



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.21479 of 2015

and

M.P. (MD) .No.1 and 2 of 2015

Y-58 Parapattu Primary Agricultural
Co-operative Credit Society,
Represented through its
President S.Thangamani,
Manavalakurichy Post,
Kanyakumari District - 629 252.

... Petitioner

Vs.

1.The Inspector of Labour,
Authority under Tamil Nadu Industrial Establishments,
(Conferment of Permanent Status to workmen) Act,
Office of Inspector of Labour,
Nagercoil, Kanyakumari District.

2.M.James Robert

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order cum directions of the first respondent in reference Na.Ka.No.1360/2014 dated 31.12.2014 and quash the same and to issue such other appropriate directions or orders to the first respondent.

For Petitioner : Mr.G.Manivannan

For R-1 : Mr.N.Ramesh Arumugam,
Government Advocate (Civil Side)

For R-2 : Mr.Jerin Mathew,
For M.E.Ilango



ORDER

The Credit Society has filed this Writ Petition to quash the order of the Inspector of Labour dated 31.12.2014 granting permanency to the second respondent.

WEB COPY

2. The second respondent was one of the salesman in the said Society. The second respondent was not appointed through any recruitment formalities and his recruitment was cancelled on 01.01.2000. But, subsequently he was re-appointed on 10.07.2000. The contention of the Society is that though the second respondent was an irregular appointee he was paid delay wages and he is entitled to the benefit of time scale if the irregular appointment is made between 08.07.1980 and 12.03.2001. The said benefit was extended to the second respondent but one of the condition stated in proceedings dated 21.08.2008 is that such time scale of pay will not confer regularization on par with regular employees. The second respondent accepting the said condition have given an affidavit dated 29.12.2009. The second respondent filed an application before the first respondent on 21.07.2014 under Section 5 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to workmen) Act with a prayer seeking direction to the petitioner society to make the second respondent as permanent sales man with a time scale of pay.

3. The contention of the petitioner is the second respondent was paid basic DA and HRA for the irregular appointee only. The conferment of permanency status is not applicable as there was never more than 10 employees in the society. However, the first respondent did not consider the contention of the petitioner and directed the petitioner's Society to confer permanency status to the petitioner from the date of appointment. Aggrieved over the same, the present Writ Petition is filed. The second respondent has not filed any counter but relied on the averments stated in the petition before the Labour Officer.

4. Heard Mr.G.Manivannan, learned counsel for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate (Civil Side) for the first respondent and Mr.Jerin Mathew, learned counsel for M.E.Ilango appearing for the second respondent.

5. The second respondent is graduate in a regular stream and also completed Diploma in Co-operative Society. The second respondent was appointed as salesman under daily wages in the petitioner's Society on 07.05.1997 through Resolution No.12 and the second respondent is working for more than 17 years without any break. The petitioner was not employed through Employment Exchange and other recruitment formalities was not followed. Therefore, the petitioner's Society has not granted any regularization to the second respondent. It is seen from the records that in the year



regular scale of pay, are declared to have satisfied the substantial/mandatory qualification prescribed under Rule 149(1) of the Rules;

b. The appointments not being sponsored by the employment exchange, as prescribed under Rule 149(2) of the Rules, will only make the appointments irregular and not illegal;

c. All those Petitioners/Respondent Employee, as the case may be who have fulfilled the criteria stipulated in Clause (a), shall be regularised by the Respondents by issuing appropriate proceedings within a period of 8 weeks from the date of receipt of copy of this Order by taking the cut-off date as 12.03.2001;

d. The regularization of service of the Petitioners/Respondent Employee, as the case may be will not entail them with any additional monetary benefits except the consequential benefits which flows from such regularization; and e. The benefit of regularization that is extended to the eligible Petitioners/Respondent Employee, as the case may be shall also be extended to all those employees who are similarly placed even though they have not knocked the doors of this Court.

Accordingly, the batch of writ petitions are disposed of. No costs. Consequently, all the connected miscellaneous petitions are closed."

7. Therefore, this Court is of the considered opinion that since the Government itself has come out with the circular, the petitioner is entitled to regularization. Therefore, the respondents are directed to regularize the service of the petitioner as stated in Circular No.7. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

8. With this direction, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

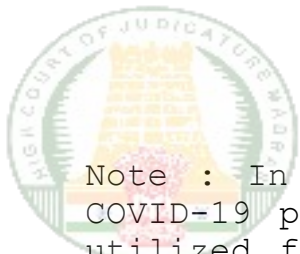
Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr



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 Inspector of Labour,
Authority under Tamil Nadu Industrial Establishments,
(Conferment of Permanent Status to workmen) Act,
Office of Inspector of Labour,
Nagercoil, Kanyakumari District.

W.P. (MD) .No.21479 of 2015

04.03.2022

MGJ(24.03.2022) 5P 2C