



W.P.(MD)No.14512of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.14512 of 2022
and
WMP(MD) No.10371 of 2022

K.M.Loganathan

.. Petitioner

Vs

**1. The Joint Commissioner,
HR and CE Department,
Millerpuram, Opposite to V.O.C College
Tuticorin**

**2. The Executive Officer,
Arulmighu Muthuramman Thiruvkovil
Kulasekarapatnam,
Tiruchendur Taluk
Tuticorin District**

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 15.06.2022 made in I.A.No.1 of 2022 in O.A.No.3 of 2022 on the file of the 1st Respondent and quash the same and consequently direct the 1st respondent to receive the documents.



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For Petitioner	: Mr.G.Mohankumar
For Respondents No.1	: Mr. M.Lingadurai Special Government Pleader`
No.2	: Mr. Muthugeethian Standing Counsel

ORDER

The petitioner, challenging the order of the second respondent in not permitting the petitioner to mark seven exhibits, has filed this writ petition.

2. The petitioner has filed a petition under Section 63(b) and 'Honour' under Section 63(e) of the HR and CE Act in O.A.No.03 of 2022. Though he had made various references to the Department, the documents were not available. Therefore, the petitioner could lay hand to 7 documents which is very much necessary for him. Hence, he filed I.A.No.1 of 2022 to mark the documents as exhibits and take evidence in O.A.No.3 of 2022. The first respondent/Adjudicating Authority had dismissed the petition referring to the Evidence Act, that the documents produced by the petitioner cannot be taken as evidence. Since the



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documents produced are only photostat copies without following procedure for marking the secondary document as primary document, this petition has been filed. Further, the petitioner's apprehension is that earlier when the petitioner attempted to file a petition before the Joint Commissioner Court, the same was not entertained. The petitioner hence filed a petition in W.P(MD)No.5632 of 2022 and thereafter, on the direction of this Court, his petition was taken on file.

3. The learned counsel appearing for the respondents submits that the petitioner without following the procedure as contemplated under the law, had approached this Court by way of writ petition, which is not maintainable. If at all, the petitioner is aggrieved, the petitioner is to file an appropriate petition before the Commissioner under Section 69 of the Act.

4. The learned counsel appearing for the second respondent would submit that the HR and CE Act is a self-contained Act, wherein procedures contemplated in conducting the proceedings following the Civil Procedure Code. The petitioner aggrieved against the dismissal of



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the petition by not taking photostat documents as primary documents in the plaint, he has to file an appeal before the Commissioner, HR and CE Department and not before this Court. The second respondent produced the decision of this Court in ***K.S. Lakshmikumara Thatachariar vs. T.E.Vijayaraghavan and others*** reported in ***2013(1)CWC 8***, wherein the Hon'ble Division Bench of this Court had held as follows:

“ Pursuant to the above direction of the First Bench of this Court, the Joint Commissioner passed orders on 12.10.2012. Admittedly against such an order passed by the Joint Commissioner, an appeal remedy is available to the aggrieved party by way of appeal before the Commissioner under Section 69 of the Act. Therefore we refrain ourselves from going into various arguments advanced on either side, since such contentions can very well be raised before the Commissioner in the appeal proceedings for his appreciation and decision ”

5. The parties therein shall avail efficacious alternate remedy available to them under Section 69 of the Act. Further, to sum up, any order passed under Chapter-V has to be challenged before the Commissioner, HR and CE Department and not before this Court. The



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petitioner has approached this Court seeking to set aside the order passed by the first respondent in M.P.No.1 of 2022 for marking certain documents in O.A.No.3 of 2022 and the same is not proper.

6. In view of the same, this Writ Petition stands dismissed. The petitioner to approach the Commissioner well within the limitation period of 60 days. His only apprehension is that it might take some time for the appeal to be numbered and taken up for consideration. In the meanwhile, his right in the trial before the first respondent would greatly get affected and prejudice will be caused. In view of the same, this Court directs the Commissioner Court to list the appeal filed by the petitioner within a period of two weeks from filing of the appeal, with out any objection on ground of limitation if it is otherwise in order. No costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No
Internet : Yes/No
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M.NIRMAL KUMAR, J.

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