



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

Writ Petition (MD)No.13966 of 2011

and

M.P. (MD) .No.1 of 2011

Palanatham Primary Agricultural
Co-operative Credit Society Limited,
represented through its Special Officer,
Vedasandur,
Dindigul District. ... Petitioner

Vs.

1.R.Ponnusamy

2.The Appellate Authority under the
Shops and Establishments Act
(Deputy Commissioner of Labour.
Dindigul). ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the order dated 21.10.2011 passed by the second respondent in TNSE No.6 of 2011 and quash the same.

For Petitioner : Mr.V.O.S.Kalaiselvam
For R1 : Mr.T.Lenin Kumar

O R D E R

This writ petition has been filed challenging the impugned order passed by the second respondent in TNSE No.6 of 2011, dated 21.10.2011 and to quash the same.

2. The petitioner is the Primary Agricultural Co-operative Credit Society Limited. The first respondent was never appointed as an employee of the petitioner Society and he was engaged by the salesman of the fair price shop, for his convenience. The claim of the first respondent is that he was appointed as Packer in the year 1994, in the petitioner Society and in the year 2010, he was given promotion as in-charge Manure Salesman. Thereafter, he was orally terminated from service on 23.11.2010. Challenging the said oral termination, the first respondent filed a petition before the second respondent under Section 41(2) of the Shops and Establishments Act. The second respondent arrived at a conclusion that there was a resolution in favour of the first respondent, appointing him as
~~Manure Salesman~~ and the resolution was not cancelled. Further, the



resolution itself reveals that the first respondent was initially appointed as Packer and subsequently, he was given in-charge as Manure Salesman, in view of the best service rendered by the first respondent and he continued the service for more than 14 years. Therefore, the second respondent has set aside the oral termination order dated 23.11.2010 and ordered for reinstatement in TNSE No.6 of 2011, dated 21.10.2011. Challenging the same, the present writ petition has been filed by the petitioner Society.

3. Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner Society would submit that in order to prove the case, the first respondent marked Exs.P1 to P12 and on the above said documents, few documents reveal that the first respondent was appointed as Manure Salesman and as per Exs.M1 and M2, he was given in-charge as Salesman. However, the first respondent claimed that he was appointed as Packer in the year 1994. But, no appointment order was produced before the second respondent, in order to prove that he was in employment right from 1994 and his appointment was made in accordance with the Co-operative Societies Act and Bye Laws. Ex.P12 reveals that the first respondent was appointed as Salesman and there is no record available for the first respondent's employment in the year 1994. Further, on 25.08.2010, he was given in-charge as Salesman in Vaigai Angadi and subsequently, the said resolution was cancelled and without considering the same, the second respondent has passed the order in favour of the first respondent, which is not sustainable one. Accordingly, he prayed for allowing of this writ petition.

4. The learned counsel appearing for the first respondent workman would fairly submit that except the resolution, no other document available to prove the petitioner's employment from the year 1994 to 2010.

5. Heard the learned counsel for the petitioner, learned counsel for the first respondent and perused the materials available on record.

6. The facts in the present case are not in dispute and the law is well settled that once the authority viz., the Shops Authority arrived at a conclusion, this Court cannot interfere with the same, under Article 226 of the Constitution of India and the re-appreciation is also not permissible. However, in the present case, the first respondent claims that he was appointed as Packer in the year 1994 and he continued in employment up to 2010. Further, the first respondent claims that he was given temporary promotion as Manure Salesman and he received consolidated pay of Rs.25,000/- from the petitioner Society. Thereafter, he was orally terminated from service. However, in order to prove the same, no document was marked.



7. In view of the above, there is no evidence to show that the first respondent was not appointed as per the Co-operative Societies Act and Bye Laws and except the resolution, no other document is marked to prove the first respondent's employment in the petitioner Society from the year 1994 to 2010. Hence, the order of the second respondent is liable to be set aside. Accordingly, the order passed by the second respondent in TNSE No.6 of 2011, dated 21.10.2011, is set aside and the writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

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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

The Appellate Authority under the
Shops and Establishments Act
(Deputy Commissioner of Labour.
Dindigul).

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