



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.NO.1468 OF 2022

AGAINST

W.P.NO.6250 OF 2021

1. The Head-Human Resources,
M/s.Indusind Bank Limited,
8th Floor - Tower-I,
841, SB Mark, Eliphinstone Road,
Mumbai-400 013.
2. The Head-Employees Relations,
M/s.Indusind Bank Limited,
8th Floor - Tower-I,
841, SB Mark, Eliphinstone Road,
Mumbai-400 013.
3. The Regional Manager - Human Resources,
M/s.Indusind Bank Limited,
New No.34, G.N.Chetty Street,
T.Nagar, Chennai-600 017.

.. Appellants/Petitioners

Vs

1. The Appellate Authority under Shops and
Establishment Act (Special joint Commissioner of Labour)
DMS Compound, Chennai-600 006.

2. Srinivasan Kottaiah

.. Respondents/Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent against
the order dated 28.01.2022 passed in W.P.No.6520 of 2021.

Prayer in W.P.No.6520 of 2021: Writ Petition filed under
Article 226 of the Constitution of India praying for a Writ of
Certiorari calling for the records relating to the order dated
04.02.2020 passed by the 1st Respondent in TSE - 1 / 11 of 2015
and to quash the same.



pay the same till the final order is passed by the appellate authority. The order aforesaid has been questioned mainly on the ground that the issue as to whether the order of dismissal was substituted by acceptance of resignation and if not then as to whether the dismissal was appropriate or not is yet to be decided after affording an opportunity of hearing to the employer to lead evidence.

5. It is further submitted that only after declaring the order of dismissal to be illegal, the authority can take a decision for the consequential benefits, if any. No benefit can be extended till the issue is adjudicated by the appellate authority. However, the learned Single Judge awarded lump sum amount pre-supposing the order of dismissal to be invalid. It is without realising that if the appellate authority finally comes to the conclusion that it was not a case of dismissal, but acceptance of resignation or it is a case of dismissal, then after affording an opportunity, the order of dismissal is found to be valid, then it will take effect from the date the order was passed originally. In that case, the employee would not be entitled to any benefits for the intervening period. Yet, without assigning any reason, huge amount of Rs.10.00 lakh has been awarded with further direction to pay last drawn salary during the pendency of the application before the appellate authority as if it is a petition before the High Court where Section 17B of the Industrial Disputes Act, 1947 would apply. The provision of Section 17B of the Industrial Disputes Act, 1947 is not applicable to the proceedings before the authority under the Tamil Nadu Shops and Establishments Act, 1947.

6. The appeal is opposed by learned counsel for the employee. It is submitted that the order to grant lump sum amount of Rs.10.00 lakh and the last drawn salary is to ensure that the employee survives during the pendency of hearing of the application filed before the authority. It is looking to the fact that for the last seven years, he is out of employment. Thus, a just and proper order has been passed by the learned Single Judge.

7. We have considered the rival submissions and find that there is substance in the arguments raised by learned counsel for the writ appellants.

8. It is settled law that whenever an issue about the validity of the dismissal order is to be adjudicated by the authority and if it finally comes to the conclusion about the validity of the order, the dismissal would relate back to the date of the original order, even in a case where inquiry is conducted by the authority for the first time or after holding



the inquiry to be unfair. It is not that the order of termination will take effect from the date of its confirmation by the authority, but it would relate back to the original date of order of termination, in view of the decision of the Apex Court in the case of P.H.Kalyani v. Air France, Calcutta, AIR 1963 SCC 1756. Ignoring the aforesaid, the learned Single Judge awarded lump sum amount which cannot be without adjudication of the issue about the validity of the order of dismissal. The issue aforesaid is open for consideration before the appellate authority and, therefore, we would not comment upon the aforesaid, as otherwise the matter has been remanded to the appellate authority. The direction to pay last wage drawn is also not legally sustainable. Section 17B of the Industrial Disputes Act, 1947 would be applicable only to a writ petition filed to challenge the award of the Labour Court and not to the proceedings before the authority under the Tamil Nadu Shops and Establishments Act, 1947.

9. Accordingly, we find reason to cause interference in the order of the learned Single Judge to the extent of directions contained in paragraphs 13 to 16 and those directions are set aside. The appellate authority is directed to expedite the matter and for that both parties are directed to cooperate with the appellate authority so that the matter may be decided within a time frame, which should not be beyond a period of six months from the date of receipt of a copy of this judgment.

10. The appeal is disposed of accordingly. There will be no order as to costs. Consequently, C.M.P.No.9607 of 2022 is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

bbr

To

The Appellate Authority under Shops and
Establishment Act (Special joint Commissioner of Labour)
DMS Compound, Chennai-600 006.

+lcc to Mr.H.Karthik Seshadri, Advocate, S.R.No.41062

+lcc to M/s.R.Sivakumar, Advocate, S.R.No.40392

+lcc to the Government Pleader, S.R.No.40954

W.A.No.1468 of 2022

MG(CO)

RLP(06/07/2022)