



W.P.(MD)No.14779 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)No.14779 of 2013**

The Administrator,  
T.1727 Punavasal Primary Agricultural Co-operative  
Bank Limited, Punavasal 613 204,  
Thiruvaiyaru Taluk,  
Thanjavur District.

... Petitioner

vs.

1. The Presiding Officer,  
Labour Court,  
Cuddalore.

2. R.Manthirakavi

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1<sup>st</sup> respondent relating to the Award in I.D.No.21 of 2000 dated 21.02.2013 and quash the same.

|                |                 |
|----------------|-----------------|
| For Petitioner | : No appearance |
| For R-1        | : Court         |
| For R-2        | : M/s.D.Geetha  |



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## **ORDER**

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order, dated 21.02.2013 passed by the 1<sup>st</sup> respondent in I.D.No.21 of 2000.

2(i). The brief facts of the case are that the petitioner Society is primarily engaged in financing agricultural operations in and around Thiruvaiyaru Taluk. The society is also engaged in running Ration Shop (Anganvadi) at Punavasal and engages one person for running the ration shop. Presently one S.Sundararaman is working as a Salesman, who is a regularized permanent employee. Earlier, the ration ship was running by engaging casual worker. The second respondent was one among the persons who was engaged purely on casual basis and paid lastly at the rate of Rs.40/-per day. As and when occasion arises and when there was need for casual employee, the 2<sup>nd</sup> respondent was engaged on daily wage basis. The contract of employment between the petitioner and the 2<sup>nd</sup> respondent was on day-to-day basis. Hence, the 2<sup>nd</sup> respondent is not entitled to any pay scale or increment and other benefits, which is applicable to permanent employees only.



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2(ii). Moreover, the 2<sup>nd</sup> respondent was not recruited through Employment Exchange or not through advertisement and not through any notice, affixed in the notice board. The 2<sup>nd</sup> respondent was not appointed by any of the Special Officer. As per Rule 149 of the Tamil Nadu Cooperative Societies, 1988, *'if the recruitment is not occurred under 149 of the aforesaid Rule, the person is not entitled for regularization.'* The second respondent has worked for a period from 01.07.1994 to 21.05.1997. He was not engaged continuously throughout the period. In fact, during the last 12 months from 01.06.1996 to 21.05.1997, the 2<sup>nd</sup> respondent has worked less than 240 days. Thereafter, from 22.05.1997 onwards, the 2<sup>nd</sup> respondent deserted from the casual work and therefore he was not employed from 21.05.1997 onwards.

2(iii). Moreover, the 2<sup>nd</sup> respondent's appointment was also not against any sanctioned post and there was also no approval of the Registrar of Co-operative Societies. Therefore, the 2<sup>nd</sup> respondent is not entitled to any relief. All the vouchers, wherein all payments made which would show the dates and attendance as well as the non-attendance period. These factors were not dealt with



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by the Labour Court. Therefore, the writ petitioner society prays to allow this Writ Petition.

3. The contention of the 2<sup>nd</sup> respondent is that, he was working as a Salesman and the petitioner society did not allow the 2<sup>nd</sup> respondent to attend duty. The 2<sup>nd</sup> respondent was earlier dismissed from service without any notice, without any charge memo, without any enquiry and without any payment of compensation. The 2<sup>nd</sup> respondent requested the petitioner to give employment, but the petitioner society refused to give employment. Hence, the 2<sup>nd</sup> respondent has raised an industrial dispute before the Labour Court and failure report was filed on 28.08.1998. The said industrial dispute was filed against the order of dismissal dated 26.05.1997, prayed to reinstate with continuity of service, back wages and other attendant benefits. The Labour Court after perusing the records has decided that the 2<sup>nd</sup> respondent was entitled for reinstatement only. A criminal case was filed against the 2<sup>nd</sup> respondent. As per Ex.W.12/Judgment in S.C.No.74 of 1999 on the file of the learned Principal Assistant Sessions Judge, Thanjavur, the 2<sup>nd</sup> respondent was acquitted from the charges framed against him. The petitioner/Management contended that the 2<sup>nd</sup> respondent has committed



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misappropriation of funds and hence, he was dismissed from service. Since the petitioner/Management has not filed any documents to prove that the 2<sup>nd</sup> respondent has committed misappropriation of funds during his service he was acquitted in the criminal case.

4. The contention of the petitioner/Management is that the appointment of the 2<sup>nd</sup> respondent is against the Rules stated in the Co-operative Societies Act. Since the 2<sup>nd</sup> respondent was worked as a Casual labour the Management took a stand that he was not engaged any permanent post.

5. Heard M/s.D.Geetha, learned counsel appearing for the second respondent. The learned counsel appearing for the petitioner/Management has reported no instructions. Though, notice has been served to the petitioner/Management and their name was also printed in the cause list, the petitioner/Management has not taken any steps to appear before this Court either in person or through any counsel.



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6. On perusal of the records and the affidavit filed by the Writ petitioner as well as the petition filed before the Labour Court and considering the rival submissions made by the 2<sup>nd</sup> respondent, this Court passes the following order.

7. The 2<sup>nd</sup> respondent was permitted to carry on work of Salesman, however, the appointment was not through proper recruitment process. Admittedly, there was no advertisement or the list was not called for from the Employment Exchange. Moreover, the contention of the Petitioner is that there was no sanctioned post also. The petitioner is running a ration shop for which the 2<sup>nd</sup> respondent was engaged a Casual Labour on day-to-day basis. The 2<sup>nd</sup> respondent has put service from 01.07.1994 to 21.05.1997 and even during this period, the 2<sup>nd</sup> respondent was not continuously engaged. A specific plea was raised by the petitioner/management that from 01.06.1996 to 21.05.1997, the 2<sup>nd</sup> respondent was engaged that too which is less than 240 days. From 22.05.1997 onwards the 2<sup>nd</sup> respondent has worked as a Casual worker. Thereafter, he was not reported to duty. Even though, the petitioner had not taken the plea of misappropriation in the writ petition, the said plea was taken before the Labour



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Court and has submitted that the 2<sup>nd</sup> respondent was charged for misappropriation and criminal case was initiated, subsequently, it was ended in acquittal.

8. The 2<sup>nd</sup> respondent being a Casual employee he may be entitled for regularization only if the he had put in service for more than 10 years. Since the 2<sup>nd</sup> respondent has put in three years of service only, he is not entitled for regularization. Moreover the 2<sup>nd</sup> respondent has filed I.D.No.21 of 2000 before the Labour Court, after lapse of three years

9. In view of the foregoing reasons, this Court is directing the Petitioner/Management to engage the 2<sup>nd</sup> respondent as a Temporary employee itself and also submit proper proposal to the Government for approval of post and approval of appointment. Since it is directed to engage the petitioner as temporary employee, there is no question of continuity of service. The 2<sup>nd</sup> respondent is not working from 1997 onwards, he is not entitled for any back wages under the principle of “No work No pay”.



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10. With the directions, this Writ Petition is disposed of. No Costs.

Index : Yes / No  
Internet : Yes  
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To

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**S.SRIMATHY, J**

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