



W.P. No.34858/2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.04.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.34858 OF 2019

AND

W.M.P. NO. 35624 OF 2019

The Management
Athur Agricultural Producers
Co-operative Marketing Society Ltd.
55, Kamarajanar Road
Pudupettai 636 141
Athur, Salem District.

.. Petitioner

- Vs -

General Secretary
Salem Jilla Sumaithookum
Thozhilalar Sangam
VPC Street, Cinema Nagar
Salem – 9.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarito call for the records in I.D. No.94 of 2013 on the file of Labour Court, Salem, quash the award dated 3.5.2018 passed therein (published on 23.08.2018).



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For Petitioner : Mr. R.M..Raghavan

For Respondent : No Appearance

ORDER

Aggrieved by the award in and by which the workmen of the respondent were directed to be conferred permanent status with consequential direction for payment of all monetary and other benefits from the date of the raising of industrial dispute till the date of award, the present writ petition has been filed.

2. It is the case of the petitioner that the petitioner Society was formed in accordance with the provisions of the Tamil Nadu Co-operative Societies Act and that the petitioner distributes essential commodities to around 290 fair price shops. It is the further case of the petitioner that the petitioner, previously, was distributing the essential commodities through Kalasi workmen, who were available at the time of delivery and pay them wages for the said day. The said engagement was not on the basis of any regular contract of employment, but only on the basis of their availability on a particular day and they were paid for the work on piece rate basis.



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3. It is the further averment of the petitioner that the Registrar of Co-operative Societies found that the said system of distribution was not effective and, hence, directed tender system to be called for to fix lorry owners for distribution of essential commodities, which started functioning from the year 2009. It is the further case of the petitioner that the said lorry owners, who were under contract, were to employ workmen and to pay them for carrying out the distribution works entrusted by the petitioner.

4. It is the further averment of the petitioner that the respondent Union raised a dispute in the year 2011 claiming that the workmen should be employed by the Society directly and grant them all the benefits and as no conciliation could be arrived at in the proceedings before the Conciliation Officer, the dispute was referred to the file of the Labour Court in I.D. No.94//2013. After trial, in which the petitioner participated and placed all the material papers, the Labour Court held that the employees should be provided direct employment and that they should be confirmed as per the Permanency Act, 1981 and that the



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petitioner should obtain necessary permission from the authorities to make them permanent.

5. It is the averment of the petitioner that the society is provided with a cadre strength beyond which no recruitment is permissible and that the delivery is not perennial in nature and there is no scope for regularity of employment, which have been lost sight of by the Labour Court while considering the issue which makes the award arbitrary, perverse and unreasonable. Assailing the said order, the present writ petition has been filed.

6. Learned counsel appearing for the petitioner submits that the employees who are engaged for carrying out the work of supply of materials are engaged by the lorry contractors with whom the petitioner had contracted for supply of the essential commodities and the said workmen have no nexus with the petitioner as neither they are appointed by the petitioner nor any payment of their wages is paid by the petitioner.



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7. It is the further submission of the learned counsel that the discretion for employing the number of persons is the discretion of the contractor and the petitioner has no say in such employment, but is only concerned about the distribution of the essential commodities to the fair price shops. It is further borne out by the contract that the payment of wages to the workmen is by the contractor, who has employed them and the petitioner is in no way connected with the said payment and, therefore, fastening any liability on the petitioner to confirm the workmen on the rolls of the petitioner under the Permanency Act is wholly fallacious as no employer-employee relationship has been established by the respondent.

8. It is the further submission of the learned counsel that the petitioner society could make recruitment only in accordance with Rule 149 of the Tamil Nadu Cooperative Society Rules and the workmen under the respondent having not been recruited by the petitioner by following the rules and rather they having been engaged by the contractors, the petitioner cannot be made liable to confirm them on its rolls. Though materials substantiating the above facts have been



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placed before the Labour Court, the Labour Court misdirected itself and passed the erroneous order, which requires to be interfered with.

9. Though notice has been issued to the respondent, there is no representation for the respondent. Since the case is of the year 2019 and as the respondent, inspite of issuance of notice, has not shown any inclination to represent itself before this Court, the writ petition is taken up for consideration on the basis of the materials available on record.

10. Heard the learned counsel appearing for the petitioner and perused the materials available on record and also the award passed by the Labour Court.

11. Even at the very outset, before venturing into the factual materials on record, it could be safely concluded that the Labour Court had not only exceeded in its jurisdiction in passing the award not only erroneously granting permanency to the workmen, but also awarding all the consequential benefits. The realm of the Labour Court is to the extent of finding out whether the workmen, as alleged, are employed by the petitioner on the basis of the materials placed before it and



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the Labour Court cannot traverse beyond the same to record a finding, which is not supported by any materials.

12. It is the specific case of the petitioner that based on the directions of the Government at the behest of the Registrar of Co-operative Societies, the distribution of essential commodities was decided to be contracted through contractors by entering into contract in and by which the contractors would distribute the materials to the distribution outlets by employing workforce. Therefore, unless the respondent herein establishes that there is a relationship of employer-employee between the petitioner and the workmen, which has to be established through proper materials, no inference can be drawn that the workmen employed by the contractors are, in turn, workmen, who were employed at the behest of the petitioner. Though the Labour Court had held that there is no proof filed on behalf of the respondent herein to prove the employer-employee relationship, however, erroneously, the Labour Court had gone further and held that the petitioner herein had not placed any materials to disprove the fact that the workmen were not employed by the petitioner. The said finding of the Labour Court is not only fallacious, but also abhorrent and clearly reveals the



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ignorance of law. When materials are placed by the workmen to establish their status as employee under the petitioner, then a duty is cast on the petitioner herein to rebut the same. However, when there is no iota of material to show any relationship between the petitioner and the workmen, the mere fact that the workmen had discharged some works on their employment by the contractor, no liability can be fastened on the petitioner to take the workmen on the rolls of the petitioner.

13. It further transpires that the Labour Court had, by its judgment, sought to nullify the decision of the Apex Court in *Umarani's case* as the said decision is not applicable to the facts of the present case. The workmen have not at all been employed by the petitioner, even irregularly, as their employment is only through the contractor. Such being the case, the order of the Labour Court to employ the workmen on the rolls of the petitioner runs counter to the decision in *Umarani's case* as even irregular appointments were frowned upon by the Apex Court, but the present case is more bad, as there is not even an irregular appointment, but a gratis is sought to be conferred on the workmen through an erroneous award by a wrong interpretation of law, which can find favour with this Court.



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14. It is further to be pointed out that the observations of the Conciliation Officer would not have any relevance for the Labour Court to grant any award for confirmation of the workmen. The recommendation of the Labour Officer is not only in excess of jurisdiction, but has no statutory force nor backed by any statute for the Labour Court to rely on the same to pass any orders in favour of the workmen.

15. The further finding of the Labour Court that the workmen have been victimized is not supported by any material on record. Further, victimisation of the workmen cannot form the basis of a discussion, as there is no contract of employment between the petitioner and the workmen. Further, the contract is between the petitioner and the contractors for distribution of essential commodities to the distribution networks and if the contractors had employed workmen to carry out the work, the said workmen cannot be termed to be workmen employed by the petitioner as there is no material connecting the petitioner and the workmen. The contract clearly delineates the work to be done by the contractor and the amounts payable to the contractor on the basis of the



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quantity of work given and the employment of any workmen by the contractor would not be of any relevance to the petitioner.

16. The materials available on record, filed on behalf of the workmen and also the petitioner clearly reveal that there is not even a scintilla of material connecting the petitioner and the workmen under the aegis of employer-employee relationship. In fact, none of the documents filed by the workmen even by the faintest trace connect the petitioner and the workmen. Such being the case, the basis of the award has been arrived at more on the basis of the Labour Court arriving at a conclusion that the petitioner herein has not submitted any documents to prove that there is no employer-employee relationship, which finding is beyond the comprehension of this Court.

17. On a holistic consideration of all the materials coupled with the findings recorded by the Labour Court, it is clear that on an imprudent consideration of materials and wrong application of law, the Labour Court had gone beyond the scope of reference and exceeded in its jurisdiction in passing



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the award, which does not deserve to be sustained and the same requires to be interfered by this Court.

18. For the reasons aforesaid, the award passed in I.D. No.94/2013 by the Labour Court, Salem, is perverse, erroneous, arbitrary and unreasonable and the same is set aside and this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No

GLN

To

The Presiding Officer
Labour Court, Salem.

M.DHANDAPANI, J.



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