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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.30074 OF 2019

AND

W.M.P.NO.30017 OF 2019

Vellore District Consumer Co-operative
Wholesale Sales Stores Ltd.,
Rep. by its Joint Registrar / Managing Director,
Anna Salai, Vellore-632 001. ... Petitioner

-vs-

1. The Authority under the
Conferment of Status Act, /
Assistant Commissioner of Labour (Implementation)
Vellore.
2. K.Sanyasi
3. G.Rajaram ... Respondents

Prayer:

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the order passed by the 1st Respondent in Na.Ka.No.E/327/2018 dated 29.08.2019 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For R1 : Mr.LSM.Hasan Fizal
Govt. Advocate

For R2 : Mr.Balan Haridas

O R D E R

This writ petition has been filed, seeking to quash the Order passed by the 1st Respondent in Na.Ka.No.E/327/2018 dated 29.08.2019, by which, while issuing a certificate under Section 3(1) of the Conferment of Workmen Status, the Petitioner / Management was directed to regularize the services of R2 and R3 within 30 days.



2. It is the case of the Petitioner / Management that the Respondents 2 and 3 were engaged as Packers on daily wage basis and they were disengaged from service, as their services were no longer required. Since they did not come under the purview of Tamil Nadu Co-operative Acts and Rules and Bye-Laws of the Management, they were neither issued any appointment order nor termination order and they cannot claim permanent status under the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'the 1981 Act'). It is further case of the Management that the Authority under the 1981 Act granted permanency without considering the fact that the Respondents 2 and 3 filed a petition after a lapse of 18 years. Hence, it is prayed that the Order of the Authority needs interference by this Court.

3. Mr.M.S.Palaniswamy, learned counsel for the Management submitted that the order passed by the Division Bench of this Court in the case of L.Justine and another vs. The Registrar of Cooperative Societies and others, reported in 2002 (4) CTC 385, was challenged before the Apex Court by way of a Special Leave Petition, which was heard along with the connected case in Umarani vs. Registrar, Cooperative Societies, reported in (2004) 7 SCC 112. The Supreme Court, after elaborate argument, reversed some of the findings rendered in both cases, holding that when the initial entry was found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment, the illegal appointments can never be regularised. He further submitted that there cannot be any back door entry and when there is an appointment contrary to the by-laws, the Authority, without looking into the cadre strength, conferred permanent status to the Workmen. The Respondents 2 and 3 were never engaged after 2001 and that they were duly paid wages for the work extracted from them. He also submitted that the claim of these Workmen was already rejected by the Registrar and the same cannot be re-agitated by them before the Statutory Authority after a decade. Therefore, it was vehemently argued that Respondents 2 and 3 are not entitled for conferment of permanent status and the Order of the Authority is perverse and needs to be interfered with by this Court.

4. Mr.Balan Haridas s, learned counsel for R2 strenuously contended that these employees had worked as Packers, receiving Rs.10/- per day through voucher and since they had completed 480 days in a period of 24 calendar months, they are entitled to permanent status. He further contended that there was no violation of Rules, Bye-laws, etc. Even though Justine's case and Umarani's case may be correct, those judgements partially support their contentions too, as the Authority has looked into various aspects that are required under the provisions of the 1981 Act, Rules and Bye-Laws made therein. He also contended



that the Authority, after taking into account various judgments produced by the Workmen, has rendered a finding that there is a discrimination and unfair labour practice and therefore, conferred permanent status on the Workmen and the Management did not produce any documents in support of their case. Learned counsel for the Workmen also drew the attention of this Court to the judgment of this Court in the case of A.Palanivel vs. Tamil Nadu Khadi and Village Industries Board, reported in 1997 (3) LLN 509, wherein this Court had held that though the onus of proving continuous employment as required under the 1981 Act, has been held to be on the employees, a mere denial of such service by the employer in the counter affidavit without any material in the form of records and documents is no ground to reject the claim of the employees to be made permanent.

4.1. Thus, it was vehemently contended by the learned counsel for the Workmen that the 1st Respondent considered all the factual aspects such as number of days worked by the Workmen, etc., and rendered a finding of fact, which cannot be re-appreciated by this Court. According to him, there was no question of illegal appointment and at the most, it can be construed as irregular appointment, which could be ratified by the Authority concerned. In support of his contention, he relied upon the following judgments of the Supreme Court and this Court:

(i) Municipal Corporation of Jabalpur vs. Om Prakash Dubey, reported in (2007) 1 SCC 373;

"11. The question which, thus, arises for consideration, would be: Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules has been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to."

(ii) A.Sivakumar and others vs. The Secretary to Government, Chennai and others [W.P.Nos.21440 of 2015, etc batch] decided on 19.02.2021;

"29...it is clear that the following constitutes illegality and irregularity, respectively:

a. Total disregard of the Constitutional Scheme



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and the recruitment rules or infraction of rules.

b. Substantial compliance of the rules exists despite some rules and provisions not strictly adhered to, or irregularity presupposes substantial compliance and most importantly, where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

30. In other words, the line between irregularity and illegality is to be drawn where there exist certain mandatory substantial and procedural requirements. A deviation from the latter must be curable and an appointment shall not be illegal, solely due to non-compliance of the same."

Thus, it was pleaded that the Authority is fully justified in conferring permanent status on the Workmen and the present Writ Petition is liable to be dismissed.

5. In reply, learned counsel for the Management submitted that the judgment of this Court, referred to by the learned counsel for the Workmen (supra) with regard to illegal and irregular appointments, passed by a Single Judge of this Court, may not be applicable to the facts of this case, as the employees did not fulfill the conditions of educational qualification, more so, when there was no consideration of cadre strength by the Authority.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. On a prudent consideration of the submissions of both sides, it could be seen that admittedly, Respondents 2 and 3 (employees) were in employment of the Management and though they stated that they have been deprived employment, such averments were never stated in their application. The stand of the Management is that the employees have not been appointed by following proper procedures and they have been subsequently denied employment. It is not in dispute that they were paid wages of Rs.8 to 10 per day, through vouchers, that the request of the employees for conferment of permanent status was rejected by the Registrar previously and that they had approached the Authority concerned after a decade.

8. It is relevant to point out here that the provisions of the 1981 Act nowhere prescribe any time limit for the employees to redress their grievances. A reading of Section 3(1) of the 1981 Act makes it very clear that every workman, who is in



continuous service for a period of 480 days in a period 24 calendar months in an industrial establishment is entitled for attainment of permanent status. In case of any violation or contravention of the said section, there is a penal provision (Section 6) provided in the 1981 Act, which will come in aid of the aggrieved employees. Even though it has been stated that the employees have not been appointed, pursuant to any advertisement or through proper recruitment process, the Authority held that the nature of qualification required for such posts has been fulfilled and therefore, it can be merely termed as irregular appointment and not an illegal appointment, so as to deprive employees the status of permanency.

9. The Authority further held that when other employees have been provided employment, deprivation of employment to R2 and R3 would amount to discrimination. In Labour Legislation, the construction should be liberal. A Division Bench of this Court in the case of N.Mamundiraj vs. Bharat Heavy Electricals Ltd., Trichy, reported in 1999 (I) LLJ 622 held as follows:

"25. As observed in the earlier part of our Judgment that breaks in service, if any, brought out in the chart of the days the appellants have worked, it can be reasonably inferred that the respondent has resorted to unfair labour practice and the discharge of the appellants for cease of relationship of master and servant even if assumed to be quint-essential suffers from the vires of malice apart from being in violation of the State's policy, if I may say so it would be void order. The workman would be deemed to be in service when the cessation of work has been brought about by the employer for extraneous consideration, as in the case in hand."

10. Finding that the Authority concerned has deeply gone into all the factual and legal aspects and conferred permanent status on the Workmen, which, in the considered opinion of this Court, is perfectly valid and justified and does not warrant any interference by this Court. Hence, the Writ Petition is liable to be dismissed.

11. Accordingly, this Writ Petition filed by the Management is dismissed, on the ground of bereft of essence and substance and devoid of merits.

12. It is true that no time limit is prescribed under the 1981 Act for seeking permanency, but at the same time, the employees must have approached the Authority concerned at least within a reasonable time frame. In the present case on hand, the employees have slept over for quite a long time and knocked at the doors of the Authority only in the year 2009. Once the order



of the Authority is confirmed, all the benefits accrued to the employees should be extended to the employees from the date of permanency. However, taking into account the present pandemic situation and considering the fact that there is a delay in approaching the Authority, this Court, invoking the powers under Article 226 of the Constitution of India, deprives backwages till today. However, it is made clear that on and from the date of completion of 480 days in a period of 24 calendar months, the employees are entitled to continuity of service, with all other notional and consequential benefits, that are available to their counter parts and the same shall be extended to them within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Authority under the
Conferment of Status Act, /
Assistant Commissioner of Labour (Implementation)
Vellore.

+lcc to Mr.Balan Haridas, Advocate, S.R.No.29601
+lcc to Mr.M.S.Palaniswamy, Advocate, S.R.No.29479
+lcc to the Government Pleader, S.R.No.29370

W.P.No.30074 of 2019

NK(CO)
CS/26/07/2021