



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2015

CORAM:

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

and

THE HONOURABLE DR.JUSTICE S.TAMILVANAN

W.A(MD)Nos.67 and 68 of 2015

in

WP.(MD).Nos.1733 and 1734 of 2010

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1.South Indian Bank Ltd.,
represented by its
Managing Director and CEO
SIB House, T.B.Road,
Mission Quarters,
Thrissur 680 001.

2.South Indian Bank Ltd.,
represented by its Branch Manager
Branch:Anandavadi,
(via) Rayanbaram
Ariyalur District.

... Appellants/Petitioners in both WAS

Versus

1.The Deputy Commissioner of Labour
Authority under the Tamil Nadu Shops and
Establishments Act,
Tiruchirappalli.

2.Paul Varied Cheruvathoor

...Respondents/respondents in both WAS

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 02.12.2014, made in W.P.(MD)No.1733 and 1734 of
2010.

Prayer in WP(MD). 1733/ 2010 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a WRIT OF
CERTIORARI, calling for the records of the 1st Respondent in TNSE
Appeal I.A.No.1 of 2009 in TNSE 1/08 and quash its order dated
02-09-2009.

Prayer in WP(MD). 1734/ 2010 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a WRIT OF
CERTIORARI, calling for the records of the 1st Respondent in TNSE
Appeal I.A.No.2 of 2009 in TNSE 1/08 and quash its order dated
02-09-2009.



For Appellants : Mr.V.Karthick

For Respondents : Mr.A.K.Baskarapandiyan
Government Pleader for R.1

Mr.Paul Varied Cheruvathoor
Party-in-Person/R.2

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COMMON JUDGMENT

[Judgment of the Court was delivered by The Hon'ble Chief Justice]

The second respondent was an employee of the appellant bank and pursuant to a domestic enquiry, he was dismissed from service on 24.03.2005. At the time of his dismissal, the second respondent was employed with Anandavadi Branch at Ariyalur District of the appellant bank. The second respondent aggrieved by the action of the appellant bank, preferred an appeal before the Chairman of the appellant bank as per the provisions of the South Indian Bank Officers' Conduct (Discipline and Appeal) Regulations, 2004. However, the said appeal was also dismissed on 18.06.2005.

2. The controversy emerges thereafter since the second respondent contended that it was advised to file a civil suit and persuade that remedy in Kerala. The said suit was withdrawn and a second appeal was filed before the Board of Directors. This second appeal was rejected on 28.10.2008 as hopelessly barred by time as it had been filed almost after three years. A copy of the order was received by the second respondent on 11.07.2008.

3. We may note at this stage that when the second appeal was preferred, the suit was still pending and it is only on the objection of the appellant bank that subsequently the suit was withdrawn. It is in view thereafter that in the impugned order, learned single Judge has held that suit having been subsequently withdrawn, the second appeal was maintainable.

4. On meeting with the adverse fate, the second respondent preferred an appeal under Section 4(2) of the Tamil Nadu Shops Establishments Act, 1947. The appellants in those appeals preferred applications seeking to raise three primary issues - (i) Whether the provisions of the Act and Rules made thereunder are applicable to Anandavadi Branch? (ii) Whether the appeal petition shall be dealt with as per the limitations prescribed under the Act? and (iii) Whether the appeal petition is barred by the civil suit already filed before the civil court?



5. The aforesaid applications were dismissed by the first respondent/Deputy Commissioner of Labour and it is his order dated 24.07.2009 which was assailed by the appellant by filing writ petitions. These writ petitions have been decided - vide impugned order dated 02.12.2014.

6. The appellant has approached this Court on two accounts:

(i) The findings on the issue of limitation are not sustainable.

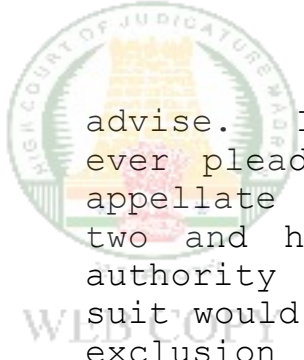
(ii) The material on record was sufficient for the learned Single Judge to opine that there was no jurisdiction with the first respondent and once the remedy was not available to the second respondent, no purpose has been served by remitting the matter back to the first respondent.

7. We have heard the learned counsel for the appellant and the second respondent-in-person.

8. In so far as the first issue raised before us is concerned, the findings of the learned Single Judge are that the period of 30 days to prefer an appeal before the first respondent expired on a Sunday and since the appeal was preferred on Monday, it should be treated as within time. The submission of the learned counsel for the appellant is that his contention was not that an appeal preferred on Monday in which limitation expired on Sunday should be treated as time barred. His contention was that the second respondent ought to have filed the second appeal within the stipulated time from the order of the appellate authority and the three years lapse of time has also to be counted as delay in preferring the appeal before the first respondent.

9. We are unable to agree with the submission of the learned counsel for the appellant for the reason that the second appellate authority/Board never opined on the merits of the controversy. It simply dismissed the appeal as barred by time. When the appeal is preferred before the first respondent, the only aspect, the first respondent has to analyse is whether the appeal was rightly rejected or wrongly rejected as barred by time. There would be no question of adjudication of the merits of the controversy - the disciplinary proceedings and the order passed by the first appellate authority -- in such a situation as if it opines that the second appellate authority passed the order correctly, then the appeal filed before the second respondent would be treated as barred by time. If it opined otherwise, then the matter would have to be remitted back to the second appellate authority/Board.

<https://hcservices.courts.gov.in/hcservices/> 10. We also add here that the exclusion of time period which the second respondent can seek is for the period when he persuade the remedy mistakenly in another forum on wrong legal



advise. It is not clear whether the second respondent in fact ever pleaded so or preferred any application before the second appellate authority. The suit is also stated to have been filed two and half years after the decision of the first appellate authority on a plea that the period of limitation for filing a suit would be three years. Thus the second respondent seeks even exclusion of this two and half years! These aspects would have to be examined by the first respondent while considering what is the nature of the order which could have been passed by the second appellate authority in such a situation.

11. As far as the second plea is concerned, no doubt on the basis of material on record, one course of action could have been for the learned Single Judge to decide the controversy on the issue of maintainability of the appeal before the first appellate court itself. However, the learned Single Judge instead of recourse to that line of action, has considered it appropriate to remit the matter back to the first respondent to be examined on the issue of its jurisdiction to entertain the appeal in view of the material on record. Such an approach cannot be stated to be *per se* erroneous in law though both the courses of action were permissible. Learned Single Judge having exercised his discretion to remit the matter back to the first respondent, the said first respondent is now required to go into the issue of its jurisdiction to entertain the appeal itself as according to the learned counsel for the appellant, that aspect stands clarified in pursuance of judicial pronouncement of this Court as well as the information made available under the RTI Act by the Office of the first respondent dated 20.11.2008 stating that the said Act is not applicable to Anandavadi Village Panchayat, Udayar Palayam Taluk, Ariyalur (District) Panchayat. This is the reason why the learned counsel for the appellant has relied upon the pronouncement of the learned single Judge of this Court in **Lakshmi Vilas Bank Ltd., vs. Deputy Commissioner of Labour** reported in **(2004(1) LLN 621)**, which view has been affirmed by the Division Bench of this Court in **Management of Akkur Primary A.C.B., Ltd., vs. Gnanasekaran** reported in **(2007(3) L.L.N 516)**. We are observing this, so that the first appellate authority specifically deals with this issue by reference to the said Judgments and the Information furnished in the RTI application apart from any other material which may be placed by the parties. Only if the first respondent has the jurisdiction would the issue of consideration of delay by the second appellate authority be decided as observed aforesaid.

12. The appeals accordingly stand disposed of in the aforesaid terms, leaving the parties to bear their own costs. Consequently, connected M.P(MD)No.1 of 2015 is closed.



13. In view of these appeals, the time period for the first appellate authority to pass orders, is extended by 30 days.

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Sd/-
Assistant Registrar(CO)
/True copy/

Sub Assistant Registrar

ksr
To

The Deputy Commissioner of Labour
Authority under the Tamil Nadu Shops and
Establishments Act,
Tiruchirappalli.

+1cc to Special Government Pleader Sr NO. 5464

+1cc to M/S.P.MALINI, ADVOCATE IN SR NO.5260

+1cc to MR.Paul Varied Cheruvathoor
Party-in-Person IN SR NO. 5169

W.A(MD)No.67 and 68 of 2015
04.02.2015

RG.09.02.2015 5P.5C.