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W.P.No. 32779 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 31.10.2022**

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**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P.No. 32779 of 2018**

**and**

**W.M.P.Nos.37993 & 37947 of 2018**

T. Gobinath

... Petitioner

Vs.

1. The Joint Registrar of Cooperative Societies,  
Erode Circle, Erode.
2. The Management of AA 526 Kinipalayam Primary  
Agricultural Cooperative Credit Society,  
Vijayamangalam Post,  
Perundurai Taluk, Erode District.

... Respondents

**Prayer:** Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the second respondent in nil proceedings dated 16.08.2018 and the order of the first respondent made in Na.Ka.No. 6299/2018/Sa.Pa. Dated 19.09.2018, to quash the same and to consequently direct the respondents to forthwith implement the order of regularization by the second respondent made with effect from 23.01.2014 with all attendant and service benefits arising thereto.

For Petitioner  
For Respondents

: Mr. L. Chandrakumar  
: Mr. R.P. Murugan Raja  
Government Advocate  
for R1 and R2



**ORDER**

The cancellation of permanent absorption of the writ petitioner as Jewel Appraiser, is under challenge in the present writ petition.

2. The petitioner states that he was appointed as jewel appraiser, in the second respondent society, initially on consolidated pay basis. He filed a petition before the Inspector of Labour under Section 3 of the Conferment of Permanent Status Act and the Labour Inspector, Erode, allowed the petition, since the petitioner completed 480 days of service. Based on the order of Inspector of Labour, under the provisions of the Conferment of Permanent Status Act, the Board of the second respondent society passed a resolution and consequently, the petitioner was permanently absorbed as jewel appraiser in the society. Subsequently, without any show cause notice and opportunity to the writ petitioner, the impugned order dated 16.08.2018 has been issued, canceling the permanent absorption made, pursuant to the orders passed by the Inspector of Labour, under the provisions of Conferment of Permanent Status Act. Thus, the petitioner is constrained to move the present writ petition.



3. The learned counsel for the petitioner states that the impugned order of cancellation of permanent absorption was issued without any show cause notice and opportunity to the petitioner and thus the impugned order is in violation of the principles of natural justice.

4. That apart, the petitioner is fully qualified as per the by-laws of the second respondent society and there is no impediment for the authorities to absorb him in permanent post of jewel appraiser.

5. The learned counsel appearing on behalf of the respondents objected the said contention by stating that the petitioner was not appointed in accordance with the provisions of the Tamil Nadu Cooperative Societies Act and Rules. He was appointed without reference to the District Employment Exchange and thus the initial appointment of the writ petitioner was irregular and thus, he is not entitled for the permanent absorption.

6. The issue to be considered is whether the order passed by the Inspector of Labour can be the basis for permanent absorption of the petitioner as jewel appraiser in the second respondent society.



7. The Tamil Nadu Cooperative Societies Act, is a Special Act governing the service conditions of its employees. Rule 149 of the Tamil Nadu Societies Rules contemplates procedures to be followed for appointment of employees in a cooperative societies and based on the Rules, Special by-laws are approved in Cooperative societies and such approval are accorded by the competent authorities of the Cooperative Department under the Act. Thus, the Special Law governing the recruitment and service conditions would prevail and the general law cannot be applied in the cases of the employees of the cooperative societies. When the Special Rules governing the service conditions are available under the Tamil Nadu Cooperative Societies Act, Rules and the by-laws, the petition filed before the Inspector of Labour under the provisions of Conferment of Permanent Status Act is not entertainable.

8. That apart, even in case, an order has been passed by the Inspector of Labour, the same cannot be implemented without adjudicating the issues on merits before the competent forum. The principles in this regard are settled by the Courts. When the Inspector of Labour without adjudication, passing an order granting permanent status, such orders cannot be implemented strictly for providing the benefit of permanent status to an



employee and such orders must be further adjudicated before the competent forum to establish that particular employee is entitled for permanent absorption in accordance with the statute and Rules in force. Thus, the award of the Inspector of Labour cannot be the basis for granting permanent absorption and the Board has committed an error in permanently absorbing the writ petitioner.

9. That apart, the issue regarding the irregular appointment in cooperative societies was elaborately adjudicated by the Hon'ble Division Bench of the High Court of Madras in the case of ***L. Justin vs Registrar of Cooperative Societies, reported in 2002 (4) CTC 385*** and the Hon'ble Division Bench directed the Registrar of Cooperative Societies to consider the cases on individual basis and extend the benefit of permanent absorption or regularisation, as the case may be, in accordance with the provisions of the Rules and the By-laws, as well as the guidelines issued by the Hon'ble Division Bench in the ***Justin's case***. Thus, the authorities competent ought to have followed the directions issued by the Hon'ble Division Bench in ***Justin's case***, which was subsequently confirmed by the Hon'ble Supreme Court of India in the case of ***A.Umarani vs Registrar, Co-operative Societies***, dated 28.07.2004 and issued appropriate orders in the matter of



permanent absorption.

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10. Beyond all this, in the present case, the impugned order of cancellation of permanent absorption was made without even issuing show cause notice to the petitioner. Thus, the order impugned is in violation of the natural justice.

11. The learned counsel for the petitioner made a submission that the petitioner is now working as consolidate pay salary employee in the post of jewel appraiser. Therefore, setting aside the impugned order may not be required. However, his case for permanent absorption is to be reviewed by the competent authorities with reference to the principles considered by this Court in the above paragraphs. Thus, the petitioner may be allowed to continue as consolidated pay salary employee in the second respondent society, till such time, the issues regarding the permanent absorption are decided by the competent authorities.

12. In view of the facts and circumstances, the first respondent is directed to issue a show cause notice to the writ petitioner and by providing opportunity, take a appropriate decision on merits and in accordance with



law, as expeditious as possible. The writ petition stands disposed of.

Consequently, connected miscellaneous petitions are closed.

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**31.10.2022**

mrn

Index : Yes / No

Speaking order / Non-Speaking order

To

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**S.M.SUBRAMANIAM, J.**



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