



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM

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THE HONOURABLE MRS.JUSTICE **S. SRIMATHY**

W.P. (MD) No.6885 of 2014

and

M.P. (MD) No.2 of 2014

S.K.Mohammed Farook

... Petitioner

vs..

1.The Joint Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
Tirunelveli.

3.M.H.K.Abdul Shukkoor (Died)

4.A.Hammed Suldhan

5.A.Abdulkathar

6.A.Sulbeeka

7.A.Mohammed Sukaif

... Respondents

(R-4 to R-7 are impleaded, vide Court order
dated 21.09.2021 in W.M.P. (MD) No.2059 of 2016
in W.P. (MD) No.6885 of 2014)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned orders of the second respondent passed in P.G.No.312 of 2003, dated 20.10.2010, which is confirmed by the first respondent in P.G. Act (Appeal) No.3 of 2011, dated 03.02.2013 and to quash the same.

For Petitioner : Mr.Alwin Bala
for H.Arumugam

For R-1 and R-2 : Mr.D.Sachi Kumar
Additional Government Pleader



ORDER

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned orders of the second respondent, dated 20.10.2010, which is confirmed by the first respondent in P.G. Act (Appeal) No.3 of 2011, dated 03.02.2013 and to quash the same.

2.The brief facts are that the Petitioner's father namely, Kaja Mohideen was the proprietor of the Bharath Medical Store and was running the shop with the assistance of the family members and no other person was employed for salary. Earlier, the medical shop was a partnership firm consisting of three brothers namely Kaja Mohideen, Mohammed Mohideen and Sahul Hameed. Subsequently, the other two partners have left the partnership firm and the said Kaja Mohideen was running the Medical Shop as a proprietor firm. One Abdul Shukkoor, claiming himself to be a Pharmacist in the Medical Shop had filed a Claim Petition before the Labour Officer in P.G.No.312 of 2003 under Gratuity Act, 1972, seeking to pay gratuity of Rs.48,462/- (Rupees Forty Eight Thousand Four Hundred and Sixty Two only). The 2nd respondent had allowed the petition and the 1st respondent, the appellant authority had confirmed the order. Aggrieved over the order the present writ petition is filed.

3.Heard Mr.Alwin Bala, learned Counsel appearing for the petitioner and Mr.D.Sashi Kumar, learned Additional Government Pleader appearing for the first and second respondent.

4.The learned Counsel appearing for the petitioner submitted that the claim Petition was filed after lapse of three years, but the medical shop was closed on 15.07.2000 itself. Moreover the petitioner claims that the shop is only 10*10 square feet and if it is 10*10 square feet, definitely 12 persons cannot be employed. The third respondent mainly relied on Ex-P4, where it has been stated by one of the partners that the shop was having more than 12 persons as employees. But the petitioner claims that the Ex-P4 is incorrect, since there was internal fight between the brothers and one of the brother has deliberately given a conduct certificate to Abdul Shukkoor in the year 2008.

5.This Court has ordered notice to the legal heirs and their names are printed in the cause list but, there was no representation for them.

6.The documents were called for from the Labour Officer and this Court perused the Ex-P4 and the contents of the conduct certificate is culled out hereunder:



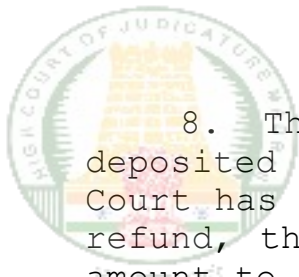
" TO WHOMSOEVER CONCERNED

I, S.P. MOHAMED MOHIDEEN, son of Pakkeer Mohamed, Muslim, aged 73 years, residing at Door No. 41-A, Kattuputhu Street, Melpalayam, Tirunelveli District, do hereby state and affirm as follows:-

I am a third party in the above matter. I was one of the partners in the BHARATH MEDICALS, No.3, North Car Street, Tirunelveli Town. After the dissolution of the partnership, my brother S.P.Kaja Mohideen was running the medical shop. Totally twelve workers were employed in the Bharath Medicals. I hereby state that Mr.M.H.A.ABDUL SHAKOOR was working in our Bharath Medicals from 01.07.1976 to 16.07.2000 as PHARMACIST - R.L.No.(1)-1826 dated 02.07.1970. He was an honest and faithful employee of our Medical Shop. He has worked for 24 years in our Medical Shop. For the fact I am making this third party affidavit."

Admittedly in the conduct certificate, the said Mohammed Mohideen has stated that totally 12 workers were employed in the Bharath Medical Store. But in a conduct certificate which is issued with the heading "whomsoever it may be concerned" has stated 12 workers. Generally in a conduct certificate it would be mentioned that the person mentioned in the certificate is known to the person issuing the certificate and the conduct is good. But in the present case the conduct certificate states that the said Abdul Shukkoor was serving in the medical shop and the medical shop contains 12 employees, which is unnecessary in a conduct certificate. Therefore this Court holds that the Ex-P4 cannot be taken into account at all, since in a conduct certificate, it is unnecessary to state whether the shop is a partnership firm or a dissolution has taken place or how many employees have worked, etc. and this Court rejects Ex-P4.

7.It is seen from the records that all the three partners died. The present writ petition is filed by the legal heir of deceased Kaja Mohideen. The claimant namely Abdul Shukkoor also died and all his legal heirs have been impleaded. Since the shop is also closed long back at this stage the legal heir of the deceased cannot be made liable to pay the amount. Moreover the Ex-P4 is rejected as stated above and there is no strong evidence to state that the shop was having more than 10 employees to attract the Gratuity Act, 1972. This Court is inclined to allow the Writ Petition and the Writ Petition is allowed.



8. The petitioner submitted that the amount was already deposited before the authorities and prayed for refund. Since this Court has allowed the Writ Petition, the petitioner is entitled to refund, therefore the second respondent is directed to refund the amount to the petitioner.

9. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

jbr/tmg

Note:

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.

To

1.The Joint Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
Tirunelveli.

+1 CC to M/s.SPL GP (SR-34940[F] dated 18/11/2021)

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-35085[F] dated
18/11/2021)

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