



WEB COPY



W.A.No. 497 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

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

Writ Appeal No.497 of 2024

P.Tamilazhagan

... Appellant

Vs.

1.DRL (C) 11 The Mohanur Co-operative
Primary, Agricultural & Rural Development
Bank Ltd.,
Represented by its President,
Mohanur,
Namakkal District – 637 015.

2.The Appellate Authority,
Tamil Nadu Shops & Establishment/
Deputy Commissioner of Labour,
Salem.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the Writ Appeal by setting aside the order passed in W.P.No.22231 of 2016 dated 06.07.2023.



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For Appellant : Mr.R.Rajesh
For R1 : Mr.M.S.Palaniswamy for Caveator
For R2 : Mrs.Raja Rajeswari
Government Advocate

J U D G M E N T

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

The writ appeal on hand has been instituted against the order dated 06.07.2023 passed in W.P.No.22231 of 2016.

2. The facts in nutshell for consideration would be that the writ appellant/respondent was appointed as Supervisor on daily wage basis in the 1st respondent/society on 30.02.1998. He was terminated by the 1st respondent/Co-operative Society on 24.08.2021. The appellant filed W.P.No.16522 of 2021, challenging the order of dismissal and this Court granted liberty to approach the competent Authority under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. Accordingly, the appellant preferred a Revision under Section 153, which was rejected by the Joint Registrar of Co-operative Society on 31.10.2003 and a Review was filed



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before the Government under Section 154, which was also rejected on 28.08.2004. Thereafter, the appellant has preferred a petition under the Tamil Nadu Shops and Establishments Act, 1942 (hereinafter called, “the Act”) in T.S.E.No.09 of 2006, which was allowed in favour of the appellant *vide* order dated 29.05.2015. The Authority under the Act ordered for reinstatement. Challenging the said order, the respondent/Co-operative Society filed W.P.No.22231 of 2016, which came to be allowed by the learned Single Judge, which is under challenge in the present writ appeal.

3. Mr.R.Rajesh, learned Counsel for the appellant would submit that similarly placed employees are still working in the Co-operative Society. The petitioner was appointed by the then management as Supervisor and the Authority under the Act, considered all these aspects. However, the learned Single Judge has not considered the fact the similarly placed persons were considered for reinstatement and therefore, the present Writ Appeal is filed.

4. Mr.M.S.Palaniswamy, learned Counsel for the 1st respondent/Co-operative Society would oppose by stating that the appointment of writ appellant is illegal. There was no approved cadre strength during the relevant



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point of time, when the petitioner was appointed as Supervisor. Illegal appointment cannot be cured, in view of the Judgment of the Hon'ble Division Bench in the case of ***L.Justine and another Vs. The Registrar of Co-operative Societies, Chennai*** reported in ***2002 (4) CTC 385*** which was confirmed by the Hon'ble Supreme Court in ***A.Umarani's*** case. The appointment of the appellant was illegal Thus, the learned Single Judge has considered the legal position and allowed the writ petition. Thus, the writ appeal is to be rejected.

5. Learned Counsel for the appellant would submit that soon after the order of Authority under the Act, the appellant filed a writ petition seeking a direction to implement the said order, which was allowed by this Court. However, Mr.M.S.Palaniswamy, learned Counsel for the 1st respondent/Society would refute by saying that the said Order was issued before filing the Writ Petition, by the management of the Society. Thus, the same was also taken into consideration by the learned Single Judge, while allowing the writ petition filed by the management.



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6. Considering the arguments, we are of the opinion that illegal appointments cannot be legalised. The appellant could not able to establish that his initial appointment was made in accordance with Rule 149 of the Tamil Nadu Co-operative Societies Rules and the Government Orders therein. The issue relating to illegal appointments were settled by the Hon'ble Division Bench of this Court in ***Justine case***. The said judgment was confirmed by the Hon'ble Supreme Court of India. A direction was issued by the Hon'ble Division Bench to regularise the appointments made in accordance with the Act and Rules and all other appointments were held illegal and those persons were directed to be removed from service. This being the settled principle, the appellant who was removed from service in the year 2001 is agitating the matter for the past about 22 years. No doubt, the Revision and the Review under Section 153 and 154 were rejected and the Authority under the Act, failed to consider the fact that the appointment of the appellant was not within the cadre strength approved by the Competent Authority under the Act and such an illegality cannot be cured nor be rectified. The said position was rightly considered by the learned Single Judge in writ order, which is under challenge.



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7. Thus, we do not find any infirmity with reference to findings and decisions arrived in the Writ Order. Accordingly, the Writ Appeal stands dismissed.

[S.M.S.J.] [K.R.S.J.]
14.02.2024

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

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