



W.P.No.37846 of 2003

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.37846 of 2003
and WMP.No.45957 of 2003

M/s.ICICI Bank Ltd.,
ICICI Towers
4th Floor, South Tower,
Bandra-Kurla Complex,
Mumbai 400 051
Rep.by its Asst.General Manager - HRMG

... Petitioner

Vs.

1. A.Vaiyaphuri

2. The Special Deputy Commissioner
of Labour,
Appellate Authority under the
Shops and Establishments Act,
DMS Campus, Chennai 600 006.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorari and to call for the records pertaining to the order dated 18.12.2003 made by the 2nd respondent in T.S.E.I/I.A./I/10/2003 in T.S.E.I./28/2002 on the file of the Special Deputy Commissioner of Labour (Appellate Authority under Tamil Nadu Shops and Establishment Act, 1947), Chennai 600 006.



W.P.No.37846 of 2003

For Petitioner : Mr.Sanjay Mohan,
Senior Counsel
for M/s.Ramasubramaniam Associates

For Respondents : Mr.T.K.Saravanan
Govt.Advocate for R2

ORDER

This writ petition has been filed to call for the records pertaining to the order dated 18.12.2003 made by the 2nd respondent in T.S.E.I./I.A./I/10/2003 in T.S.E.I./28/2002 on the file of the Special Deputy Commissioner of Labour (Appellate Authority under Tamil Nadu Shops and Establishment Act, 1947), Chennai 600 006.

2. The facts of the case in a nutshell:-

The petitioner is a Bank incorporated under the provisions of the Companies Act 1956 and is engaged in the banking and related activities having Branches all over India. The first respondent joined the services of the erstwhile Bank of Madura at Corporate Office on 24.04.1978 and the 1st respondent was in the employment of the commercial establishment of ICICI Bank situated at Cochin. In fact the 1st respondent was working for the petitioner bank in the State of Kerala from the year 1994 till the date of termination of his services. In other words the employee was employed for the



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purpose of the business of the establishment of the bank situated in the State of Kerala. The first respondent had filed an appeal before the 2nd respondent challenging the order of termination passed by the petitioner. The petitioner filed IA for leading of evidence to establish the reasonableness of the preliminary objection/counter of the petitioner. The second respondent dismissed the above I.A. on 18.12.2003. Aggrieved by the said order passed by the second respondent, the petitioner Bank has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that the first respondent was employed as a Branch Manager in NR Road Branch Road, Bangalore from 17.01.1994 to 25.05.1996 and thereafter he was transferred to Kollam Branch on 05.06.1996 and again was transferred from Kollam to Ernakulam on 11.06.1997. The first respondent was suspended on 05.12.1997 at Ernakulam and that charge sheet was issued from Chennai on 23.09.1998 and reply was received from the first respondent on 01.10.1998. The enquiry was held on 19.02.2000 at Bangalore and all subsequent proceedings were held at Bangalore and that the disciplinary authority issued the finding vide his letter dated 13.03.2002 from Mumbai and request for reply by the first respondent



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was sent to the Mumbai Office. Thereafter an order of dismissal was passed by Senior Executive Vice President dated 18.04.2002 from Mumbai and that an appeal dated 15.05.2002 was addressed to the Managing Director, Mumbai. He further submitted that the first respondent has preferred an appeal under the Tamil Nadu Shops & Establishment Act before the second respondent which is not maintainable and prohibited under law.

4. The learned counsel appearing for the petitioner relied upon the judgment passed by the First Bench of this Court in W.A.No.1500 of 1988 in the case of *The Management of Punjab National Bank Vs S.C.Gupta and others* and the relevant portion is extracted as hereunder:-

Labour and Industrial – Industrial undertaking – Section 2 of Industrial Disputes Act, 1947 and Section 41 (2) of Tamil Nadu Shops and Establishments Act, 1947 – issue related to jurisdiction with reference to maintainability of appeal preferred by first respondent before second respondent under Section 41(2) – first respondent had no connection with State of Tamil Nadu on and from 29.10.1983 – when order of termination passed no question of any part of cause of action arose within State of Tamil Nadu – no nexus between prior proceedings and order of termination of services of first respondent – prior proceedings in Madras resulted in order of termination passed at Kanpur – part of cause in Madras cannot enable first respondent to maintain his appeal under Section 41(2) before second respondent at Madras – held, Appellate Authority functioning under Section 41 (2) within State of Tamil Nadu did not have jurisdiction to



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entertain appeal filed by first respondent.

and in another judgment of this Court in the case of ***The Management of M.R.F. Ltd., and others Vs S.N.D.Sampath and others*** in W.A.No.1494 of 2007 dated 23.01.2008 and the relevant portions are extracted as below:-

“When a person is employed to work in an establishment in Goa, it must be held that he was employed wholly in connection with the business of Goa establishment – Corporate Office was in Chennai or because the resignation letter has been accepted in Chennai not confer jurisdiction on the appellate authority under Section 41(2) of the Act – Held, Appellate authority under Section 41(2) of the Act has no jurisdiction to entertain the appeal preferred by the first respondent- Appeal allowed – order of Single Judge set aside and that of the appellate authority / second respondent is restored.

12. The acceptance letter was sent to the first respondent to his Goa address as well as to his permanent address at Karnataka. The acceptance letter was received by him at both the addressees on 31.01.2003, as evident from the postal acknowledgments produced by the management. When there is no employer employee relationship subsisting with regard to an establishment situate in the State of Tamil Nadu, the mere fact that the resignation letter was accepted at Chennai would not be enough or sufficient to clothe the appellate authority under Section 41(2) of the Act to entertain the appeal filed by the first respondent. We are unable to agree with the view taken by the learned Single Judge that both the authorities namely, the authority under the Goa Shops and Establishments Act and the authority under the Tamil Nadu Shops and Establishments Act had concurrent jurisdiction to deal with the case of



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die first respondent.

14. Though the first respondent herein was initially employed in the State of Tamil Nadu, he was later transferred to the State of Karnataka and then to Goa. The first respondent tendered his resignation letter while working in the sale depot at Goa, which was forwarded to the Mumbai Office and from there to the Company's Corporate Office at Chennai where it was accepted by the Senior General Manager – Human Resources and Services. In our view, notwithstanding the fact that the resignation letter of the first respondent was accepted in Chennai, his situs of employment being at Goa, he ought to have approached the appellate authority under the Goa Shops and Establishments Act and the appellate authority under the Tamil Nadu Shops and Establishments Act had no jurisdiction to entertain the appeal preferred by the first respondent. When a person is employed to work in an establishment in Goa, it must be held that he was employed wholly in connection with the business of Goa establishment. Merely because, the Corporate Office was in Chennai or because the resignation letter has been accepted in Chennai would not confer jurisdiction on the appellate authority under Section 41(2) of the Act”.

5. Court notice was issued to the first respondent and service is awaited but the private notice was returned with an endorsement “unclaimed”. Though the name of the first respondent was printed in the cause list, he has not chosen to appear before this Court.

5. Heard the learned counsel appearing for the petitioner and perused



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the materials available on record. None appeared on behalf of the first respondent.

6. It is pertinent to note that the charge sheet was issued to the first respondent on 23.09.1998 from Chennai while he was employed in Ernakulam, Kerala State. The dismissal order was passed by the Senior Executive Vice President on 18.04.2002 from Mumbai. Appeal dated 15.05.2002 against the said order was addressed to the Managing Director, Mumbai.

7. In view of the above facts and circumstances of the case and the ratio laid down by the Division Bench and the learned Single Judge of this Court, this Court is of the considered view that the appeal filed by the first respondent before the Special Deputy Commissioner of Labour (Appellate Authority under Tamil Nadu Shops and Establishment Act, 1947), Chennai is not maintainable and the same is prohibited under law and is hereby quashed.

8. In the result, this writ petition stands allowed. No costs. Consequently connected miscellaneous petition is also closed.

13.04.2023

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Speaking Order : Yes/No



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J. SATHYA NARAYANA PRASAD, J.

dpq

To

The Special Deputy Commissioner
of Labour,
Appellate Authority under the
Shops and Establishments Act,
DMS Campus, Chennai 600 006.

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