



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2021

C O R A M

WEB COPY

**THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU**

W.P. (MD) No.15749 of 2012  
and  
M.P. (MD) No.1 of 2012

The Secretary,  
Ramanathapuram District Sarvodaya Sangh,  
66, Kanthadai Street,  
Srivilliputhur-625 125.

... Petitioner

Vs.

1.The Appellate Authority Under the  
Tamil Nadu Shops and Establishments Act,  
(Deputy Commissioner of Labour),  
1/5-C, Rathinasamy Nadar Road,  
Visalakshipuram, Madurai-625 014.

2.K.S.Gurusamy

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, to call for the records of the first respondent in T.N.S.E.No.11 of 2009 and quash the order dated 02.05.2012 passed therein.

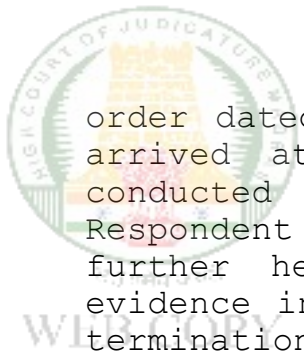
For Petitioner : Mr. T.Ravichandran  
For R 2 : Mr. C.G.Pethanaraj

**ORDER**

(through video conference)

Heard Mr. T.Ravichandran, Learned Counsel for the Petitioner and Mr. C.G.Pethanaraj, Learned Counsel for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who had been employed with the Petitioner, had been terminated from service by Order No.183/32/2009-10 dated 20.05.2009, against which he had preferred an appeal in T.N.S.E. No.11 of 2009 under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as 'TNSE Act' for short) before the First Respondent. In the



order dated 02.05.2013 passed in that appeal, the First Respondent arrived at the conclusion that the domestic enquiry had been conducted *exparte* without affording opportunity to the Second Respondent to disprove the charges preferred against him. It was further held that the Petitioner had not lead any additional evidence in that appeal and as a consequence thereof, the order of termination dated 20.05.2009 was set aside. Aggrieved thereby, the Petitioner has filed this Writ Petition.

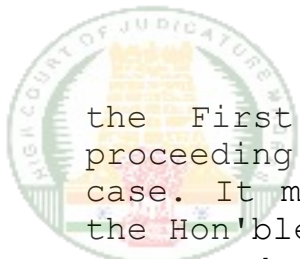
3. Though various contentions have been raised in the Writ Petition challenging the validity of the impugned order passed by the First Respondent, Learned Counsel for the Petitioner submits that he would confine to the improper manner in which the order of termination has been set aside by the First Respondent in the appeal without following the requirement of permitting the Petitioner to lead additional evidence after having arrived at the conclusion that the domestic enquiry conducted by the Petitioner against the Second Respondent did not satisfy the requirements of the principles of natural justice.

4. Having regard to the aforesaid submissions made, reference must be made, at once, to the ruling of the Hon'ble Supreme Court in ***United Planters Association of Southern India -vs- K.G.Sangameswaran*** [(1997) 4 SCC 741], in which after extracting Section 41 of the TNSE Act and Rule 9 of the Tamil Nadu Shops and Establishments Rules, 1948, it has been held as

follows:-

*" From a perusal of the provisions quoted above, it will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it will still be open to the appellate Authority to records. if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte of no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidenced to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer."*

Though it has been observed by the First Respondent in the impugned order that the Petitioner had not chosen to lead any additional evidence in the appeal, it would have to be pointed out that the stage of leading additional evidence would arise only after the First Respondent arrives at the conclusion that the enquiry conducted by the employer was defective. It has not been shown that

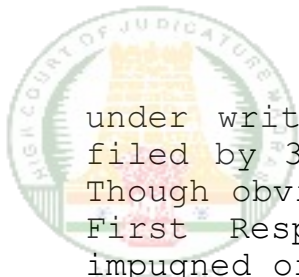


the First Respondent had carried out that requirement before proceeding to set aside the order of termination in the instant case. It must also be recalled here that the Constitution Bench of the Hon'ble Supreme Court of India in **Karnataka State Road Transport Corporation -vs- Lakshmiddevamma** [(2001) 5 SCC 483] has held that in order to avoid unnecessary delay and multiplicity of proceedings, an employer has to seek leave to lead additional evidence to support the action in alternative and without prejudice to his rights and contentions in the counter itself. The Petitioner has sought for such leave as could be seen from para 7 of the counter statement filed by the Petitioner before the First Respondent, which reads as follows:-

*" It is a settled law that in case of dismissal, on basis of enquiry, the propriety of enquiry has to be decided first. As this is also such a case, the propriety of enquiry has to be decided first. If in that preliminary issue, this Court holds against the respondent, the respondent may be given an opportunity to let in evidence to prove their case."*

The result of the forgoing discussion is that the impugned order dated 02.05.2012 in T.N.S.E.No.11 of 2009 passed by the First Respondent insofar as it holds that the Petitioner has not lead any additional evidence to prove the charges against the Second Respondent and has set aside the order No.183/32/2009-10 dated 20.05.2009 terminating the Second Respondent from service, is quashed and the appeal in T.N.S.E. No. 11 of 2009 before the First Respondent is re-opened to proceed from the stage of permitting the Petitioner to lead additional evidence to support the charges against the Second Respondent and for the Second Respondent to disprove the same in accordance with law. Similar view has been taken by this Court in the order dated 12.09.2007 in W.P. (MD) No.7913 of 2005 cited by the Learned Counsel for the Petitioner.

5. In order to expedite disposal of the matter, the appeal in T.N.S.E. No. 11 of 2009 shall be listed for hearing before the First Respondent at 11.00 a.m. on 22.07.2021 when the Petitioner and the Second Respondent shall appear in person or through their authorised representative. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall inform all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. It shall be ensured by the First Respondent that there is atleast one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the concerned parties



under written acknowledgment and that proof of such compliance is filed by 31.10.2021 before the Registrar (Judicial) of this Court. Though obvious, it is made clear that while deciding the appeal, the First Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.

6. In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CSI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

**Note: (i)** Issue order copy by 16.06.2021.

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

ta

To

The Appellate Authority Under the  
Tamil Nadu Shops and Establishments Act,  
(Deputy Commissioner of Labour),  
1/5-C, Rathinasamy Nadar Road,  
Visalakshipuram, Madurai-625 014.

2. The Registrar(Judicial),  
Madurai Bench of madras high court,  
Madurai.

3. The section officer,  
writ section,  
Madurai bench of madras high court,  
madurai.

Copy to

1. The Secretary,  
Ramanathapuram District Sarvodaya Sangh,  
66, Kanthadai Street,  
Srivilliputhur-625 125.



2. K.S.Gurusamy  
S/o. K.Subramanian  
28, Chetiakkuty Kadalaykara Street  
Srivilliputhur Post, Virudhunagar District

WEB COPY

+1 CC to M/s.R.SARAVANAN, Advocate ( SR-15951[F] dated 16/04/2021 )

W.P. (MD) No.15749 of 2012  
15.04.2021

GS (16.06.2021) 5P 7C