



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.02.2020**

CORAM:

**THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND**

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD] No.989 of 2013

and

C.M.P.(MD) Nos.1 & 2 of 2013 in

WP(MD)No.327 of 2007

The Secretary,
Trichy North Sarvodaya Sangam,
No.12, Doublemal Street,
Tiruchirappalli - 620 002.

: Appellant / Petitioner

Vs.

1.The Deputy Commissioner of Labour,
Tiruchirappalli.

2.S.Mary

: Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 26.03.2013 passed by a learned Single Judge of this Court in W.P.(MD) No.327 of 2007.

Prayer in WP(MD)No.327 of 2007

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 1st Respondent dated 17/07/2006 passed T.N.S.E.Appeal No.1 of 2004 and quash the same and pass such further or other orders as this Honourable Court may deem fit.

For appellant	: Mrs.J.Anandhavalli
For 1 st respondent	: Mr.V.R.Shanmuganathan Special Government Pleader
For 2 nd respondent	: Mr.P.Ganapathi Subramanian

JUDGMENT

[Judgment of the Court was delivered by
The Hon'ble Chief Justice]

The appeal arises out of judgment of the learned Single Judge of this Court dated 26.03.2013, whereby the matter has been remitted back to the disciplinary authority for conducting a fresh enquiry on the allegations made against the second respondent by the appellant. The allegation is that the second respondent had availed a loan facility by misrepresenting herself, in spite of the fact that she was only a saleswoman and for the said purpose, she had presented a certificate containing a forged signature of an official of the appellant. The appellant terminated the second respondent from service.



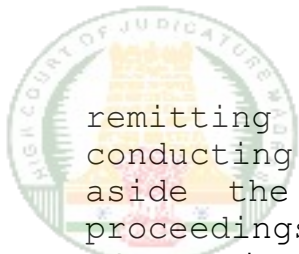
2. An appeal before the Deputy Commissioner of Labour, Tiruchirapalli under the Tamil Nadu Shops and Establishments Act, 1947, was filed by the second respondent against the termination order. The second respondent contended that since the termination was an outcome of unfair enquiry, the termination order is invalid. The claim was allowed by the authority. Aggrieved, the appellant filed the writ petition contending that the appellate authority has neither applied its mind nor considered the claim in correct perspective, inasmuch as 23 documents had been filed and the appellate authority ought to have examined the same, but without looking into the documents filed on behalf of the appellant, dismissed the appeal. The contention, therefore, is that non consideration of relevant materials and passing of a cryptic order clearly amounts to a perversity and violates principles of natural justice and therefore, the appellate order ought to be set aside.

3. The learned Single Judge had agreed with that proposition, but at the same time, had also arrived at a conclusion that the enquiry by the disciplinary authority had not been conducted in a fair manner and was *ex parte*. Therefore, while allowing the writ petition, set aside the order of termination and directed the disciplinary authority viz., the appellant herein to conduct a fresh enquiry.

4. Aggrieved by this order of remand, the appellant is before this Court contending that if the learned Single Judge was of the opinion that the matter required a reconsideration, then he should also have taken into account the fact that the pleadings had been made before the appellate authority and the appellate authority could have gone into the entire matter itself, keeping in view the provisions of Section 42 (1) and (2) of the Tamilnadu Shops and Establishments Act, 1947. The contention, therefore, is that the appellate authority exercising coextensive power could have itself examined the entire matter and therefore, the remand to conduct a disciplinary enquiry by the learned Single Judge is not justified.

5. Having considered the submissions raised, we find that the appellate authority has the power to deal with the matter appropriately more so in the facts of the present case, when the contention of the appellant is that they had filed 23 documents to demonstrate that the charge against the second respondent could be established and further in view of the fact that the allegation was that the second respondent had not participated in the enquiry.

6. This issue, therefore, being a matter of fact, could have been assessed by the appellate authority and thereafter, an order could have been passed. But, we find that the appellate authority, instead of dealing with the matter in the light of the above, passed a cryptic order that came to be challenged before the learned Single Judge. The learned Single Judge, therefore, was not justified in



remitting the matter directly to the disciplinary authority for conducting enquiry and we, accordingly, allow the appeal and set aside the order dated 26.03.2013 to that extent. The entire proceedings shall stand remitted to the appellate authority in terms of Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947.

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7. The appellate authority shall proceed to pass appropriate order on the merits of the claim, including the legal issues that had been advanced, that is the applicability of the provisions of the Act as well as the remedy available to the second respondent. The appellate authority shall dispose of the appeal within a period of three months from today. There is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

gcg/mm

To

The Deputy Commissioner of Labour,
Tiruchirappalli.

+1 CC to M/s.J.ANANTHAVALLI, Advocate (SR-8699[F]

+1 CC to M/s.G.KANTHAVADVELAN, Advocate (SR-9020[F]

JUDGMENT MADE IN

W.A.[MD]No.989 of 2013

26.02.2020

SMA/13/03/2020/3P/4C