



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1632 of 2011 and
M.P.(MD)No.2 of 2011

The Management,
Rep. by the Special Officer,
RA 385, Sadhananthapuram Primary
Agricultural Cooperative Bank Ltd.,
Sadhananthapuram,
Virudhunagar District.

: Appellant/Petitioner

Vs.

1. The Appellate Authority under the
Tamil Nadu Shops and Establishments Act,
(Assistant Commissioner of Labour),
K.K.Nagar, Madurai.

2. M.Nagarajan : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent,
praying to set aside the order passed in W.P.(MD)No.3630 of 2006
dated 03.08.2011 and allow the Writ Appeal.

Prayer in WP(MD). 3630/ 2006 :

Writ Petition filed under Article 226 of the Constitution
of India, praying for issuance of a Writ of certiorari to call for
the records and the proceedings of the Appellate authority under the
Tamil nadu Shop and Establishments Act Madurai in T.N.S.E No. 16 of
2002 dated 10/10/2005 and 19/12/2005 and quash the same.

For Appellant	: Mr.V.O.S.Kalaiselvam
For Respondent No.1	: No appearance
For Respondent No.2	: Mr.G.Rajaguru for Mr.S.R.Anbarasu

JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

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The unsuccessful writ petitioner is on appeal questioning the
order dated 03.08.2011 made in W.P.(MD)No.3630 of 2006.



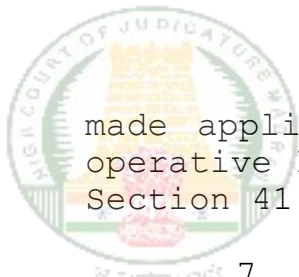
2. It is the case of the appellant that the second respondent herein joined the appellant society as Salesman on 08.01.2000. He came to be terminated on 08.02.2004. Aggrieved by the said order of termination, the second respondent herein filed an appeal before the Appellate Authority under Tamil Nadu Shops and Establishments Act (Assistant Commissioner of Labour) by invoking Section 41 of the TNSE Act, 1947. The said appeal was allowed by the first respondent by order dated 10.10.2005 in TNSE No.16 of 2002.

3. Subsequently, the said order was modified on 19.12.2005 as the second respondent filed an application that he would forego back wages and continuity of service. All that the second respondent wanted was only a provision of employment. It appears that the management also agreed to the said proposal of the second respondent.

4. Be that as it may, the appellant herein filed W.P.(MD) No.3630 of 2006, challenging the said orders dated 10.10.2005 and 19.12.2005. The appellant raised the question of jurisdiction. The learned Judge, however, negatived the said contention and dismissed the writ petition by order dated 03.08.2011. The management is on appeal challenging the dismissal of the writ petition.

5. Heard the learned counsel for both the parties. Mr.V.O.S.Kalaiselvam, learned counsel for the appellant relied on the decision reported in **2007 (2) MLJ 461 (Management of Akkur Primary Agricultural Co-operative Bank Ltd., Vs. Gnanasekaran and another)** in which it has been held by the Hon'ble First Bench of this Court that the applicability of the provisions of the Tamil Nadu Shops and Establishments Act to a village Panchayat would depend on whether the said Panchayat has been notified under Section 1 (3) (b) of the said Act. If such a notification has not been issued notifying that the provisions of TNSE Act would be applicable to the said Panchayat, the said act will not apply to the employees of the institution situated in the said panchayat limit and they cannot invoke Section 41 of the TNSE Act. The learned counsel for the appellant further contended that the appellant society is located in Sadhananthapuram village and that the said village Panchayat has not been notified under Section 1 (3) (b) of TNSE Act, 1947.

6. The learned counsel for the second respondent could not place any notification showing that the said village has been brought within the purview of the TNSE Act. Instead, the learned counsel appearing for the second respondent placed reliance on the decision of this Court rendered in W.A.(MD)No.1905 of 2003 dated 05.01.2009. The decision rendered by the Hon'ble First Bench on 05.12.2006 in W.A.(MD)No.1323 of 2006 was not brought to the notice of the Division Bench which decided W.A.(MD)No.1905 of 2003. The Hon'ble Division Bench, deciding the subsequent writ appeal proceeded on the footing that the provisions of the TNSE Act are



made applicable to all major panchayats and an employee of a co-operative bank situated in a major panchayat is entitled to invoke Section 41 of the TNSE Act.

7. But, in the present case, the appellant society is located in a village panchayat. Therefore, we are inclined to follow the decision rendered in **2007 (2) MLJ 461** and allow this Writ Appeal by setting aside the order dated 03.08.2011 in W.P.(MD)No.3630 of 2006. The orders impugned in W.P.(MD)No.3630 of 2006 passed by the first respondent herein are also quashed. This Court is conscious of the fact that the appellant management agreed to the proposal given by the second respondent herein for granting employment but without any backwages or continuity of service. But consent would not confer jurisdiction. That is why, notwithstanding the acceptance by the management of the offer made by the employee, this Court is allowing this Writ Appeal.

8. It is however, made clear that the order allowing this Writ Appeal will not bar the right of the employee to question the order of termination passed by the appellant society by invoking Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. If the second respondent herein files an appeal / revision before the concerned authority within three weeks from the date of receipt of a copy of this order, the concerned authority shall entertain the appeal / revision without referring to the question of limitation. The said authority is also directed to dispose of the appeal / revision within two months from the date of receipt of the same.

9. The Writ Appeal is allowed with the above observations. No costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The Appellate Authority under the
Tamil Nadu Shops and Establishments Act,
(Assistant Commissioner of Labour),
K.K.Nagar, Madurai.

+ 1 CC TO Mr.V.O.S.KALAISELVAM, ADVOCATE IN SR No. 69428
+ 1 CC TO Mr.G.RAJAGURU, ADVOCATE IN SR No. 69108

MR

TE/JC/SAR-II : 25/09/2017 : 3P/4C

JUDGMENT MADE IN
W.A(MD)No.1632 of 2011 and
M.P. (MD)No.2 of 2011
01.08.2017