



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD)Nos.568 to 570 of 2022

and

C.M.P(MD)Nos.4924, 4926 and 4927 of 2022

S.Santhakumar Rajasingh	: Appellant/2 nd Respondent in W.A(MD)No.568 of 2022
M.Visuvasam Samuelraj	: Petitioner/Appellant in W.A(MD)No.569 of 2022
P.T.Alwan	: Appellant/2 nd Respondent in W.A(MD)No.570 of 2022

Vs.

1.Q.212, The Nazareth Urban Cooperative Bank Limited,
represented by its Managing Director,
Nazaret, Thoothukudi District.

... 1st Respondent/Writ petitioner

2.The Assistant Commissioner of Labour (in-charge),
Authority under the Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workman)
Act, 1981, Thoothukudi.

3.The Deputy Registrar,
Cooperative Society, Tiruchendur.

: Respondents 2 & 3/Respondent 1 & 3
in all cases

Common Prayer: Writ Appeal filed under Clause 15 of the Letter
Patent to set aside the common order, dated 25.01.2022 made in W.P
(MD)Nos.9572 to 9574 of 2018.

Prayer in WP(MD). 9572/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorari to call for the records relating to the impugned order
passed by the first respondent vide No.Na.Ka.E/969/2018 dated
22.03.2018 and quash the same.

Prayer in WP(MD). 9573/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ of
certiorari to call for the records relating to the impugned order
passed by the first respondent vide No.Ka.E/970/2018 dated
22/03/2018 and quash the same .



Prayer in WP(MD). 9574/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorari to call for the records relating to the impugned order passed by the first respondent vide No.Na. Ka.E/971/2018 dated 22.03.2018

For Appellants :Mr.D.Saravanan
For Respondents :Mr.J.Ashok
Additional Government Pleader
(in all cases)

COMMON JUDGMENT

(Common Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

As against the common order passed by the learned Single Judge in the Writ Petitions in W.P(MD)Nos.9572 to 9574 of 2018, filed by the first respondent herein, the above Writ Appeals are filed.

2.Heard Mr.D.Saravanan, learned Counsel for the appellants and Mr.J.Ashok, learned Additional Government Pleader, who takes notice on behalf of respondents. By consent of both parties, these Writ Appeal are taken for final disposal at the admission stage itself.

3.The appellants herein have been appointed as Agents in the first respondent Cooperative Bank on temporary basis to canvass deposits. It is admitted that the appellants are paid on commission basis as a percentage, ie., 2.5% of the total collection of the deposits collected by them. It is admitted that no Rules or regulations have been prescribed or followed by the Bank in appointing the Agents, as compared with the procedure that is being followed while recruiting the regular employees of the Cooperative Banks.

4.Though the appellants are paid commission, no fixed commission or amount is paid to the appellants and it is admitted that their remuneration fluctuates depending upon the collections made by them. Though they are entitled to provident fund benefits in terms of the Employees Provident Fund Act, 1952, and a matching contribution is made by the respondents, it is the case of the Cooperative Bank that will not help the appellants to claim either permanency or regularisation, as a regular employee of the Cooperative Bank.



5.The appellants filed batch of Writ Petitions for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 from interfering with the appellants' functioning as Assistants in the first respondent Bank pursuant to the appellants' appointment, dated 27.03.2018 and to direct the Cooperative Bank to pay salary in the post of Assistant with effect from 28.03.2018.

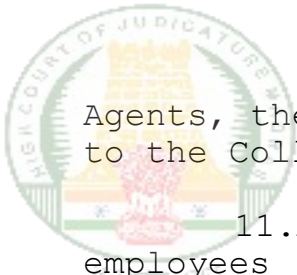
6.Earlier, the appellants have filed applications before the Authority under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981, to regularise their service in the post of Assistant. Though the Assistant Commissioner of Labour allowed the applications filed by the appellants, the respondent Bank filed three Writ Petitions in W.P(MD)No.9572 to 9574 of 2018 before this Court challenging the individual orders passed in favour of the appellants in the respective applications.

7.The learned Single Judge of this Court, while dismissing the Writ Petitions filed by the appellants, allowed the Writ Petitions filed by the Cooperative Bank. As regards the status of the appellants, the learned Judge has expressed in categorical terms that the Collection Agents do not fall under the definition of employee for the purpose of confirmation of permanency status and that therefore, the question of regularisation does not arise.

8.The learned Judge also relied upon a judgment of this Court in the case of **Indian Overseas Bank vs Workmen**, reported in **2006 (3) SCC 729**, in the context of considering similar issue in the case of Jewel Appraisers appointed by M/s.Indian Overseas Bank. Considering the fact that there is no qualification or age limit prescribed for the post of Jewel Appraiser and they are engaged by the local Manager and other factors, such as the Jewel Appraisers are entitled only to the commission as fixed, the Division Bench of this Court, in the case relied upon by the learned Single Judge, held that the Jewel Appraisers engaged by the Banks are not employees of the Bank and that therefore, they are not entitled to be considered for regularisation in a regular time scale.

9.In the present case also, there is no qualification prescribed for the Collection Agents and they are engaged by the local Manager purely on commission basis. It is to be noted that no fixed working hours is prescribed for the Collection Agents and no guaranteed payment or remuneration apart from the commission agreed upon, is paid to the Collection Agents. There is no disciplinary control applying the regular provisions of the statutes, which are applicable to the regular employees of the Cooperative Banks. No fixed wages are fixed or paid to the Collection Agent.

10.Above all, there is no age limit prescribed for the Collection Agents. Since local people are engaged, as Collection



Agents, there is no provision or Special Rules, which are applicable to the Collection Agent, regarding transfer.

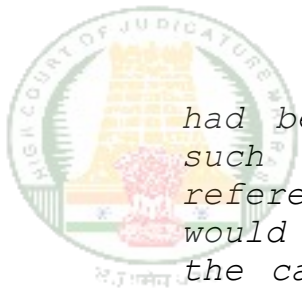
11.Above all, the Collection Agents are not full time employees of the Co-operative Bank, as there is no bar or Rules prescribed against them to engage in any other avocation or occupation or business. Therefore, this Court is unable to find any irregularity in the decision of the learned Single Judge holding that the appellants are not entitled to get the benefit of permanency status under Section 4 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981.

12.Above all, the Act does not confer any power on the Authority to regularise the service of anyone. In the present case, the appellants claiming the status, as if they are the employees of respondent Bank, as Assistants, as if they are drawing salary applicable to the post of Assistant. Their claim was that they should be allowed to continue as Assistant. Though the Writ Petitions filed by the appellants for issuance of Writ of Mandamus to protect their service as Assistant, were dismissed, after allowing the Writ Petitions filed by the Cooperative Banks, the appellants have allowed the order of learned Single Judge to become final, as they have not filed any Writ Appeal challenging the said order. Therefore, the present appeals are also barred by applying the principles of *constructive res judicata*.

13.Above all, the request of the appellants in the Writ Petitions and their case in defence to defend the order passed by the Authority under the Act giving permanency status and regularisation of the service of the appellants, is illegal and unreasonable, and therefore, the appeals are liable to be dismissed.

14.The learned Counsel for the appellants relied upon a judgment of Honourable Supreme Court in the case of **Indian Banks Association vs Workmen of Syndicate Bank and others**, reported in **(2001) 3 SCC 36**. The said judgment is against the proposition submitted by the learned Counsel for the appellants and not supporting the case of the appellants. As a matter of fact, while considering whether the Collection Agents or Deposit Collectors employed in a specified bank are entitled to pay scale, allowances and other service conditions available to regular employees of those Banks, the Honourable Supreme Court upheld the order of High Court setting aside the Industrial Tribunal's direction regarding absorption. Paragraph 28 of the said judgment is relevant and the same is extracted below for proper understanding:

"28.Mr.Nageshwar Rao is right in his submission that the concession was not binding on his clients. However, what has been conceded has been correctly conceded. No question arose of directing absorption of the Deposit Collectors as regular workmen. No such demand



had been made and, therefore, there could have been no such direction. Such directions were beyond the reference. Even otherwise, the question of absorption would be fully covered by an authority of this Court in the case of Union of India v.K.V.Baby. In this case, it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. It has been held that the mode of selection and qualification are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, not only are the modes of selection and qualifications not comparable, but even the work is not comparable. The work which the Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks."

15.In view of the judgment of the Honourable Supreme Court, this Court is unable to consider any of the submissions of the learned Counsel for the appellants challenging the order of the learned Single Judge. Hence, these Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

cmr

To

The Assistant Commissioner of Labour (in-charge),
Authority under the Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workman)
Act, 1981, Thoothukudi.

+1 CC to M/s.D. SARAVANAN, Advocate (SR-27586[F] dated 23/06/2022)
+1 CC to M/s.SPL.GP (SR-27802[F] dated 23/06/2022)

W.A(MD)Nos.568 to 570 of 2022
21.06.2022

SS/08/07/2022/ 5P 4C