

W.P.(MD).No.7252 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :21.08.2025

ORDER PRONOUNCED ON : 29.08.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.7252 of 2025
and WMP(MD).Nos.5478, 5479 & 5480 of 2025**

The Administrator
MD.SPL.21, Gudalur Co-operative Stores Ltd.,
Gudalur 625 518
Uthamapalayam Taluk
Theni District

....Petitioner

Vs

1.The Assistant Commissioner of Labour
Authority under the Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981
Theni

2.M.Karunai Raja

3.The Deputy Registrar of Co-operative Societies
Uthamapalayam Circle
Theni District

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed in C.P.S.No.289/2022 dated 25.10.2022 on the file of the Respondent No.1 and quash the same as illegal.



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For Petitioner : Mr.M.Ajmalkhan
Additional Advocate General
Assisted by Mr.G.V.Vairam Santhosh
Additional Government Pleader

For Respondent : Mr.M.Ganesan for R2
:M/s.D.Farjana Ghoushia
Special Government Pleader for R1 & R3

ORDER

The present writ petition has been filed by the Administrator of a Co-operative Society challenging the order passed by the first respondent herein conferring permanent status upon the second respondent invoking the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (CPS Act).

(A)Factual Background:

2.The second respondent herein was appointed as an Escort on 07.09.2019 for escorting the lorries while transporting commodities from godown to the fair price shops. This appointment is through an out-sourcing agency who had supplied man power. On 13.10.2021 by way of Board Resolution, the second respondent was appointed as a Packer in a fair price shop and brought under the direct employment of the Co-operative Society.

3.The second respondent herein had filed an application before the first respondent herein on 02.02.2022 in C.P.S.No.289 of 2022 claiming that he



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had completed 480 days of service in the Co-operative Society in 24 calendar months and sought conferment of permanent status as a Packer.

4.A counter was filed by the third respondent herein contending that the second respondent was an out-sourced employee and therefore, he cannot seek conferment of permanent status. It was further contended that as per judgment of the Hon'ble Division Bench of our High Court reported ***in 2002 (4) CTC 385 (L.Justine and another Vs. The Registrar of Co-operative Societies, Chennai-10 and two others)***, CPS Act cannot be invoked in order to confer permanent status upon the Co-operative employees, especially when the appointment has not been made by the District Recruitment Bureau as contemplated under Tamil Nadu Co-operative Societies Act.

5.The first respondent herein by the impugned order dated 25.10.2022 had allowed the application directing conferment of permanent status upon the second respondent from 29.12.2020 as a Packer. On 31.10.2022, a Board Resolution was passed by the Society accepting the order passed by the first respondent and conferring permanent status upon the second respondent with effect from 29.12.2020. These facts are not in dispute.

6.Challenging the order passed by the authority under C.P.S Act, the present writ petition has been filed by the Administrator of the Co-operative Society.



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(B).Submissions of the learned counsels appearing on either side:

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7.The learned Additional Advocate General appearing for the Society submitted that as per Tamil Nadu Co-operative Societies Act and Rules thereunder, the appointment of a Packer has to be made only by the District Recruitment Bureau. Therefore, the Society is not the appointing authority at all. Hence, the appointment made on 13.10.2021 by the Society is illegal.

8.The learned Additional Advocate General had further submitted that from 07.09.2019 to 13.10.2021, the employee was working under an out-sourcing agency. He was also drawing salary only from the said agency namely security service. Therefore, the said period ought not to have been taken into consideration for conferring permanent status upon the employee. He had further submitted the fact that he was an out-sourced employee was suppressed before the first respondent and an order of permanent status has been obtained.

9.The learned Additional Advocate General had further submitted that in view of judgment of the Hon'ble Division Bench of our High Court reported in **2002 (4) CTC 385 (L.Justine's case)**, C.P.S Act is not applicable to the appointment made in the Co-operative Society. This appointment is not only illegal, but a back door entry, in violation of the provisions of the Co-operative Societies Act. He had further submitted that the judgement of the Hon'ble Division Bench was confirmed by the Hon'ble Supreme Court in



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a judgment reported in **(2004) 7 SCC 112 (A.Umarani Vs.Registrar, Co-operative Societies and others)**. However, the Society has proceeded to appoint the petitioner in the year 2021 is clear violation of the statutory provisions as well as the judgment of this Court and the Hon'ble Supreme Court.

10.The learned Additional Advocate General had further submitted that within a week from the date of passing of the order of the C.P.S authority, the Society has passed a board resolution on 31.10.2022 complying with the order of C.P.S authority. When initial appointment is illegal, merely because the order of C.P.S authority was complied with by the society, that will not prevent the Society from challenging the validity and jurisdiction of the authority to pass an order conferring permanent status upon the second respondent.

11.The learned Additional Advocate General relied upon Rule 150(5) (c) of the Tamil Nadu Co-operative Societies Rules, 1988 and contended that the post of Packer has been brought within the purview of the District Recruitment Bureau from the year 2016 onwards. In such circumstances, without following the recruitment procedure, by way of a board resolution, appointed the second respondent, which is clearly illegal cannot be taken advantage of by the employee. Hence, he prayed for allowing the writ petition.



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12.Per contra, the learned counsel appearing for the second respondent/employee submitted that it is true that the workman was initially appointed through an out-sourcing agency in the year 2019. However, that will not preclude him from relying upon the said period for claiming permanent status. When the workman was drawing salary from the Society through an out-sourcing agency as an unlettered man, he was not aware of the technicalities. Hence, the order of the authority under C.P.S.Act cannot be found fault with.

13.The learned counsel appearing for the second respondent further submitted that C.P.S Act is a special enactment and therefore, it overrides the provisions under Tamil Nadu Co-operative Societies Act. He had further pointed out that the first respondent has passed the impugned order on 25.10.2022. However, the writ petition has been filed belatedly after a period of 3 years. Hence, the writ petition has been dismissed on the ground of laches.

14.The learned counsel for the respondent further contended that when the order impugned in the writ petition has already been implemented by the Society by way of resolution dated 31.10.2022, thereafter, the same Society cannot file the present writ petition challenging the order conferring permanent status. The Society is estopped from challenging the order after implementing the same.



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15.The learned counsel for the respondent had relied upon a judgment for the Hon'ble Supreme Court reported in **2024 SCC Online SC 3826 (Jaggo Vs. Union of India and others)** and contended that the Government Department cannot engage the workers on a temporary basis for an extended period when their work is perennial in nature. Hence, he prayed for dismissal of the writ petition.

16.Heard both sides and perused the material records.

(C). Discussion:

17.A perusal of the impugned order reveals that the first respondent has also taken into consideration the period during which the workman was employed as an out-sourced employee for calculating 480 days. In fact, the workman was appointed as an employee of the Society only on 13.10.2021 and the impugned order has been passed on 25.10.2022 as if the workman has completed 480 days within a period of 24 months.

18.That apart, the initial appointment of the workman through the out-sourcing agency is that of an Escort to lorries. He was appointed as a Packer only on 13.10.2021. Under the impugned order, the CPS authority has proceeded to confer permanent status upon the workman as a Packer from 29.12.2020 onwards. Therefore, it is clear that, on the face of it, the order of the first respondent is not sustainable in the eye of law.



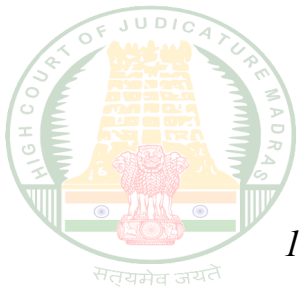
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19.The Hon'ble Division Bench of our High Court in a judgement reported in **2002 (4) CTC 285** had an occasion to consider the interplay between the C.P.S Act and the Tamil Nadu Co-operative Societies Act and Rules thereunder with regard to appointment of an employee in Co-operative Society and conferment of permanent status. Paragraph No.15 of the said judgment is extracted as follows:

“15.....The provisions of either the Permanency Act of 1981 or of the Industrial Disputes Act 1947 cannot also be pressed into service when the appointments are ipso facto illegal and unauthorised. We cannot accede to the contention that even if the appointment is illegal and unauthorised, merely on the passage of time and completion of the stipulated period of 480 days under the Permanency Act of 1981 or 240 days under the , Industrial Disputes Act, 1947an indefeasible right accrues to an employee. Such an argument is clearly untenable. If we accept the said argument, then there is no need for any law and finally, the concept of rule of law loses its significance. The conduct of personnel manning the cooperative societies while recruiting the staff is reprehensible....”

20.This judgment was confirmed by the Hon'ble Supreme Court in a judgment reported in **(2004) 7 SCC 112 (A.Umarani Vs. Registrar, Co-operative Societies and others)**. Paragraph Nos. 30, 35, 38 and 39 are extracted as follows:

“30.The State had framed rules in exercise of its power conferred upon it under Section 180 of the 1983 Act in the year



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1988. Rule 149 of the 1988 Rules provides for a complete code as regard the mode and manner in which appointments were required to be made and the process of appointments is required to be carried out. In terms of the said Rule, requirements to possess educational qualification and other qualifications had been laid down. One of the essential qualifications laid down for holding certain posts is 'undergoing cooperative training and previous experience.

35.No appointment, therefore, can be made in deviation of or departure from the procedures laid down in the said statutory rules.

38.Provisions of the Act and the Rules framed thereunder reflect the legislative recruitment policy. The said provisions are, thus, mandatory in nature.

39.Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See, *State of H.P. Vs. H.P.Suresh Kumar Verma.*).”

21.In view of the judgments cited supra, it is clear that CPS Act cannot be invoked, to violate the statutory recruitment procedure as contemplated under Tamil Nadu Co-operative Societies Act read with the concerned Rules.



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22. Section 74 of the Tamil Nadu Co-operative Societies Act, 1983

provides for constitution of Recruitment Bureaus at the State or District level for recruitment of various categories who paid officers and servants. Rule 150 of the Tamil Nadu Co-operative Societies Rules 1988 deals with Constitution of Recruitment Bureau. As per Rule 150(5)(c), the salesman and packer for employment in the fair price shops under Public Distribution System have been brought within the purview of Recruitment Bureau for a Revenue District. These amendments have been introduced with effect from 05.01.2016. Therefore, it is clear that after the said date, no appointments can be made through a Board Resolution. However, in the present case, the second respondent has been appointed as a Packer by way of Board Resolution on 13.10.2021. It cannot be considered a mere irregular appointment. On the other hand, it is clearly an illegal one. In such circumstances, as rightly pointed out by the learned Additional Advocate General, the Division Bench judgment of our High Court and the judgment of the Hon'ble Supreme Court would be squarely applicable to the facts of the present case.

23. The learned counsel for the respondent had contended that when the impugned order has already been implemented by the Society by way of resolution dated 31.10.2022, thereafter the Society is estopped from challenging the said order by filing the present writ petition. As pointed out in



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the previous paragraphs, the appointment is in violation of the statutory provisions. In such circumstances, the plea of estoppel cannot be raised as a defence as against the violation of the statutory provisions in order to defend the illegal appointments.

24.In fact, in *Justine's case*, it has been categorically held that the provisions of C.P.S Act, cannot be pressed into service when the appointment is *ipso facto* illegal and unauthorised. Relying upon the judgment of the Hon'ble Supreme Court (*Jaggo's case*), the learned counsel for the workmen had contended that the Government cannot be run by employing the temporary employees. A perusal of the said judgment reveals that it relates to sanitary workers who had put in more than 20 years of service. Further, the appointments in that case were not in violation of any statutory provisions. Therefore, the said judgment is not applicable to the facts of the present case.

(D).Conclusion:

25.In view of the above said deliberations, the order impugned in the writ petition is not sustainable in the eye of law and the same is hereby set aside. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2025.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No



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1.The Assistant Commissioner of Labour
Authority under the Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981
Theni

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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