

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON 30.01.2020
ORDER DELIVERED ON 14.02.2020
CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.Nos. 3229 & 3230 of 2015

W.P.No.3229 of 2015

B.V.Viswanathan

.. Petitioner

vs

1. Deputy Commissioner of Labour (Minimum Wages)
(Appellate Authority under the Tamil Nadu
Shops & Establishments Act)
DMS Compound,
Chennai - 600 006.

2. M/s. Gamesa Wind Turbines Pvt. Ltd.,
represented by its Chairman & Managing Director
Futura Park, Block No.B, 8th Floor,
334, Rajiv Gandhi Salai,
Sholinganallur,
Chennai - 600 119.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the order in I.A.No.32/2014 in T.N.S.E.No.II/4/2014 dated 10.12.2014 and quash the same and further direct the first respondent to try all issue in the appeal, based on evidence and decide the appeal in accordance with law, award cost of this proceeding as against the second respondent.

W.P.No.3230 of 2015

B.L.Madhavan

.. Petitioner

vs

1. The Deputy Commissioner of Labour (Minimum Wages)
(Appellate Authority under the Tamil Nadu
Shops & Establishments Act,1947)
Office of the Deputy Commissioner of Labour,
Teynampet,
Chennai - 600 006.

2. Rane Engine Valves Limited,
represented by its Head-Operations
Plant-1, No.5, Noble Street,
P.B.No.1305
Chennai - 600 016.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the impugned order passed in I.A.No.33/2014 in T.N.S.E.No.II/1/2014 dated 20.11.2014 and quash the same and consequently direct the first respondent/Deputy Commissioner of Labour-2, Chennai to take up T.N.S.E.No.II/1/2014 and dispose of the same on merits.

For Petitioners
in both the W.Ps.

: Mr.V.Prakash
Senior counsel
for Mr.T.Ramkumar

For Respondents
in both the W.Ps.

: Mr.K.Magesh,
Special Government Pleader
for R1
Mr.S.Ravi
for M/s. Gupta Ravi for R2

C O M M O N O R D E R

W.P.No.3229 of 2015 is filed challenging the order made in I.A.No.32/2014 in T.N.S.E.No.II/4/2014 dated 10.12.2014 passed by the 1st respondent and consequently, for a direction to the 1st respondent to try all the issues in the Appeal based on evidence and decide the Appeal in accordance with law.

W.P.No.3230/2015 is filed against I.A.No.33/2014 in T.N.S.E.No.II/1/2014 dated 20.11.2014 of the 1st respondent and consequently, direct the 1st respondent to take up T.N.S.E.No.II/1/2014 and dispose of the same on merits.

2. The writ petitioners herein challenged their respective order of termination by filing an appeal before the 1st respondent under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. The Management in both the Writ Petitions is different. Before the 1st respondent, the Management filed the above interim applications to decide the question of maintainability of the Appeal on the ground of jurisdiction, as preliminary issue. The 1st respondent in both cases found that the Appeal filed under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, is not maintainable and consequently dismissed the appeals on that ground. Therefore, these writ petitions are filed.

3. W.P.No.3229/2015

i) The case of the writ petitioner is as follows:

He joined the service of the 2nd respondent as Deputy Management-Security on 10.02.2011 and his service was confirmed on 10.08.2011. He was employed in the 2nd respondent unit at Redhills which is in connection with PAN

INDIA operations. The petitioner was in charge of deployment of security personnel in the factory premises, supervision and maintenance of electronic security system, supervising the security for the warehouse storing raw materials and finished goods, issuing of ID and Access Cards to all the employees, monitoring scrap movement in the factory premises etc. The petitioner was in-charge of the entire security requirement of the factory premises including regulating the entry and exist of workmen, movement of vehicles from and outside the factory premises. All the employees who are in-charge of the security of the factory premises are covered under the Factories Act, 1948. He was terminated from service on 01.07.2014 without any reason. The 2nd respondent is a Shop within the meaning of Section 2(16) of the Tamil Nadu Shops and Establishments Act, 1947. Therefore, the petitioner preferred an Appeal against the order of termination before the 1st respondent under Section 41(2) of the said Act. The Management filed interlocutory application to decide the maintainability of the appeal as preliminary issue. The 1st respondent, without trying all the issues, including the jurisdiction issue, together, allowed the interlocutory application and dismissed the appeal as not maintainable.

ii) The case of the 2nd respondent is as follows:

The petitioner was appointed as Deputy Manager-Security on 10.02.2011 at the factory of the 2nd respondent and he was terminated on 01.07.2014. By virtue of G.O.Ms.No.545 dated 10.02.1950, the provisions of Tamil Nadu Shops and Establishments Act, 1947 does not apply to the petitioner and consequently, the appeal is not maintainable.

4. W.P.No.3230/2015

i) The case of the petitioner is as follows:

He was an employee of the 2nd respondent Management as Senior Executive in Human Resources Department. Though he was designated as Senior Executive, the work performed by him was that of clerical nature. The main duties and responsibilities assigned to him was maintenance of statutory records, filing of the same before appropriate authorities, management presentations, wage administration and distribution of stipends to apprentices and other administrative works. Thus, the work discharged by him was that of purely clerical nature. He was neither assigned with duties in manufacturing process of the management nor any other kind of work incidental to the manufacturing process. He is not governed by the provisions of the Factories Act, 1948 and his service conditions are governed by the provisions of Tamil Nadu Shops and Establishments Act, 1947. While so, the 2nd respondent Management without issuing any prior notice, issued an order of termination dated 31.12.2013. Hence, the petitioner preferred an appeal under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 before the 1st respondent. The Management filed interlocutory application to decide the jurisdiction issue as the preliminary issue. The 1st respondent, without deciding all the issues together,

including the jurisdiction issue, allowed the interlocutory application and dismissed the appeal as not maintainable. Hence, the present writ petition.

ii) Counter affidavit is filed by the 2nd respondent. The case of the 2nd respondent is as follows:

Admittedly, the petitioner was appointed as Senior Executive, Human Resources Department at the factory of the 2nd respondent, by order of appointment dated 31.08.2011. Human Resources Department is in charge of service conditions of all the operators and other staff working in the Factory premises. It is in charge of preparing shift roaster, allotting the workmen to the various shifts, maintaining attendance records, enter and exist of the workmen, grant of leave, payment of wages, deduction and remittance of PF, ESI etc., disciplinary control of the workmen enforcing discipline and maintaining industrial harmony in the factory premises, regulating employment of contract labour and ensuring statutory compliance. Human Resources Department is responsible for compliance with the provisions of Factories Act, 1948. The entire work of Human Resources Department deals with work incidental to or connected with the manufacturing process carried on in the factory premises. All the employees in the Human Resources Department (HRD) are covered by the Factories Act, 1948 and are part of the factory of the 2nd respondent. Under Rule 82 of the Tamil Nadu Factories Rules 1950, Personnel are deemed to be employed in a confidential position in the factory and hence, in terms of Section 64 of the Act only provisions of Chapter VI of the Factories Act, 1948 alone does not apply to the said category of persons. HRD officers are deemed to hold the position of supervision or management in the factory in terms of Rule 81 of the Tamil Nadu Factories Rules, 1950. Rule 81 & 82 of the Tamil Nadu Factories Rules, 1950 would show that employees working in the HRD whether they are officers or not are covered by the provisions of the Factories Act, 1948 read with Tamilnadu Factories Rules, 1950. All the provisions of the Act would apply to the persons employed in the Human Resources Department. Only Chapter VI alone is not applicable. Therefore, the appeal filed by the writ petitioner before the 1st respondent under section 41(2) of Tamil Nadu Shops and Establishment Act, 1947 is not maintainable. Only a person employed in the clerical department of a factory falls within the definition of the person employed and even such of those persons, if they are employed in the Factory governed by the Factories Act, 1948 are exempted from the provisions of the Act. By virtue of G.O.Ms.No.545 dated 10.02.1950, the provisions of Tamil Nadu Shops and Establishments Act, 1947, do not apply to the writ petitioner.

5.Mr.V.Prakash, the learned senior counsel for the writ petitioners submitted as follows:

The appeal presented before the 1st respondent is maintainable under section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947. G.O.4074 dated 05.10.1966 expressly

apply to the case of the petitioners and therefore, the respondent Management is not entitled to rely on G.O.Ms.No.545 dated 10.02.1950. Even otherwise, to apply G.O.Ms.No.545, twin test has to be applied, namely, whether such person is employed in a Factory and whether such person is also governed by the Factories Act. In this case, the petitioners, though are persons employed in the Factories, they are not governed by the Factories Act. Therefore, they are automatically governed under the Tamil Nadu Shops and Establishments Act, 1947 and consequently, the appeal filed under section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 is maintainable. Rule 81 and 82 of the Factories Rules will not apply to the case of the petitioners since the designation per se does not decide the status of the party. In support of his contention, the learned senior counsel relied on (i) 1992(1) LLJ 15 (Automac (M) (P) Ltd. vs. Deputy Commissioner of Labour), (ii) AIR 1963 SC 1561 (Municipal Council Palai through the Commissioner of Municipal Council, Palai vs. T.J.Joseph & Ors) and (iii) unreported decision made in W.P.No.16196/2000 dated 08.06.2010.

6. Per contra, Mr.Ravi, learned counsel appearing for the 2nd respondent Management submitted as follows:

Section 6 of the Factories Act deals with power of the Government to grant exemption to certain class of persons from the purview of Tamil Nadu Shops and Establishments Act, 1947. Based on such power conferred under section 6, G.O.Ms.No.545 was issued, wherein and whereby, all the persons employed on any kind of work in Factories and governed by the Factories Act, 1948, are exempted permanently from all provisions of Madras Shops and Establishment Act, 1947. Under the Factories Act, 1948 the definition of worker includes clerical department. Rules 81 and 82 of the Tamilnadu Factories Rules 1950 contemplate that all persons who are employed in the Security Department and Human Resources Department, whether they are officers or not are covered by the provisions of Factories Act, 1948 and therefore, the provisions of Tamil Nadu Shops and Establishments Act, 1947 does not apply to such of those persons. In support of his contention learned counsel relied on 2001 (4) LLN 857 (E.I.D. Parry (I) Ltd. v. Commissioner of Labour) and 1988(1) LLJ 398 (Management of Binny Ltd. vs. K.Elumalai).

7. Heard both sides. Perused the materials placed before this Court.

8. Challenge made in these writ petitions is against the order of the 1st respondent Appellate Authority in dismissing the appeals filed by the petitioners under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947, as not maintainable. The 1st respondent Appellate Authority took such view on the Interlocutory Application filed by the 2nd respondent Management herein to decide the question of maintainability of the appeals on the ground of jurisdiction

as the preliminary issue. According to the Management in each case, the respective employee is a person working in the Factory and that he is governed by the provisions of the Factories Act and therefore, he is not entitled to invoke Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 to file the Appeal challenging the order of termination.

9. There is no dispute to the fact that the petitioner in W.P.No.3229/2015 was working as Deputy Manager (Security) and the petitioner in W.P.No.3230/2015 was working as Senior Executive HRD.

10. It is the contention of the Management before the 1st respondent in the case of the petitioner in W.P.No.3229/2015 that he was in charge of the entire security requirement of the Factory premises including regulating the entry and exist of workmen, movement of vehicles from and outside the factory premises and protecting the Factory premises; that all the employees who are in charge of the security of the factory premises are covered by the Factories Act, 1948 and are part of the factory at Redhills , Chennai; that the name of the writ petitioner is entered in Form No.12 viz., Register for adult workers maintained by Management in terms of Rule 80 of the Tamil Nadu Factories Rules, 1950 and Rule-81 of the Tamil Nadu Factories Rules 1950 the security personnel like the writ petitioners are deemed to hold position of supervision or management in Factory and hence, in terms of Section 64 of the Factories Act, the Security Officers are deemed to be employed in a confidential position in the factory and that Rules 81 and 82 of the Tamil Nadu Factories Rules, 1950 clearly show that employees working in the Security Department whether they are officers or not are covered by the provisions of the Factories Act, 1948 read with Tamil Nadu Factories Rules 1950; that the aforesaid activities would clearly show that the work carried on in the Security Department is incidental or connected with the manufacturing process carried on in the factory premises and consequently the employees of Security Department also satisfy the definition of "worker" as defined under the Factories Act, 1948 and that all the provisions of the Act would apply to the persons employed in the Security Department.

11. Per contra, the writ petitioner herein as the appellant therein before the 1st respondent contested the said application by disputing the claim of the Management. It is his specific contention that he was appointed as Deputy Manager-Security and the main duties and responsibilities are in the administrative office, where the customers are rendered service and that his service with the Management never involved in the manufacturing process; that none of the provisions of the Factories Act has been made applicable to him and right from the beginning of his appointment, his service conditions are governed by the Tamil Nadu Shops and Establishment Act, that merely the administrative office is

located within the area which is under the Factories Act, the same could not straight away become factory premises; that the particular nature of duties which are discharged by him alone could be taken into account and that the duties and responsibilities assigned to him are not governed by the Factories Act, 1948.

12. Likewise, in the case of writ petitioner in W.P.No.3230/2015, the claim of the Management before the Appellate Authority is that the writ petitioner was appointed as Senior Executive, HRD at the Factory; that Human Resources Department is in charge of service conditions of all the operators and other staffs working in the Factory premises; that HR(Personnel) are in charge of preparing shift roaster, allotting of workmen to various shifts, maintaining attendance, records of entry and exit of the workmen, grant of leave, payment of wages, deduction and remittance of PF, ESI etc., disciplinary control of the workmen, enforcing discipline and maintaining industrial harmony in the factory premises, regulating employment of contract labour and ensuring statutory compliance etc.; that HRD Personnel are deemed to be employed in a confidential position in the factory and hence, in terms of Section 64 of the Act provisions of Chapter VI of the Factories Act, 1948 alone does not apply to those persons and on the other hand, these HRD Officers are deemed to hold the position of supervision or management in the factory in terms of Rule 81 of the Tamil Nadu Factories Rules, 1950, and that Rules 81 and 82 of the Tamil Nadu Factories Rules, 1950 clearly show that the employees working in the HRD whether they are officers or not are covered by the provisions of the Factories Act, 1948 read with Tamilnadu Factories Rules, 1950; that the aforesaid activities would clearly show that the work carried on in the HR Department is incidental to or connected with the manufacturing process carried on in the factory premises and consequently, the employees of HR department also satisfy the definition of "worker" as determined under the Factories Act, 1948, and that all the provisions of the Act would apply to the persons employed in the Human Resources Department.

13. The writ petitioner denied the above contentions before the 1st respondent. His specific case is that though the writ petitioner was designated as a "Senior Executive" in the Human Resources Department he did not have any powers to appoint or terminate anybody; that he did not have any powers to sign any cheques for the Management nor did he possess any powers or duties of supervision over his fellow workers; that the job was to maintain service records of the workers and report to their superiors about absenteeism and any other issues relating to safety health and other related matters; that his work was entirely clerical in nature and he was a member of the clerical staff employed in the factory of the Management; that as per G.O.No.545 Labour Department dated 10.02.1950, considering the nature of his work, he would fall

within the purview of "Persons Employed" as defined under Section 2(12) of the Tamil Nadu Shops and Establishments Act, 1947 and therefore, the question of maintainability does not arise.

14. According to the Management in both cases, these writ petitioners are not only persons who were working in the Factory registered under the Factories Act but they are also governed by the provisions of the Factories Act. On the other hand, it is the contention of the respective writ petitioners that though they were working in the Factory, the nature of work and responsibility assigned to and discharged by them, will not bring them as persons governed by the provisions of the Factories Act. Before the 1st respondent Appellate Authority, except the rival pleadings of the respective parties, no evidence whatsoever either oral or documentary was produced by both parties. However, the 1st respondent Appellate Authority in these cases has proceeded to decide the maintainability issue based on the rival pleadings. Now this Court has to decide the issue raised in these writ petitions based on certain Government orders and statutory position touching upon the present issue.

15. G.O.Ms.No.545 Development Department dated 10.02.1950 deals with exemption of persons employed in Factories governed by the Factories Act from Madras Shops and Establishment Act, which reads as follows:

"Exemptions from Madras Shops and Establishment Act

PERSONS EMPLOYED IN FACTORIES GOVERNED
BY
THE FACTORIES ACT

(G.O.Ms.No.545, Development, 10th February 1950)
No.146

In exercise of the powers conferred by section 6 of the Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1947) and in supersession of the Development Department Notification No.1085, dated the 5th November 1948, published at page 1101 of Part I of the Fort St.George Gazette, dated the 16th November 1948, as subsequently amended, His Excellency the Governor of Madras hereby exempts permanently all persons employed on any kind of work in factories and governed by the Factories Act, 1948 (Central Act LXIII of 1948, from all provisions of the Madras Shops and Establishments Act, 1947."

16. Perusal of the said G.O. would show that in order to exempt a person from the provisions of Madras Shops and Establishment Act, (now Tamil Nadu Shops and Establishment Act), he must not only be a person employed on any kind of work in factories and also be governed by the Factories Act, 1948. In other words, it is not sufficient to show that such

person is employed in a factory "of any kind of work" and it should also be proved that such person is governed by the Factories Act, 1948. From the reading of the above Government Order, granting exemption to such of those persons from the purview of Madras Shops and Establishment Act, 1947, it reveals that not all persons working in a factory are automatically governed by the Factories Act, 1948 and on the other hand, there are persons, though working in factories, are still not governed by the Factories Act, 1948. Therefore, it is to be seen as to whether these writ petitioners admittedly working in the factory are governed by the Factories Act, 1948 as well. If the answer to the above question is in the affirmative, automatically, the appeal presented by them under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947, is not maintainable, in view of the specific exemption granted from the application of the provisions of the Tamil Nadu Shops and Establishment Act, 1947, to those persons, as contemplated under G.O.Ms.No.545.

17. It is not in dispute that both the petitioners are employed in their respective factory. Admittedly, the petitioner in W.P.No.3239/2015 was working as Deputy Manager (Security) and the petitioner in W.P.No.3230/2015 was working as Senior Executive (HRD). Though these petitioners dispute the nature of duties and responsibilities discharged by them in their respective factory, they are not disputing their designation of appointment namely, Deputy Manager (Security) and Senior Executive (HRD). Therefore, the first limb of the requirement to exempt them from the application of Tamil Nadu Shops and Establishment Act, 1947, gets satisfied. Consequently, it is to be seen as to whether these petitioners are also governed by the Factories Act. As rightly pointed out by the learned counsel for the Management, answer to the said question lies in the very Factories Act, 1948, and Tamil Nadu Factories Rules, 1950, itself. Rule 81 of the Tamil Nadu Factories Rules 1950 defines the categories of persons deemed to hold position of supervision or management. Under the said Rule, 26 categories of persons are referred to as the persons deemed to hold position of supervision or management. Serial No.2 refers "Manager" and Serial No.22 refers "Human Resources Development Officers". Likewise, Rule 82 of the said Rules shows the categories of persons deemed to be employed in confidential position. 12 categories of persons were shown under the said Rule as the persons deemed to be employed in confidential position, out of which, Serial No.6 refers to "Human Resources Development Personnel" and Serial No.7 refers "Security Officers". Therefore, it is apparent that the petitioners herein holding the post of Deputy Manager (Security) and Senior Executive (HRD) respectively, are undoubtedly, persons covered under Rules 81 and 82 of the above said Rules and consequently, without having any iota of doubt, it can be safely concluded that these petitioners are the persons covered by the provisions of the Factories Act, 1948, except to the application of Chapter VI of the Factories

Act, 1948 in view of provisions made under Section 64 of the said Act. Section 64(i) of the Factories Act, 1948, which reads as follows:

64. Power to make exempting rules - (1)
The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules, as a person holding position of supervision or management or employed in a confidential position in a factory, if in the opinion of the Chief Inspector, such person holds such position or is so employed, and the provisions of this Chapter, other than the provisions of clause (b) of sub section(1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared."

18. Thus, it is evident that except Chapter VI under which Section 64 lies, all other provisions of Factories Act, 1948 would apply to these writ petitioners. It is to be noted at this juncture that Chapter VI deals only with Working Hours of Adults. Therefore, this Chapter does not alter the character or designation of these writ petitioners in any manner.

19. Section 2(12) of the Tamil Nadu Shops and Establishment Act, 1947, defines "person employed", wherein sub clause (iii) reads as follows:

.....
.....
(iii) in the case of a commercial establishment other than a clerical department of a factory or an industrial undertaking, a person wholly or principally employed in connexion with the business of the establishment, and includes a peon; '

20. Thus, in order to attract Section 41(2) of the said Act and to maintain the appeal before the 1st respondent, these writ petitioners should be persons who come under the meaning of "person employed" under the Tamil Nadu Shops and Establishment Act, 1947. There is a specific exemption under sub clause (iii) in respect of persons in a clerical department of a factory or industrial undertaking. Thus, a conjoint reading of Section 2(12) (iii) and Section 41(2) of Tamil Nadu Shops and Establishment Act, 1947, on one side and Rules 81 & 82 of the Tamil Nadu Factories Rules, 1950 and Section 64 of the Factories Act, 1948, on the other side, coupled with G.O.Ms.No.545 dated 10.02.1950, would undoubtedly show that these writ petitioners are not only employees of

the factory and also governed by the provisions of the Factories Act. Therefore, their appeal presented under section 41(2) of the Tamil Nadu Shops and Establishment Act, is not maintainable.

21. At this juncture, the Division Bench decision relied on by the learned counsel for the 2nd respondent in 2001 (4) LLN 857 (E.I.D. Parry (I) Ltd. v. Commissioner of Labour) is to be noted wherein the Division Bench observed that the 2nd respondent therein who was working as General Manager in a factory will not fall under the definition of "person employed" under the Tamil Nadu Shops and Establishment Act, 1947 and on the other hand, he was a workman who would fall under the definition of Section 2(1) of the Factories Act and therefore, the exemption from applicability of the Tamil Nadu Shops and Establishment Act, to the persons governed by the Factories Act, as provided under G.O.Ms.No.545 dated 10.02.1950, would come into force. Thus, the Division Bench found that the appeal filed by the said General Manager was not maintainable under Section 41(2) of the Tamil Nadu Shops and Establishment Act, challenging his termination order.

22. No doubt, the petitioners are disputing the nature of duties and responsibilities assigned to and performed by them. But in my considered view the nature of duties and responsibilities performed by the respective writ petitioners will not be the material factor to decide with regard to the maintainability of the appeal before the 1st respondent. On the other hand, their admitted designation of employment matters to decide as to whether they are persons employed within the meaning and definition of Section 2(12) of the Tamil Nadu Shops and Establishment Act. Admittedly, these writ petitioners were holding the respective post in the respective category, which fall under Rules 81 and 82 of the said Rules as discussed supra.

23. Chapter VI of the Factories Act, 1948, only deals with working hours of adults. Therefore, the exemption granted from the purview of Chapter VI of the Factories Act to such of those persons covered under Rules 81 and 82 are confined only when the relevant provisions deals with working hours of adults commencing from Sections 51 to 66 and not more than that. Therefore, in my considered view, these petitioners are not only the persons employed in their respective factory and also governed by the Factories Act, 1948. Consequently, their appeal filed before the 1st respondent under Section 41(2) of the Tamil Nadu Shops and Establishment Act is not maintainable. The 1st respondent has rightly held so.

24. Learned senior counsel for the writ petitioners also contended that in the case of the petitioners, G.O.Ms.No.545 would not apply and on the other hand, subsequent, G.O.Ms.No.4074, Industries, Labour and Housing Department dated 03.10.1966 alone would apply. By relying on the said

G.O., the learned senior counsel contended that all the provisions of the Tamil Nadu Shops and Establishment Act, 1947, would apply to these petitioners.

25. A careful perusal of the above G.O.Ms.No.4074 dated 05.10.1966 would show that the above contention is liable to be rejected for the following reasons.

i) G.O.Ms.No.4074 reads as follows:

"(G.O.Ms.No.4074, Industries, Labour and Housing (Labour), 5th October, 1966.)

II-1 No.4489 of 1966 - In exercise of the powers conferred by section 5 of the madras Shops and Establishments Act, 1947 (Madras Act , 1947 (Madras Act XXXVI of 1947)), the Governor of Madras hereby applies all the provisions of the said Act to the class of persons mentioned in clause (a) of sub-section (1) of section 4."

ii) Perusal of the above said G.O. would show that only the class of persons mentioned in Section 4(1)(a), who were originally exempted under the Tamil Nadu Shops and Establishment Act, 1947, are brought under the purview of the above said Act. Section 4(1) (a) of the said Act deals with persons employed in any "establishment" in a position of Management. The term "establishment" is defined under Section 2(6) of the said Act as follows:

(6) "establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purposes of this Act;

iii) A careful perusal of the above definition of "establishment" would show that it would not include a factory where manufacturing activities is going on. On the other hand, Section 2(7) defines "Factory" specifically as premises within the meaning of the Factories Act, 1948. It is also to be noted that Section 4(1)(f) of the said Act specifically deals with "establishments" which not being factory within the meaning of Factories Act, 1948, governed by a separate law for the time being in force. Therefore, it is evident that the exemption of provisions made under Section 4 does not deal with the factory and consequently, the learned senior counsel is not justified in relying upon G.O.Ms.No.4074 dated 05.10.1966 in support of his contention, since the term "establishment" referred to under 4(1)(a) of the said Act is an "establishment" defined under Section 2(6) and not a "factory" which is separately defined under 2(7) of the said Act.

26. Learned counsel for the petitioners relied on 1992 (1) LLJ 15 (Automac (M) (P) Ltd. vs. Deputy Commissioner of Labour), the Division Bench decision of this Court, in support of his contention that this Court can decide the dispute

between the parties here itself in respect of the preliminary objection raised on the jurisdiction of the 1st respondent. Perusal of the said decision would show that in that case, it has been found that none of the provisions of the Factories Act, is made applicable to the 2nd respondent therein and right from the beginning, his service conditions do not govern by the Tamil Nadu Shops and Establishment Act. It is further seen from the facts and circumstances of the said case that the employee therein was functioning as Office staff and such category is not falling under Rule 81 or Rule 82. In this case, as I have already pointed out that these writ petitioners are covered under the above said Rules. Therefore, I find that the above decision is not helping the writ petitioners in any manner.

27. Likewise, the other unreported decision relied on by the learned senior counsel for the petitioners made in W.P.No.16196/2000 dated 08.06.2010 is also in respect of a person appointed as technical officer, which category does not fall under Rule 81 or 82. On the other hand, in this case, the position held by these writ petitioners are specifically covered under those Rules. Therefore, the above unreported decision also is not helping the writ petitioners in any manner.

28. In view of the above stated facts and circumstances, I find that these Writ Petitioners have not made out a case for interfering with the order passed by the 1st respondent. Accordingly, both the Writ Petitions fail and the same are dismissed, however, by granting liberty to the respective writ petitioners to work out their remedy against the order of termination before the appropriate forum in a manner known to law within a period of four weeks from the date of receipt of a copy of this order. If any such challenge is made, the concerned Forum will take into account the pendency of the proceedings before the 1st respondent as well before this Court to exclude the period of limitation, if any. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi

To

The Deputy Commissioner of Labour (Minimum Wages)
(Appellate Authority under the Tamil Nadu
Shops & Establishments Act)
DMS Compound, Chennai - 600 006.

+2ccs to Mr.Gupta and Ravi , Advocate SR.No. 12795

+2ccs to Mr.T.Ramkumar , Advocate SR.No. 13201 13202

+1 cc to Government Pleader Sr.No. 13624

W.P.Nos.3229 & 3230 of 2015