



W.P(MD)Nos.22888 and 23466 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.22888 and 23466 of 2019

and

W.M.P.(MD)Nos.19639 of 2019, 3792 of 2020 and 2509 of 2021

W.P.(MD)No.22888 of 2019:-

O.726 Prakasapuram Co-Operative Urban Bank Ltd.,
Rep.By its Managing Director,
26, Main Road, Prakasapuram -628 616,
Thoothukudi District.

... Petitioner

Vs.

1.The Inspector of Labour,
Authority Under the Tamilnadu Industrial
Establishment (Conferment of Permanent
Status to Workmen) Act 1981,
Tuticorin.

2.Thanasingan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order in Na.Ka.No.E/813/2019 dated 09/07/2019 passed by the 1st respondent and quash the same as illegal.

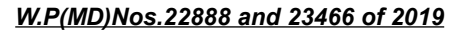
For Petitioner : Mr.M.Jerin Mathew

For Mr.M.E.Ilango.

For Respondents : Mr.M.Senthil Ayyanar,

Govt. Advocate for R1.

Mr.K.Anand for R2.



P.Thanasingan

... Petitioner

Vs.

1. The Registrar of Co-Operative Societies,
No.170, E.V.R.Periyar High Road,
Kilpauk, Chennai- 600 010.
2. The Joint Registrar of Co-Operative Societies,
No.39, BDR Naidu Street, (First Floor),
Thoothukudi District.
3. The Inspector of Labour/ Authority Under Tamil Nadu
Industrial Establishment (Conferment of
Permanent Status of Workmen) Act 1981,
Korapallam, Thoothukudi District.
4. The Managing Director,
Prakasapuram Urban Co-Operative Bank,
Prakasapuram, Thoothukudi District.

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, Directing the 4th respondent / Prakasapuram Urban Co-Operative Bank, Prakasapuram, Thoothukudi District to implement the speaking order passed by the Labour Inspector/Authority Under Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workman) Act, 1981, Thoothukudi District vide No.E/813 on 09.07.2019 who has also reconfirmed the earlier order passed by him vide No.1413/2013 on 29.08.2013 regularizing the petitioner's service as permanent status of employment with effect from 02.06.2005 as the petitioner was employed by the 4th respondent Bank as worker and engaged on clerical work predominately, regularly, this Court may also kindly grant all his legitimate back benefits.



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For Petitioner : Mr.K.Anand

For Respondents : Mr.M.Senthil Ayyanar,
Govt. Advocate for R1 to R3.
Mr.M.Jerin Mathew
For Mr.M.E.Ilango for R4.

COMMON ORDER

Heard the learned counsel on either side.

2.The question that arises for consideration is whether P.Thanasingam, who was appointed as Deposit Collection Agent in O.726 Prakasapuram Co-Operative Urban Bank Limited was rightly conferred the status of permanent employee by the competent authority.

3.It is not in dispute that P.Thanasingam was appointed as Deposit Collection Agent by the Special Officer of the Society on 26.10.2010 and he continues to be in the said post even as on date. He filed a petition before the Inspector of Labour, Tuticorin, who is also an authority under Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act 1981 in the year 2013. An award was passed in favour of P.Thanasingam on 29.08.2013. Questioning the same, the Management filed W.P.(MD)No.7455 of 2014. Vide order dated 20.12.2018, the award passed by the competent



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authority was set aside and the matter was remanded to his file to pass an order afresh on merits and in accordance with law. The operative portion of the order is as follows:-

“49. Therefore, to meet the ends of justice, the case is remanded back to the second respondent to pass speaking order on merits within a period of six weeks from date of communication of this order. Needless to state, order shall be passed only after hearing the 1st respondent after following the principles of natural justice. If the petitioner had been indeed employed the first respondent as a workman, he shall be conferred with the status of permanent employment. On the other hand, if the first respondent merely acted as an agent he shall not be conferred with the permanent status.”

4.Following remand, the competent authority once again passed an award dated 09.07.2019 conferring the status of permanent workman of P.Thanasingam. Seeking enforcement of the said award, P.Thanasingam filed W.P.(MD)No.23466 of 2019. Questioning the award, the Management filed W.P.(MD)No.22888 of 2019.

5.The learned counsel for the workman relied on a catena of decisions namely, **(2001) 3 SCC 36 (Indian Banks Association Vs. Workmen of Syndicate Bank and Others)**, the order of the Hon'ble Division Bench in



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W.A.(MD)No.1163 and 1164 of 2016, the order dated 19.02.2021 in W.P.Nos.21440 of 2015 etc batch and the decision reported in 2018-I-LLJ-117 (Management, Salem District Central Co-Operative Bank Ltd. and Others Vs. Inspector of Labour Authority and Others).

6.The learned counsel for the workman submitted that the impugned award deserves to be enforced since P.Thanasingam has put in more than 480 days in twenty-four months. He also pointed out that apart from the job of Deposit Collection Agent, P.Thanasingam is performing the role of Cashier and Assistant after 04.00 pm. He submitted that the writ petition filed by the Management deserves to be dismissed.

7.On the other hand, the learned counsel for the Management as well as the learned Government Advocate for the Cooperative Department submitted that the award passed by the competent authority deserves to be set aside.

8.I carefully considered the rival contentions and went through the materials on record. Let me consider the decisions relied on by the learned counsel appearing for P.Thanasingam. The Hon'ble Apex Court in the decision reported in ***(2001) 3 SCC 36 (Indian Banks Association Vs. Workmen of***



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Syndicate Bank and Others) had only held that a person working as Commission Agents/Deposit Collector of banks has to be considered as workman. The Hon'ble Apex Court in paragraph No.28 had held that there was no question of absorption and there was also no question of the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. This decision in my view does not help the workman. Likewise, the order dated 19.02.2021 in W.P.Nos.21440 of 2015 etc batch also is against the workman. In paragraph No.35, the learned Judge had held that the question of regularizing an appointment would depend on the candidate possessing necessary qualification and falling within the sanctioned strength. Once these aspects are in favour of the employee, the procedural infirmities can always be cured. Thus, the learned Judge had also emphasized that the post should fall within the cadre strength. Of course, the decision of the Hon'ble Division Bench made in W.A.(MD)Nos.1163 and 1164 of 2016 appears to apparently favour the workman. But the said decision is applicable only in the cases of statutory Corporations and Governments. In the case on hand, we are not concerned with the persons working for statutory corporation or a government department. On the other hand, we are concerned with a case of an employee who is serving a Co-operative Society. Therefore, the primary question that would arise is



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whether the position held by the person concerned would fall within the sanctioned strength. The learned counsel for the petitioner relied on the decision made in W.P.(MD)Nos.11571 to 11573 to 2018 etc rendered on 25.01.2022. The said case also pertains to a claim of Deposit Agent for permanent status. Arguments now advanced by the workman were advanced in the said case also. After an elaborate consideration, the learned Judge held that the Mandamus sought for by the Agents cannot be granted. Paragraphs Nos.19, 20, 21 and 22 of the said order read as follows:-

“19. I am thus of the categorical view that the agents do not have attributes of 'employees' and are not 'workman' for the purpose of the CoPS Act. The question of their regularisation thus, does not arise.

20. In light of my conclusion as aforesaid, I need make no reference to the submissions of learned counsel relating to the scourge of back door entrants, turning upon the judgments in A.Uma Rani vs. Registrar of Co-operative Societies (2004(7) SCC 112), L.Justin and another vs. the Registrar of Co-operative Societies (2002(4) CTC 385) and R.Radhakrishnan vs. Deputy Registrar of Co-operative Societies (2007(6) MLJ 455).

21. In light of the discussion as aforesaid, and having arrived at the conclusion that the petitioners are deposit agents, who receive only a percentage of the deposits as commission and who enjoy no master-servant relationship inter se the Bank, the question of regularisation of their services does not arise.



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The conclusion of R1 to the effect that they constitute workman for the purposes of the Conferment of Permanent Status Act is, in my view, contrary to the facts and legal position and is hence, set aside.

22. The Mandamus as sought for by the agents forbearing the Bank from interfering with their services rendered as Assistants cannot be granted and impugned order dated 22.03.2018 is set aside.”

9.The learned counsel for the Management had filed additional typed set of papers indicating that the sanctioned strength of the society is follows:-

The Prakasapuram Cooperative Urban Bank Ltd.,
Staff Strength & Vacant (01.02.2022)

Sl. No	Name of the post	Head Office			Enni			Aathoor			Muthupuram			Meelavittan			Total			
		Approved staff strength	Present strength	Vacant	Approved staff strength	Present strength	Vacant	Approved staff strength	Present strength	Vacant	Approved staff strength	Present strength	Vacant	Approved staff strength	Present strength	Vacant	Approved staff strength	Present strength	Vacant	Forward
1	General Manager	1	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	
2	Asst. General Manager	1	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	
3	Manager	2	1	1	1	0	1	1	0	1	1	0	1	1	0	1	0	5	0	
4	Asst. Manager	1	0	1	0	1	0	0	0	0	1	0	1	0	0	3	1	2	0	
5	Assistant	6	4	2	3	1	2	2	2	0	3	1	2	2	0	10	10	0	0	
6	Jewel Appraiser	1	1	0	1	1	0	1	1	0	1	1	0	1	0	5	4	1	0	
7	Sub Staff	1	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	
	Total	15	6	9	5	1	2	4	3	1	5	3	2	4	2	33	17	16	0	

All the Assistant and Sub staff Vacancies can be filled up through District Recruitment Board Only. No Other means of Appointments is Permitted by the Cooperative Act and Rules.


General Manager(I/C)
0.726Prakasapuram Cooperative Urban Bank



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10.The learned Government Advocate also confirms that the post of Deposit Collection Agent is not one of the approved posts. It does not fall within the sanctioned strength. Respectfully applying the ratio laid down in the aforesaid decisions, I have to necessarily hold that the impugned award passed by the competent authority has to be set aside. The reason for setting aside the award is that the competent authority has merely focused attention on the number of days for which P.Thanasingam had worked and the duties and responsibilities purportedly discharged by him. He has not taken note of the sanctioned strength of the said society.

11.In this view of the matter, the impugned award is set aside. W.P.(MD)No.22888 of 2019 is allowed and W.P.(MD)No.23466 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

ias

To:

- 1.The Registrar of Co-Operative Societies,
No.170, E.V.R.Periyar High Road,
Kilpauk, Chennai- 600 010.
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