



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)NO.31 OF 2012

and

W.P(MD)Nos.12755 of 2010 and 24395 of 2019

and

M.P(MD)Nos.1 of 2010 and 1 and 2 of 2012

W.A(MD)NO.31 OF 2012

Arunmozhi
S/o.S.Appadurai,
Salesman,
T.475, Thanjavur Agricultural Producer Co-operative
Marketing Society Limited,
Thanjavur. :Petitioner/Appellant

.vs.

- 1.The Joint Registrar of Co-operative Societies,
Thanjavur.
- 2.The Deputy Registrar of Co-operative Societies,
Thanjavur.
- 3.The Liquidator,
Z-502,Inam Arulmozhipettai Tenant Co-operative Farming
Society Limited,
Thanjavur.
- 4.The Special Officer,
T.475, Thanjavur Agricultural Producer Co-operative
Marketing Society Limited,
Thanjavur. : Respondents/Respondents

W.P(MD)No.12755 of 2010

S.Latha :Petitioner

/vs/

- 1.The Registrar of Co-operative Societies,
Thanjavur.
- 2.The Deputy Registrar of Co-operative Societies,
Thanjavur.



3.The Deputy Registrar of Co-operative Societies,
Thanjavur.

4.The Special Officer,
T/1709,Vengarayan Kudi Kadu Primary Agricultural
Co-operative Society,
Thanajvur.

5.The Special Officer,
T.475, Thanjavur Agricultural Producer Co-operative
Marketing Society Limited,
Thanjavur. :Respondents

W.P(MD)No.24395 of 2019

1.A.Arunmozhi

2.S.Latha :Petitioners

/vs/

1.The Assistant Commissioner of Labour,
Thanjavur,
Thanjavur District.

2.The Joint Registrar of Co-operative Societies,
Medical College Road,Thanjavur.

3.The Managing Director/CSR,
T.475, Thanjavur Agriculture Producers Co-operative
Marketing Society Limited,
Thanjavur District :Respondents

PRAYER in W.A(MD)No.31 of 2012: Writ Appeal filed under Clause 15 of the Letters Patent Act praying this Court to set aside the order passed by this Court in W.P(MD)No.12754of 2010, dated 10.11.2011.

Prayer in WP(MD) . 12754 of 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records pertaining to the impugned order dated 29.09.2010 on the file of the 4th respondent and quash the same consequently directing the respondents to consider the claim of the petitioner for permanent absorption in the light of the communication of 3rd and 4th respondents dated 21.07.2009 and 28.01.2010.

PRAYER in W.P(MD)No.12755 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, call for the records pertaining to the impugned order dated 29.9.2010 on the file of the fifth



respondent herein and to quash the same and consequently to direct the respondents to consider the claim of the Petitioner for regularization of service in the light of the G.O.Ms.No.86, Cooperative Food and Consumer(CA2) Department, dated 12.3.2001.

PRAYER in W.P(MD)No.24395 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the first respondent to dispose of the statutory application dated 17.10.2019 filed by the Petitioners under the Provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen)Act, 1981 seeking permanent status to their job.

W.A(MD)NO.31 OF 2012

For Appellant	:Mr.N.Sivakumar
For Respondents 1 and 2	:Mr.M.Murugan Govt.Advocate
For Respondents 3 and 4	:No appearance

W.P(MD)NO.12755 OF 2010

For Petitioner	:Mr.N.Sivakumar
For Respondents 1 to 3	:Mr.M.Murugan Govt.Advocate
For Respondents 4 and 5	:No appearance

W.P(MD)NO.24395 OF 2019

For Petitioners	:Mr.N.Sivakumar
For Respondents	:Mr.M.Murugan Govt.Advocate

COMMON JUDGMENT

[Judgment of the Court was made by **PUSHPA SATHYANARAYANA, J.**]

W.A(MD)No.31 of 2012 and W.P(MD)No.12755 of 2010 are filed challenging the order of termination from their post as Sales Person and W.P(MD)No.24395 of 2019 has been filed for issuance of a Writ of Mandamus directing the first respondent to dispose of the statutory application dated 17.10.2019 filed by the Petitioners under the Provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen)Act, 1981 seeking permanent status to their job.



2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The Special Officer of the fifth respondent Society in W.P (MD) No. 12755 of 2010 had passed the impugned order relieving them from service stating that their appointment is irregular one. They have been working till date by virtue of the interim order passed by this Court. The learned Single Judge while deciding the Writ Petition along with other Writ Petitions filed by many other Petitioners, has considered the counter affidavit filed by the Deputy Registrar of Cooperative Societies, Thanjavur. Both the Writ Petitioners have worked in the establishment for more than 480 days. Therefore, they have been seeking regularization. But the stand of the Joint Registrar of Cooperative societies, Thanjavur was that there was no provision under which the appointment of the Petitioners can be regularized. As per Rule 149(2) of the Tamil Nadu Co-operative Societies Rule, unless the Petitioners come within the cadre strength fixed by the Departmental authorities, regularization is not possible.

4. The Full Bench of this Court in **2007(4) LLN 868** in the case of **R. Rathakrishnan .vs. Deputy Registrar of Cooperative Societies, Dindigul**, has held as follows:

'18. So far as the second issue, whether the Court could grant interim relief so as to perpetuate the service of irregular appointees, is concerned, our reply is in the negative.

It is settled law that what cannot be done directly cannot be ordered indirectly. If regularisation of service of illegal appointees is not permissible, against constitutional mandate, no interim relief could be granted so as to perpetuate the services of such illegal appointees.

It is settled law that no interim order could be passed, which may amount to final decision in the subject.

In this regard, one may refer to Supreme Court decision in State of U.P. v. Ram Sukhi Devi reported in 2004 AIR SCW 6955, wherein, the following observation was made:

8. To say the least, approach of the learned single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of



final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd. , State of Rajasthan v. Swaika Properties , State of U.P. and Ors. v. Visheshwar 1995 Supp (3) SCC 590, Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa and Ors. 1995 Supp (2) SCC 593, Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr. 1995 Supp (2) SCC 726 and Commissioner/Secretary to Govt. Health and Medical Education Department Civil Sectt., Jammu v. Dr. Ashok Kumar Kohli 1995 Supp (4) SCC 214.] No basis has been indicated as to why learned single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above that itself is not sufficient. We, therefore, set aside the order passed by learned single Judge as affirmed by the Division Bench without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons....

The question of grant of interim relief also fell for consideration in the case of Uma Devi (3) (supra). In the said case, the Constitution Bench of the Supreme Court, while observed that the High Court acting under Article 226 of Constitution should not ordinarily issue direction for absorption, regularisation or permanent continuance, in regard to interim relief, the following observation was made, in para 43 at page 98:

43. ...The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since,



after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

In the case of *State of Orissa v. Madan Gopal Rungta*, the question fell for consideration whether direction in the nature of interim relief only could be granted under Article 226 by the Court without decision of right - final order. Having noticed the provisions of Article 226 of the Constitution of India, the Constitution Bench of the Supreme Court made the following observation:

5. ...The language of the Article shows that the issuing of writs or directions by the court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under the Article.

In the said case, the Constitution Bench of the Supreme Court further held as follows:

''...In our opinion, Article 226, cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80, Civil P. C., and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of



mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action.''

19. In view of the authoritative pronouncement of the Supreme Court, we hold as follows:

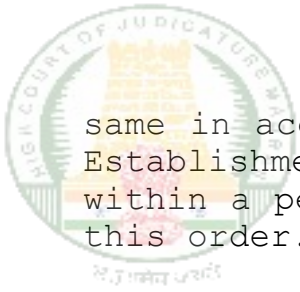
(i) The State Government cannot exercise its jurisdiction under Article 162 of the Constitution of India or under any Act to direct regularisation of service of any employee, including employees of a co-operative society, if the appointments have been made in contravention of the statutory rule or constitutional mandate.

(ii) Article 226 of the Constitution of India cannot be used for the purpose of giving interim relief as the only and final relief, without determination of the main issue.''

5.The learned counsel appearing for both the Writ Appellant as well as the Writ Petitioners would state that the Petitioners in W.P(MD)NO.24395 of 2019 have made statutory applications seeking for permanent status before the second respondent on 17.10.2019 enclosing all the documents including their appointment orders. But the said applications were returned calling upon them to furnish the particulars that they have been in continuous service from 1.9.1994. Thereafter, it appears that both the Writ Petitioners have presented their applications through their Advocate on 25.01.2000.

6.The learned counsel appearing for the Writ Appellant as well as the Writ Petitioners would only submit that it would suffice if the Assistant Commissioner of Labour, Thanjavur, Thanjavur District/the first respondent in W.P(MD)No.24395 of 2019 shall consider the statutory applications filed by the Petitioners seeking conferment of permanent status under the Provisions of the Tamil Nadu Industrial Establishments(Conferment of Permanent Status to Workmen)Act, 1981 and dispose of the same within the reasonable time fixed by this Court.

7.In view of the above-said submission, this Court without going into the merits of the matter, directs the first respondent in W.P(MD)No.24395 of 2019 to consider the statutory applications submitted by the Petitioners, dated 17.10.2019 and dispose of the



same in accordance with the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 within a period of two months from the date of receipt of a copy of this order.

8. With the above direction, W.P(MD) No. 24395 of 2019 stands disposed of. In view of the order passed in W.P(MD) No. 24395 of 2019, no separate orders are necessary in W.A(MD) No. 31 of 2012 and W.P(MD) No. 12755 of 2010 and accordingly, both the above Writ Appeal as well as the Writ Petition stands closed. Till passing of such orders in the statutory applications submitted by the Petitioners, as stated supra, the service of the Petitioners shall be continued. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Vsn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Assistant Commissioner of Labour,
Thanjavur,
Thanjavur District.
2. The Registrar of Cooperative Societies,
Thanjavur.
3. The Joint Registrar of Cooperative Societies,
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Z-502, Inam Arulmozhipettai Tenant Cooperative Farming
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Marketing Society Limited,
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8.The Managing Director/CSR,
T.475, Thanjavur Agriculture Producers Cooperative
Marketing Society Limited,
Thanjavur District

+1 CC to Mr.N.SIVAKUMAR, Advocate (SR-7948[F] dated 01/03/2021)

+1 CC to SPL GP (SR-8424[F] dated 03/03/2021)

COMMON JUDGMENT MADE IN

W.A(MD)NO.31 OF 2012

and

W.P(MD)Nos.12755 of 2010 and

24395 of 2019

and

M.P(MD)Nos.1 of 2010 and

1 and 2 of 2012

01.03.2021

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