



W.A.No.1082 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal No.1082 of 2014
and
M.P.No.01 of 2014
and
C.M.P.Nos.13859 & 13860 of 2017 and C.M.P.No.13076 of 2019

The Management of Tiruchengode Agricultural
Producers Co-operative Marketing Society Ltd,
No.S.351, Represented by its Special Officer,
Tiruchengode – 637 211.

... Appellant

Vs.

1.The Inspector of Labour,
(Authority constituted under the Tamil Nadu
Industrial Establishments Conferment of Permanent
Status to Workmen Act 1981),
Office of the Inspector of Labour,
Namakkal – 637 011.

2.Tiruchengode Sankari Co-operative Labour Union,
Represented by its Secretary,
No.37, Agraharam,
Tiruchengode – 637 211.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the
order dated 17.04.2012 made in W.P.No.11189 of 2005.



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For Appellant

: Mr.L.P.Shanmugasundaram

For R1

: Mrs.P.Raja Rajeswari
Government Advocate

For R2

: Mr.K.Srinivasamurthy
for M/s.Row and Reddy

J U D G M E N T

(Judgment of the Court was delivered by S.M.SUBRAMANIAM, J.)

The present intra-court appeal has been instituted challenging the order dated 17.04.2012 passed in W.P.No.11189 of 2005.

2. The writ petitioner is the appellant before us. The writ petition was instituted challenging the order dated 30.09.2004, passed by the Inspector of Labour, an Authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workmen) Act, 1981.

3. The members of the 2nd respondent/Labour Union filed an application under the Permanent Status Act before the Inspector of Labour,



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who in turn conducted a summary proceedings and issued an order in favour of the Workmen under the Permanent Status Act. Thus, the management preferred a writ appeal to set aside the writ order.

4. The Writ Court considered the documents filed before the Inspector of Labour i.e., Exs.A10 to A12 being the attendance register and salary disbursement registers and formed an opinion that the workmen served in the appellant/society for more than 480 days and consequently, confirmed the order passed by the Inspector of Labour under the Permanent Status Act. Thus, the present writ appeal came to be instituted.

5. Mr.L.P.Shanmugasundaram, learned Counsel for the appellant/society mainly contended that the appellant is the Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The Co-operative Societies Act will prevail over the Permanent Status Act being a special enactment and the service conditions of the employees of the Co-operative Societies are governed under Rule 149 of the Tamil Nadu Co-operative Societies Rules. Thus, the Inspector of Labour



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has no authority to issue an order for permanency under the Permanent Status Act. The order impugned in the writ petition was without jurisdiction.

6. In this context, he relied on the Judgment of the Hon'ble Division Bench of this Court in the case of ***L. Justine and Ors.***, reported in **2002 (4) CTC 385**. The said judgment was upheld by the Hon'ble Supreme Court. Accordingly, the Permanent Status Act is inapplicable regarding the claim of the employees in Co-operative Society registered under the Tamil Nadu Co-operative Societies Act. The remedy for aggrieved person is under Co-operative Societies Act itself. More-so, in the present case, the workmen are seasonal employees. The Writ Court has not considered the legal principles settled by the Hon'ble Division Bench in the case of ***L. Justine and Ors.***, as confirmed by the Hon'ble Supreme Court of India. Further, the writ court has not adjudicated these issues raised by the appellant and thus, the writ appeal is to be allowed.

7. Mr.K.Srinivasamurthy, appearing on behalf of the 2nd respondent/Labour Union would oppose by stating the members of the 2nd respondent/Labour Union are engaged as Khalasis and their services are



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utilised for loading and un-loading of food products and other essential commodities.

8. Mr.K.Srinivasamurthy, would mainly contend that the regular employees are not engaged for performing loading and un-loading job and only the Khalasis are serving as load men in the Appellant/Society. When there are permanent nature of job is available, the services of the petitioners are to be absorbed under the provisions of the Tamil Nadu Co-operative Societies Act and Rules. No action has been taken by the Management to absorb the Khalasis as permanent employees and they are continuing only as daily wage employees. Therefore, actions are to be initiated to fix cadre strength for the permanent absorption of these Khalasis in the appellant/management. In this context, he would rely on the Judgment of the Hon'ble Supreme Court of India, in the case of **Nihal Singh and Ors vs. State of Punjab and Ors**. Reported in 2013 (5) LLN 109 (SC). The relevant portions are extracted below:

"20. No doubt that the powers under Section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a



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short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21 to 34.....

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the Executive Government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the Executive Government to apply its mind and take a decision to create posts or stop extracting work from persons such as the Appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State."

9. We have considered the rival submissions made on behalf of the parties to the *lis* on hand.

10. Admittedly, the appellant/Society is a Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. When the special enactment provides Rules regulating service conditions of the employees of the Co-operative Societies, then the general



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law would have no application. Inspector of Labour is granting relief under the Permanent Status Act, only by verifying the attendance register maintained by the Management. It is a summary proceedings, through which relief of permanent status is granted. As far as the Co-operative Societies are concerned, recruitment and appointment procedures are contemplated in order to provide equal opportunity to all the eligible persons to secure employment under the Constitutional Scheme of appointments.

11. As per Section 74 of Tamil Nadu Co-operative Societies Act, 1983 recruitment Bureaus are constituted for recruiting employees to the Co-operative Societies. These Co-operative Societies are controlled by the Registrar of Co-operative Societies and the Government. When the service conditions of the employees are regulated under the Rules and special by-laws approved by the competent Authority under the Act, the Inspector of Labour cannot grant permanent status merely by conducting a summary proceeding. Such a decision would run counter to the provisions of the Co-operative Societies Act, Rules and by-laws approved by the competent Authority under the Act. All appointments, approval of cadre strength, method of appointments, procedures are regulated with the approval of the Government and the Registrar of the Co-operative Societies.



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Therefore, any other method of appointment beyond the scope of the provisions of the Co-operative Societies Act and Rules are impermissible.

12. The Hon'ble Division Bench in the case of ***L.Justine and Ors.***, framed Issue No. (ii), which is as follows:

"13. The Permanency Act of 1981 is also an Act enacted by the State and received the President's assent. Section 3 of the Act contains non obstinate clause and provides protection to workmen, who are in continuous service for a continuous period of 480 days in a period of 24 calendar months in an industrial establishment, thus conferring a status of permanency. 'Industrial establishment' is defined in sub-section (3) of Section 2 of the Act and in clause (e) thereof, an 'establishment' as defined in clause 2 (6) of the Tamil Nadu Shops and Establishments Act, 1947 is defined to be an industrial establishment. If we go to Section 2 (6) of the Tamil Nadu Shops and Establishments Act, it is clear that the word 'establishment' therein takes in cooperative society also. As such, there cannot be any doubt regarding the applicability of the Permanency Act of 1981. The word 'industry' defined in Section 2(j) (q) under the Industrial Disputes Act, 1947 also makes the cooperative societies susceptible to the Act of 1947. Thus, all such workmen belonging to a class and



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are afforded protection, are entitled for the benefits of the Permanency Act of 1981 as also the Industrial Disputes Act of 1947. "

The answer for the issue was discussed in para 16 & 19 as under:

"16. Coming to the application of Permanency Act of 1981 or the Industrial Disputes Act, 1947, de hors G.O. Ms. No.86, the said enactments are not applicable to the appointments made in an illegal manner. There is a lot of difference between irregularity and illegality. The appointments here are not irregular but illegal. Irregular is something which is done in an authorised manner but while doing so, there is some procedural irregularity. Illegality is altogether different. An action is illegal if it is contrary to law. The law in the instant case is so clear that the appointments cannot be beyond the permissible cadre strength. The rule mandates the fixation of the cadre strength. In fact, amendment of Rule 149 by G.O. Ms. No.212 was only made with that object obligating the societies to fix the cadre strength per force. Government has felt that the general criteria for fixation of the educational qualifications or the executive instructions fixing the cadre strength with expenditure not exceeding 2 to 3% of the working capital, need to be emphasised in a more clear and effective manner. For that reason, the



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Government brought forth amendment to Rule 149, particularly sub-Rule (1) thereof, by which, every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the approval of the Registrar of Cooperative Societies, a special bye-law covering the service conditions of its employees and also enumerated the same, which are as stated below:

"(i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.

(ii) The method of recruitment for each such posts.

(iii) The scale of pay and allowances for each such posts.

@BT-1-IND = (iv) Conditions of probation for each such posts.

(v) Duties and responsibilities for each such posts. @BT-1-IND = (vi) Leave of various kinds admissible and, the conditions thereto for each such posts

(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

(viii) Conditions relating to acquisition and disposal of movable and immovable property:

Provided that a minimum period of three years of



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satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts."

Most of the societies have not followed the mandate of this Rule. The arguments of the learned counsel for the appellants/petitioners are to the effect that the fault lies with the cooperative societies, which did not adopt the special bye-laws and for that reason, they should not be punished. We are unable to accept this contention for the reason that the illegal appointees cannot have more rights than the cooperative societies themselves. The cooperative societies were totally prevented from making any appointments until the compliance of the mandate of the above Rule adopting a bye-law containing the particulars specified. Even thereafter, the appointments were to be only strictly as per the approved special bye-laws and not otherwise. Compassion cannot displace the essential legal requirements and as already stated above, essential legal requirements are the cadre strength and the qualifications and these cannot be bye-passed and any infraction in observance of the said essential requirement, makes the action of the Appointing Authority illegal. Neither the



Permanency Act of 1981 nor the Industrial Disputes Act, 1947, imply that regardless of the illegal nature of appointments even at the entry stage, statutory protection is afforded under the above Acts after the completion of the man-days, be it 480 or 240 prescribed under the above statutes. The above two enactments have to be read and understood in the context that if only the appointments are authorised and the employees continued even in temporary positions beyond the respective mandays prescribed, the workmen get right to continue further on the legal presumption that the temporary posts are allowed to be treated as permanent. But if the appointment itself is illegal, then the Permanency Act of 1981 or the Industrial Disputes Act, 1947 cannot be invoked at all.

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



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down to be in consonance with the legal principles enunciated by the Supreme Court in Ashwini Kumar's Case, (supra). Hence, the settlements entered under Sections 12 or 18 of the Industrial Disputes Act, have got to no statutory force and are unenforceable. Promotions effected also fall to ground.

In view of what is stated supra, we hold that requisite pleadings and necessary material are also not available on record to arrive at a definite finding in that regard.”

13. The Judgment of the Division Bench has been confirmed by the Hon'ble Supreme Court of India. Therefore, the order passed by the Inspector of Labour under the Permanent Status Act is without jurisdiction and the provisions of the Tamil Nadu Co-operative Societies Act and Rules will prevail over.

14. With reference to the contention that cadre strength is to be fixed, we are inclined to direct the Registrar of Co-operative Societies to look into the present position prevailing in the appellant/Society. If necessary by conducting manpower audit, take administrative decision for fixing or re-fixing the cadre strength as the case may be, as far as the appellant/society is



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concerned.

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15. However, we are of the considered opinion that the order under challenge passed in writ petition is infirm and not in consonance with the legal principles settled. Consequently, the order dated 17.04.2012 in W.P.No.11189 of 2005 is set aside and the Writ Appeal stands **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S.J.] [K.R.S.J.]
20.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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