



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2018

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.6521 of 2015

M.Renganayagi

...Petitioner

Vs.

1.The Appellate Authority,
(Tamil Nadu Shops and Establishments Act, 1947),
The Deputy Commissioner of Labour,
Trichy.

2.The Management of
Y.P.-676, Puthukottai District Anganwadi Employees'
Co-operative Thrift & Credit Society Limited,
T.S.N.5851 Shanthanathapuram 7th Street,
Pudukottai. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the first respondent relating to the impugned order of the first respondent dated 05.05.2014 in TNSE No.4/13, quash the same and consequently to hold that the termination of the services of the petitioner by the second respondent by its order dated 25.02.2012 was illegal and to direct the second respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits and award cost.

For Petitioner : Mr.R.M.Sivakumar

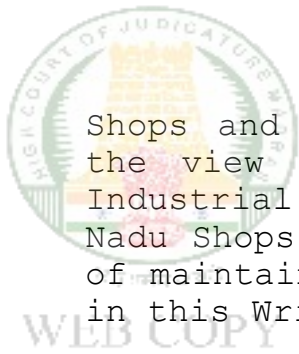
For R1 : Mrs.S.Srimathy
Special Government Pleader

For R2 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner was employed in the second respondent/Society. She had gone on maternity leave. When she returned and reported for duty, she was not permitted to do so. She, therefore, raised an industrial dispute. The conciliation proceedings failed. Therefore, she filed an appeal under Section 41 of the Tamil Nadu



Shops and Establishments Act, 1947. The Appellate Authority took the view that once the petitioner invoked the provision of the Industrial Disputes Act, an appeal under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 would not lie on the ground of maintainability. The said order of dismissal is under challenge in this Writ Petition.

3. The learned counsel appearing for the petitioner submitted that merely because the petitioner invoked the conciliation proceedings, she is not debarred to file an appeal under Section 41 of the said Act. In this regard, the petitioner placed reliance on the decision of the Hon'ble Supreme Court reported in 1991 (1) LLJ 111-(Nirchiliya & Others Vs. Management of Safire Thearre, Madras 7 Anr.). The Hon'ble Supreme Court held that that the workman is entitled to work out his remedy before either of the fora. There is no specific bar that after invoking the Industrial Dispute Act, Section 41 of the Tamil Nadu Shops and Establishment Act cannot be invoked.

4. When there is no such statutory bar, the appellate authority erred in non suiting the petitioner on the ground of maintainability.

5. The order impugned in the Writ Petition is quashed. The matter is remitted to the file of the first respondent. The first respondent shall dispose of the matter in accordance with law after giving due opportunity of hearing to both the parties within a period of four months from the date of receipt of a copy of this order.

The Writ Petition is allowed accordingly. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Appellate Authority,
(Tamil Nadu Shops and Establishments Act, 1947),
The Deputy Commissioner of Labour,
Trichy.

2. The Management of
Y.P.-676, Puthukottai District Anganwadi Employees'
Co-operative Thrift & Credit Society Limited,
T.S.N.5851 Shanthanathapuram 7th Street,
Pudukottai.



+1cc to M/S.R.M.Sivakumar, Advocate SR.No. 56523
+1cc to Special Government Pleader, SR.No. 56484

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ORDER MADE IN
W.P. (MD) .No.6521 of 2015
19.03.2018

tsg
JM/PN/SAR 1/17.07.2018/3P/5C