



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD) No.3908 of 2011

and

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

WEB COPY

The Special Officer,
A-2253, Madurai Southern Railway Staff
Cooperative Stores Ltd.,
No.149, Railway Colony,
Madurai - 16.

: Petitioner

Vs.

1.The Appellate Authority under the
Tamil Nadu Shop and Establishment Act,
(Deputy Commissioner of Labour),
K.K. Nagar, Madurai - 20.

2.M.Muthuramalingam

: Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records from the first respondent's impugned order made in Case No.T.N.S.E.26/2009, dated 14.12.2010 and quash the same as illegal.

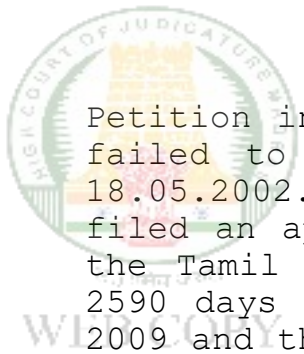
For Petitioner : Mr.R.Saravanan

For Respondent 2 : Mr.T.Ravichandran

ORDER

This Writ Petition is filed challenging the order of the first respondent dated 14.12.2010 allowing the appeal preferred by the second respondent.

2.The case of the petitioner is that though the petitioner is registered under the Tamil Nadu Cooperative Societies Act, the store having special bye-laws in connection with service conditions with the employees of the petitioner's store under Rule 149 of the Tamil Nadu Cooperative Societies Rule, 1988. The petitioner further averred that if any appointment is made in the petitioner's society, the society has to get prior permission from the Cooperative Department as per the Special Bye-Law of the Society and Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988. However, the second respondent was appointed as a packer on daily wages in the petitioner's store on 10.01.2000 by the erstwhile Management without getting prior permission from the Cooperative authority in terms of Rule 149 of the Tamil Nadu Cooperative Societies Rules. As the second respondent's appointment being the illegal appointment, the petitioner society issued a show cause notice on 01.10.2001. As against the show cause notice, the second respondent filed a Writ



Petition in W.P.No.38674 of 2002 and the same was dismissed and he failed to submit explanation, he was dismissed from service on 18.05.2002. As against the order of dismissal, the second respondent filed an appeal before the first respondent under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 with a delay of 2590 days and the same was taken on file as T.N.S.E. I.A. No.5 of 2009 and the same was allowed on 08.12.2009 at the cost of Rs.200/- and the main appeal was numbered as T.N.S.E. No.26 of 2009 and the first respondent set aside the dismissal order dated 18.05.2002 made in T.N.S.E. No.26 of 2009 dated 14.12.2010. Challenging the same, the petitioner has filed the present Writ Petition.

3.The learned Counsel appearing for the petitioner would submit that though the petitioner's society is governed by Tamil Nadu Cooperative Societies Act and the Rules made thereunder, as per Rule 149, any appointment has to be made with the prior consent of the Registrar. In the present case, the second respondent's appointment was made by the erstwhile Management of the Board contrary to the said Rule and hence, the order of termination was passed and without considering the legal position, the authority under Tamil Nadu Shop and Establishment Act had entertained the petition and passed an award which is unsustainable one. The learned Counsel appearing for the petitioner's society would submit that the very same issue came up for consideration before this Court in **Justin's case** in W.A.Nos.2501 and 2501 of 2001 relates to irregular appointment made without sponsoring from Employment Exchange and without following the Rule 149 of the Tamil Nadu Cooperative Societies Rules, such appointment can be invalidated. Accordingly the all those Writ Petitions filed by the employees whose appointment was illegal was set aside.

4.Learned Counsel appearing for the second respondent would submit that the order of dismissal is *non est* in law after elaborate adjudication and perusal of the entire records the trial Court passed the order in favour of the second respondent which cannot be interfered with.

5.This Court paid its careful consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record.

6.As the petitioner's society is governed by Tamil Nadu Cooperative Societies Act and the Rules made thereunder, as per Rule 149, any appointment has to be made with the prior consent of the Registrar. In the present case, the second respondent's appointment was made by the erstwhile Management of the Board contrary to the said Rule and hence, the order of termination was passed and without considering the legal position, the authority under Tamil Nadu Shop and Establishment Act had entertained the petition and passed an award which is unsustainable one. Further, the similar issue has



been considered by this Court in **Justin's case** in W.A.Nos.2501 and 2501 of 2001 which relates to irregular appointment made without sponsoring from Employment Exchange and without following the Rule 149 of the Tamil Nadu Cooperative Societies Rules, such appointment can be invalidated. The Hon'ble Supreme Court also in the case of **A.Uma Rani vs. Registrar, Cooperative Society and others** reported in (2004) 7 SCC 112 held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised. Therefore, this Court is of the view that the first respondent has not considered the fact that the second respondent's appointment was not as per the Rule 149 of the Tamil Nadu Cooperative Societies Rules. Hence, the order passed by the first respondent in T.N.S.E. No.26 of 2009 dated 14.12.2010 is liable to be quashed and accordingly, quashed.

7.In the result, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Appellate Authority under the
Tamil Nadu Shop and Establishment Act,
(Deputy Commissioner of Labour),
K.K. Nagar, Madurai - 20.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-611[F] dated 08/01/2021)

W.P (MD)No.3908 of 2011
07.01.2021

MJ(CO)

KB(11.02.2021) 3P 3C