

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.26030 of 2014
& MP.No.1 of 2014 & W.M.P.No.10199 of 2017

The Management of M/s. Anand Rathi
Share and stock Brokers Ltd.,
Rep. by its Authorised Signatory,
Subham Centre B-2, 5th Floor,
Cardinal Gracious Road,
Century Plaza- 560 562.
Chakala, Andheri(E),
Mumbai-400 099.
...Petitioner

vs.

1.A.Sridharan

2.The Vice President(Southern Head),
M/s.Anand Rathi Share and Stock Brokers Ltd.,
4th Floor, Indian Express Buildings,
Queens Road, Bangalore-560 052.

3.Mr.Devarajan,
Cluster Manager,
M/s.Anand Rathi Share and Stock Brokers Ltd.,
G-1, Aarthi Apartment,
New No.150, Habibullah Road,
T.Nagar, Chennai-600 017.
(set exparte and hence given up)

4.The Special Deputy Commissioner
of Labour (Appellate Authority under Shops
& Establishment Act 1947),
Chennai-6.
...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Certiorari, to call for the records dated 30.08.2013 in proceedings TSE/16/2011 on the file of the fourth respondent and quash the same.

For Petitioner : Mr.Rajagopalan

For Respondents : Mr.S.Sathiachandran for R1

O R D E R

The petitioner has approached this Court seeking for the following relief:

'To issue a Certiorari, to call for the records dated 30.08.2013 in proceedings TSE/16/2011 on the file of the fourth respondent and quash the same'.

2. The case of the petitioner is as follows:

The first respondent was appointed as Manager in the petitioner/ Management on 10.03.2008. According to him, while he was discharging his duties without any complaints, he was terminated from service with effect from 13.08.2009. He joined originally on 10.03.2008. According to the first respondent, his services came to be terminated on 13.08.2009. According to the petitioner/Management, there was no termination at all and it was the first respondent/employee, who submitted his resignation on 13.08.2009 and the same was accepted and he was relieved from service. However, this was disputed by the first respondent/employee stating that there was no voluntary resignation on his part, but his services came to be wrongly terminated without giving any reasons. The petitioner was not allowed to enter Office after 13.08.2009 and the copy of the relieving order was served on him on 23.09.2009 as if the first respondent/employee is retired from service. The first respondent/employee, as against the termination order, preferred an appeal in TSE.No.I/16 under Section 41 of the Tamilnadu Shops and Establishments Act.

3. Before the fourth respondent/authority, the first respondent/employee was examined and cross examined on behalf of the Management. However, not satisfied with the cross examination of the employee/first respondent, the petitioner herein filed I.A.24 of 2009 before the appellate authority to re-open the evidence of the appellant therein namely, the employee/first respondent, which was objected to, by the appellant/employee. Even though, an opportunity was afforded to the petitioner/Management for the production of documents, the documents were not produced. Therefore, Interlocutory Application for re-opening appellant/employee's evidence was dismissed. As against the dismissal of I.A. No.24 of 2009, the petitioner/management herein has approached this Court in W.P.No.27365 of 2011. This Court, by order dated 28.02.2012, allowed the writ petition by setting aside the order of the appellate authority dated 04.07.2011 in I.A.No.16 of 2011, and the petitioner /management was directed to be given one last

opportunity to place the documents subject to the payment of Rs.5000/- as cost, to the employee and further directed the appellate authority to expeditiously decide the matter and close the evidence and proceed further in the matter. In pursuance of the order/direction of this Court, in the above said writ petition, the case was posted for hearing on 24.07.2012 & 16.08.2012. However, on behalf of the petitioner/management, there was no representation. Thereafter, the case was posted on 11.10.2012 and further adjourned to 19.11.2012. In the meanwhile, a cost of Rs.5000/- was paid. Thereafter, the appeal was adjourned for several occasions on 06.12.2012 & 03.01.2013, 06.02.2013 & 09.04.2013, 26.04.2013, 23.05.2013, 30.05.2013 and finally on 06.06.2013. In spite of repeated adjournments, there was no representation on behalf of petitioner / management and therefore, the evidence was closed and the petitioner/management was set exparte on 09.04.2013. The third respondent, who was impleaded in his personal capacity was set ex-parte. The appellate authority, thereafter, proceeded further in the matter and ultimately allowed the appeal vide order dated 30.08.2013. As against the order passed by the appellate authority, the petitioner /management is before this Court, assailing the same.

4. Mr.N.R.Rajagopalan, learned counsel entered appearance on behalf of the petitioner /management and he would submit that the first respondent/employee does not come within the definition of 'person employed' and there was no employer / employee relationship between the management and the first respondent and in any event, the petitioner/management does not come within the definition of 'employer' as defined in the Tamilnadu Shops and Establishments Act and therefore, he would submit that the appellate authority's order allowing appeal in favour of the first respondent/employee is contrary to the provisions of the Tamilnadu Shops and Establishments Act and therefore is liable to be interfered with.

5. The learned counsel for the petitioner/management has also further contended that even on merits, the first respondent/management is not entitled to any relief, in view of the fact that there was no wrongful termination as the workman/employee himself submitted resignation voluntarily and in such event, the question of wrongful termination did not arise at all. Therefore, according to the learned counsel for the petitioner/management, the appellate authority has misdirected himself in concluding against the management/petitioner and in favour of the employee while disposing of the appeal.

6. Per contra, Mr.S.Sathiachandran, the learned counsel for the first respondent/ management would contend that all the

objections which are raised before this Court by the petitioner/management have been considered in detail by the appellate authority and every point of legal objection on behalf of the petitioner/management was examined and taken note of and the appellate authority had given a well considered findings on both the legal and factual aspects. The learned counsel would draw the attention of this Court to the detailed order passed by the appellate authority dated 30.08.2013. As rightly contended by the learned counsel, the authority had dealt with all the objections and also the evidence available and had come to the right conclusion in favour of the employee and allowed the appeal. The consideration of the appellate authority, which ultimately ended in favour of the employee, as found in the order dated 30.08.2013, is extracted below:

"In this case, it is to be decided whether the appeal filed by the appellant is to be allowed or not?

The first contention of the respondent in the counter is that the appellant will not come under the definition of 'person employed' and the term 'establishment' would not cover the first respondent.

Section 4(1) of Tamil Nadu Shops and Establishments Act, 1947 reads as under:

"4(1) Nothing contained in this Act shall apply to-
(a) Persons employed in any establishment in a position of management.

Section 5 of the Tamil Nadu Shops and Establishments Act, 1947 reads as under:

"5 Power of Government to apply Act to exempted persons or establishments:

Notwithstanding anything contained in Section, the (State) Government may, by notification apply all or any of the provisions of the Act to any class of persons or establishments mentioned in that section, other than those mentioned in clauses (c) and (f) of sub-section(1) and modify or cancel any such notification".

Section 5 of the Act confers power on the Government to apply all or any of the provisions of the Act by notification to the exempted employees under Section 4 of the Act. The State Government, vide G.O.No.4047, Industries, Labour and Housing (Labour) Department, dated 05.10.1966, notified as below:

"In exercise of the powers conferred by Section 5 of the Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1947) the Governor of Madras hereby applies all the provisions of the said Act to the class of persons mentioned in clause(a) of sub section(1) of section 4".

As the notification applies to the persons employed in

any establishment in a position of management, the Appellant herein also covered under the term 'person employed'.

The next contention of the respondent is that their establishment is not covered under the Tamil Nadu Shops and Establishments Act, 1947.

Sub Section(6) of Section 2 of Tamil Nadu Shops and Establishments Act, 1947 defines 'establishment'.

'(6) 'establishment' means a shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement of entertainment and includes such establishments as the State Government may be notification declare to be an establishment for the purposes of this Act.'

Sub section (3) of section 2 of Tamil Nadu Shops and Establishments Act, 1947 defines 'commercial establishment'.

'(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the state Government may be notification declare to be a commercial establishment for the purpose of this Act'.

It is not in dispute that the respondent-company involved in share capital investment in the stock market all over India and run on commercial manner. An organisation to be a commercial establishment, there must not only be an organized activity for carrying on any business, trade or profession but the activity must be carried on in a commercial manner. It is also not in dispute that the respondent-company is run on commercial basis. Therefore, the respondent-company is an 'establishment' and covered under the Act.

Now, the issue to be decided is whether the appeal filed by Thiru A. Sridharan under section 41(2) of Tamil Nadu Shops and Establishments Act, 1947 should be allowed or not. Section 41 of Tamil Nadu Shops and Establishments Act, 1947 reads as under:

'41. Notice of dismissal-(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided however, that such notice shall

not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

According to Section 41(1) of the Act, if the services of the person employed have to be dispensed with, if it is for 'reasonable cause' by giving one month notice or wages in lieu of notice and if it is on 'charge of misconduct', termination of service should be preceded by (i) enquiry and (ii) supported by satisfactory evidence.

In this case, the contention of the respondents 1 and 2 is that the appellant submitted his resignation letter dated 13.08.2009 and he was relieved from the services of the respondent on 13.08.2009 itself.

The rebuttal of the appellant is that he did not resign and had not submitted any resignation letter.

The respondents 1 and 2 were given sufficient opportunity to lead evidence to substantiate their claim that the appellant had resigned from job on his own volition.

But, the respondents 1 & 2 failed to lead any evidence or to file any document in support of their claim. Hence it is held that the respondents 1 and 2 failed to substantiate their claim that the appellant had resigned from services of the respondent with legal evidence and therefore the respondents' contention is rejected''.

7. From the above, it could be seen that the appellate authority had addressed the legal issues in a proper perspective with reference to the definition and various Sections of the Tamilnadu Shops and Establishments Act and had given a thorough findings both on the legal as well as factual aspects. The appellate authority had also taken into consideration the counter filed on behalf of the management/second respondent therein and taken note of the objections and after considering all the relevant factors, the appellate authority had come to a correct conclusion in favour of the first respondent/employee.

8. This Court, on considering the submissions made on behalf of the learned counsel, does not find any infirmity in the order passed by the fourth respondent/appellate authority. On

the other hand, the petitioner/management has not made out any case calling for interference of this Court. The grounds raised in support of the writ petition have all been considered and negatived and therefore, this Court does not find any merit and substance in the writ petition and therefore, the present writ petition is liable to be dismissed and hence dismissed. Consequent to the dismissal of the petition filed by the petitioner/management is concerned, there shall be a direction to the petitioner/management to reinstate the first respondent /employee in service with all the attendant benefits. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

9. The writ petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Vice President(Southern Head),
M/s.Anand Rathi Share and Stock Brokers Ltd.,
4th Floor, Indian Express Buildings,
Queens Road, Bangalore-560 052.
 - 2.Mr.Devarajan,
Cluster Manager,
M/s.Anand Rathi Share and Stock Brokers Ltd.,
G-1, Aarthi Apartment,
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T.Nagar, Chennai-600 017.
(set exparte and hence given up)
 - 3.The Special Deputy Commissioner
of Labour (Appellate Authority under Shops
& Establishment Act 1947),
Chennai-6.
- + 1 cc to Mr.N.R. Ragagopalan, Advocate Sr.70457
+ 1 cc to M/s. S. Sathichandran, Advocate Sr.70418

W.P.No.26030 of 2014

RK(CO)
EU(31/10/2017)