

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.33 of 2016 and
CMP No.441 of 2016

P.Saravanan

...Appellant/Petitioner

Vs

1.The Management of T.V.S. & Sons Ltd.,
7B, West Veli Street,
Madurai - 625 001.

2.TVS & Sons Ltd.,
101, Trichy Main Road,
Salamedu, Villupuram - 605 401.

3.The Appellate Authority under
Tamil Nadu Shops and Establishments Act/
The Deputy Commissioner of Labour
(Minimum Wages), Chennai -6. ...Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in M.P.No.1 of 2015 in W.P.No.10534 of 2013 dated 30.11.2015.

W.P.No.10534 of 2013:-

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to modify the orders of this Hon'ble Court passed in MP.No.2/2014 dated 29.04.2014 by directing the writ petitioner to pay last drawn wages Rs.37,617/- instead of Rs.13,640/- under Section 17-B of the industrial Disputes Act 1947 with effect from the date the filing of writ petition and the backwages of Rs.18,05,616/- instead of Rs.5,45,000/- CMP.1/2015 in WP.10534 of 2013.

For Appellant : Mr.V.Prakash
Senior Counsel for
Mr.K.Krishnamoorthy

For Respondents : Mr.G.Anand
for M/s.T.S.Gopalan and Co.,
for R1 and R2
Mr.V.Anandhamoorthy
Addl.Govt.Pleader for R3

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

The miscellaneous petition filed by the appellant to modify the order passed by a learned Judge dated 29 April 2014 in M.P.No.2 of 2014 in W.P.No.10534 of 2013 was posted before another learned Judge, who, on consideration of the averments found in the affidavit filed in support of the petition opined that the appellant ought to have filed a review petition instead of a petition for modification and thereafter, dismissed the very petition on the ground of maintainability. Feeling aggrieved, the appellant has come up with this intra court appeal.

2. The proceedings initiated by the first respondent against the appellant was challenged before the Appellate Authority under the Tamil Nadu Shops and Establishments Act. The Appellate Authority allowed the appeal and set aside the order passed by the disciplinary authority. The order dated 15 February 2013 was challenged by the Management before the Writ Court in W.P.No.10534 of 2013.

3. Before the Writ Court, the appellant filed miscellaneous petitions in M.P.Nos.1 and 2 of 2014 to grant him last drawn wages during the currency of the writ petition.

4. The learned single Judge after hearing both the parties passed an order dated 29 April 2014 directing the first respondent to pay a sum of Rs.13,640/- per month to the appellant, pending disposal of the writ petition.

5. The appellant nearly about one year after passing the said order filed a petition in M.P.No.1 of 2015 to modify the order dated 29 April 2014 primarily on the ground that he was receiving a sum of Rs.37,617/- towards last drawn wages and as such, the last drawn wages fixed in the order dated 29 April 2014 requires modification.

6. The Registry instead of posting the modification petition before the learned single Judge, who passed the order dated 29

April 2014 posted the petition before another learned Judge, as per roster.

7. The learned single Judge was of the view that the appellant ought to have filed a review petition, in case, he was of the view that the learned Judge omitted to consider the material facts relating to the last drawn wages. The learned single Judge dismissed the petition on the ground that such a petition is legally not maintainable. It is the said order, which is impugned in this intra court appeal.

8. The learned Senior Counsel for the appellant by placing reliance on the returns filed by the first respondent before the Income Tax Officer indicating the salary of the appellant, contended that as per the statutory returns, the appellant was receiving a gross salary of Rs.4,64,572.60/-. The learned Senior Counsel by taking into account the definition of the term "Wages" as contained in Section 2(18) of the Tamil Nadu Shops and Establishments Act, contended that even other additions to the remuneration received by the employee should be included in the term "Wages" for fixing the last drawn wages.

9. The learned counsel for the first respondent contended that the learned single Judge calculated the wages received by the appellant taking into account the basic wages and the Commission received by him. According to the learned counsel, the learned single Judge deducted the Commission paid to the appellant and thereafter fixed the wages. The learned counsel contended that there is no question of modification of the order in view of the rejection of the claim made by the appellant in his petition to pay him last drawn wages at Rs.37,617/-

10. There is no dispute that on a careful consideration of the miscellaneous petition filed by the appellant for payment of wages under Section 17B of the Industrial Disputes Act, the learned single Judge passed an order on 29 April 2014. It is worth mentioning here that the learned single Judge fixed the amount at Rs.13,640/- in spite of the claim made by the appellant that he was receiving last drawn wages at Rs.37,617/-.

11. The appellant filed a petition in M.P.No.1 of 2015 to modify the order dated 29 April 2014. The Registry instead of posting the miscellaneous petition before the very same learned Judge, who heard and decided the application in M.P.No.2 of 2014 by order dated 29 April 2014, posted it before another learned single Judge as per roster.

12. The Registry ought to have posted the application for modification before the very same learned Judge, who is the

author of the order dated 29 April 2014. It would not be possible for another single Judge to take up the application in M.P.No.1 of 2015 at a later point of time to modify the order passed by his predecessor. The entire issue has arisen on account of the posting made by the Registry before a learned Judge, who was holding the portfolio at that point of time, in spite of the fact that the order in question was passed by another learned Judge.

13. There is no dispute that the review petition should be posted before the learned Judge, who is the author of the order. Similar is the case with the petition for modification. The learned Judge who had the benefit of hearing the parties and perusing the pleadings would be in a better position to decide the petition for modification. We are therefore of the view that henceforth to the extent possible modification petition shall be posted before the learned Judge, who is the author of the original order.

14. In the subject case, the application in M.P.No.1 of 2015 was posted before the learned single Judge, who was not the author of the order dated 29 April 2014. The question of modification would arise only in case, the learned Judge who heard the matter earlier is of the view that the order requires modification. We are therefore of the view that the matter requires fresh consideration.

15. The order dated 30 November 2015 is set aside. The application in M.P.No.1 of 2015 is restored to file.

16. We direct the Registry to post the miscellaneous application for modification before the learned single Judge (M.Sathyanarayanan,J.), who is the author of the order dated 29 April 2014 in M.P.No.2 of 2014.

17. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

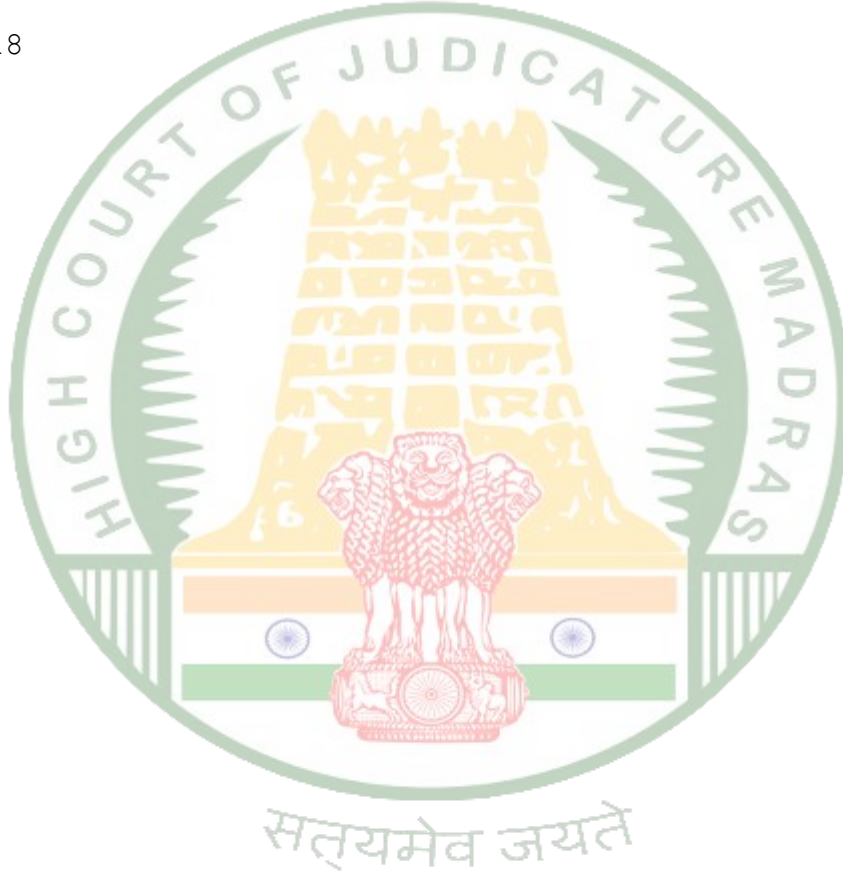
The Appellate Authority under
Tamil Nadu Shops and Establishments Act/
The Deputy Commissioner of Labour
(Minimum Wages), Chennai -6.

+1cc to Mr.K.Krishnamoorthy, Advocate, S.R.No.28522

+1cc to M/s.T.S.Gopalan and Co.,, Advocate, S.R.No.28030

W.A.No.33 of 2016

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