

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.5316 and 5317 of 2014
and M.P.Nos.1 and 2 of 2014

The Management,
Hyundai Motor India Limited,
Plot No.H1, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur - 602 117.
Rep. by Asst. Manager Legal ... Petitioner in Both WP's

Vs

1.The Authority under the Shops
and Establishment Act, 1947 cum
Deputy Commissioner of Labour
[Minimum Wages],
DMS Compound, Teynampet,
Chennai - 600 006.

2.A.Rajesh ... Respondents in Both WP's

COMMON PRAYER : Writ Petitions filed Under Article 226 of the
Constitution of India, to issue a Writ of Certiorari, to call
for the records relating to the order dated 20.12.2013 passed by
the first respondent in TNSE No.II/IA7/2013 and TNSE
No.II/IA2/2013 and to quash the same.

For Petitioner
in both W.Ps. : Mr.R.Jayaprakash

For Respondents
in both W.Ps : Mr.A.M.Ayyadurai
Government Advocate [For R1]
Mr.M.D.Nasrullah [For R2]

COMMON ORDER

The order passed by the authority under the Tamil Nadu
Shops and Establishments Act, 1947 is under challenge in the
present writ petition.

2.The writ petitioner is a Company registered under the provisions of the Companies Act and in its factory at SIPCOT Industrial Park, Irrungattukottai, Sriperumbudur Taluk, Kacheepuram District in Tamil Nadu, the petitioner is engaged in the business of manufacture of passenger cars.

2.The second respondent joined the service of the petitioner on 01.11.2006 as Business Associate Trainee-II and he was made permanent on 01.06.2008. The second respondent was promoted as Junior Officer [General Affairs] and his place of work is situated inside the factory. The Car manufacturing factory is within the meaning of Factories Act, 1948 and the second respondent was a worker within the meaning of Section 2 (1) of the said Act.

3.The petitioner has narrated the chief functions and duties of the second respondent in his position as Junior Officer [General Affairs]. While so, on account of certain allegations, the second respondent was terminated from service. Challenging the order of termination, the second respondent approached the first respondent authority under the Tamil Nadu Shops and Establishments Act, 1947. The first respondent authority dismissed the preliminary objection raised by the petitioner regarding the maintainability of the petition. Hence, the present writ petition is filed.

4.The learned counsel appearing on behalf of the writ petitioner mainly contended that the petitioner Management marked documents with the consent of the second respondent employee. By consent, nine documents were marked. Those documents reveal that the petitioner establishment in which the second respondent was working is a factory and registered under the Factories Act. Further, they have marked the documents relating to Payment of Salary, Muster roll, Adult worker register and Salary slip. Considering all the documents, the first respondent authority also made a finding that the petitioner Management has established that it is a factory and the second respondent is working in the factory premises. While made a finding that the second respondent was working in the factory premises in paragraph 9 of the order, the first respondent has turn around and taken a decision that the petitioner has not established that it is a factory in paragraph 10, for which no document is relied upon.

5.The learned counsel appearing for the petitioner reiterated that in paragraph 9, finding is made based on the documents filed by the petitioner Management, however the finding in paragraph 10 is not supported with any document. Therefore, it is self contradictory and running counter to the

finding arrived in paragraph 9 based on the documents filed by the writ petitioner with the consent of the second respondent.

6.Regarding the maintainability of the petition under the provisions of the Tamil Nadu Shops and Establishments Act, 1947, the petitioner relied upon the Government Order issued in G.O.Ms.No.545 Development dated 10.02.1950. The said Government Order was elaborately considered by the Hon'ble Division Bench of this Court in the case of Management of E.I.D. Parry [India] Ltd., vs. Commissioner of Labour and others reported in [2001] 3 LW 820, wherein the Hon'ble Division Bench made following observations with reference to the exemption granted to the factory premises in the Government Order issued in G.O.Ms.No.545 dated 10.02.1950:

"15.To appreciate the contention of the learned senior counsel for the appellant, it is necessary to go through the said G.O. which reads thus:

"G.O. Ms. No. 545 Development, dated February 10, 1950 In exercise of the powers conferred by Section 6 of the Madras Shops and Establishments Act, 1947 (Madras Act 34 of 1947) and in supersession of the Development Department notification No. 1085 dated November 5, 1948 published at page 1101 of Part I of the Fort St. George Gazette, dated November 16, Governor of Madras hereby exempts permanently all persons employed in any kind of work in factories and governed by the Factories Act, 1948 (Central Act LXII of 1948) from all provisions of the Madras Shops Establishments Act, 1947."

16.On a perusal of the terms of the above G.O. one could see that the government has granted exemption from all the provisions of the Madras Shops and Establishments Act, 1947 permanently to all persons employed in any kind of work in factories and they are governed by the Factories Act, 1948.

19. Section 2(1) of the Factory Act, 1948 defines 'worker' thus:

"worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, but does not include any member of the armed forces of

the Union."

22. On the basis of the principles laid down by the Apex Court in the above judgment, we are of the view that the second respondent is governed by the Factories Act. When the services of the second respondent is governed by the Factories Act, naturally G.O. Ms No. 545 dated February 10, 1950 granting exemption from the application of the Tamil Nadu Shops and Establishments Act would come into force. The learned single Judge did not have the benefit of the above judgment of the Supreme Court.

24. In view of the Apex Court judgment referred to above, we have no hesitation to hold that the second respondent would fall within the definition of 'worker' under the Factories Act and as such the exemption in G.O. 545 dated February 10, 1950 will come into operation.

25. On the basis of the exemption in G.O. Ms. No. 545 dated February 10, 1950 the second respondent is exempted from the application of the provisions of the Tamil Nadu Shops and Establishments Act. Hence the finding of the first respondent in W.A. 606/1995 regarding the maintainability of the appeal before the first respondent in W.A. 607/1995 is liable to be set aside and the appeal preferred by the second respondent herein before the first respondent in W.A. 607/1995 is not legally maintainable."

7. The learned counsel appearing for the second respondent opposed the said contention by stating that the first respondent authority made a finding that the petitioner Management failed to establish that the writ petitioner was engaged in the factory premises. When the findings in paragraph 10 of the order reveal that the petitioner has not established that it is a factory, there is no reason to interfere with the order and furthermore, the order was passed in the year 2014 and the second respondent is suffering for the past eight years.

8. This Court is of the considered opinion that the preliminary objection was raised by the Management regarding the maintainability of the petition under the provisions of the Tamil Nadu Shops and Establishments Act, 1947. The first respondent authority also adjudicated the issue in paragraph 9 of the order. The first respondent has categorically formed an opinion that the writ petitioner Establishment is a factory under the Factories Act and the second respondent was engaged in the factory premises and therefore, the petitioner Management

has established that the second respondent was working in the factory premises. However, contrary to the documents and the findings in paragraph 9 the first respondent further formed an opinion that the petitioner Management has failed to establish that it is a factory under the provisions of the Factories Act. Such a finding in paragraph 10 cannot be relied upon in view of the clear finding in paragraph 9 which is based on the documents filed by the writ petitioner Management with the consent of the second respondent.

9. That apart, the factory registered under the Factories Act is exempted from the provisions of the Tamil Nadu Shops and Establishments Act, 1947 through the notification issued by the Government which was considered by the Hon'ble Division Bench of this Court in the judgment cited supra. This being the factum established, the order passed by the first respondent is not in consonance with the provisions of the Tamil Nadu Shops and Establishments Act and also the exemption granted by the Government. Accordingly, the order impugned passed by the first respondent in TNSE No.II/IA7/2013 and TNSE No.II/IA2/2013 dated 20.12.2013 are hereby quashed and the second respondent is at liberty to redress his grievance by approaching the appropriate forum and in the event of preferring any objection, the period during which the litigations are pending both before the first respondent as well as before the High Court is to be taken into consideration for the purpose of condoning the delay, if any and the issues are to be decided on merits and in accordance with law.

10. With these observations, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

cse

To

The Authority under the Shops
and Establishment Act, 1947 cum
Deputy Commissioner of Labour
[Minimum Wages],
DMS Compound, Teynampet,
Chennai - 600 006.

+1cc to Mr.Jayaprakash, Advocate SR.No.35990

+1cc to Government Pleader SR.No.35329

W.P.Nos.5316 and 5317 of 2014

SKM(CO)
GMY(29/06/2022)