

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Second day of March Two Thousand Eighteen

PRESENT

THE HON`BLE MR.JUSTICE SATRUGHANA PUJAHARI

WMP No.17699 of 2017

in WP No.9277 of 2017

P.KRISHNAN

[PETITIONER]

Vs

1 THE MANAGEMENT [RESPONDENTS]
ATTUR PUDUPETTAI PRIMARY AGRICULTURAL
CO-OP. SOCIETY LTD., REP.BY ITS SECRETARY,
(NOW PRESIDENT),12, KARUTHAN ST,PUDUPETTAI,
ATTUR, SALEM DISTRICT.

2 THE DEPUTY COMMISSIONER
OF LABOUR SALEM. (APPELLATE AUTHORITY UNDER
THE TAMILNADU SHOPS ESTABLISHMENT ACT)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Vacate the Order of Interim Stay granted in WMP No.10253 / 2017 in WP NO.9277 of 2017 pending WP No.9277 of 2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.AYYATHURAI, Advocate for the petitioner and of MR.L.P.SHANMUGA SUNDARAM Advocate on behalf of the 1st Respondent the court made the following order:-

Heard on the prayer for vacation of stay.

2. It appears that an order of the appellate authority, under the Tamilnadu Shops and Establishments Act, 1947 setting aside the termination of the petitioner has been challenged in the aforesaid writ petition by the writ petitioner/employer.

3.This Court while issuing notice had stayed the aforesaid order of the appellate authority. Now, the writ miscellaneous petition has been filed to vacate such order.

4.The learned counsel appearing for the petitioner submits that unless the interim order of stay is vacated, the petitioner who has been deprived of the benefit under Section 41-A of the Tamilnadu Shops and Establishments Act, 1947, would suffer. However, the learned counsel appearing for the writ petitioner submits that such a prayer is devoid of merit since the writ petitioner has a good case. Inasmuch as the order was passed without jurisdiction. To appreciate the contention of the parties, it would be apposite to visit a look under Section 41-A of the Tamilnadu Shops and Establishments Act, 1947, which reads as thus:

'41-A-Payment of full wages to person employed pending proceedings in Higher Courts:-Where in any case, the appellate authority, by its decision under Section 41, directs reinstatement of any person employed and the employer prefers any proceeding against such decision in a High Court or the Supreme Court, the employer shall be liable to pay such person employed, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the person employed had not been employed in any establishment during such period and an affidavit by such person employed had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such person employed had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period or part, as the case may be.

5. The aforesaid provision would go to show that when the order of the appellate authority directing reinstatement as in this case has been stayed, the writ petitioner may be directed to pay the last wages drawn by the employee concerned on the date of his termination. The aforesaid provision is in *pari materia* to the provisions of Section 17 B of the Industrial Disputes Act. Therefore, while deciding the petition under Section 41-A, the Court is not concerned with the merit of the order but only concerned with regard to the non employment and non receipt of the remuneration of the employee, being not employed any where. The petitioner/employee, however, has reached the age of superannuation.

6. In such premises, this Court is not inclined to vacate the order of stay. But considering the mandate of Section 41-A directs the respondent no.2 to pay an amount of Rs.2,00,000/- by an account paid cheque or demand draft on or before 15.04.2018 to the petitioner/workman. Unless the amount is paid by the aforesaid

date, the interim order of stay already granted in this case shall stands vacated.

7.The petitioner/ workmen made a prayer for an early disposal of the writ petition. This Court has not been assigned with the roster to dispose of the main writ petition, pertains to the year 2017. Hence, the petitioner/workmen is at liberty to make a mention before the appropriate Bench in this regard.

-sd/-
02/03/2018

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE DEPUTY COMMISSIONER
OF LABOUR SALEM. (APPELLATE AUTHORITY UNDER
THE TAMILNADU SHOPS ESTABLISHMENT ACT)

C.C. to M/S.S.AYYATHURAI Advocate SR.NO. 2592

C.C. to M/S.L.P.SHANMUGA SUNDARAM Advocate SR.NO.2675

Order

in
WMP.17699/2017

in
WP.9277/2017

Date :02/03/2018

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
VS 20.03.2018