



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD)No.1052 of 2018

and

C.M.P(MD)No.7266 of 2018

- 1.The President,
National Horticultural Research & Development Foundation,
Chitegaon Phata Village,
Darna Sangvi (Post),
Niphad Taluk, Nasik District,
Maharashtra - 422 201.
Now shifted to
The President,
National Horticultural Research and
Development Foundation (NHRDF),
Plot No.47, Pankha Road,
Institutional Area, Janakpuri,
New Delhi - 110 058.
- 2.National Horticultural Research and
Development Foundation (NHRDF),
55, Pandiyan Nagar,
Dindigul - 624 001.
A part of work of Dindigul Centre shifted and
presently functioning at
National Horticultural Research and
Development Foundation (NHRDF),
5/5, B-1B, Sakthi Vinayagar Nagar,
Vellalore,
Coimbatore - 641 111.
- 3.National Horticultural Research & Development Foundation,
T.Kombai Village,
Pannaipatti BPO,
Kannivadi (Via),
Dindigul West Taluk,
Dindigul District.

... Appellants/
Respondents 2 to 4



1.P.Murugesan

... 1st Respondent/
Writ Petitioner

2.The Presiding Officer,
Labour Court,
Thiruchirappalli.

... 2nd Respondent/
1st Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.3222 of 2018, dated 27.03.2018.

Prayer in WP(MD). 3222/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Certiorari Mandamus after calling for the records from the 1st respondent Labour Court relating to the impugned order dated 28.03.2017 in I.D. No 100 of 2010, quash the same and consequently to direct the 2nd respondent to reinstate the petitioner into service with full back wages, continuity of service with other consequential benefits as per the prayer made in I.D. No 100/2010 and impose the exemplary cost to the 2nd respondent for raising the issue already settled in C.R.P.No.1840 of 2013 and thereby misdirecting the 1st Respondent to arrive such wrong conclusion.

For Appellants : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.P.Murugesan
Party-in-Person for R.1

R.2 - Labour Court.

* * * * *

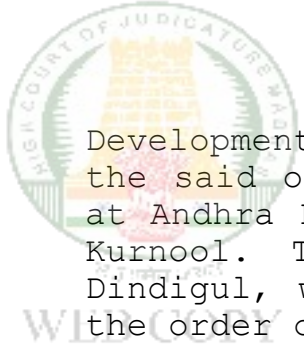
JUDGMENT

[Judgment of the Court was delivered by **T.RAJA, J.**]

This writ appeal is directed against the impugned order passed by the learned Single Judge, dated 27.03.2018, passed in Writ Petition (MD)No.3222 of 2018, in and by which, the question of jurisdiction raised by both the parties, has been decided in favour of the first respondent - P.Murugesan [Party-in-person]. The sole issue raised all through the proceedings from the Labour Court at Tiruchirappalli, Camp at Dindigul, to this Court in W.P (MD)No.3222 of 2018 and also before us, is, "Whether the employee was right in raising Industrial Dispute before the Assistant Commissioner of Labour, Dindigul?"

2. Brief facts leading to the filing of this writ appeal that are necessary, are given as under:

When the first respondent - P.Murugesan [Party-in-person] {hereinafter referred to as 'the employee'} was serving as a Technical Officer in National Horticultural Research and



Development Foundation [in short 'NHRDF'] in the Branch Office of the said organisation at Dindigul, he was transferred to Kurnool at Andhra Pradesh. Subsequently, he was dismissed from service at Kurnool. The said order of dismissal was served on him at Dindigul, wherein the employee resided at the time of serving of the order of dismissal.

2.2. A perusal of the order of dismissal passed by the appellants, dated 21.07.2010, clearly shows that the said order was served at both places, viz., Varanasi and also Dindigul. Therefore, he raised conciliation proceedings before the Assistant Commissioner of Labour, Dindigul and subsequently, on filing the failure report, he raised I.D.No.100 of 2010 on the file of the Labour Court, Tiruchirappalli, Camp at Dindigul. Huge objection was raised by the appellants herein, taking a stand that the employee could raise the industrial dispute either at Kurnool or at Varanasi, but not at Dindigul. The said issue has been taken up finally by the Labour Court in I.A.No.95 of 2012 in I.D.No.100 of 2010. It is relevant to extract the three objections raised by the appellants herein and answered by the Labour Court, as under:

"Point for consideration:

Whether this Industrial Dispute is maintainable before this Court?

On perusal of the pleadings on either side, it appeared that the petitioner was initially appointed at Dindigul and Regional officer of Dindigul was situated within the Dindigul District and in that circumstance, the Industrial Dispute was entertained by this Court and so, this Court is having territorial jurisdiction to decide this matter.

The second objection raised by the petitioner is that since the head office was shifted from Dindigul to Coimbatore, this Court lost jurisdiction is not accepted because since the respondent was initially appointed at Dindigul and after entertaining the Industrial Dispute shifting the office to Coimbatore, cannot be ground for lacking jurisdiction. Further the contention of the respondent is that research station with the branch of the petitioner is also within Dindigul District and so, the contention is not having any basis.

The third contention is that the Conciliation Officer was not having jurisdiction to decide the matter is also not sustainable in Law because as on date when the petitioner appeared before the Conciliation Officer and the petitioner was having its branch office at Dindigul within Dindigul District and the same issue was decided by the Conciliation Officer and it is valid."



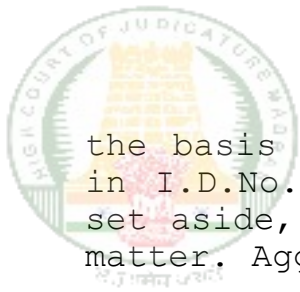
2.3. The Labour Court, Tiruchirappalli, Camp at Dindigul, by its order dated 13.09.2012, answered in favour of the employee by overruling the objections raised by the appellants.

2.4. Firstly, as the employee was initially appointed at Dindigul and the research station with the Branch Office of the appellants was also within Dindigul District, the Industrial Dispute raised by the employee was entertained by the Labour Court, Tiruchirappalli and it was made clear that the Labour Court, Tiruchirappalli, is having territorial jurisdiction to decide the issue.

2.5. Secondly, it was also held that the contention made by the appellants that since the Head Office was shifted from Dindigul to Coimbatore, the Labour Court, Tiruchirappalli has lost its jurisdiction, was not accepted, for the reason that the employee was initially appointed at Dindigul and thereafter, he was transferred to Kurnool and therefore, it cannot be a ground for lacking jurisdiction.

2.6. Thirdly, it was also held, overruling another objection that the Conciliation Officer was not having jurisdiction to have decided the matter, for the reason that as on the date when the appellants appeared before the Conciliation Officer at Dindigul, the appellants were having Branch Office within Dindigul District. Aggrieved by the same, the Civil Revision Petition (PD) (MD) No.1840 of 2013 was unsuccessfully filed and this Court, by order dated 25.09.2014, while dismissing the said Civil Revision Petition and answering all the issues raised by both the parties, held that the jurisdiction issue cannot be decided as a preliminary issue and it could be adjudicated at the time of final disposal itself and confirmed the order passed by the Labour Court, Tiruchirappalli, Camp at Dindigul. While holding so, this Court further held that part of cause of action arises at Dindigul where the Head Office has located when the employee approached the Conciliation Officer and shifting of Head Office to Coimbatore, thereafter, cannot oust the jurisdiction. Again, it has been further held that the dismissal order was served upon the employee at Dindigul and therefore, cause of action is available and the Labour Court rightly dismissed the petition filed by the appellants. Thereafter, the Labour Court has taken up the main issue. While taking up the main issue, it has also decided the jurisdiction point, taking a "U" Turn and taking its stand that the Labour Court, Tiruchirappalli, Camp at Dindigul, has no jurisdiction. Aggrieved thereby, the employee came to this Court.

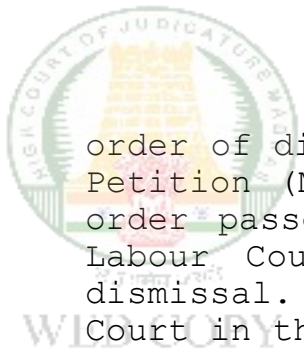
2.7. In the impugned order, the learned Single Judge of this Court followed the judgment of the Honourable Apex Court in **Workmen of Shri.Ranga Vilas Motors (P) Ltd., v. Sri Rangavilas Motors (P) Ltd., and others** reported in **AIR 1967 Supreme Court 1040** and found that it cannot be denied when there was a Branch Office at Dindigul and the dispute can be raised at Dindigul. On



the basis of the said finding, the order dated 28.03.2017 passed in I.D.No.100 of 2010 by the Labour Court, Tiruchirappalli, was set aside, directing the Labour Court to decide the merits of the matter. Aggrieved thereby, the present writ appeal has been filed.

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3. Mr.V.O.S.Kalaiselvam, learned Counsel for the appellants, distinguishing the ratio laid down by the Honourable Apex Court in **Workmen of Shri.Ranga Vilas Motors (P) Ltd., v. Sri Rangavilas Motors (P) Ltd., and others** reported in **AIR 1967 Supreme Court 1040**, submitted that in that case, the employee while serving at Bangalore, was transferred to Krishnagiri in Tamil Nadu. As he refused to join duty at Krishnagiri, he was departmentally prosecuted and finally, he was found guilty on the charges of not joining the duty at Krishnagiri in Tamil Nadu and consequently, he was dismissed from service. The order of dismissal was questioned before the Labour Court, Bangalore. When there was an objection raised by the Management that once the order of dismissal was served upon the employee at Bangalore, the situs of employment is more important for invoking the jurisdiction of the Court at an appropriate place. In that case, it was held that both the situs of employment and residence of that employee was at Bangalore. Therefore, it was held that the Industrial Dispute raised by the dismissed employee was accepted. But, in the present case, the employee while serving at Kurnool in Andhra Pradesh was transferred to Varanasi. He refused to join duty at Varanasi and therefore, departmental proceedings were initiated and he was dismissed. At the time of dismissal, he was neither serving at Kurnool in Andhra Pradesh nor at Varanasi. However, as he was transferred from Kurnool in Andhra Pradesh to Varanasi, the situs of employment is more important and as it is a crucial issue to invoke the jurisdiction to decide his dismissal from service. Instead of approaching the Labour Court at Kurnool in Andhra Pradesh or the Labour Court at Varanasi, he has wrongly approached the Assistant Commissioner of Labour at Dindigul, on a wrong premise that at one point of time, the Head Office of the appellants was situated at Dindigul. The said Office was also subsequently transferred to Coimbatore. After filing the failure report filed by the Assistant Commissioner of Labour, Dindigul, the employee raised Industrial Dispute No.100 of 2010 on the file of the Labour Court, Tiruchirappalli, Camp at Dindigul. The Labour Court, had wrongly decided against the appellants that the dispute raised by the employee is maintainable on the file of the Labour Court, Tiruchirappalli, Camp at Dindigul. As against that, although Civil Revision Petition No.1840 of 2013 was filed and it was dismissed by order dated 25.09.2014 and a direction was issued by this Court to the employee and the appellants to raise all the issues finally, viz., both the question of jurisdiction and the correctness of the order of dismissal. The Labour Court, Tiruchirappalli, has finally decided the issue that it has no jurisdiction to entertain the Industrial Dispute for the simple reason that the situs of employment was not available at Dindigul, when the employee was terminated and also served a copy of the



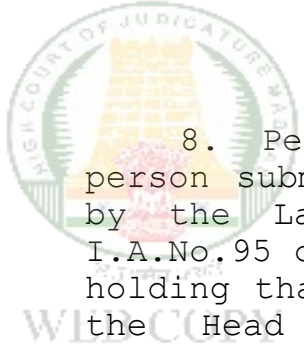
order of dismissal. Aggrieved by the same, the employee filed Writ Petition (MD) No. 3222 of 2018 and this Court, while reversing the order passed by the Labour Court, Tiruchirappalli, directed the Labour Court to decide only the correctness of the order of dismissal. Aggrieved thereby, the appellants have come before this Court in the present writ appeal.

4. Adding further, the learned Counsel for the appellants would submit that a Division Bench of this Court in **The Management of M.R.F., Ltd., v. S.N.D. Sampath** reported in **2008 (2) CTC 359**, has held that the situs of employment is a pre-requisite for raising any dispute. In the present case, the situs of employ of the employee is either at Kurnool in Andhra Pradesh or at Varanasi and therefore, the Industrial Dispute raised on the file of the Labour Court, Tiruchirappalli, Camp at Dindigul, where the employee resided at the time of serving the copy of the order of dismissal, is wholly far from acceptance.

5. The learned Counsel for the appellants also referred to one another judgment of this Court in **The Management of Best & Crompton Engineering Limited v. The Presiding Officer, I Additional Labour Court, Madras** reported in **(2002) 2 M.L.J., 37**, wherein it was held that even if a substantial part of the cause of action can be said to have been arisen where the order of termination is made and therefore, a person who is served with the order copy at Madras, cannot approach the Labour Court at Madras as the said Labour Court has no jurisdiction.

6. Since the learned Single Judge has taken a support from the judgment of the Honourable Apex Court in **Workmen of Shri. Ranga Vilas Motors (P) Ltd., v. Sri Rangavilas Motors (P) Ltd., and others** reported in **AIR 1967 Supreme Court 1040**, the impugned order passed by the learned Single Judge taking a contra view against the ratio laid down by the Honourable Apex Court in **Workmen of Shri. Ranga Vilas Motors (P) Ltd., case** (cited supra), is liable to be reversed, he pleaded.

7. Finally, the learned Counsel for the appellants referring to one other judgment of this Court in **R.M. Kannappan (Deceased) and others v. The Deputy Commissioner of Labour, Madurai and another** reported in **2010 (2) TLNJ 626 (Civil)**, wherein it was held that the concept of Section 20 of the Code of Civil Procedure will not apply to Section 41(2) of the Tamil Nadu Shops and Establishments Act, for the reason that if an employee is employed at Mumbai, he is not entitled to file appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, merely because the Head Quarters is at Chennai, submitted that the impugned order running contrary to the said judgment is liable to be set aside.



8. Per contra, Mr.P.Murugesan, first respondent/party-in-person submitted that once the issue of jurisdiction was decided by the Labour Court, Tiruchirappalli, Camp at Dindigul, in I.A.No.95 of 2012 in I.D.No.100 of 2010, dated 13.09.2012, clearly holding that the employee was initially appointed at Dindigul and the Head Office was situated at Dindigul and in such circumstances, the Industrial Dispute raised by the employee was rightly entertained by the Labour Court, Tiruchirappalli, Camp at Dindigul and this order was also further upheld by this Court in Civil Revision Petition (MD)No. 1840 of 2013, dated 25.09.2014 and hence, the rule of merger will apply against both the employee and the appellants.

9. Heard the learned Counsel for the appellants and the first respondent/party-in-person.

10. It is pertinent to extract hereunder the relevant portion of the order dated 25.09.2014 passed by this Court in Civil Revision Petition (MD)No.1840 of 2013, filed by the appellants against the order dated 13.09.2012 passed by the Labour Court, Tiruchirappalli, Camp at Dindigul, in I.A.No.95 of 2012 in I.D.No.100 of 2010:

"13. The aforesaid judgments would categorically state that the jurisdiction issue cannot be decided as a preliminary issue and it can be adjudicated at the time of final disposal itself. Part of cause of action arises at Dindigul where the Head Office has located when the respondent approached the Conciliation Officer and shifting of Head Office to Coimbatore, thereafter, cannot oust the jurisdiction. Thirdly, the dismissal order was served upon the respondent at Dindigul and therefore, cause of action is available and the Tribunal rightly dismissed the petition filed by the petitioner and therefore, the revision fails and the same was dismissed. Consequently, the connected Miscellaneous petition is also dismissed. No costs."

11. On a careful perusal of the aforesaid order, it is seen that because a part of cause of action arises at Dindigul where the Head Office has located, the employee approached the Conciliation Officer at Dindigul. Therefore, shifting of Head Office to Coimbatore cannot oust the jurisdiction and further, finding that the order of dismissal was served upon the employee at Dindigul, the cause of action was available and the Labour Court, Tiruchirappalli, Camp at Dindigul, rightly dismissed the petition filed by the appellants to raise preliminary issue with regard to jurisdiction and accordingly, the question of jurisdiction raised by both the parties was answered succinctly by the Labour Court, Tiruchirappalli, Camp at Dindigul, in the order dated 13.09.2012 passed in I.A.No.95 of 2012 in I.D.No.100 of 2010, which was also rightly confirmed by this Court in Civil Revision Petition (MD)No.1840 of 2013.



12. When the issue raised before us was finally concluded in Civil Revision Petition (MD)No.1840 of 2013, in our considered view, the Labour Court ought not to have taken up once again the question of jurisdiction.

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13. Secondly, after considering the question of jurisdiction, the Labour Court also failed to address on the merits of the order of dismissal, dated 21.07.2010, issued against the employee. Therefore, we are not able to find out any merit in this writ appeal and further, our views are also supported by the order passed by this Court in **Neslin Joesph Prim v. P.O., Central Government Industrial Tribunal cum Labourt Court, Chennai and another** reported in **2002-III-LLJ 686**, in which, it is held as follows:

"10. Learned counsel for the petitioner also relied on a Division Bench decision of the Punjab and Haryana High Court in Ramlal v. Labour Court, Patiala, 1986-II-LLJ-231. The Division Bench has held thus at p.235:

"4. In the result, the answer to the first question is that the State Government within whose territorial limitation the industrial dispute arose and the orders one dismissal had been received and became operative, is the appropriate Government for referring the industrial dispute for adjudication."

In our case, I have already referred to the fact that the appointment order was communicated to the petitioner at his residential address at Madras (now Chennai) and the order of dehiring was also issued to him at the same address. In the light of the said factual position, the Division Bench decision referred to above supports the claim made by the petitioner.

11. The other decision referred to by Mr.R.Viduthalai is in National Engineering Industries Ltd., v. State of Rajasthan, AIR 2000 SC 469 : 2000 (1) SCC 371 : 2000-I-LLJ-247 wherein Their Lordships have held that the Industrial Tribunal is the creation of a statute and it gets jurisdiction on the basis of reference. They also held that it cannot go into the question on validity of the reference.

* * * * *

13. ... I am also satisfied that by applying the well-known test of jurisdiction, namely, that a Court or Tribunal would have jurisdiction if the parties reside within the jurisdiction or if the subject-matter of the dispute substantially arose within the jurisdiction part of action has arisen at Chennai. It is demonstrated before me that the petitioner is residing at Chennai and the same is found in the records of the

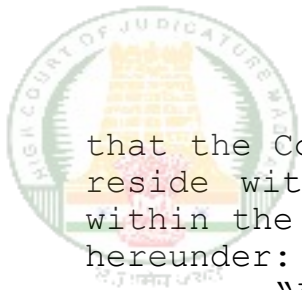


second respondent. In such a circumstance, the dispute can be filed either in the place of the petitioner or the 2nd respondent is residing or working or where the cause of action has arisen wholly or in part. Hence the impugned order of the first respondent rejecting the industrial dispute purely on grounds of jurisdiction is erroneous in law and liable to be set aside.

14. It is also settled law that the first respondent has to decide a dispute comprehensively on all issues and has no right to decide preliminary issues as it is opposed to the law declared by the Supreme Court. The first respondent has also failed to adhere to the scheme of the Industrial Disputes Act which mandates expeditious resolution of the entire dispute. As stated earlier, I have verified and am satisfied that the order of appointment were issued to the petitioner at his residential address at Chennai and that the order of de-hiring was also issued to him at the same address. In such circumstances, the dispute can be raised in the place where the petitioner or the 2nd respondent resides or works or the place where the cause of action has arisen with regard to the jurisdiction of a matter."

14. At this juncture, the learned Counsel for the appellants once again referring to the judgment of the Division Bench of this Court in **The Management of M.R.F., Ltd., v. S.N.D. Sampath** reported in **2008 (2) CTC 359**, reiterated that the situs of employment should be the criteria for invoking the territorial jurisdiction of the quasi-judicial authority or judicial authority and prayed for allowing the writ appeal. But, the said judgment is squarely inapplicable to the case on hand inasmuch as that was a case relating to the provisions of the Goa Shops and Establishments Act. In the said judgment, it was held that when a person is employed to work in an establishment in Goa, it must be held that he was employed wholly in connection with the business of Goa establishment and merely because, the Corporate Office was in Chennai or because the resignation letter has been accepted in Chennai would not confer jurisdiction on the appellate authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. But, in the present case, as we have already mentioned above, the dispute raised by the employee is the one raised under the Industrial Disputes Act. Therefore, the ratio laid down by the Division Bench of this Court in **The Management of M.R.F., Ltd., v. S.N.D. Sampath** reported in **2008 (2) CTC 359**, that the situs of employment being at Goa, he cannot approach the appellate authority in Chennai, cannot be made applicable to the present case.

15. Further, it is also relevant to refer to the judgment of Apex Court in **Workmen of Shri. Ranga Vilas Motors (P) Ltd., case** (cited supra), wherein it has been clearly ruled



that the Court or Tribunal would have jurisdiction, if the parties reside within the jurisdiction or if the subject matter arises within the said jurisdiction and the relevant portion is extracted hereunder:

"As the High Court observed, there would clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose. This Court in *Indian Cable Company, Ltd., v. its workmen* [1962-I-L.L.J. 409], held as follows:

"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in *Lalbai Tricumlal Mills, Ltd., v. Vin (D.M.) and others* [1956-I L.L.J., 557 at 558]:

'But what we are concerned with to decide is, where did the dispute substantially arise? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the labour court. But applying the well-known tests of jurisdiction, a Court, or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the -subject-matter of the dispute substantially arises within jurisdiction.'

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under S.10 of the Act".

Applying the above principles to the facts of this case it is quite clear that the subject-matter of the dispute in this case subsequently arose within the jurisdiction of the Mysore Government."

16. In view of the above *ratio*, at the time of serving the order of dismissal, if the dismissed employee resides at Dindigul, he is always entitled to approach either the Assistant Commissioner of Labour, Dindigul or the Labour Court, Tiruchirappalli, Camp at Dindigul. It is not in dispute that the employee was served with the copy of the order of dismissal dated 21.07.2010 at Dindigul, besides he has also been a resident of Dindigul on both occasions, viz., at the time of serving the copy of order of dismissal and even today. Therefore, in our considered view, the employee has rightly approached the Assistant Commissioner of Labour, Dindigul, for the reason that he was served with a copy of the order of dismissal at Dindigul and he is



also residing at Dindigul. Moreover, at the time when the order of dismissal was served, a Branch Office was also located at Dindigul.

17. Therefore, we do not find any merit in the writ appeal and accordingly, this writ appeal fails and the same is dismissed. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-II)

To
The Presiding Officer,
Labour Court,
Thiruchirappalli.

+1 CC To MR.P.MURUGESAN, PARTY IN PERSON SR. NO. 83152

W.A(MD)No.1052 of 2018

and

C.M.P (MD) No.7266 of 2018

07.09.2018

RSB

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