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W.A.No.1633 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.06.2024

Delivered on : 21.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

W.A.No.1633 of 2024
and CMP.No.11464 of 2024.

The Management
Rep. By M.Selvaraj
A-3099 Tamil Nadu State Transport
Workers Cooperative Stores Ltd
27, Bye-pass road
Pasumpon Nagar, Madurai-03

.... Appellant

Vs

1.The Deputy Commissioner of Labour
(Appellate Authority Under Tamil Nadu
Shops and Establishment Act, Madurai)

2.S.Ramalakshmi
C/o.Themandala Kooturavu Paniyalar Sangam
Madurai

...Respondents

PRAYER: Writ Appeal filed as against the order passed in W.P.No.38187 of
2003 dated 22.12.2017.



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For Appellant : Mr.N.Umapathy

For Respondents : Mr.V.Ravi, Spl.Govt.Pleader for R1
R2- No appearance.

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JUDGMENT

Per J.Nisha Banu,J.

This writ appeal is filed by the Management, Tamil Nadu State Transport Workers Cooperative Stores Ltd., as against the order passed in W.P.No.38187 of 2003 dated 22.12.2017, whereby the second respondent-Sales woman had been directed to be reinstated into service without backwages within two months from the date of receipt of order passed in the writ petition.

2. The necessary facts necessary for the disposal of this writ appeal is as follows:-

(a) The second respondent-Sales woman had been appointed in the appellant's cooperative stores on 01.06.1999. She was paid daily wages of Rs.55 per day. During 2001, the appellant society issued show cause notice to the Sales woman stating that her appointment was irregular and her name was not sponsored through employment exchange. The Sales woman given her



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reply; not satisfied with the reply, appellant issued order of removal from service.

(b) Aggrieved by the order of removal from service, the second respondent-Sales woman approached the Appellate Authority under the Tamil Nadu Shops and Establishment Act (The Deputy Commissioner of Labour, Madurai). The Authority, found that the removal of service of the second respondent was unlawful and so passed an order directing the Cooperative Stores-Appellant to reinstate the Sales woman within a period of 30 days with continuity of service, without backwages.

(c) Aggrieved by the order of the 1st respondent, the appellant-Management filed W.P.No.38187 of 2003.

(d) On the side of the Management, the argument was that the name of the second respondent-Sales woman was made inadvertently without getting the name from the employment exchange and without verifying the educational qualification, hence, she has been removed from service.

(e) On the side of Sales woman, it was argued that second respondent-Sales woman has completed Diploma in Cooperative Training and possess



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necessary qualification i.e +2 and Diploma in Cooperative Training and that the procedure contemplated under the Tamil Nadu Shops and Establishment Act has not been followed.

(f) The writ court pointed out that the Cooperative Stores had appointed the second respondent-sales woman on 01.06.1999; from the date of appointment till the date of removal, she had been continuously working i.e. for more than 600 days up to 30.01.2001; the said claim made by the second respondent had not been disputed by the Management. The writ court also pointed out that second respondent completed +2 and also Diploma in Cooperative Training and the said qualification had also been registered in the Employment Exchange, therefore, non sponsoring the name through employment exchange and non following the communal rotation and the action of removing the second respondent from service cannot be permissible. The writ court held that the order passed by the first respondent is sustainable and dismissed the writ petition filed by the Management. The writ court further directed the Management of Cooperative Stores to reinstate the second respondent-sales woman to reinstate her into service without backwages.

(g) Aggrieved by the said direction of reinstatement of Sales woman



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into service, the appellant Management has filed the present Writ Appeal.

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3. The learned counsel appearing for the appellant would submit that the order of the learned Single Judge cannot be implemented due to poor financial condition of the stores and that some branches had already been closed. He would further submit that second respondent-sales woman was appointed only on daily wages and she has not been confirmed by the appellant. Since her name was not sponsored through employment exchange, she has been removed from service and that there cannot be back door entry in the public department. Further the appointment of 2nd respondent was not under proper cadre strength. The stores is now running under loss and there is no proper funds to pay the salary to the existing employees.

4. Mr.V.Ravi learned Special Government Pleader appearing for R1 would submit that the order passed by the 1st respondent in reinstating the second respondent is sustainable. The learned Single Judge while passing the order in the writ petition, discussed and analysed entire facts and by following the relevant Rules, confirmed the said order, therefore, the present Writ Appeal has no merits and prayed this court to confirm the order of the writ court.



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5. There is no appearance for the second respondent-Sales woman.

6. Heard and perused the materials available on record.

7. A perusal of entire facts of the case would go to show that the 2nd respondent-sales woman was appointed in the appellant's store on 01.06.1999 and she has been working continuously and on 18.11.2001, appellant issued show cause notice stating that her appointment was irregular and illegal. However, after reply given by the petitioner, order of removal of service was passed by the appellant. Thereafter, the petitioner approached the Appellate Authority under the Tamil Nadu Shops and Establishment Act (The Deputy Commissioner of Labour, Madurai) and the appeal was ordered in her favour and her reinstatement was ordered. The said reinstatement order was confirmed by the Writ Court by giving findings that the second respondent is having a qualification of +2 and Diploma in Cooperative training and the said qualification had already been registered in the Employment Exchange. The second respondent had been working more than 600 days and that the appellant-Cooperative stores has not given any reasons except for stating that no communal reservation was followed and her name was not sponsored by the Employment Exchange. The said appellant's decision to dispense with the



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service of the second respondent is not permissible. The Writ court further observed that the second respondent even at the time of entering into the service, had the necessary qualification and therefore, she was appointed and even though the appointment in the public service is not through employment exchange, it can be cured at any point of time and service can be regularized. With such view, the writ court confirmed the order of the first respondent- Deputy Commissioner of Labour dated 05.11.2002 and directed for reinstatement of second respondent into service within a period of two months.

8. In our considered view, the findings of the learned Single Judge, is well founded. We find no reasons to interfere with the impugned order. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected CMP is closed.

(J.N.B.,J.)

(V.S.G.,J.)

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J.NISHA BANU, J.

AND

V.SIVAGNANAM, J.

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To

1. The Management
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JUDGMENT in

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