

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1160 of 2012 and
M.P.No.1/2012

The Special Officer,
Tamil Nadu Silk Producers Federation Limited,
Ind. No.944,
522, Gandhi Road,
Kancheepuram.

...Appellant/Petitioner

-vs-

1. The Deputy Commissioner of Labour
(Minimum Wages),
The Appellate Authority under Tamil Nadu
Shops and Establishment Act, 1947,
Chennai-6.

2. T.Veliappan ... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 15.12.2011 passed in W.P.No.32118/2007
by a learned Single Judge of this Court.

Prayer in W.P.No.32118/2007

Writ Petition filed under Article 226 of the Constitution of
India, Praying for the issuance of writ of certiorari to call
for the records from the first respondent herein relating to the
order dated 07.03.2007 passed in T.S.E.II-2/2006 and to quash
the same.

For Appellant : Mr.B.Hari Babu

For 1st respondent : Mrs.Reehana Begum,
Government Advocate

For 2nd Respondent : Mr.V.Lakshminarayanan

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

The Special Officer, Tamil Nadu Silk Producers Federation Limited, Kancheepuram, has filed this Writ Appeal, questioning the order passed by a learned Single Judge in W.P.No.32118/2007 dated 15.12.2011 wherein it has been held that the appeal filed against the retrenchment order passed against the 2nd respondent herein, namely, T.Veliappan, under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947, (hereinafter referred to as, 'the Act') is proper and valid.

2. Mr.B.Hari Babu, learned Counsel for the appellant would submit that when the 2nd respondent Mr.T.Veliappan being a workman with the appellant joined the service on 08.11.1993 on daily wages basis and his services were retrenched by letter dated 19.09.2003, aggrieved thereby, he has wrongly preferred an appeal before the 1st respondent, namely, the Deputy Commissioner of Labour (Minimum Wages), The Appellate Authority under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947. The 1st respondent also, after examining the claims made by the 2nd respondent and also the objections raised by the appellant along with marking of three documents as Ex.A.1 to Ex.A.3 on behalf of the 2nd respondent and examining one witness on the side of the appellant as R.W.1 along with marking of 17 documents as Ex.R1 to 17, came to a conclusion that the 2nd respondent can invoke the provisions of Section 41(2) of the Act even without resorting to the provisions of the Industrial Disputes Act, 1947 and that approach adopted by the 2nd respondent was unknown to law, therefore, this was overlooked by the learned Single Judge. Hence, the present appeal has been filed. The learned Counsel for the appellant would further submit that when the appeal was not even maintainable and not covered under the provisions of the Act, the 1st respondent has committed illegality in passing the order under the Tamil Nadu Shops and Establishments Act, 1947, therefore, the present appeal deserves to be allowed.

3. Arguing further, learned Counsel for the appellant would submit that the 2nd respondent was only a daily wage worker, therefore, he was retrenched for the reasons mentioned therein. When the retrenchment order passed against the 2nd respondent was proper and valid, more particularly, after following the procedure laid down in Section 25(F) of the Industrial Disputes Act, the remedy that would be resorted by the 2nd respondent is only under the Industrial Disputes Act, but not filing appeal under the provisions of the Tamil Nadu Shops and Establishment Act, therefore, the impugned order passed by the learned Single Judge is liable to be set aside by allowing the present Writ Appeal.

4. Per contra, Mr.V.Lakshminarayanan, learned Counsel for the 2nd respondent supporting the impugned order pleaded that the issue raised both before the 1st respondent and subsequently before the learned Single Judge has already been adjudicated and decided not only by a Division Bench of Our High Court but also Full Bench in the case in The Management of Safire Theatre, Madras, vs. The Additional Commissioner for Workmen's Compensation, Madras and Others reported in (1978) AIR (Madras) 14. Learned Counsel for the 2nd respondent again referring to paragraph 8 of the Division Bench Judgment in the case of Ms.T.N.Chandra vs. South India Corporation (Agencies) Limited and another reported in (1992) 1 CLR 951 = (1992) 1 LLJ 739 = (1992) 1 LLN 868, pleaded that the Division Bench, while considering a similar and identical issue taking reliance from the judgment of the Apex Court in Mohan Lal vs. Management of Bharat Electronics Limited held that termination in violation of Section 25 of the Industrial Disputes Act would be ab initio void and the workman would be entitled to a declaration that he continues to be in service with all consequential benefits.

5. Learned Counsel for the 2nd respondent also referred to yet another decision of the Apex Court in Krishna District Co-operative Marketing Society Limited, Vijayawada vs. N.V.Purnachandra Rao and Others reported in AIR 1987 SC 1960 in which it has been held that if the employees are workmen and the management is an industry as defined in the Industrial Disputes Act, and thereupon, the action taken by the Management amounts to 'retrenchment', that the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Industrial Disputes Act and that the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under Section 40(1) and (3) of the Andhra Pradesh Shops and Establishment Act, 1966. In this regard, it is useful to refer to the ratio laid down by the Full Bench of our High Court, in the case in The Management of Safire Theatre, Madras vs. The Additional Commissioner for Workmen's Compensation, Madras and Others reported in (1978) AIR (Madras) 14. Therefore, when the issue raised by the appellant before the learned Single Judge and also before this Court has already been decided long time back in Safire Theatre case cited supra, nothing survives for adjudication in this appeal, he pleaded.

6. We also find some merits on the submissions made by the learned Counsel for the 2nd respondent. The reason being that when the 2nd respondent was serving as a workman with the appellant from 08.11.1993 on daily wages basis, his service was retrenched by letter dated 19.09.2003. Aggrieved by the said retrenchment order passed against him, the 2nd respondent went

before the 1st respondent invoking the appellate power given under Section 41(2) of the Tamil Nadu Shops and Establishments Act. The 1st respondent taking first issue as to whether the 2nd respondent who attained retrenchment from service can seek relief under Section 41 of the said Act, rightly answering the same, has come to the conclusion that when the 2nd respondent was a workman and had put in nearly 10 years of continuous service from 08.11.1993 on daily wages basis, considering the fact that he was retrenched from service vide letter dated 19.09.2003, he can also seek remedy under Section 41(2) of the Tamil Nadu Shops and Establishment Act. Further, taking reliance from the judgment of Our High Court in Ms.T.N.Chandra vs. South India Corporation (Agencies) Limited and another reported in (1992) 1 CLR 951 holding that the appellate Authority under Section 41 (2) of the Act can adjudicate the matter arising under Chapter V-A of the Industrial Disputes Act has rightly held that the appeal filed by the 2nd respondent was maintainable under Section 41(2) of the Act.

7. In this regard, since serious objection has been raised by the learned Counsel for the appellant, we deem it fit to refer to the ratio laid down by the Division Bench of Our High Court in the case in Ms.T.N.Chandra vs. South India Corporation (Agencies) Limited and another reported in (1992) 1 CLR 951 here under :

''8. We have carefully considered the respective submissions of the learned counsel appearing on either side but unable to subscribed to the views expressed by the learned single Judge or uphold the order under appear before us. In the decision reported in Mohan Lal Vs. Management of Bharat Electronics Ltd., the Supreme Court held that a termination in violation of S.25 of the Industrial Disputes Act, would be ab initio void and the workman would be entitled to a declaration that he continues to be in service with all consequential benefits. In Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V.Purnachandra Rao and Others, the Supreme Court held that if the employees are 'work men' and the management is an 'industry' as defined in the Industrial Disputes Act, and the action taken by the Management amounts to 'retrenchment' then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Industrial Disputes Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities u/s.40(1) and (3) of the Andhra Pradesh Shops and Establishment Act, 1966. The Management of Safire Theatre, Madras vs. The

Additional Commissioner for Workmen's Compensation, Madras and Others, a Full Bench of their Court held that Section 2-A of the Industrial Disputes Act does not fully bar the remedy under S.41 of the Shops Act, and if decision is rendered under S.41(2) of the Shops Act, before the Government had made a reference under S.10 of the Industrial Disputes Act, that decision would be final between the parties and that the remedies under both the Acts, subject to a worker. In State Bank of Travancore Vs. Dy.Commissioner of Labour, Coimbatore and another, a learned Single Judge of this Court held that where the worker satisfied the definition of a person employed and the management satisfied the definition of an employer within the meaning of the Act, any contract between the employer and the person employed cannot over ride the express provisions of the Shops Act, particularly, S.41 thereof. The decision in M.Palaniswami Vs. Madukkarai Cement Works Employees' Co-operative Stores Limited and Another, of a learned Single Judge of this Court was referred to in order to show that even in respect of a probationer, this High Court considered the question of termination in the light of S.41 though ultimately on merits the claim of the worker was rejected.'

8. Likewise, it is pertinent to extract the relevant paragraphs 19 and 20 of the Full Bench Judgment of Our High Court in The Management of Safire Theatre, Madras vs. The Additional Commissioner for Workmen's Compensation, Madras and Others reported in (1978) AIR (Madras) 14 here under :

'19. On a careful consideration of the cases cited and the various provisions of the two Acts, we answer the questions referred to by Koshal J., as follows:

20. Section 2-A of the Industrial Disputes Act does not fully bar the remedy u/s.41 of the Madras Shops and Establishments Act 1947. If a decision is rendered u/s.41(2) of the Madras Act before the Government had made a reference u/s.10 of the Industrial Disputes Act, the decision would be final between the parties. But before the conclusion of the enquiry u/s.41 of the Madras Act, if the Government makes a reference u/s.10 of the Industrial Disputes Act, the pending proceedings u/s.41 of the Madras Act cannot be continued.'

Therefore, when both the learned Division Bench and the Full Bench of our High Court mentioned supra have rightly held that Section 2A of the Industrial Disputes Act does not fully bar the remedy under Section 41 of the Madras Shops and Establishments Act, 1947, with a small aberration that if a decision is rendered under Section 41(2) of the said Act, before the Government had made a reference under Section 10 of the Industrial Disputes Act, that decision would be final between the parties. However, before the conclusion of the enquiry under Section 41 of the Madras Act, if the Government makes a reference under Section 10 of the Industrial Disputes Act, the pending proceedings under Section 41 of the Madras Act cannot be continued.

9. In the present case, before any decision is taken by the Government to refer the industrial dispute to the Labour Court, the 2nd respondent having approached the 1st respondent, we are of the view that the findings of the learned Single Judge supporting the conclusions reached by the 1st respondent is fully in order. Therefore, we find no merit in the present Appeal.

10. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsi

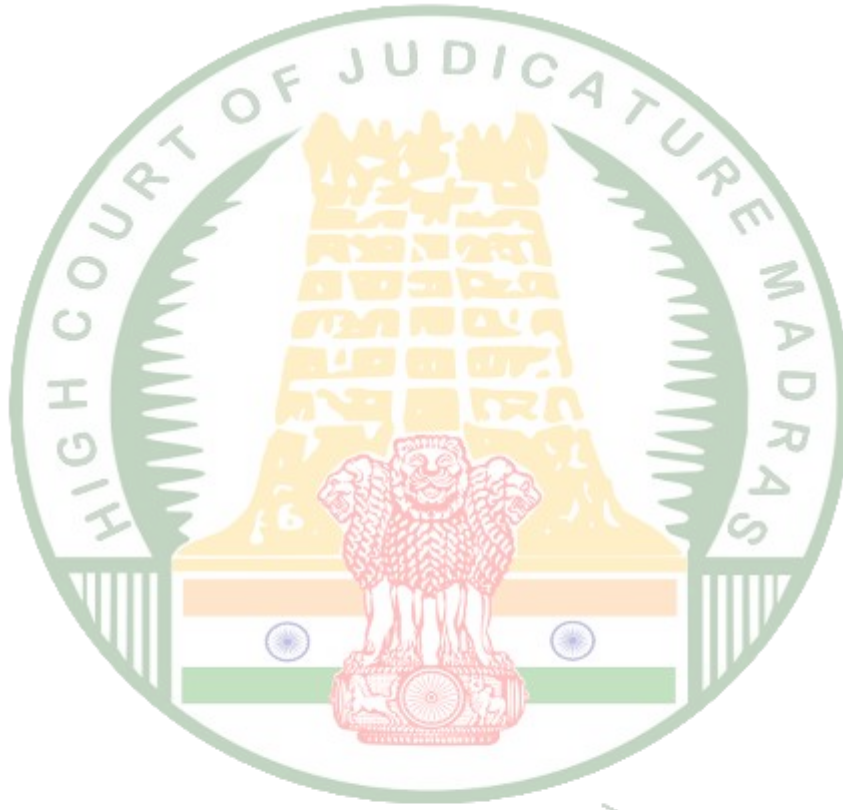
To

The Deputy Commissioner of Labour
(Minimum Wages),
The Appellate Authority under Tamil Nadu
Shops and Establishment Act, 1947,
Chennai-6.

+1cc to Ms.V.RAGHAVACHARI, Advocate, S.R.No.25485

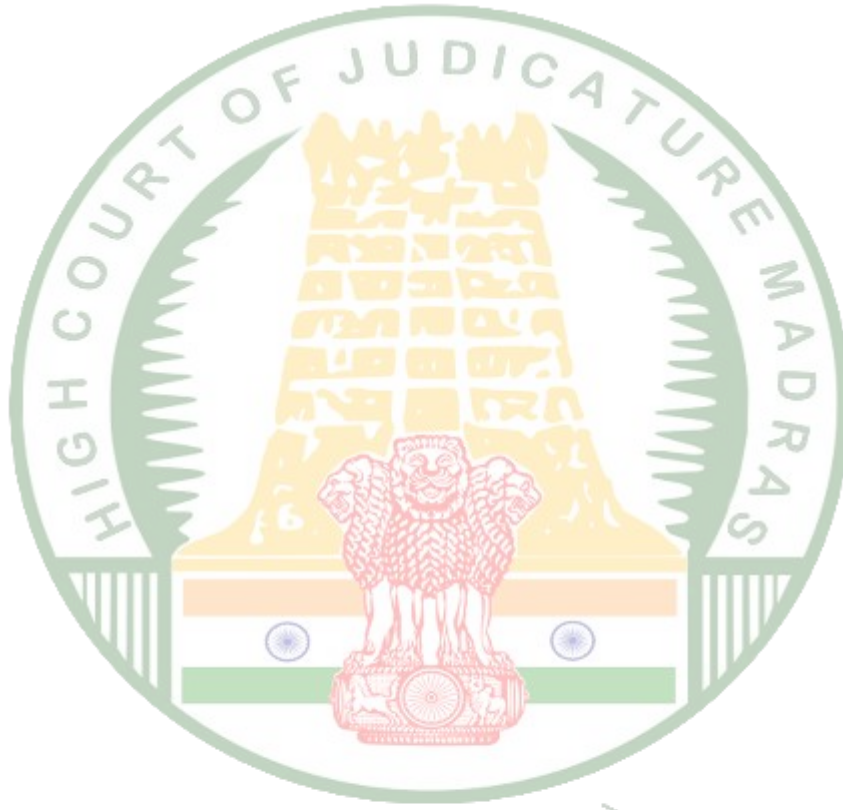
W.A.No.1160 of 2012

CP(CO)
BE(13/07/2021)



सत्यमेव जयते

WEB COPY



सत्यमेव जयते

WEB COPY