

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 10935 of 2019

and

W.M.P. Nos. 11373 and 11374 of 2019

The Management
Neptune Travels India Pvt. Ltd.,
Rep. by its Managing Director,
Mr. Harinder Agarwal
No. 109, S.No. 3 & 4
Pamadi Chamber, DVG Road
Basavankudi, Bangalore - 4. ... Petitioner

-vs-

1.The Special Deputy Commissioner Labour
Appellate Authority under Shop and
Establishment Act
Chennai - 600 006.

2.S.Maragatham @ Madubala ... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari, to
call for the records relating to the order of setting aside the
oral termination order passed by the 1st Respondent dated
19.09.2007 in TSE No. 1.3/2009 and quash the same.

For Petitioner: Mr. S.Venkatesan

For Respondents: Mr. D.Sathyaraj (For R1)
Special Government Pleader

Mr. P.Solomon (For R2)

O R D E R

(through video conference)

Heard Mr. S.Venkatesan, Learned Counsel for the Petitioner,
Mr. D.Sathyaraj, Learned Special Government Pleader for the
First Respondent and Mr.P.Solomon, Learned Counsel for the

Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent who claims to have been working from 01.06.2006 in the establishment of the Petitioner had filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, claiming that she had been orally terminated from service with effect from 01.03.2007. According to the Petitioner, no notice had been received in the said appeal in which an exparte order dated 19.09.2007 has been passed setting aside the termination.

3. The Petitioner, who claims that the passing of the aforesaid order had come to its knowledge only after perusing the order dated 26.11.2013 in C.P. No. 213 of 2013 filed by the Second Respondent against the Petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 before the II Additional Labour Court, Chennai, has filed this Writ Petition on 21.03.2019 challenging the aforesaid order passed by the First Respondent.

4. In order to ascertain as to whether notice had been issued by the First Respondent to the Petitioner in the impugned proceedings, this Court by an order dated 30.07.2020 had called for the records. It is noticed on perusal of the photostat copy of the same that the Petitioner had entered appearance through Counsel who had filed vakalat on 21.05.2007 and that the matter had been adjourned to 07.06.2007, 26.06.2007, 05.07.2007, 17.07.2007, 31.07.2007, 14.08.2007 and 28.08.2007 for filing Counter and thereafter, the exparte order has been passed on the failure of the Petitioner to appear in the said proceedings. In view of the same, the Petitioner cannot be heard to complain that it had no notice in the proceedings before the impugned order had been passed.

5. At the same time, it requires to be taken note of the fact that the impugned order dated 19.09.2007 is a non-speaking one, which has been extracted as under:-

"Inspite of final notices, the Respondent-1 and II have been continuously absent on the hearing dates of 17.07.2007, 31.07.2007, 14.08.2007 and 28.08.2007, and as such the appeal is allowed exparte as prayed by the Appellant and her oral termination is set aside."

It must, at once, be pointed out that the Division Bench of this Court in M/s. Meenakshisundaram Textiles -vs- M/s. Valliammal Textiles Ltd. [(2011) 3 CTC 168] after referring to the decisions of the Hon'ble Supreme Court of India in Swaran Lata Ghosh -vs- H.K. Banerjee [(1969) 1 SCC 709], State of Tamil Nadu

-vs- S. Thangavel [(1997) 2 SCC 349], Balraj Taneja -vs- Sunil Madan [(1999) 8 SCC 396], Lakshmi Ram Bhuyan -vs- Hari Prasad Bhuyan [(2003) 1 SCC 197], Ramesh Chand Ardawatiya -vs- Anil Panjwani [(2003) 7 SCC 350], and State of Punjab -vs- Bhag Singh [(2004) 1 SCC 547], has reiterated the settled legal position that even in the absence of the Defendant contesting in a suit, the Court is legally bound to give reasons for accepting the claim of the Plaintiff and in the absence of such adjudication of the claim, such decree passed cannot be sustained in law. There is no discussion with reference to any of the documents produced as to how the Second Respondent was entitled to the relief sought as prayed for the mere asking, and as such, the exparte order dated 19.09.2007 in TSE No. 13 of 2007 passed by the First Respondent in this case calls for interference.

6. However, it cannot also be lost sight of the fact that the Petitioner had been served with notice and had failed to appear for several hearings before the impugned order was passed and the same is challenged after an inordinate delay of 12 years for which it cannot be said that the Petitioner was not at fault. In this backdrop, in order to shorten litigation and expedite adjudication of the main dispute between the parties, Learned Counsel for the Second Respondent by memo dated 01.09.2020 has agreed that the impugned order dated 19.09.2007 in TSE No. 13 of 2007 passed by the First Respondent may be set aside and the matter may be remitted for fresh disposal on payment of costs of Rs. 35,000/-, for which the Learned Counsel for the Petitioner has produced proof for such payment made and has filed a memo dated 11.09.2020, which is placed on record.

7. In view of the foregoing discussion, the impugned exparte order dated 19.09.2007 in TSE No. 13 of 2007 passed by the First Respondent is set aside and TSE No. 13 of 2007 is restored to file, and the matter shall be posted for the next hearing on 28.10.2020 before the First Respondent. The Petitioner shall file its Counter in TSE No. 13 of 2007 on that date without fail. The parties shall attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and extend their co-operation for the expeditious disposal of the matter. It shall be ensured that there is atleast one effective hearing every week showing progress of the matter. After affording full opportunity of hearing to all parties concerned following the prescribed procedure, the First Respondent shall pass reasoned order on merits and in accordance with law and communicate the decision to the concerned parties under written acknowledgment.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

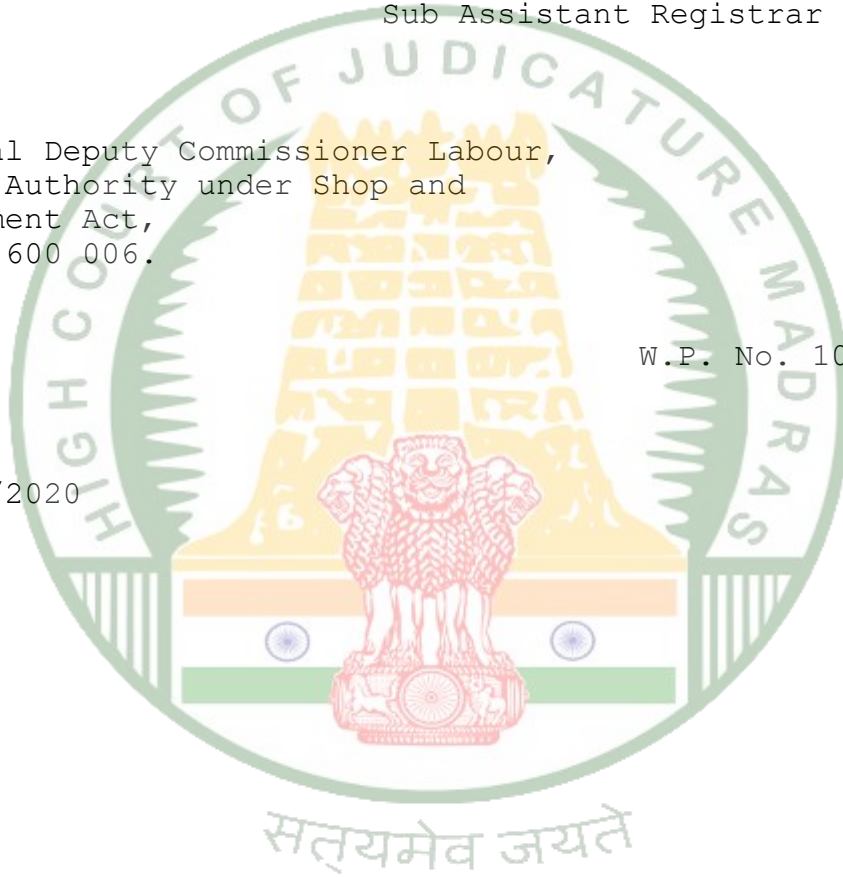
Sub Assistant Registrar

To

The Special Deputy Commissioner Labour,
Appellate Authority under Shop and
Establishment Act,
Chennai - 600 006.

W.P. No. 10935 of 2019

mp[co]
srg 01/10/2020



WEB COPY