



W.A.(MD)No.1305 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **28.02.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

AND

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

W.A.(MD)No.1305 of 2015
and M.P(MD)No.1 of 2015

S.Selvakumar

: Appellant/Petitioner

Vs.

1.The Registrar of Co-operative Societies,
(Housing),
4th Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020.

2.The Deputy Registrar of Co-operative Societies (Housing)
Tirunelveli Region,
Tirunelveli – 2.

3.The Management / President,
Sattankulam Taluk,
Co-operative Housing Society Ltd.,
TNV-HSG 26, Sattankulam,
Thoothukudi District.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 01.10.2015 passed in W.P.(MD) No.17834 of 2015.

For Appellant

: Mr.G.Prabhu Rajadurai

For Respondents

: Mr.A.K.Manikkam

Spl. Govt. Pleader



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JUDGMENT

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(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

The appellant, as the petitioner, has filed the writ petition challenging the dismissal order of the first respondent, dated 11.12.2014 passed in his review application. Since the writ petition is dismissed, he has filed the present writ appeal.

2. Heard the learned counsel for the appellant/petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

3. According to the appellant/petitioner, he was appointed as Junior Clerk in the third respondent Society, on 13.01.2000, under 18(1) settlement, through the District Employment Exchange, Thoothukudi. While he was working as such, the third respondent, by order, dated 20.07.2006, removed him from service stating that his appointment was made contrary to the cadre strength fixed by the first respondent vide Circular, dated 22.02.1995. Aggrieved by the order of removal, he filed a writ petition in W.P.No.23903 of 2006, before this Court. This Court, by order dated 22.03.2011, disposed of the



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said writ petition permitting him to challenge the order of termination before the appropriate forum and also stayed the operation of the termination order until he approaches the appropriate forum. Thereafter, he filed a revision before the first respondent, under Section 153 of the Co-operative Societies Act, challenging the order of termination. The first respondent, after hearing both sides, by order, dated 17.04.2013, dismissed the revision. Subsequently, he filed a review application before the first respondent to review the order, dated 17.04.2013. However, the first respondent, by order, dated 11.12.2014, dismissed the review and confirmed the earlier order, dated 17.04.2013. Challenging the correctness of the order, dated 11.12.2014, passed by the first respondent, he has filed the writ petition.

4. It was contended by the petitioner before the Writ Court that the petitioner was dismissed from service on the ground that his appointment was made contrary to the cadre strength fixed by the first respondent by Circular, dated 22.02.1995. At the outset, it is pertinent to note that the first respondent ought to have seen that the Circular, dated 22.02.1995, has already been set aside by this Court in W.P.No.6228 of 1995 and therefore, the impugned order passed by the first respondent overlooking the Circular, dated 22.02.1995, is absolutely unjustified. Hence, the order of the first respondent is liable to be



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set aside. It was further contended that the third respondent has committed a serious mistake in relying upon the Circular, dated 22.02.1995, issued by the first respondent fixing cadre strength, since 18(1) settlement between the third respondent and his employees is in existence. Therefore, on that ground also, the appointment of the petitioner should not be disturbed. Further, when the first respondent has already kept the Circular, dated 22.02.1995, in abeyance, neither the third respondent nor the first respondent can pass the order of termination by wrongly overlooking the reasons given in the Circular, dated 22.02.1995.

5. On a perusal of the records, it is seen that on 06.12.1999, the Elected Board President called for a list of eligible candidates from the District Employment Exchange, Thoothukudi. It appears that during that time, the Government of Tamil Nadu banned the appointments and hence, the District Employment Officer sought for clarification, vide letter, dated 14.12.1999, about the ban on appointments. Ignoring the ban on appointments and also the clarification sought for by the District Employment Officer as to how the appointment can be made, the appellant/petitioner came to be appointed on 13.01.2000. Further, as per the provisions of Tamil Nadu Co-operative Societies Act and as per Clause 7(1) of the Special Bye-Laws, no person shall be



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appointed when he had completed 30 years of age. Admittedly, in the present case, the date of birth of the appellant/petitioner is 02.01.1970 and his appointment was made on 13.01.2000, which would go to show that at the time of appointment, the petitioner had completed 30 years of age. Hence, he was ineligible. This aspect has also been rightly considered by the first respondent in the order of termination. Further, when the appellant/petitioner's name was sponsored by the District Employment Exchange, he was employed in TC3, Arasoor Primary Agricultural Co-operative Bank from 11.06.1993 to 12.01.2000. While so, it is not known, how the Employment Exchange again sponsored the name of a person for a second time, who is already working in a Co-operative Society. Hence, it appears that the appellant/petitioner has played a manipulation in securing his appointment. This aspect has also been properly considered by the first respondent. Therefore, considering all these aspects, the Writ Court has dismissed the writ petition by confirming the order of the first respondent.

6. The learned counsel appearing for the appellant/petitioner reiterated the contention raised before the Writ Court.



7. The Honourable Division Bench of this Court in the case of the **L.**

Justine and another vs. The Registrar of Cooperative Societies reported in **2002(4) CTC 385** by referring the case of **Ashwini kumar** reported in **1997(2) SCC 1**, has categorised such illegally appointed personnel as *persona non grata* and held that question of confirmation or regularisation of an irregularly appointed candidate would arise only if the candidate concerned is appointed in an irregular manner or on *ad hoc* basis against an available vacancy, which is already sanctioned but if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration as the very entry itself was illegal and void. Further, when the initial entry of the employee against an available vacancy is found to have suffered from some flaws in the procedural exercise though the person appointed is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment, the second instance is cited as a case of irregular appointment in contra-distinction to the illegal appointment stating that the regularisation cannot be made in the second type of cases when the initial entry was found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment and such illegal appointments can never be regularised. This Court by observing the above facts held that the



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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.

8. 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 (supra). Hence, the settlements entered under [Sections 12](#) or 18 of the [Industrial Disputes Act](#), have got no statutory force and are unenforceable.

9. In view of the above settled law, we are of the view that the Writ Court has rightly dismissed the writ petition. Hence, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]

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NCC : Yes/No

Index : Yes / No

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