BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.08.2025

PRONOUNCED ON : 15 .10.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD).Nos.8110 & 8111 of 2019 and 25719 to 25722 of 2022 and WP(MD).No.14833 of 2023
and
WMP(MD).Nos.6378, 6379 of 2019, 12520 of 2023, 14660 of 2025 and 19828, 19830 to 19832 of 2022

WP(MD).No.8110 of 2019:

The Management
M/s.Kanyakumari District Central Co-operative Bank Ltd.,
Rep.by its Managing Director
Alexandra Press Road
Nagercoil
Kanyakumari District
Tamil Nadu ...Petitioner

Vs

1.The Assistant Commissioner of Labour (Enforcement)
Authority under Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981
Nagercoil, Kanyakumari District

2.J.Stalin Jose ....Respondents

Prayer in WP(MD).No.8110 of 2019: : Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the respondent vide Na.Ka.No.103/2016 dated 23.01.2019 and quash the same.

(In WP(MD).No.8110 of 2019):

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For Respondents	: M/s.D.Farjana Ghoushia Special Government Pleader for R1
	: Mr.S.C.Herold Singh for R2

COMMON ORDER

These writ petitions have been filed by the Management of Kanyakumari District Central Co-operative Bank Limited challenging the order passed by the authority under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 (CPS Act) on 23.01.2019, 29.09.2022 and 03.03.2023 conferring permanent status upon the Jewel Appraisers engaged in various branches of petitioner Co-operative Bank.

(A).Factual Background:

2.The second respondent in WP(MD).No.8110 of 2019 was appointed in Kanyakumari Central Co-operative Bank on 12.05.2012. The petitioner in

WP(MD).No.8111 of 2019 was appointed on 20.04.2012. The petitioner in WP(MD).No.25719 of 2022 was appointed on 06.09.1994. The petitioner in WP(MD).No.25720 of 2022 on 11.07.2014. The petitioner in WP(MD).No.25721 of 2022 was appointed on 07.12.2001. The petitioner in WP(MD).No.25722 of 2022 was appointed on 22.06.2015. The petitioner in WP(MD).No.14833 of 2023 on 18.09.2009. All of them were appointed as Jewel Appraisers.

3.They have approached the first respondent under Section 3(1) of CPS Act contending that they had completed 480 days of services within a period of 24 months. According to them, they were appointed as Jewel Appraisers on commission basis in the petitioner Bank. As per Special Byelaws, a deposit of Rs.10,000/- was made by them at the time of their appointment. It was further contended that as per 2(2)(c) of CPS Act, the petitioner management is an industry and they are workmen as contemplated under Section 2(4) of the above said Act. Even though they are working for several years, their services have not been regularised. The request made by them for regularizing their services have not been considered. It was further alleged that they have not been brought under EPF Scheme. Hence, the present writ petitions.

4.The petitioner Bank has filed a counter contending that the second respondent herein have been appointed on a commission basis in various branches of the Bank and they were not paid monthly salary. It was further contended that the Jewel Appraisers were not appointed on a regular basis as per cadre strength. Their appointments were not as per Tamil Nadu Co-operative Societies Rules and Byelaws of the Bank. It was further contended that the Jewel Appraisers were not employees of the Bank. On the other hand, they have been engaged for the specific work of appraising the jewels and the commission was paid by collecting the same from the customers who pledged their jewels.

5.The management had further contended that there is no fixed working hours and no attendance register is being maintained for those Jewel Appraisers. According to the Bank, there is no master and servant relationship between them and the Jewel Appraisers. It was further contended that there is no contract of employment between the Jewel Appraisers and Bank. The Bank does not have any disciplinary control over the Jewel Appraiser. The Bank had also relied upon the judgment of the Hon'ble Supreme Court reported in ***(2006) 3 SCC 729 (Indian Overseas Bank Vs. Workmen)*** to contend that a Jewel Appraiser cannot be considered to be an employee of the Bank.

6.The Management had further contended that the Jewel Appraiser cannot be considered to be an employee of the Co-operative Society under Rule 149 of the Co-operative Societies Rules. The name of the respondents were not sponsored through employment exchange nor they were recruited through Recruitment Bureau as constituted under Section 75 of the Tamil Nadu Co-operative Societies Act. It was further contended that the Jewel Appraiser post is not a sanctioned post in the Co-operative Bank and therefore, they were not employees of the Bank. The Bank had also disputed the claim of the workmen that they had completed 480 days of services in 24 calender months.

7.The Management has also relied upon the Hon'ble Division Bench judgment of our High Court reported in ***2002(4) CTC 385 (Justine Vs. Registrar of Co-operative Societies)*** to impress upon the authority that any illegal appointment in a Co-operative Societies cannot be regularised. According to the Management, the said judgment was confirmed by the Hon'ble Supreme Court in a judgment reported in ***2004 SCC (7) Page 112 (Umarani Vs. The Registrar of Co-operative Societies)***. Therefore, the Management prayed for dismissing the applications filed by the workmen.

8.Before the Authority, the Workmen as well as the authorized representative of the Bank Management were examined and they were cross examined by the other side.

9.Based upon the submissions and the documents filed on either side, the authority had arrived at a finding that the Jewel Appraiser would fall within the definition of 2(4) of Workmen CPS Act. It also found that the Bank

Management is the employer. Passing of an order in favour of the workmen under the CPS Act, is not dependent upon the vacancy or cadre strength. The authority had further found that all the workmen have completed 480 days of services within a period of 24 calender month.

10.Based upon the above said findings, the authority proceeded to issue a direction to the Bank Management to confer permanent status from the next day on which they have completed 480 days of services. Challenging the said order, the present writ petitions have been filed by the Bank Management.

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

11.The learned counsel for the petitioner Management reiterated all the submissions made before the authority under CPS Act. He had relied upon the appointment order issued to the second respondent and contended that the appointment orders clearly reveal that their appointment is based on commission basis. Therefore, they were not receiving monthly wages from the Bank.

12.The learned counsel for the Management had also relied upon a decision of the Hon'ble Supreme Court reported in ***(2006) 3 SCC 729 (Indian Overseas Bank Vs. Workmen)*** wherein the Hon'ble Supreme Court was pleased to hold that the Jewel Appraiser working in a Bank cannot be considered to be the employees of the Bank and therefore, there is no master and servant relationship. The Management had further submitted that during cross examination, the Jewel Appraisers have categorically admitted that the Attendance Register is not being maintained and no disciplinary proceedings have been initiated. He further stated that the Byelaws of the Co-operative Society do not provide for appointment of Jewel Appraiser. In such circumstances, in view of the order of the Hon'ble Division Bench in *Justine's* case, reported in ***2002(4) CTC 385,*** any person illegally appointed without undergoing a selection process, would not be entitled to regularization of service. According to the petitioner, the order of the Hon'ble Division Bench was confirmed by the Hon'ble Supreme Court reported in ***2004 SCC (7) Page 112 (Umarani Vs. The Registrar of Co-operative Societies)***.

13.The learned counsel appearing for the Bank Management had further submitted that the judgment of the Hon'ble Division Bench in *W.A.Nos.1765 of 2019 batch case (The Special Officer, Salem District Central Co-operative Bank Limited Vs. The State of Tamil Nadu, Department of Co-operative Societies, Chennai and others)* dated 16.06.2023 is not applicable to the facts of the present case. He further submitted that in the said case, the appointments were made through the Employment Exchange. Further, the date of superannuation was specifically mentioned. He further contended that the Provident Fund contribution was recovered from those employees and terminal benefits were also paid. In the said case, the appointment of the Jewel Appraisers were not based on commission, but it was monthly salary. Therefore, the said Division Bench order is not applicable to the facts of the present case.

14.The petitioner Bank further relied upon the decision of the two Learned Judges of this Court in *WP(MD).Nos.22888 & 23466 of 2019 and WP(MD).Nos. 11571 to 11573 & 9572 to 9574 of 2018* in support of his contention.

15.Per contra, the learned counsel appearing for the Jewel Appraisers are as follows:

a)The Byelaws of the Society which deals with cadre strength reflected one post for Jewel Appraiser. Therefore, the contention of the Bank that there is no sanctioned vacancy for Jewel Appraiser is not legally sustainable.

b)The Jewel Appraisers have been regularly transferred from one branch to other branch by the petitioner Management. Therefore, they should be only construed to be a direct employees of the Bank.

c)Though the payment is made on commission basis, it is credited to their Bank account only on monthly basis. Therefore, it cannot be contended that they are not receiving salary, but only commission. In some of the branches, separate register is being maintained and the Jewel Appraisers are expected to be on duty between 10.00 a.m to 5.00 p.m. The working hours of the Bank employees and the Jewel Appraisers are one and the same.

d)At the time of entering into service, they have been directed to submit their educational certificate. Only after verifying that they are fully qualified, they have been appointed.

e)The learned counsel had relied upon a decision of the learned Judge of this Court in *WP.Nos.25109 & 21299 of 2010 batch case (The Management, Salem District Central Co-operative Bank Ltd., Salem Vs. The Inspector of Labour Authority, Namakkal and others)* dated 13.10.2017 wherein the learned Judge was pleased to hold that merely because the Jewel Appraisers were not recruited through Employment Exchange, they cannot be deprived of the benefit of regularization.

f) The learned counsel for the petitioner in WP(MD).No.14833 of 2023 contended that there is one sanctioned post in the Head Office and he had been appointed in the said vacancy. The Jewel Appraiser in the Head Office is expected to inspect all the branches. Therefore, the petitioner in the said case cannot be considered to be an outsourced employee.

g)Though it is alleged by the management that the Jewel Appraisers can also take up other avocation, no document has been placed on record by the Bank to establish the fact that the Jewel Appraisers who are working under the petitioner management are taking up other avocation.

h)Apart from appraising jewels, the Jewel Appraisers have been directed to recover the jewel loans and they are also expected to offer their services on the day-to-day activities of the Bank. In such circumstances, the Jewel Appraisers cannot be considered to be an outsourced employee who are receiving commission.

(C).Discussion:

16.A perusal of the appointment order issued to the Jewel Appraisers reveal that their appointment is based on commission basis and the commission is based upon the circular that is issued by the Registrar of the Co-operative Society from time to time. Therefore, it is clear that they are not receiving monthly wages and their rights is not dependent upon any settlement or Statutory Service Rules and it is solely depended upon the circular to be issued by the Registrar of Co-operative Society.

17.Before the authority under CPS Act, the second respondents herein have been subjected to cross examination. All of them have admitted that their appointments were on commission basis based upon the jewels that are pledged on any particular date. It is clear that the commission is not paid by the Bank , but from the charges collected from the customers who are pledging the jewels. Therefore, it is clear that the Bank is not paying salary or even commission for the assessment of quality of jewels. Merely because the commission amount is not paid daily, but the aggregated amount is credited to the Bank account of the Jewel Appraisers, it cannot be contended that the Jewel Appraisers are receiving monthly salary.

18. It can also be gathered from the cross examination that the names of the Jewel Appraisers are not reflected in the attendance registers maintained by the concerned branches. The fact that some branches maintain the separate registers for Jewel Appraisers would clearly indicate that it is only to note down the physical presence of the Jewel Appraisers and the same would not in any way amount to treating the Jewel Appraisers as regular Bank employees.

19.When the Jewel Appraisers are not receiving salary from the Bank, but only a commission, paid from the charges collected from the customers and they are not signing the attendance register meant for other regular Bank employees, there is no master servant relationship between the Bank and Jewel Appraiser.

20.It is also clear that the Jewel Appraisers are not governed by any Conduct Rules, except to the fact that they have to take responsibility to the quality of the jewels which they appraise. There is no prohibition in the appointment order or in any other circular, as against the Jewel Appraisers, not to take up any other employment elsewhere beyond the working hours. If the Jewel Appraisers have not taken up any other avocation beyond the working hours, it is their choice and non-exercising of the said choice would not convert them to be the regular Bank employees.

21.None of the Jewel Appraisers could place on record any material to show any disciplinary action has been initiated as against them. Some documents have been placed before this Court to show that they have been transferred from one branch to other branch. It is only a matter of exigency that these transfers have been made. It is not known whether these transfer orders are at the request of the concerned Jewel Appraisers or by the Bank Management due to administration exigency. When the Jewel Appraisers have been appointed by the Head Office and they have expressed their willingness to work in any one of the branches, merely because they are transferred from one branch to other branch, that will not be sufficient to treat them as Bank employees.

22. A perusal of the Special Byelaws shows that in the approved cadre strength, only one post of Jewel Appraiser is found. It is brought to the notice of the Court that there are 25 branches in the petitioner Bank. As rightly contended by the learned counsel for the petitioners, the Hon'ble Division Bench in the judgment reported in ***2002(4) CTC 385*** has categorically found that the question of regularization of the employees who are appointed beyond the cadre strength is not valid. The said judgment has been confirmed by the Hon'ble Supreme Court in a judgment reported in ***2004 SCC (7) Page 112.***

23.The appointment order of the petitioner in WP(MD).No.14833 of 2023 does not reveal that he had been appointed to the sanctioned post. If any appointment is made to a sanctioned post, it can be done only through the District Recruited Bureau as contemplated under Section 75 of the Tamil Nadu Co-operative Societies Act. Otherwise, it is not merely an irregular appointment but an illegal appointment. In such circumstances, the request of the petitioner in WP(MD).No.14833 of 2023 to sustain the order of conferment of permanent status cannot be sustained.

24.The judgment of the Hon'ble Supreme Court reported in ***2006 3 SCC 729*** is squarely applicable to the facts of the present case. However, the judgment of the Hon'ble Division Bench in ***W.A.Nos.1765 of 2019 batch case*** is completely on different facts, where the Jewel Appraisers were granted gratuity and provident fund benefits and were paid monthly salary.

25.In view of the above said deliberations, it is clear that there is no employer employee relationship between the petitioner management and the Jewel Appraisers. Therefore, question of invoking CPS Act does not arise. The order passed by the authority under CPS Act is clearly without jurisdiction and therefore, the same is liable to be set aside.

(D).Conclusion:

26.The order impugned in the writ petitions are hereby set aside and the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

15.10.2025

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

To

1.The Assistant Commissioner of Labour (Enforcement)
Authority under Tamil Nadu Industrial Establishment
(Conferment of Permanent Status to Workmen) Act, 1981
Nagercoil, Kanyakumari District

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

R.VIJAYAKUMAR,J.

msa

Pre-delivery Common Order made in

W.P(MD).Nos.8110 & 8111 of 2019
and 25719 to 25722 of 2022
and WP(MD).No.14833 of 2023
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