



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.07.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.A.[MD].No.534 of 2013
and
M.P. (MD) .No.1 of 2013

The Management,
N.N.490, Ramanathapuram District,
Co-operative Printing Works Ltd.,
Industrial Estate,
Devakottai Road,
Karaikudi - 5..

... Appellant/ Writ Petitioner

Vs.

1. The Appellate Authority,
Under the Tamil Nadu Shops and Establishment Act,
(Deputy Commissioner of Labour),
Sundaram Theater Road, K.K.Nagar,
Madurai - 625 020.

2. C.Thirunavukkarasu ... Respondents/Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, against the order passed by this Court, dated 05.03.2013 made in WP (MD)No.7118 of 2007 and to allow the Writ Appeal.

Prayer in WP(MD). 7118/ 2007 :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1st respondent , in his file T.N.S.E.No.1/07 and quash the order Dated 27/06/07 setting aside the order of dismissal passed by the petitioner against the 2nd respondent and justify the same with cost.

For Appellant : Mr.D.Sadiq Raja

For R 1 : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

For R 2 : Mr.G.Murugan

**JUDGMENT**

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

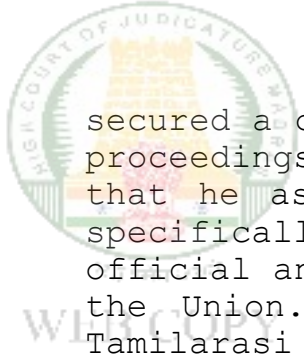
The unsuccessful writ petitioner is on appeal, questioning the order dated 15 March 2013, dismissing W.P.(MD).No.7118 of 2007.

2.The second respondent herein was employed in the appellant Co-operative Society. He was served with the charge memo, dated 12 July 2006. The charge memo contains three articles of charges. The first and the important one was that he sent a false complaint against the Special Officer and Co-staffs of the Society to the higher officials of the department. Enquiry was conducted and the charges were held proved. He was ultimately terminated from service vide order dated 10 January 2007.

3.Aggrieved by the same, the second respondent herein filed an appeal before the first respondent herein under Section 41 of the Tamil Nadu Shops and Establishments Act. The appellate authority by order dated 27 June 2007, allowed the appeal filed by the second respondent herein. The dismissal order was set aside and reinstatement of the second respondent was ordered. Questioning the same the appellant herein filed W.P(MD).No.7118 of 2007. The said writ petition was dismissed by order dated 15 March 2013. Hence, this intra Court appeal has been filed.

4.The learned counsel for the appellant in his grounds of appeal had contended that the second respondent ought to have availed the remedy under the Industrial Dispute Act and it was not open to him to file an appeal under section 41 of the Tamil Nadu Shops and Establishments Act. We are not inclined to consider the contention because the learned Judge had specifically held that the question as to whether there was bar for the second respondent to invoke Section 41 of the said Act need not to be gone into, since the Management did not raise the said contention during the course of argument. What was not argued before the learned single Judge cannot be permitted to be raised in this writ appeal. Therefore, we decline to consider this contention.

5.The learned counsel appearing for the appellant contended that the second respondent herein had admitted his guilt and therefore the Appellate Authority, the first respondent herein erred in interfering with the order of termination. This contention of the appellant is unsustainable, in the light of the elaborate discussion of the evidentiary material on record in the order dismissing the writ petition. From paragraphs 12 to 20, there has been a minute discussion on every factual aspect. The learned single Judge held that it is the first charge, i.e. the allegation of giving false complaint against the Special Officer of the Society and the Co-staff, which is the principal one. The other two charges flow therefrom. The learned single Judge rightly found that there is no evidence on the side of the Management to show as to how they



secured a copy of the written complaint which has been marked in the proceedings. It is true that the second respondent herein admitted that he asked one Tamilarasi to type out the complaint. But he specifically stated that he never sent the same to the higher official and the same was prepared by him for internal discussion in the Union. He put the blame on Tamilarasi. Interestingly, the Tamilarasi was not examined by the Management. The writ petitioner was also not cross-examined on this aspect.

6.The charge is that false complaints were sent to the higher officials. The second respondent herein denied the said charge. Therefore the learned counsel for the appellant is not correct in contending that the second respondent admitted his guilt. The learned single Judge had specifically held that non-examination of Tamilarasi in the domestic enquiry is fatal to the case of the Management. The charge was very specific. Therefore, the higher officials to whom the complaint was sent ought to have been examined. There was no such attempt on the part of the Management. That is why the appellate authority rightly held that the charges framed against the second respondent herein were not established. As regards the allegation that the second respondent did not hand over the charge following the suspension, it has been found that it was not the case of the Management that the records were ever taken out by the second respondent. All the records were very much available within the premises of the appellant society. Therefore no prejudice had really occurred to them. In this case, the handing over of the charge would only be a paper delivery and nothing beyond it. Therefore, the learned single Judge was right in sustaining the order passed by the first respondent Appellate Authority. We find no ground to interfere with the well considered of the learned Single Judge. Accordingly, this writ appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Deputy Commissioner of Labour/The Appellate Authority,
Sundaram Theater Road, K.K.Nagar,
Madurai - 625 020.

+ 1 CC TO Mr.D.SIDIQ RAJA, ADVOCATE IN SR No. 65227

GSP/KM/DAS

TE/MR-KKR/SAR-II : 03/08/2017 : 3P/3C