

K. Karuppanan

Vs

Secretary to Government of Tamil Nadu

Civil Appeal No. 213 of 1996

(S.S. Mohammed Quadri, S.N. Phukan JJ)

04.05.1999

JUDGMENT

S.S. Mohammed Quadri, J.

1. In this appeal the order of Tamil Nadu Administrative Tribunal, Madras in O.A. No. 2605 dated 11.1.1995, is under challenge. The third respondent in the said O.A. is the appellant.
2. To appreciate the question arising in this appeal, we shall briefly state the facts of the case.
3. Under the Tamil Nadu Agricultural Produce Markets Act, 1959 (Act No. 23 of 1959) (for short 'the Act') various district Market Committees came into being. The appellant was appointed as Junior Assistant in the Market Committee, Madurai on July 22, 1976. By an order issued on November 17, 1981 the Government of Tamil Nadu declared that all the persons working in various district Market Committees were Government servants or would be treated as Government servants effect from that date. In 1982-83, there were 17 vacancies of Supervisors in Thanjavur Market Committee. After calling for options from the eligible staff of district Market Committees, the Director of Agricultural Marketing, Trichirapalli transferred the appellant along with others to Thanjavur Market Committee for their appointment as Supervisors. The Market Committee passed Resolution No. 12/82-83 on 17.3.83 appointing them as Supervisors and on March 18, 1983 in Proceeding No. 1 E1/893/83, the Secretary of Thanjavur Market Committee issued orders of their appointment. The appellant is shown at Sl. No. 14 in the said proceedings. In Proceeding No. E1/13639/84 dated 26.7.84 issued by the Secretary of the said Market Committee, the services of the appellant as well as the other Supervisors were regularised with effect from 23.12.81 pursuant to the Resolution No. 139/84-84 of the Market Committee dated 21.7.84. Thereafter, the Thanjavur Market Committee by its Resolution No. 229/84-85 dated 22.9.84 declared the probation of the appellant with effect from 24.3.83 (forenoon).
4. It appears that the Government of Tamil Nadu issued orders in GOMs No. 194 Agriculture dated March 15, 1991 treating each District Market Committee as a separate unit. As an upshot of that order of the Government, the Director of Agricultural Marketing issued proceeding on June 28, 1991 purporting to repatriate the appellant to his parent Market Committee, Madurai. The appellant made a representation to the Director of Agricultural Marketing against his repatriation and by order dated 9.7.91 in Proceeding No. A4.16887/91, the Director cancelled his earlier proceedings of 28.6.91. Challenging the correctness of the proceeding of July 9, 1991, respondents 4 to 8 herein filed O.A. No. 2605/91 before the Tamil Nadu Administrative Tribunal, Madras. The O.A. was allowed by the Tribunal on 19.6.92. The appellant assailed the validity of the order of the Tribunal before this Court in Civil Appeal No. 4221/93. By judgment and order of this Court dated

September 7, 1994, the order of the Tribunal dated 19.6.92 was set aside and the case was remanded to the Tribunal for fresh disposal in accordance with law. After remand, on January 11, 1995, the Tribunal allowed the application of the said respondents holding that on appointment as Supervisor of Thanjavur Market Committee the appellant did not acquire any right and his subsequent regularisation and completion of probation did not make him the regular incumbent of Thanjavur Market Committee. That order is the subject matter of the present appeal.

5. The contentions of Mr. T. Raja, learned counsel for the appellant, are that the appointment of the appellant by transfer as Supervisor under Rule 203 of Tamil Nadu Agricultural Produce Market Rules, 1962 (for short 'the 1962 Rules') and his subsequent regularisation would make him an employee of the Thanjavur Market Committee and for that reason declaration of completion of probation was also made by the Committee. The appellant was appointed as Supervisor by the competent authority in 1983 and that was saved by amendment of Rules in GOMs No. 206 Agriculture Department dated 18.3.91. Therefore, the repatriation of the appellant to the parent Market Committee, Madurai was wholly illegal which was rightly withdrawn by the Director as such the impugned order of the Tribunal is liable to be set aside.

6. Learned counsel appearing for the official respondents, respondent 1-3, submitted that the transfer of the appellant from Market Committee, Madurai to Thanjavur Market Committee by the Director did not make him an employee of Thanjavur Market Committee; he continued to have his lien in the Market Committee, Madurai; his subsequent regularisation on the post of Supervisor and declaration of probation by Thanjavur Market Committee would not confer any right, whatsoever, on him. The Director committed error in withdrawing the order of repatriation and the Tribunal corrected the illegality by allowing the O.A. of respondents 4 to 8 herein.

7. Though service of notice of this appeal on respondent 4 to 8, petitioner in the O.A., is reported to be complete, yet they did not enter appearance.

8. The short question that arises for consideration is whether in the circumstances of this case on his transfer and appointment as Supervisor of the Thanjavur Market Committee, the appellant became the employee of that Committee.

9. Here it may be useful to refer to the relevant Rules. Under the 1962 Rules each Market Committee was a separate unit. While so, by order issued in GOMs No. 2535 Agriculture dated 17.11.81, the Government of Tamil Nadu declared the services of the employees working in the Market Committees as Government servants w.e.f. 17.11.81. Rule 202 of the said Rules empowered the Director of Agriculture Marketing to transfer employees of one Market Committee to any other Market Committee. In 1982-83, there were 17 vacant posts of Supervisors in Thanjavur Market Committee. The Director having called for options of the eligible candidates from various district Market Committees transferred 17 persons including the appellant from their respective Market Committees to Thanjavur Market Committee for being appointed as Supervisors. Accordingly under Rule 203 of the said Rules, the Thanjavur Market Committee appointed the appellant and others as Supervisors and issued orders on 18.3.83. On 26.7.84 the services of the appellant were regularised by Thanjavur Market Committee and on 1.10.84 he was declared to have completed his probation satisfactorily. Under the said Rules the Market Committee was competent to appoint Supervisors of that Committee. Therefore, the appointment of the appellant as Supervisor was in accordance with Rules then in force. It is no doubt true that the transfer of the appellant was subject to certain conditions but in view of his subsequent appointment as Supervisor of Thanjavur Market Committee and thereafter his regularisation on satisfactory completion of probation, those

conditions would not affect his tenure.

10. In 1989, the Government of Tamil Nadu decided to constitute separate service called the Tamil Nadu Agricultural Marketing Subordinate Service and made Rules governing that service. In GOMs No. 470 Agriculture dated 5.7.89 the rules for Tamil Nadu Agricultural Marketing Subordinate Service Rules (hereinafter referred to as the special Rules) were issued. Thus a centralised Tamil Nadu Agricultural Marketing Subordinate Service was constituted of which all the employees of district Market Committee were members. Consequently the employees of district Market Committees ceased to be employees in separate units of District Market Committees. By Rule 2, the Special Rules were given retrospective effect from November 17, 1981. The Director of Agriculture Marketing was made the appointing authority for the post of Supervisor under the Special Rules. Since the special rules were framed in 1989 and given retrospective effect from 17.11.81 and in the meanwhile many appointments were made by the Market Committees, the Government issued order first inserting Rule 7 in the special Rules providing that nothing contained in those rules shall adversely affect the appointments and promotions made under the provisions of 1962 Rules on and from 17.11.81 till 4.7.89. Further Rule 10 was added in the special Rules to ensure that nothing contained in those Rules shall adversely affect any appointment and promotion already made under the provisions of the 1962 Rules. In view of Rules 7 and 10, referred to above, the appointment of the appellant by the Thanjavur Market Committee which was valid under the 1962 Rules then in force, remained valid even under the special Rules.

11. It appears that the Government of Tamil Nadu issued orders in GOMs 194 on 15.3.91 directing that each Market Committee shall be treated as separate unit. The appellant who was already working as a Supervisor in Thanjavur Market Committee on March 15, 1991 was entitled to continue as Supervisor of that Market Committee and he could not have been treated as employee of the District Market Committee, Madurai in which he was initially appointed. His repatriation to the District Market Committee, Madurai on the ground that it was his parent Committee was wholly illegal for the simple reason that after formation of centralized Marketing Subordinate Service the concept of the parent committee and the borrowing Committee got obliterated. The order of the Director transferring the appellant to District Market Committee, Madurai on the ground that it was his parent Committee in the absence of any specific rule authorising him to do so, was clearly illegal. The Director was, therefore, justified in withdrawing the illegal order. The Tribunal, in our view, erred in not treating the appellant as employee of the Thanjavur Market Committee and in holding that his promotion, regularisation and declaration of probation as Supervisor by the Thanjavur Market Committee did not confer any right on him.

12. Mr. A. Mariarputham, learned counsel appearing for the respondents, however, relied on the judgment of this Court in *M/s. Onkarlal Nandlal v. State of Rajasthan & anr.*, 1985(4) SCC 404. That case arose under the Rajasthan Sales Tax Act. The question was whether the sale in question was inter-State sale or intra-State sale. The assessee purchased poppy seeds against Declarations under Form ST 17 which indicated that the purchases were for the purpose of resale within the State. But the sale of the goods though inside the State, was effected in the course of inter-State trade and commerce. The expression 'resale within the State' in Form No. ST 17, it was held by this Court, must be read in the light of Explanation II to Section 2(o) of the State Act. The Explanation by incorporating the provisions of Section 4(2) of the Central Sales Tax Act provided as to when a sale shall be deemed to be a sale within the State. It was laid down that Explanation II to Section 2(o) of the State Act had to be interpreted as if Section 4(2) of the Central Act was written out verbatim in that Explanation and there was no occasion or need to refer to the Central Act from which that incorporation was made or to its purpose or context. That judgment is of no assistance to

the respondent in interpreting the 1962 Rules or special Rules or the amendment made to those Rules.

13. For the above reasons, the judgment and order under appeal is set aside. The appeal is allowed but in the circumstances of the case without costs.

Appeal allowed.