



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9564 of 2021

1. The Management,
HDFC Bank Limited,
Zonal Office, Lodha,
I Think Techno Complex,
Alpha, Next to Kanjur Marg Railway Station (East),
Kanjur Marg (E),
Mumbai 400 042.
2. The Management,
HDFC Bank Limited,
Prince Kushal Tower,
No.96, Anna Salai,
Chennai 600 002.
3. The Management,
HDFC Bank Limited,
No.110, Cabrose Building,
Nelson Manickam Road,
Aminjikarai,
Chennai 600 029.
4. The Management,
HDFC Bank Limited,
Kanthakottam Complex,
Erode Branch,
Erode - 638 001.

...Petitioners

Vs.

1. The Appellate Authority,
Under the Shop and Commercial
Establishment Act,
Deputy Commissioner of Labour,
Coonoor.
2. L.Suresh Kumar

...Respondents



Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records on the file of the 1st Respondent and quash the impugned order dated 13.07.2020 made in TNSE No.1 of 2018.

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For Petitioners : Mr.C.Mohan,
for M/s.King & Patridge

For 2nd Respondent : Mr.R.Pandian

O R D E R

Petitioner/Management has come up with the present Writ Petition challenging the order dated 13.07.2020 passed by the Authority under the Tamil Nadu Shops and Establishments Act, 1947 in TNSE No.1 of 2018, setting aside the order of dismissal of the 2nd Respondent/employee, without giving an opportunity to the Management to let in evidence to establish the charges against the employee.

2. Learned counsel for the Petitioner/Management pointed out that, the 2nd Respondent/employee has admitted his guilt in his Written Statement dated 03.04.2017. Learned counsel drew the attention of this Court to the Apex Court decision in the case of United Planters Association of Southern India (UPASI) vs. K.G.Sangameswaran, wherein, the employer was permitted to lead evidence to establish the charges before the Appellate Authority. Relevant portion of the said decision is extracted hereunder:

"11. Before construing the provisions of Section 14 and Rule 9, it may be stated that it has always been the philosophy of Industrial Jurisprudence that if the domestic enquiry held by the employer was defective, deficient, incomplete or not held at all, the Tribunal, instead of remanding the case to the enquiry officer for holding the enquiry de novo, would itself require the parties to produce their evidence so as to decide whether the charges, for which disciplinary action was taken against the employee, were established or not. The pending proceedings keep the employer and the employee in a state of confrontation generating further misgivings and bitterness. It is, therefore, of paramount importance that such proceedings should come to an end at the earliest so as to maintain industrial peace and cordial



relations between the management and the labour. "

3. The Appellate Authority is empowered to accept the evidence of the employer in support of the charges framed against the employee and he cannot straightaway set aside the order of dismissal of an employee. In case, the employer does not seek permission to let in evidence, then it is open to the Authority to pass orders setting aside the order of dismissal of the employee, depending upon the merits of the case and available records.

4. After the introduction of Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947 (in short 'Shops Act'), an employee would be entitled to wages payable to him every month till the disposal of the Writ Petition. The present Writ Petition was filed in March 2021 and the impugned order was passed by the Authority under the Shops Act on 13.07.2020. Once the order of dismissal is set aside, the employee will be deemed to be in service, as if there is no order of dismissal at all. So, in the case on hand, the 2nd Respondent/employee is deemed to be in service pursuant to the order impugned in this Writ Petition.

5. Since an opportunity has not been given to the employer as per the ratio laid down in UPASI's case (supra), the matter needs to be remanded to the Authority, and heard. As the employee had the benefit of the order dated 13.07.2020 as mentioned supra, he has to be paid the last drawn wages till date from the date of dismissal, in terms of Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947.

6. For better appreciation, Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947, is extracted below:

[41.A. Payment of full wages to person employed pending proceedings in Higher Courts -- Where in any case, the appellate authority, by its decision under Section 41, directs reinstatement of any person employed and the employer prefers any proceeding against such decision in a High Court or the Supreme Court, the employer shall be liable to pay such person employed, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the person employed had not been employed in any establishment during such period and an affidavit by such



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person employed had been filed to that effect in such Court: Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such person employed had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]

7. Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947 is almost similar to Section 17-B of the Industrial Disputes Act, 1947. A narrow interpretation to Section 41-A of the Shops Act cannot be given and once the order of dismissal is set aside, the employee is deemed to be in service from the date of dismissal till it is reversed by a higher forum. In the Affidavit, the 2nd Respondent/employee has stated that, he has not been gainfully employed.

8. Once the order of the Appellate Authority is set aside and that, the order of dismissal relate back, this Court cannot treat the employee as if, he is in service and to pay for the future months from the date of the Appellate Authority's order being set aside. But, for the purpose of his livelihood and to contest the matter on merits, more so, in the present pandemic situation, monetary amount is required to sustain himself and his family. If the Writ Petition is pending, the 'person employed' would be entitled to draw wages during the pendency of the Writ Petition, in terms of Section 41-A of the Shops Act.

9. Though, the charges alleged against the 2nd Respondent/employee appear to be serious in nature, by reserving the rights of the parties, the Petitioner/Management shall pay the last drawn wages due to the employee from 13.07.2020 till the date of this order, spread over for a period of six months in equated instalments, from the date of initiation of the proceedings before the Shops Act Authority, till it is concluded. Further, the legal dues and the loan said to have been paid to the employee can be adjusted from that amount and the Authority under the Shops Act is expected to decide the Appeal within a period of six months.

10. It is made clear that, the 2nd Respondent/employee will not be entitled to any amount beyond a period of six months, if he is not going to co-operate and participate in the enquiry for any reason whatsoever.

11. In fine, the order 13.07.2020 passed by the 1st Respondent herein is set aside and the matter is remanded to the



1st Respondent/Appellate Authority in order to give an opportunity to the Petitioner/Management to establish the charges, by filing additional documents and additional pleadings, if so advised and the 2nd Respondent/employee is entitled to rebut the same along with verbal and documentary evidence, if so advised.

The Writ Petition is allowed accordingly. No costs. Consequently, connected W.M.P.No.10162 of 2021 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

Note to Registry: (i) Issue copy of this order on 30.07.2021
(ii) Upload this order in the website on 30.07.2021 itself.

To:

The Appellate Authority,
Under the Shop and Commercial Establishment Act,
Deputy Commissioner of Labour, Coonoor.

+lcc to Mr.R.Pandian, Advocate, S.R.No.35407/21
+lcc to M/s.King & Partridge, Advocate, S.R.No.35252/21

W.P.No.9564 of 2021

RLD(CO)
RGA(30/07/2021)