

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36767 of 2003
and
W.M.P.No.44654 of 2003

The Management of

M/s. Trimax Industries Ltd.,
No.1, Subbarayan Avenue,
C.P.Ramaswamy Road,
Alwarpet, Chennai - 600 018

... Petitioner

Vs.

1. Appellate Authority under the
Tamil Nadu Shops and Establishments
Act, (Deputy Commr. Of Labour-I),
Chennai -6.

2. G.R.Venkatesh Babu,

.... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India in the nature of Writ of Prohibition or other appropriate Writ or Order or Direction to prohibit the Appellate Authority under Tamil Nadu Shops and Establishments Act (Deputy Commissioner of Labour-I), Chennai/ the first respondent from proceeding further with the hearing of the Appeal TSE No.1-21 of 2001 filed by the second respondent herein under Section 41 of Tamil Nadu Shops and Establishments Act 1947.

For Petitioner : Mr.M.R.Raghavan

For Respondents : Mr. M.Digvijayapandian,
Additional Government Pleader
for R1
R2 - No Appearance

O R D E R

The petitioner Management has filed this writ petition to issue writ of prohibition prohibiting the appellate authority under the Tamil Nadu Shops and Establishments Act, namely, the first respondent from proceeding further with the hearing of the Appeal TSE No.1-21 of 2001 filed by the second respondent under Section 41 of the Tamil Nadu Shops and Establishments Act.

2. The brief facts of the case are as follows:

The petitioner management was engaged in the business of export of bulk minerals. Due to severe competition in Export market, the petitioner was compelled to streamline the operation to reduce the costs. Accordingly, the manpower position in the company was reviewed and it was found that there was no necessity for engaging two junior supervisors since one was sufficient. Hence, the second respondent, who was a Juniormost employee in the petitioner management, was sent out and the management also sent a notice on 15.03.2001 and relieved him from service from 15.04.2001 and make him eligible for pay and allowance upto 15.04.2001. Subsequent to this communication, on 11.04.2001, the second respondent tendered his resignation and requested the management to relieve him from the service of the company on 12.04.2001. Thereafter, the petitioner management accepted the second respondent resignation and relieved him and consequently, final settlement was also given to him on 12.04.2001.

3. After some time, the second respondent sent a letter stating that the resignation was obtained by coercion and threat and requested the management to recall the earlier orders. After receipt of the letter from the second respondent, the petitioner management wrote a letter on 12.05.2001 denying all the allegations mentioning about the receipt of the full settlement. Aggrieved by the same, the second respondent filed an appeal before the first respondent under Section 41(2) of the Tamil Nadu Shops and Establishments Act. While the case was in progress, the petitioner filed this writ petition for prohibiting the first respondent to proceed with the case.

4. Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the first respondent.

5. Mr. M.R.Raghavan, the learned counsel appearing for the petitioner would submit that the above matter is squarely covered by the judgement of this Court reported in 1986(1) Labour Law Journal 408 in the case of M/s. Needle Industries Ltd /v/ the Additional Commissioner for Workmen's compensation Madras Teynampet and others

The relevant portion as follows:

17. As per the wording of S. 41 of the Act, no employer shall dispense with the services of a person 1) except for a reasonable cause; or 2) by way of misconduct, where there is no dispensation with the service by the petitioner, the employer, but the dispensation was brought about by the act of resignation, the court can have no jurisdiction. This is all the more so when in the appeal all that the

authority could hold in under S. 41(2) there was no reasonable cause nor was the employee guilty of the misconduct alleged. Then again, it can merely uphold or set aside the order of termination and cannot exercise a discretion like the Courts established under the Industrial Law which are entrusted with powers under S. 11-A of the Industrial Disputes Act or the authorities constituted under the Catering and Establishment Act. What is required to be noted in this case is, if there is no termination by the employer the fact that the resignation was brought about by coercion is not a matter which falls within the jurisdiction of the authority, because the authority will then be assuming jurisdiction like that of a civil court as to whether the resignation was voluntary or not which falls totally outside the purview of S. 41(2) of the Act. Ammapet Handloom Weavers' Cooperative Productions and Sales Society v. Kadalamuthu (K.S.) and other [1969-II L.L.J. 52] is cited for the proposition that this Court in a case arising under S. 41 of the Act took the view that when a workman failed to turn up, if his name was removed from the register or rolls, that would not amount to termination. Citing The Lakshmi Vilas Bank Ltd., Karur v. L. S. Pattabi Chettiar and another [1970-II L.L.J. 211] it is contended that superannuation does not tantamount to premature termination. M/s. Southern Roadways, Bangalore v. K. Padmanabhan and another [1979-L.I.C. 224] is cited for the contention as to how the matter could be approached under S. 2-A of the Industrial Disputes Act. In conclusion Mr. Narayanaswamy submits that unless and until the premature termination by the dispensation with the services of the employee is brought about by an act attributable to the employer, S. 41(2) cannot clothe the authority with jurisdiction.

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19. The learned counsel relies on The Lakshmi Vilas Bank Ltd., Karur v. L. S. Pattabi Chettiar and another (supra) and relies strongly upon certain observations made by the learned Judge there to the effect that if resignation was made as a cloak for dispensation with the services, the matter would be different. From this it is sought to be argued that in such a case the first respondent will have every jurisdiction. Then again, M/s. Southern Roadways Ltd., Bangalore v. K. Padmanabhan and another (supra) is also pressed into service. That was a case of resignation. On these rulings it is submitted that there is every jurisdiction for the authority to go into the question of resignation because, but for the

coercion there was no resignation. Therefore, the act that is attributable to the management is coercion. Coercion removed, no resignation. If this contention is not upheld, this device would be adopted by every employer and the purpose of providing a quicker remedy under the Act would be defeated. Lastly it is submitted that the Act being a social welfare legislation made in furtherance of the employees working in Shops, Commercial Establishments, Restaurants, Theatres, etc., a liberal interpretation must be pleaded having regard to the trend of law.

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24. Allowing the writ petition preferred by the bank, held that the retirement of an employee on reaching the age of superannuation according to service rules would not come within the scope of S. 41. From the very nature of the language employed in S. 41(1) only a premature termination of the services of an employee could be brought within the scope of that section, thereby meaning a premature termination as the termination of the services of an employee prior to the period fixed in a contract of service, if there is one, or a termination of service prior to the period fixed for retirement on reaching the age of superannuation prescribed either in a contract of service, if there is one, or in the rules or regulations governing such service. Consequently if there is a contract of service and the contract of service itself prescribes the period of service, the termination of service of the employee pursuant to the expiry of such period of employment could not fall within the scope of the S. 41(1). Equally if there are terms in the contract of service or provisions in the rules applicable to the service providing for the retirement of the employee on reaching the age of superannuation, such a case also cannot fail within the scope of S. 41(2). The dispensing with the service for a reasonable cause or the dispensing with the service on a charge of misconduct, both of them, contemplate a termination of service anterior and prior to the date on which the service would come to an end automatically either as a result of the terms on the terms on the contract of service or as a result of a rule application to the service in question.

25. It may happen in a particular case that the retirement was used by the employer as a cloak for dispensing with the services of an employee where the motive for dispensing with the service is something different. In the event different position may possibly result because no person will be allowed to

evade the obligations imposed on him by law by having recourse to a cloak or guise under which he can take refuge in order escape from such an obligation."

In the course of the judgment, Justice Ismail (as he then was) observed :

"It may happen in a particular case the retirement was used by the employer as a cloak for dispensing with the services of an employee where the motive for dispensing with the services is something different. In that event a different position may possibly result because no person will be allowed to evade the obligation imposed on him by law by having recourse to a cloak or guise under which he can take refuge in order to escape from such an obligation."

Certainly I do not mean to understand this observation as to hold that in a case of resignation albeit it being disputed as not voluntary but brought about by coercion, the learned Judge considered that an authority exercising jurisdiction under S. 41 of the Act could go into the question whether the resignation was brought about by the supervening circumstances by coercion. Therefore, this ruling does not help the respondent. Yet, one other case that is relied on is M/s. Southern Roadways Ltd., Bangalore v. K. Padmanabhan and another (supra). That was a case which arose under S. 2-A of the Industrial Disputes Act. No doubt, in that case the workman alleged that his tendering of resignation was under threat. The question arose whether the dispute was referable to the Labour Court. The Court held thus :

"When an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute relating to such discharge, dismissal, retrenchment or termination is required to be treated as an industrial dispute notwithstanding the fact that no other workman or any Union of workman has sponsored such a dispute.

If an employer secures resignation of any of his employees by force or against his will, in substance it amounts to the termination of the services of the concerned employee. It is to cover such cases of termination brought about in any form whatsoever the Legislature has designedly used the words 'or otherwise terminates the services' in S. 2-A. The question whether in a given case the resignation was tendered voluntarily or secured under duress, is a question of fact. Therefore, if a workman complains that he has not tendered his resignation voluntarily but his resignation was secured under threat or coercion and by that process the termination of his services is brought about, such a dispute between an

individual workman and the employer is squarely covered by the provisions of S. 2-A of such a case falls within the scope of the words 'otherwise terminates the services.'" In the present case the workman complained that his resignation was secured under threat and by that method his services were terminated by the employer. Therefore, the State Government was competent to refer the dispute to the Labour Court."

One important fact which cannot be lost sight of is, S. 2-A of the Industrial Disputes Act is comprehensively worded as to include 'or otherwise terminate the services of an individual workman". Normally in the context in which this phraseology occurs, it would mean ejusdem generis. Therefore, I find great difficulty in accepting the ratio of this ruling. With great respect, I beg to differ. Nonetheless, it is not for me to examine whether some other interpretation on the language of S. 2-A of the Industrial Disputes Act is permissible because no such language occurs in S. 41 of the present Act. Hence this ruling does not support the respondent."

6. On a perusal of the above judgment, this Court is fully satisfied that the present writ petition is fully covered by the judgment stated supra. In view of the above, this Court is inclined to allow the writ petition .

7. In the result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To

The Appellate Authority under the
Tamil Nadu Shops and Establishments
Act, (Deputy Commr. Of Labour-I),
Chennai -6.

+1cc to Mr.M.R.Raghavan, Advocate, S.R.No.50191

W.P.No.36767 of 2003

RJ(CO)
CA(05/09/2017)