



W.P.No.14858 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.05.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.14858 of 2015

and M.P.No.1 of 2015

The Management

The Nilgiris District Central Co-operative Bank,

Represented by its Managing Director,

Udhagamandalam.

...Petitioner

vs.

1. R. Ramesh,

Night Watchman,

The Nilgiris District Central Co-operative Bank,

Gudalur, The Nilgiris,

Residing at: S/o.Raji,

Nandatti P.O.Gudalur,

Nilgiris.

2. The Inspector of Labour,

Coonoor

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, call for the records relating to the passing of the order in Na.Ka.No.939 of 2013 dated 10.03.2015 on the file of the Inspector of Labours, Coonoor and quash the same.



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For Petitioner : Mr.L.P.Shanmugasundaram
For Respondents :
For R1 : Ms.S.Sona Satishkumar
for Mr.M.Prabaharan
For R2 : Mr.S. Rajesh
Government Advocate

ORDER

Challenge is made to the Order passed by the Inspector of Labour, Coonoor, dated 10.03.2015 passed by the Managing Director of The Nilgiris District Central Cooperative Bank, Udhagamandalam in respect of 1st respondent R.Ramesh, Night Watchman and to quash the same.

2. The first respondent R.Ramesh in his letter dated 18.07.2002 requested the management of the petitioner's Bank to offer the post of Night Watchman on daily wage basis. Acceding to his request, he was appointed as a Night Watchman in the petitioner Bank on daily wages at Rs.50/- per day from 18.07.2002 by an oral order. He was not appointed through the employment exchange and his appointment is in contravention of Rule 149(2) of the Tamil Nadu Cooperative Societies Rules, 1988. He was a workman on daily wages and his appointment was outside the cadre strength. He filed a petition for conferment of permanent status before the second respondent. He was a surplus staff



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and his appointment was not approved by the Registrar of Cooperative Societies. The second respondent by an Order dated 10.03.2015 ordered that the first respondent is eligible for permanent status with effect from 31.12.2005. Against the said order, this writ petition.

3. The learned counsel appearing for the writ petitioner would vehemently contend that the order passed by the second respondent is grossly contrary to the law laid down by the Hon'ble Supreme Court in the case of *Umarani Vs. Registrar, Cooperative Societies and Others* reported in AIR 2004 SC 4504. He drew the attention of this Court by referring to the observations made by the Hon'ble Division Bench of this Court in *L. Justine and another Vs. The Registrar of Cooperative Societies, Chennai - 10 and Others* reported in 2002 (4) CTC 385 wherein this Court held that:

“(vii) that either the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlement entered under Sections 12 or 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 09.07.1980 to 11.03.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.03.2001 onwards.”



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Hence he sought to quash the order passed by the second respondent herein.

4. Per contra, Ms.S.Sona Satishkumar, learned counsel appearing for the 1st respondent would strenuously argue that upon the application of 1st respondent dated 18.07.2002, he was appointed on the same day by the petitioner Bank by an oral order as Night Watchman on daily wages of Rs.50/- per day. Amount is being deducted for Provident Fund vide PF.No.TN4108/241 since 03.01.2007. He was continuously employed without any holiday. From 14.04.2012, his wages stood revised and he was drawing a daily wage of Rs.200/- per day by way of voucher. It was further contended that the first respondent was rightly conferred with permanent status by way of an order passed by the second respondent vide Na.Ka.939 of 2013 dated 10.03.2015 on completion of continuous period of 480 days of uninterrupted service.

5. The first respondent herein by his letter dated 18.07.2002, gave a requisition to the management of the Bank to offer him the post of Night Watchmen on daily wages basis, promising to follow the rules and regulations of the Bank. Based on his request, he was appointed as a Night Watchman in the petitioner's Bank from the said day onwards on



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daily wages of Rs.50/-, per day by an oral order. Meanwhile, the first respondent herein preferred a petition dated 01.11.2013 to consider him as permanent employee with effect from 03.01.2007 onwards it has been stated that the amount is being deducted for the Provident Fund (PF) in PF.No.TN4108/241. He has further stated that he worked continuously for 480 days and completed his 8th standard.

6. For which, the petitioner objects by stating that he was only employed on daily wages.

7. The Inspector of Labour, Coonoor, upon consideration has held that as the petitioner has been working in the Bank since 2003, the daily wages was being paid through voucher and the non filing of attendance register was not accepted and ordered under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 to the effect that he was conferred permanent status with effect from 31.12.2005.

8. It is relevant to note that during the enquiry before the Inspector of Labour, on the request of the first respondent, the vouchers, ledgers and the attendance registers were sought to be produced by the Bank but



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the said records were not produced by the Bank.

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9. It is relevant to extract the observations made by the Hon'ble Full Bench of this Court in M.Thanikkachalam and others Vs. Madurantakam Agricultural Producers Cooperative Marketing Society and others reported in 2000 (4) CTC 556, it was held that:

“If an employee is regularly and legally appointed but has been divested of his posts or is kept under suspension or any action is taken in the course of discharge of his functions, then it is a dispute inter se between the cooperative society and its employee. Such is not the situation in the instant cases. The cases on hand invite a broader and comprehensive adjudication regarding the fate of thousands of employees and in the face of Government's unequivocal stand that such appointments are illegal and only concession given is the exemption from the purview of the employment exchange and not relaxing or condoning any other requirement, the said interpretation cannot be left to the cooperative societies or any statutory authority under the Act. Further, the applicability or otherwise of Permanency Act of 1981 or the Industrial Disputes Act also cannot be the subject matter of adjudication by any statutory authority. Such matters have to be decided only by this Court and the appropriate remedy is the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.”



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10. More so, In L. Justine and another Vs. The Registrar of Cooperative Societies, Chennai-10 and others reported in 2002 (4) CTC 385, it is held that:

“19. In view of the authoritative pronouncement of the Supreme Court, which is the law of the land under Article 141 of the Indian Constitution, and as the facts of this batch of cases clearly attract the legal principles enunciated by the Supreme Court, we hold that the appointments of the staff made to the cooperative societies by the elected bodies or the officers in charge, in violation of the cadre strength or the prescriptions of the educational qualifications, cannot stand and are held to be null and void. As already stated above, the Permanency Act of 1981 or Industrial Disputes Act, 1947, cannot be pressed into service, Non-obstante clause in the above enactments have to be read down to be in consonance with the legal principles enunciated by the Supreme Court in Ashwini Kumar's Case. Hence, the settlements entered under Sections 12 or 18 of the Industrial Disputes Act, have got no statutory force and are unenforceable. Promotions effected also fall to ground.”

11. In the decision of Superintending Engineer, Vellore Electricity Distribution Circle, Vellore, and others Vs. Inspector of Labour, Perambalur and others reported in (2004) 3 LLN 598, this Court has held that:



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“22 (b).The fact about the engagement of the services of the concerned workmen was never disputed by the Board. The only stand was that since they were all contract workmen, they were not entitled for any benefit to be conferred under the provisions of the Act. But even in respect of the said stand except the *ipsi dixit* of the stand taken in the counter nothing was placed before the Inspector of Labour. Even about the non-maintenance of the required forms under the provisions of the Act, the stand of the Board was that since they were all contract labourers, the question of maintaining those records did not arise. It is pertinent to note that while it was contended that the persons were employed as contract labourers under certain guidelines, nothing was placed before the Inspector of Labour in support of the said stand.”

12. The Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others Vs. Uma Devi and others reported in (2006) 4 SCC

1. It has been held that the regularisation/absorption in service is possible, if the following conditions are fulfilled:-

1. Initial employment of the employee should be legal i.e. in the manner consistent and capable with the constitutional scheme as contained in Article 14 and 16 of the Constitution:



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2. employee has put in 10 years or more of service:
3. employee has continued in service without taking shelter under Court order and
4. there exist a sanctioned post.

13. In Lakshmi Mills Company Limited, Palladam Branch, Coimbatore Vs. The Deputy Chief Inspector of Factories, Tiruppur and Another reported in (CDJ) 2007 MHC 1303, It was observed that:

“6. Regarding the second contention, it is clearly found that the appellant did not seriously dispute the length of service put in by the workmen, before the authority and the authority had sufficient evidence to come to the conclusion that the workmen had completed 480 days of service in 24 Calender months. Once that factum is proved, Section 3 of the Tamil Nadu Act 42 of 1981 makes the permanency automatic without any scope for further enquiry. Besides this, the power vested on the first respondent is of summary nature and he is not required to conduct any elaborate enquiry. In the present case, the length of service of the workmen is not disputed. Therefore, there is no further enquiry contemplated in the Act.”



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14. In the case of Tamil Nadu Handicrafts Development Corporation Limited, rep. by its Secretary, No.759, Anna Salai, Madras – 2 and another Vs. The Inspector of Factories, Range No.II, Madurai – 2, and two others, in W.A.No.411 of 1998 and 2410 of 1999 dated 27.07.2007, the Hon'ble Division Bench of this Court has held that:

“7. It is not in dispute that 23+1, i.e., all the 24 workmen have completed more than 480 days of service in 24 calendar months. Details have been shown in the impugned order dated 4.7.1996 and 9.4.1997 and the list attached thereto. In this background, the appellant cannot deny the benefit to which such workmen are entitled under the law.”

15. The first respondent was appointed as a Night Watchman from 18.07.2002 on daily wages basis by the petitioner Bank. For better understanding, Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is extracted hereunder:

“3. Conferment of permanent status to workmen. -

(1) Notwithstanding anything contained in any law for the time



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being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.”

16. A close perusal of the above said provision indicates the fact that it is obligatory on the part of the employer to confer permanent status of an employee who has completed 480 days in a period of twenty four calendar months. It is an admitted fact that the first respondent was appointed orally as a Night Watchman on 18.07.2002. However, in his application he has mentioned that he is working as a Night Watchman since 2003, therefore the Inspector of Labour has taken the date as first month of 2003. Despite the directions to produce the vouchers, ledgers and attendance register, the petitioner Bank did not produce relevant records. The first respondent in his petition has stated that from 03.01.2007 onwards, amount was being deducted for Provident Fund from his salary. For the said details, there is no explanation in the counter of the Bank.

17. Under the provisions of the Permanency Act, 1981, the



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government issued a notification in G.O.Ms.118, Labour and Employment dated 12.04.1991 wherein, the Inspector of Labour is the competent authority in the matters of granting of permanent status. From the available records, it was taken that the first respondent has been working in the petitioner's Bank since 01.01.2003 and from 31.12.2005 onwards the first respondent is entitled to claim permanency. Therefore with effect from 31.12.2005 his post is made permanent.

18. As regards the mode of appointment, he was appointed by an oral order. At the best, the mode of appointment can be termed as irregular. Having engaged his service as Night Watchman from 18.07.2002 onwards, more particularly from 2003 onwards and turning down his request by stating that his appointment is not in accordance with law, cannot be acceptable and it amounts to unfair labour practice.

19. Based on the above said details, this writ petition is dismissed.
No costs. Connected miscellaneous petition is also closed.

16.05.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No



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To
The Inspector of Labour,
Coonoor

R.KALAIMATHI, J.
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and M.P.No.1 of 2015

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