



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P[MD]No.6957 of 2013

and

M.P.[MD]No.1 of 2013

M/s.MD.Spl.52, Melachockanathapuram,
Primary Agricultural Co-operative Bank Ltd.,
Now called as
MD.Spl.52, Melachockanathapuram,
Primary Agricultural Co-operative Credit Society Ltd.,
Thro' its Administrator,
Melachockanathapuram,
Bodi Taluk, Theni District. ... Petitioner

Vs.

1.The Appellate Authority,
Under the Tamil Nadu Shop and
Establishment Act (The Deputy
Commissioner of Labour,
Pandian Nagar, Dindigul Post & District.

2.M.Sivaram ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent made in impugned order passed in TNSE Appeal No.I.A.No.8/2012 dated 21.04.2013 and quash the same.

For Petitioner : Mr.R.Saravanan

For Respondent No.2 : Mr.T.Lajapathi Roy

ORDER

The order passed by the appellate authority under the Tamil Nadu Shops and Establishment Act, 1947, in the TNSE Appeal No.I.A.No.8/2012 dated 21.04.2013, is under challenge in the present writ petition.

2.The writ petitioner is a Co-operative Bank registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The second respondent was an employee of the writ petitioner Co-operative Bank and terminated from service on account of the proved charges in proceedings dated 01.08.2003.



3.The learned Counsel appearing on behalf of the writ petitioner states that the criminal case registered against the second respondent was also pending during the relevant point of time. The second respondent has not chosen to challenge the order of termination within the time limit prescribed under the Shops and Establishments Act. However, the appeal is filed by the second respondent after a lapse of eight years and 265 days and the said delay was condoned by the first respondent and thus the present writ petition is filed.

4.The learned Counsel for the writ petitioner states that such an enormous delay cannot be condoned without genuine reasons. Though, the second respondent states that his wife was taking treatment, he appeared before the Criminal Court. However, the fact regarding the appearance of the second respondent before the criminal Court on several occasions were not at all considered.

5.The learned Counsel appearing on behalf of the second respondent states that the order of termination is nothing but a civil death to an employee. The opportunity of appeal is the last opportunity to the second respondent and therefore, the merits of the case should not be buried on account of the delay raised by the second respondent.

6.However, the fact remains that the criminal case was pending against the second respondent and he was appearing before the criminal Court periodically. When the second respondent had knowledge about the order of termination and an opportunity to prefer an appeal, he has not chosen to do so within the time limit prescribed under the statute. Though, this Court is not inclined to condone the delay of 8 years and 265 days for preferring an appeal against the order of termination under the provisions of the Shops and Establishments Act, this Court is of the opinion that the point of limitation also shall be considered and decided along with the merits of the case raised by the second respondent in the grounds of appeal before the first respondent. In other words, the first respondent shall consider the merits of the case as well as the points of limitation and pass final orders providing reasons both for delay as well as on merits.

7.This being the factum of this case, the first respondent is directed to expedite the hearing of the appeal and pass final orders by affording opportunity to all the parties concerned on merits and in accordance with law. However, the impugned order now under challenge stands quashed. The writ petitioners are at liberty to raise all the grounds on merits as well as the point of limitation raised by them in the I.A.No.8 of 2012, during the final hearing and all those grounds raised by the writ petitioner are also to be considered and an order to be passed on merits and in accordance with law. The appeal shall be heard and decided as expeditiously as possible.



8. Accordingly, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

/ True Copy /

Sd/-

Assistant Registrar (Crl.side)

Sub Assistant Registrar (CS-)

To

The Appellate Authority,
Under the Tamil Nadu Shop and
Establishment Act (The Deputy
Commissioner of Labour,
Pandian Nagar,
Dindigul Post & District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-67178[F] dated 06/06/2019)
+1 CC to M/s.R.SARAVANAN, Advocate (SR-66825[F] dated 04/06/2019)

W.P[MD]No.6957 of 2013
04.06.2019

ES/05.07.2019/3P/4C