

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 29-02-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1805 OF 2015

The Management of
Higginbothams Private Limited,
No.116, Anna Salai,
Chennai-600 002.

... Petitioner

-vs-

1.Special Deputy Commissioner of Labour,
Appellate Authority under Tamilnadu
Shops and Establishments Act,1947,
Chennai-600 006.

2.K.S.Sudhakar

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pending on the file of the first respondent in TSE No.12 of 2009 now renumbered as TSE-1/6 of 2014 and to quash the impugned order of the first respondent made in I.A.No.1 of 2010 in TSE Appeal No.12 of 2009, dated 27.12.2012.

For petitioner : Mr.C.Mohan
For respondent 1 : Mr.R.Rajeswaran,
Spl.Govt.Pleader.

For respondent 2 : Mr.K.M.Ramesh

सत्यमेव जयते

O R D E R

Petitioner is the management of Higginbothams Private Limited and they have challenged the order passed by the first respondent/Special Deputy Commissioner of Labour, who is the Appellate Authority, under the provisions of Tamil Nadu Shops and Establishments Act,1947, dated 27.12.2012, in an interlocutory application, filed by the second respondent/workman.

2. Respondent workman filed I.A.No.1 of 2010 before the first respondent, seeking for a direction to produce certain

records, namely, (1) chargesheet issued to one Tmt.Visalakshi Arunkumar and her explanation; (2) various statements filed by the witnesses in support of charges against Tmt.Visalakshi Arunkumar, including their examination in chief; (3) entire enquiry proceedings against Tmt.Visalakshi Arunkumar and also the findings of the Enquiry Officer; (4) second show cause notice calling upon Tmt. Visalakshi Arunkumar to submit her written representation against the proposal of dismissal and her written statement against the proposed punishment of dismissal from service; and (5) final orders passed against her imposing a lesser punishment and also letter if any issued to her about the forfeiture of gratuity. The said application was resisted by the management, by filing a counter statement, inter alia, referring to a decision of the Hon'ble Supreme Court in the case of United Planters Association of Southern India v. K.G.Sangameswaran and Another, reported in (1997) 4 SCC 741.

3. It is the submission of the learned counsel for the petitioner that the authority has to first consider as to whether domestic enquiry conducted against the respondent workman was fair and proper and only thereafter it has to proceed further in the matter and it ought not to have entertained the interlocutory application at this stage.

4. Counter affidavit has been filed by the respondent workman, justifying his demand for summoning the documents. However, it is stated in paragraphs 9 and 10 of the counter affidavit that on account of pendency of the writ petition, the appellate authority, namely, first respondent has been prevented from proceeding further in the matter, and, therefore, the respondent workman has submitted that, at present, he will not press for production of the documents sought for and recording the said submission, the writ petition may be disposed of, in order to avoid further delay in proceeding with the appeal before the appellate authority.

5. In the light of the above stand taken by the respondent workman in the counter affidavit filed before this Court, the question of adjudicating the correctness of the impugned order does not arise and it is left open for the respondent workman to seek for appropriate remedy before the appellate authority, if the need arises, at a later stage. Also, pursuant to the above stand of the respondent workman, the challenge to the impugned proceedings has virtually become infructuous, and, accordingly, I.A.No.1 of 2010 on the file of first respondent is closed, as not pressed.

6. Writ Petition is disposed of accordingly. No costs. Consequently, the connected M.P.No.1 of 2015 and W.M.P.No.3794 of 2016 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Special Deputy Commissioner of Labour,
Appellate Authority under Tamilnadu
Shops and Establishments Act,1947,
Chennai-600 006.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.12785
+1cc to M/s.King & Patridge, Advocate, S.R.No.12736
+1cc to the Government Pleader, S.R.No.12966

W.P.No.1805 OF 2015

ctk(CO)
srg(17/03/2016)

सत्यमेव जयते

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