constitution of India, however, the decision in Uma Devi (3) case will be of no assistance if there is a State enactment dealing on the subject. Thus, we find merit in the conclusion arrived at by the learned Single Judge, therefore, we have no other option except to confirm the same and accordingly, the impugned order passed by the learned Single Judge confirming the order of the first respondent is hereby confirmed.

16. In fine, for the reasons stated above, the writ appeal is dismissed with costs throughout. The appellant is directed to reinstate the second respondent-workman in service by giving the benefit of regularization as ordered by the first respondent



with all consequential benefits, within a period of eight weeks from the date of receipt of a copy of this judgment.

WEB COPY

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rkm

To

1. The Deputy Commissioner of Labour,
(Appellate Authority under the Tamil Nadu
Shops and Establishment Act),
Dindigul.

+1cc to the Government Pleader, S.R.No.40742
+1cc to Mr.R.Parthiban, Advocate, S.R.No.40643

W.A.No.179 of 2013

GSM(CO)
PM/27/09/2021