



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.34619 OF 2016

AND

WMP.NO.29828 OF 2016

M.S.Swaminathan Research Foundation
Rep.by Executive Director
3rd Cross Street,
Taramani Institutional Area,
Chennai 600 113.

... Petitioner

-VS-

1. The Special Deputy Commissioner of Labour
(Appellate Authority under the Tamil Nadu Shops
and Establishments Act)
DMS Complex, Teynampet,
Chennai 600 006.

2. D.Rozario.

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the first respondent in TNSE-1/1AB/14 in TNSE-1/1A1/11 dated 01.09.2016 and quash the same.

For Petitioner : Mr.Haroon for
M/s.T.S.Gopalan and Co.

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate for R1
Mr.S.V.Ramamurthy for R2



ORDER

WEB COPY This writ petition has been filed, seeking to quash the Order of the first respondent dated 01.09.2016 passed in TNSE-1/1AB/14 in TNSE-1/1A1/11, by which, it was declared that the petitioner Foundation is an establishment, covered by the provisions of Tamil Nadu Shops and Establishment Act, 1947 (in short 'the Act, 1947'). Challenging the order of the authority under the Tamil Nadu Shops and Establishments Act, 1947 passed in the Interlocutory Application, the present writ petition has been filed.

2. The main contention of the Petitioner / employer is that it is a Research Foundation, a non-profit scientific Trust established in the year 1988 and hence the Act, 1947 is not applicable. Even assuming for the sake of argument that the Act, 1947 is applicable, the person employed was working in and around Puducherry and that the Act, 1947 will not be applicable to the Institution, more so it is not an establishment covered under the said Act.

3. The authority has decided the preliminary issue and not about the divesting of duties. The authority held that in terms of the Act, 1947, the petitioner is a commercial establishment and that the Act is applicable and dismissed the IA.No.8 of 2014 filed by the Management and posted the matter for further hearing in 2016.

4. In the meantime, the employer has approached this Court by way of present writ petition. In fact the matter has been posted before the Mediation Centre for settlement and mediation also failed. This Court has also suggested to find out the feasibility of an amicable settlement, so that the compensation could be paid and a decision with regard to the termination order, purported to have been issued against the person employed can be taken and a quietus be given to the issue, by means of entering into a compromise for settlement between the parties.

5. According to Mr.Haroon, learned counsel for the Petitioner, serious charges have been framed against the so called person employed and that the issue is with regard to



applicability of the Act to the case of the petitioner and the same has got to be decided at the first instance.

6. Upon hearing both the parties, this Court found that the person employed has got remedy only under the Puducherry Shops and Establishment Act, 1964 and not under the Tamil Nadu Shops and Establishment Act, 1947. Even if a finding is rendered one way or other, this Court is of the view that this will not give a final solution to the disengagement / termination of the person employed, as the issue to be decided is only with regard to the applicability of the Act, 1947 alone, which will take another decade to attain finality.

7. The second respondent would submit that he may be permitted to approach the authority under 1964 Act and that the time limit may be prescribed for an early disposal.

8. Taking note of the submissions of both parties, this Court is inclined to set aside the order of the 1st Respondent and holds that the Tamil Nadu Shops and Establishments Act, 1947 is not applicable to the case of the petitioner herein. As the Authority under the Act, 1947, has decided the applicability of the Act, 1947, there is no bar for the second respondent to approach the authority under the 1964 Act, seeking relief. The Apex Court in the case of P.Sarathy vs. State Bank of India, reported in AIR 2000 SC 2023 held that the entire period during which the proceedings were pending has to be excluded. In terms of the said judgment, the second respondent is entitled to prefer an appeal within a period of 30 days from the date of receipt of a copy of this order to the authority constituted under the Puducherry Shops and Establishment Act, 1964 and the Authority is expected to decide the matter within a period of six months from the date of such institution. This Court makes it very clear that any observation touching upon the merits of the matter in the present writ petition will have no bearing on the new authority and if any appeal is filed, the same shall be decided afresh after affording an opportunity to both the parties to decide the case on merits. That part when the issue pertaining to Section 51 is raised, the Commissioner of Labour alone is empowered to decide the issue and he has no power to delegate to any other authority under the Act. For example, under Section 41 of the Act, it has been specifically mentioned that a person employed will have a right to file an appeal to



such authority and that it has got to be notified. Even assuming that the delegation of powers as contemplated under Section 48 is applicable to cases falling under Section 50, it is only the Government, which can, by notification do it and the Commissioner of Labour cannot delegate the powers to any other authority. For the sake of brevity, Section 48 of the Act, 1947 reads as under:

"48. Delegation of powers. - (1) The State Government may, by notification, authorize any officer or authority subordinate to them, to exercise any one or more of the powers vested in them by or under this Act, except the power mentioned in section 49, subject to such restrictions and conditions, if any, as may be specified in the notification.

(2) The exercise of the powers delegated under subsection (1) shall be subject to control and revision by the State Government or by such persons as may be empowered by them in that behalf. The State Government shall also have power to control and revise the acts or proceedings of any person so empowered."

9. With the above observation the writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

dpq

To:

The Special Deputy Commissioner of Labour
(Appellate Authority under the Tamil Nadu Shops
and Establishments Act)
DMS Complex, Teynampet,
Chennai 600 006.



+2ccs to Mr.S.V.Ramamurthy, Advocate, S.R.No.29918

+1cc to the Government Pleader, S.R.No.30213

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W.P.No.34619 of 2016
and WMP.No.29828 of 2016

KSM(CO)
RLP(17/09/2021)
RLP(30/09/2021)