



W.P.Nos.37173, 37178, 37177 and 37175 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 23.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.Nos.37173, 37175, 37177 and 37178 of 2015

W.P.No.37173 of 2015

S. Ramalingam

... Petitioner

Vs

1. The Registrar of Co-operative Societies,
Chennai- 600 010
2. The Joint Registrar of Co-operative Societies
Thiruvannamalai Region,
Thiruvannamalai.
3. The Inspector of Labour
Thiruvannamalai.
4. The President/ Special Officer
Thiruvannamalai Agricultural Producers,
Co-operative Sales Society Hd.C.385,
No. 162, Theradi Street,
Thiruvannamalai.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records relating to the orders in (1) Letter Ref.No.Lr.No. A/1159/08 dated 02.03.2009 of the 3rd respondent and (2) Rc.No. 80143/10/CM2 dated 21.01.2011 of the 1st respondent quash the same and issue consequential directions to the respondents to implement the award passed by the 3rd respondent in Pro.Na.Ka.No.E/963/2002 dated 30.09.2002 and grant consequential service and monetary benefits to the petitioner.

For Petitioner : Mr. K. Govindaraj

For Respondents 1 to 3 : Mr. S. Ravikumar,
Special Government Pleader
(co-operative societies)

For Respondent 4 : Mr. L.P.Shanmugasundaram

COMMON ORDER

The issue involved in all the writ petitions are identical. The petitioners have invoked the extraordinary jurisdiction of this Court to



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quash the orders in Letter Ref.No.Lr.No. A/1159/08 dated 02.03.2009 of the 3rd respondent and Rc.No.80143/10/CM2 dated 21.01.2011 of the 1st respondent and consequently direct the respondents to implement the award passed by the 3rd respondent in Na.Ka.No.E/963/2002 dated 30.09.2002 and grant consequential service and monetary benefits to them.

2. All the four petitioners were appointed as Salesmen on temporary basis in the 4th respondent-Society on 08.08.2000, 02.08.2000, 01.08.1995 and 01.10.1999 respectively. It is the contention of the petitioners that though they had put in 480 days of service in 24 calender months, they were not given permanency benefits and their services were not regularized, in terms of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workers) Act, 1981 (hereinafter referred to as Permanency Act). The petitioners therefore filed a petition before the third respondent and



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after hearing the petitioners and the management, an Award was passed directing the Management to grant permanency to the petitioners. However, the respondents had not challenged the said order. On 15.04.2008, the petitioners had submitted an application before the third respondent to take action against the Management as per the provisions of Section 6 of the Permanency Act. The third respondent however did not pass orders on the application constraining them to approach this Court by filing W.P.Nos.21088 of 2008, 21090 of 2008, 21093 of 2008 and 21092 of 2008 respectively for a mandamus directing the third respondent to forthwith take action on the representation of the petitioners. By a common order dated 28.08.2008, these writ petitions were disposed of, directing the third respondent to pass orders in accordance with law within a period of 6 months from the date of receipt of a copy of that order. Thereafter, by his letter dated 02.03.2009, bearing Ref.No.Lr.No.A/1159/08, the third respondent had passed an order stating that since the



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appointment of the petitioners is illegal, they are not entitled to invoke the Permanency Act in the light of the order of this Court passed in W.A.Nos.2501 and 2502 of 2001 dated 24.10.2002. Therefore, the third respondent had responded that the request made in the application of the petitioners could not be complied with and the petition for implementation of the order was closed. Prior to the passing of this order, the third respondent had issued a show cause notice dated 30.10.2008 to the 4th Respondent and on 05.10.2009 the Special Officer of the 4th respondent replied to the said notice wherein the Special Officer of the 4th respondent declined to implement the order passed by the 3rd respondent stating that the provisions of the Permanency Act were not applicable to the Cooperative Societies. The Joint Registrar, Thiruvannamalai originally had made a request to the Registrar, Cooperative Societies to consider re-appointing the petitioners and 5 other similarly placed retrenched employees. The first respondent by reply dated 21.01.2011 in R.C.No.80143/10/CM2



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stated that since the original recruitments of the six employees are irregular, the judgment of the Hon'ble Supreme reported in (2004) 7 SCC 112 [*A.Umarani Vs Registrar, Cooperative Societies and Others*] would apply and therefore, the very order passed by the Special Officer retrenching the petitioners is itself an invalid order and that the case of re-appointment was not valid in law. Therefore, the petitioners have come forward with the above writ petitions.

3. A common counter affidavit has been filed by the respondents 1 and 2 in which they have stated that the writ petitions were not maintainable and also suffers from laches as these writ petitions have been filed after a lapse of 5 years. That apart, all the petitioners had been appointed on a temporary basis and they had not been sponsored by the employment exchange. This appointment was directly in contravention to Rule 149(2) of the Tamil Nadu Cooperative Societies Rules, 1988. Since the appointment of the



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petitioners were illegal, the provisions of the Permanency Act would not apply to them as set out in the judgment of the Division Bench of this Court reported in **2002 (4) CTC 385 [L.Justine and another Vs. The Registrar of Cooperative Societies, Chennai and two others]**. This judgment was taken up on appeal to the Hon'ble Supreme Court, which was dismissed. The Hon'ble Supreme Court, in **Umarani's** case cited supra, held that the persons who come through the back door should go through that door and no regularization is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India, particularly when the appointments were made in contravention of the statutory Rules. Further, pursuant to the judgment in **Uma Rani's** case, the Government Order in G.O.Ms.No.301, Cooperation Food and Consumer Protection Department dated 17.10.2007 had withdrawn the order permitting the Regional Joint Registrars to regularize the services of the irregular appointments. Therefore, the respondents would submit that the



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petitioners were not entitled to be regularized. They would submit that in the light of the judgment in Justin's Case and Umarani's Case, the persons cannot claim any right on the basis of the award passed under the Permanency Act which is not applicable to the irregular employees. Therefore, they sought for dismissal of the above writ petitions.

4. Heard the learned counsels on either side and perused the materials available on record.

5. In order to appreciate the arguments adduced by the respective counsels, it would be apposite to refer to the case of Justin cited supra. The Division Bench was asked to consider a batch of Writ Appeals and Writ Petitions involving an important point regarding the regularization of irregular appointments in several cooperative societies of the State of Tamil Nadu. Considering the rival



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contentions, the Bench had framed five issues and the second issue related to whether the Cooperative Societies are governed by the Provisions of the Permanency Act as also the Industrial Disputes Act. While rendering a finding on the same, the Bench observed that the Cooperative Societies would also come within the definition of the term “establishment”. However, the Bench observed that the Cooperative Societies were adopting a back door method for recruiting staff and there was a fall in standards. That apart, Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988 prescribes that all candidates should be from the employment exchange where vacancies are notified. In the instant case, such an exercise has not taken place. The Division Bench ultimately observed as follows in paragraph 19 (vii):

“vii) that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial



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Disputes Act, 1947, or the settlements 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 9.7.1980 to 11.3.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.3.2001 onwards.”

On appeal, the Hon'ble Supreme Court in ***Umarani's*** case had observed that the primal question which arose for consideration was whether the State had the requisite authority to direct regularization of the employees by the Cooperative Societies by reason of G.O.Ms.No.86 dated 12.03.2001. The Hon'ble Supreme Court, after going through the provisions of the Cooperative Societies Act and the earlier judgments, had observed in paragraph No.49 as follows:-

“49. It is trite that appointments cannot be



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made on political considerations and in violation of the government directions for reduction of establishment expenditure or a prohibition on the filing up of vacant posts or creating new posts including regularisation of daily-waged employees”.

Ultimately, extracting the judgment of the Hon'ble Court reported in ***(2003) 3 SCC 374 [Ramakrishna Kamat and others Vs.State of Karnataka and others]***, where regularization of service had been rejected with the following observations, the appeal was rejected:

“We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to



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answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zila Parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned Single Judge and looking to the very directions given, a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons, who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment."



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The appeals by the employees were also dismissed thereby upholding the order passed by the Division Bench of this Court reported in *Justin's* case cited supra.

6. The petitioners herein are claiming regularization on the basis of the award passed by the third respondent under the Permanency Act., In the light of the above referred judgments, the petitioners cannot claim enforcement of the said Award. That apart, the very appointment itself is illegal inasmuch as a contravention of Rule 149 of the Tamil Nadu Cooperative Societies Rules. Therefore, the orders passed by the authorities which are impugned in the above writ petitions are correct. Accordingly, these writ petitions are dismissed. There shall be no order as to costs.

23.07.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No



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P.T.ASHA, J.,

srn

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