

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.16985 of 2019
and W.M.P.No.16546 of 2019

1. The Deputy General Manager,
Disciplinary Authority,
Tamilnadu Mercantile Bank Ltd.,
Regd. Off: 57, V.E.Road,
Thoothukudi - 628 002.
 2. The General Manager,
Appellate Authority,
Tamil Nadu Mercantile Bank Ltd.,
Regd. Off: 57, V.E.Road,
Thoothukudi - 628 002.
 3. The Deputy General Manager,
I.T.Department,
Tamilnadu Mercantile Bank Ltd.,
II Floor, Pearl Tower 4923, II Avenue,
Anna Nagar, Chennai - 600 040. Petitioners
- Vs.
- R.P.Sinthujaa ... Respondent

PRAYER: The Writ Petition has been 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 passed by the Appellate Authority under Tamil Nadu Shops and Establishment Act, 1947, Special Joint Commissioner of Labour, Commissionerate of Labour, Chennai - 6, in TNSE1/IA/3 of 2017 in TNSE No.1/3/2017, dated 14.09.2018 and quash the same.

For Petitioners : Mr.Parthiban R.

For Respondent : Mr.A.Thirumaran

O R D E R

Inveighing the order passed by the Appellate Authority under the Tamil Nadu Shops and Establishment Act, 1947, dated 14.09.2018, the Management has preferred the present Writ Petition.

2. According to the Management, they have conducted a proper enquiry and imposed punishment of dismissal from service. Since the Appellate Authority had proceeded on the merits of the case without deciding the issue as to whether the domestic enquiry conducted by them is fair and proper or not, they have filed an interim application to decide the fairness of the domestic enquiry take it as a preliminary issue. The interim application filed by them came to be dismissed by the Appellate Authority on the ground that a decision can be taken after looking into the documents relating to the conduct of the domestic enquiry and that question of dismissal could also be decided on the strength of the documents placed in the enquiry.

3. In fact, the observation made by the Appellate Authority is vague. It is not clearly spelt out as to whether the Appellate Authority will take up the issue with regard to the fairness of the domestic enquiry as a preliminary issue or not? If such a decision is taken, the authority shall not proceed with the matter on merits. In that event, the hearing date should have been fixed for deciding the preliminary issue. But, without expressing any view as to the future course of action to be adopted, the interim application has been dismissed.

4. It is well settled that in any dispute against the punishment of dismissal or discharge on the basis of a domestic enquiry, it is incumbent upon the Appellate Authority or the Labour Court or the Tribunal or the Board to decide as to whether the domestic enquiry conducted by the Management is fair and proper or not? If it is decided the conduct of enquiry is fair and proper, the next procedure is to see whether the punishment imposed is proportionate or disproportionate to charges framed. If the domestic enquiry is held to be not fair and proper, then, on request made by the employer either by way of pleadings or by oral request or on an application filed, an opportunity shall be given to the Management to adduce additional evidence to prove the charges. After analysing the evidence and materials, the matter can be decided on merits as to whether to impose the punishment or to set aside the disciplinary proceedings.

5. But in the instant case, an observation has been made that the issue can be decided only after looking into the documents relating to the domestic enquiry. If that is so, the authority should have taken up the matter for hearing and decided the issue one way or other, but dismissed the application without any decision. The order as such is vague and unsustainable.

6. Therefore, a direction is given to the Appellate Authority to take up the issue of fairness of the domestic

enquiry as a preliminary issue and thereafter, to proceed with the matter in accordance with law. It is open to the respondent to place all his objections before the Appellate Authority.

The Writ Petition is disposed of with the above direction. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS.VIII)

/True Copy/

Sub Assistant Registrar

To

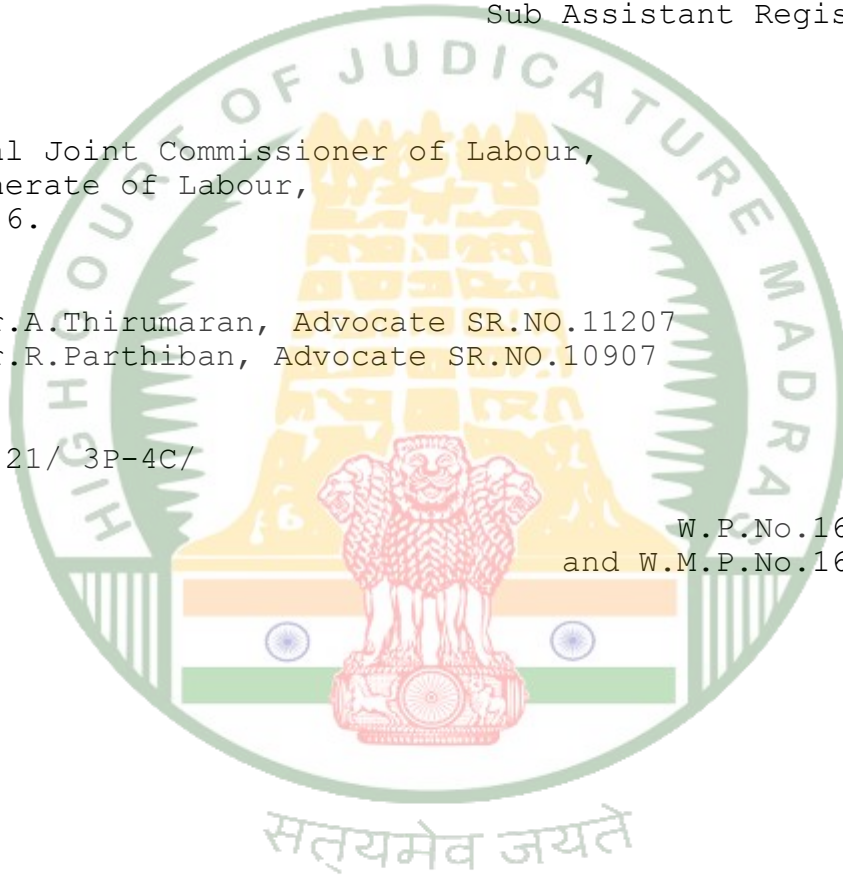
The Special Joint Commissioner of Labour,
Commissionerate of Labour,
Chennai - 6.

+1cc to Mr.A.Thirumaran, Advocate SR.NO.11207

+1cc to Mr.R.Parthiban, Advocate SR.NO.10907

AKM/26.02.21/ 3P-4C/

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