



W.P.(MD).No.19482 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

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and

W.M.P.(MD).Nos.15922, 15923 and 18642 of 2019

Y.K.165, Karur District All Noon Meal Employees,
Co-operative Thrift and Credit Society,
Represented by its,
President,
Thanthondrimalai,
Karur – 5.

... Petitioner

Vs.

1.The Appellate Authority under
Tamil Nadu Shops and Establishments Act/
The Deputy Commissioner of Labour,
Dindigul.

2.K.Manoranjitham

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in T.N.S.E.No.3/2012 dated 29.03.2012 and quash the same.

For Petitioner : Mr.M.Sam Eugene Jebakumar

For R-1 : Mr.M.Lingadurai,
Special Government Pleader.

For R-2 : Mr.P.R.Prithiviraj



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ORDER

This Writ Petition is filed by the Cooperative Thrift and Credit Society challenging the order passed by the Deputy Commissioner of Labour under the Shops and Establishment Act in TNSE No.3/2012 dated 29.03.2012.

2. The second respondent was appointed by the then Board of the petitioner Society on consolidated basis vide Board Resolution dated 07.06.2004. Since the second respondent was appointed by the then Board and not through employment exchange, her appointment was not regularized. Moreover, prior permission was not obtained from the Registrar of Cooperative Society, hence her appointment is against Rule 149 of Co-operative Societies Rules, 1988. Therefore, the petitioner's Society did not permit the second respondent to discharge her duty from 18.01.2012 and orally terminated her. Aggrieved over the same, the second respondent preferred petition before the authorities under Section 41 of the Tamil Nadu Shops and Establishment Act, 1947. After considering the claim of the second respondent, the first respondent was pleased to set aside the oral termination dated 18.01.2012 vide order dated 29.03.2012. Further, the authority has not granted any backwages, but has directed to reinstate with continuity of service.

Without challenging the above said order, the then Board of petitioner Society

<https://www.mhc.tn.gov.in/judis>



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implemented the above order, thereby reinstated the second respondent vide its resolution. Subsequently, the then Board of the petitioner Society granted permanent status to the appointment of the second respondent vide resolution dated 19.09.2015 and time scale of pay was also granted. Based on this, the second respondent was working as Clerk in the petitioner Society as on date. Under these circumstances, the Deputy Registrar of Co-operative Societies, Karur issued a communication to the petitioner Society on 05.07.2019 directing the Society to challenge the order dated 29.03.2012 by way of filing Writ Petition. Based on the said communication, the present Writ Petition is filed.

3. The said communication further states that there is an audit objection, since the said appointment of the second respondent was not in accordance to law. Since the audit objection is there for payment of the salary even under consolidated pay, the Society has come forward with this Writ Petition. At the time of admission, this Court has granted an order of interim stay vide order dated 12.09.2019.

4. The second respondent has filed a counter along with Vacate Stay Petition in W.M.P.(MD)No.18642 of 2019. The second respondent has stated that the second respondent was appointed by the then Board on consolidated basis vide Board Resolution dated 07.06.2004 for a sum of Rs.500/-, thereafter



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it was periodically increased. The petitioner Society orally terminated the second respondent. Aggrieved over the same, she had preferred a Petition before the competent authority, wherein, the Society was directed to reinstate the second respondent. Thereafter, without any appeal, the respondents reinstated and regularized the service and also granted time scale of pay from 01.09.2015 onwards and she is working for the past 4 years. After the lapse of 4 years, the petitioner Society has filed the present writ petition and has challenged the order passed by authority under Shops and Establishments Act, hence the writ petition is hit by the principles of delay and laches, therefore the writ petition ought to be dismissed based on delay and laches. Even on merits the writ petition cannot be sustained. Hence, the respondents prayed to dismiss this Writ Petition.

5. Heard Mr.M.Sam Eugene Jebakumar, learned counsel for the petitioner, Mr.M.Lingadurai, learned Special Government Pleader for the first respondent and Mr.P.R.Prithiviraj, learned counsel for the second respondent and perused the records.

6. It is seen from the records that the second respondent after completing 10th standard in the year 1997 had registered in Employment Exchange, then completed 12th standard, then had completed Diploma in Cooperation in the



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year 2002, then B.A. (Economics) through Distance education in the year 2010.

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All the above qualification was registered in the Employment Exchange and was appointed by the Board only. Whenever any recruitment ought to be carried out then the society ought to call for list from the Employment Exchange, then conduct interview thereafter select the meritorious person. The objection by the petitioner Society and the Registrar is that the petitioner was not called for from the list of Employment Exchange, interview was not conducted. The petitioner Society was newly formed society, the Board had selected the 2nd respondent, then after passing resolution appointed the 2nd respondent. It is seen even though the petitioner society has not called the list from the Employment Exchange, the Board has carried out the recruitment process and selected the second respondent and appointed. The objection of the Registrar is not specific, but only states that the petitioner society has not called for the list of names from the employment exchange. It is settled principle that it is not necessary to call for any eligible candidates only from the Employment Exchange alone. The eligible candidates can be called for from any mode even paper advertisement through newspapers. Therefore, since the objection of the Registrar is not specific, the said objection cannot be sustained, more so, when the petitioner is possessing the requisite qualification of Diploma in Cooperation.



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7. The next objection is that the petitioner society has not preferred any appeal from the order of the authority under Shops and Establishment Act and hence the present writ petition is filed. It is seen from the records that the order was passed on 29.03.2012, but this writ petition is filed on 05.09.2019. Hence the petition is hit by the principles of delay and latches.

8. The next objection by the Registrar is that prior permission was not sought for the 2nd respondent's appointment. But the Registrar has not stated under which provision of law prior permission from the Registrar is necessary. Therefore, this objection is not sustainable. Moreover, as rightly pointed out by the learned counsel appearing for the 2nd respondent is that the petitioner Society has filed this petition based on the communication of the Registrar and audit objection. In the meanwhile, the petitioner was granted regularization and granted time scale of pay as early as 2015 itself and she is working for the past 4 years. At this stage, the second respondent cannot be disturbed from her service. Moreover, as stated supra, the objections raised by the Registrar is not valid and the second respondent is entitled to continue her service along with all benefits applicable to the said post. The communication of the Registrar is quashed and the appointment of the 2nd respondent is sustained and the second respondent is entitled to all benefits attached to the said service.



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9. In view of the above observations, this Writ Petition is dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

The Appellate Authority under
Tamil Nadu Shops and Establishments Act/
The Deputy Commissioner of Labour,
Dindigul.



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S.SRIMATHY, J.

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