



WEB COPY



W.P.No.12819 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.12819 of 2015
and M.P.Nos.1 and 2 of 2015

Kancheepuram District Consumer
Co-operative Wholesale Stores Limited,
Represented by its Managing Director,
No.185, Prakasam Saalai,
Chennai - 600 108.

... Petitioner

-Vs-

1.G.Venkatesan

2.The Appellate Authority under the
Tamil Nadu Shops and Establishment Act 1947/
Deputy Commissioner of Labour (Minimum Wages),
Tamil Nadu Shops and Establishment Act,
Teynampet, Chennai - 600 006.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the second respondent in proceeding TSE-II 4/2009 dated 11.07.2011 and the impugned order passed by the second respondent in proceeding Na.Ka.No.S2/13445/2015 dated 25.03.2015 and quash these orders and consequently direct the second respondent to take the Appeal in TSC-II 4/2009 on file and adjudicate the matter in accordance with law.



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For Petitioner : Mr.R.Prem Narayan

For R1 : Mr.P.Solomon

For R2 : No appearance

ORDER

This Writ Petition has been filed calling for the records in pursuant to the impugned order passed by the second respondent in proceeding TSE-II 4/2009 dated 11.07.2011 and the impugned order passed by the second respondent in proceeding Na.Ka.No.S2/13445/2015 dated 25.03.2015 and quash these orders and consequently direct the second respondent to take the Appeal in TSC-II 4/2009 on file and adjudicate the matter in accordance with law.

2. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

3. The first respondent was working as Salesman in the petitioner Society. While he was in service, he had committed grave financial irregularities to the tune of 8175 kgs of PDS rice. Therefore, he was suspended from service and he was served with a charge memo dated 14.11.2002. After issuance of show cause notice, on receipt of the explanation, Enquiry Officer



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was appointed and conducted enquiry. During the enquiry, the petitioner was given opportunity and the Enquiry Officer found that the charges proved against the first respondent. Thereafter, the petitioner was given opportunity to explain and on receipt of the explanation submitted by the first respondent, the first respondent was removed from service by an order dated 24.07.2004.

4. Aggrieved by the same, the first respondent filed an appeal under the Tamil Nadu Shops and Establishment Act 1947, before the second respondent. Even after the receipt of notice, the petitioner did not appear before the appellate authority and appeal filed by the first respondent was allowed. After coming to the knowledge about the exparte order, the petitioner filed a petition to set aside the exparte order along with a condone delay petition to condone the delay of 1341 days in filing the petitioner to set aside the exparte order. In the meanwhile, the first respondent filed a claim petition in C.P.No.6 of 2014 on the file of the II Labour Court, Chennai. It was allowed by the award dated 10.07.2018. Aggrieved by the same, the petitioner also preferred a writ petition before this Court in W.P.No.30967 of 2018 and it is pending. Further, the first respondent also filed a writ petition in W.P.No.2717 of 2012 to implement the order passed by the second respondent to reinstate him into service.



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5. Therefore, the second respondent returned the application to condone the delay and to set aside the exparte order, on the ground that already the first respondent filed a writ petition for implementation of the order passed by the second respondent and it is pending. Subsequently, the said writ petition was withdrawn by the first respondent. The writ petition filed by the petitioner challenging the order of the Labour Court is pending in W.P.No.30967 of 2018. Therefore, the second respondent has no impediment to deal with the petition filed by the petitioner to condone the delay and to set aside the exparte order.

6. The learned counsel for the first respondent would submit that the petitioner ought to have filed a petition to set aside the exparte order, within a period of 30 days from the date of the exparte order as contemplated under Rule 9A of the Tamil Nadu Shops and Establishment Rules 1947.

7. It is relevant to extract the provision of Rule 9A of the Tamil Nadu Shops and Establishment Rules 1947 as follows:-

“ 9A- Re-hearing of appeals:- (1) In any appeal preferred under the Act, if the employer or his representative fails to appear on the specified date, the appellate authority may proceed to hear and determine the appeal ex-parte.

(2) In any appeal preferred under the Act, if the appellant fails to appear on the specified date, the appellate authority may dismiss the appeal.



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(3) Notwithstanding anything contained in sub-rules (1) and (2), an order passed under either of those sub-rules may be set aside and the appeal reheard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for such rehearing.”

As per Rule 9A(3), the petition can be filed to set aside the exparte order with condone delay.

8. Therefore, the petitioner had rightly filed a petition to set aside the exparte order along with a condone delay petition. Therefore, the second respondent is directed to entertain the application to condone the delay and the petition to set aside the exparte order, after issuance of notice to the petitioner and the first respondent and after giving an opportunity of hearing to them, pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is disposed of. Consequently, connected Miscellaneous petitions are closed. No costs.

30.08.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

The Deputy Commissioner of Labour (Minimum Wages),
The Appellate Authority under the
Tamil Nadu Shops and Establishment Act 1947/
Tamil Nadu Shops and Establishment Act,
Teynampet, Chennai - 600 006.

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