



W.P.No.5319 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No.5319 of 2013

R.Govind

... Petitioner

Vs.

1.M/s.Symantech Software and
Services Private Limited,
1/124, Shivaji Gaardens,
5th Floor, Block 1A,
Moonlight Stop,
Nandhambakkam Post,
DLF Info City,
Ramapuram Mount,
Poonamallee Road,
Chennai - 89.

2.The Deputy Commissioner of Labour
/ Appellate Authority,
Commissionerate of Labour,
DMS Compound,
Teynampet,
Chennai.

... Respondents



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PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in refusing to entertain the appeal in his letter/order viz. Letter. No.S.2/42367/2012 dated 03.10.2012, quash the same and direct the 2nd respondent to perform his statutory duty by entertaining the petitioner's appeal filed under Section 41(2) of the Tamil Nadu Shops and Establishment Act 1947 and covered by the impugned order/letter dated 03.10.2012 with costs.

For Petitioner : Mr.V.Prakash,
Senior Counsel
for Ms.S.Kala

For Respondents : Mr.Abishek Jenasenan for R1

Mr.K.Tippu Sultan,
Government Advocate for R2

ORDER

This Writ Petition challenges the order passed by the Appellate Authority under the Shops and Establishments Act, whereby the appeal filed by the petitioner came to be rejected.



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2.The case of the petitioner is that he had joined the services of the 1st respondent on 11.01.2012 and had resigned from service on punitive grounds on 07.03.2012. Thereafter, he preferred an appeal before the Authority under the Tamil Nadu Shops and Establishments Act, on 24.09.2012 and the appeal came to be returned on 03.10.2012. The impugned order reads as follows:

"பணியாளர் ஒருவர் ஆறு மாத காலம் ஓர் நிறுவனத்தில் தொடர்ந்து பணிபுரிந்தால் மட்டுமே தமிழ்நாடு கடைகள் மற்றும் நிறுவனங்கள் சட்டப்பிரிவு 41(2)ன் கீழ் வழக்கு தொடர வழி வகை உள்ளது. மேற்படி மனுதாரர் எதிர் மனுதாரரின் நிர்வாகத்தில் 3 மாதம் 21 நாட்கள் மட்டுமே பணிபுரிந்துள்ளார்.

எனவே, தமிழ்நாடு கடைகள் மற்றும் நிறுவனங்கள் சட்டத்தின் கீழ் வழக்கு ஏற்கக்கூடியதாக இல்லை என்பதால் தங்களது மனு அசலாக திருப்பப்படுகிறது என தெரிவிக்கப்படுகிறது."



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3.Mr.V.Prakash, learned Senior Counsel appearing for the petitioner would submit that the period of six months is found only under Section 41(1) of the Tamil Nadu Shops and Establishments Act (hereinafter referred to as the Act) and not under Section 41(2) of the Act. Therefore, he would submit that the period fixed as six months under Section 41(1) should not be read into Section 41(2) of the Act. In other words, his argument is that Sections 41(1) and 41(2) are independent Sections and have to be interpreted accordingly. He would state that the purpose of an appeal is to seek the remedial situation granted to the employees of the shops and establishments and if six months period is read into Section 41(2) of the Act, when the persons have been employed for less than the period of six months, they will not have a remedy at all and therefore, such a distinction amounts to discrimination. Therefore, he requested this Court to interfere in this matter. Further, he would state that even a



person who has been employed for less than six months is entitled to maintain an appeal.

4.*Per contra*, Mr.Abishek Jenasenan, learned counsel appearing for the 1st respondent would submit that there is no dispute that the petitioner had joined services on 11.01.2012 and went on resignation on 05.04.2012 and therefore, nothing on the provision of Section 41 of the Act is attracted. He would submit that there is no question of an appeal remedy under Section 41 of the Act.

5.I have carefully considered the arguments of the learned counsels appearing on either side and perused the records.

6.Section 41 of the Tamil Nadu Shops and Establishments Act is extracted hereunder:

“41.Notice of dismissal – (1)No employer shall



dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.

(2)The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

[(2-A) The appellate authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such person. For the aforesaid purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witnesses

(2-B)The appellate authority, may, after giving notice in the prescribed manner to the employer and the person employed, dismiss the appeal or direct the



reinstatement of the person employed, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.]

3)The decision of the appellate authority shall be final and binding on both the employer and the person employed.

[41.A. Payment of full wages to person employed pending proceedings in Higher Courts -- Where in any case, the appellate authority, by its decision under Section 41, directs reinstatement of any person employed and the employer prefers any proceeding against such decision in a High Court or the Supreme Court, the employer shall be liable to pay such person employed, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the person employed had not been employed in any establishment during such period and an affidavit by such person employed had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such person employed had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]”



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7. On bare reading of Section 41 of the Act, it is clear that Section 41 came under the Act of 1947, to provide an avenue for redressal of grievance. It is meant for regulation of conditions of work in shops, commercial shops, restaurants, theatres and other establishments. Prior to this Act, there was no provision for the persons working in such shops other than to approach the Civil Court. Even the Civil Court could not have ordered reinstatement because the contract of a person for service is not specifically enforceable. There is a bar under Section 14 of the Specific Relief Act to that effect. In order to give some relief, the present legislation had been enacted. In other words, it was the change from the existing situation, to provide certain rights to workmen and moving away "hire and fire situation".

8. The injunction under Section 41(1) of the Act as extracted is that the employer cannot dispense with or discharge of the



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service of the employee, who has been continuously working with him for six months and more. The exception for the rule being that the employer is empowered to dispense with the service of such employee after giving one month notice with a reasonable cause or wages in lieu of such notice. The other exception is when the employee is guilty of misconduct, the misconduct is to be supported by satisfactory evidence. It is under those circumstances, an appeal provision is provided in the Tamil Nadu Shops and Establishments Act.

9.In the present case, the petitioner has not worked for more than six months. The jurisdictional fact that has to be satisfied before invoking the Tamil Nadu Shops and Establishments Act is that the persons employed should have continuously worked for six months. If I have to accept the arguments of the learned Senior Counsel, it will do violence to Section 41(1) of the Act, which is the injunction against the



employer under Section 41(2) and the leave granted to the employee. In case, if he has breached this injunction, the conditions precedent that must be satisfied are

(1) There is a relationship of employee and employer.

(2) The employee should have continuously worked for a period of not less than six months.

(3) His service has been dispensed with for a reasonable cause.

(4) Services has been dispensed with for a charge of misconduct.

10. The Act describes the public policy delineated by the legislature. I have to give full meaning to the words "a person employed should have been working continuously for a period of six months". If I have to accept otherwise, I will be amending the Section, a power, which I do not have. I have harmoniously read Sections 41(1) and 41(2) of the Act. I am not going to interpret them in a manner which will destroy the purpose of



legislation.

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11.Insofar as the argument of arbitrariness is concerned that the person who worked for a period of six months is given protection, he is fundamentally different from one who has not worked for six months period. Therefore, it is a reasonable classification between the workers who have worked for six months and who have not.

12.I am of the view that Sections 41(1) and 41(2) are not independent and have to be interpreted and given unified construction. I have to conclude that the person who had not continuously worked for a period of six months is not entitled to maintain the appeal under Section 41(2) of the Act. Having reached this conclusion, I have to dismiss the Writ Petition. I have to place on record that I did attempt a settlement between the parties. However, the settlement failed.



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13.The view that I have taken is supported by the Judgment of this Court in the case of **the Management, A.2823, Thirunagar Co-operative Urban Credit Society limited, Thirunagar, Madurai - 6 through its Special Officer v. The Appellate Authority under the Tamil Nadu Shops and Establishments Act (Deputy Commissioner of Labour), Sundaram Theatre Road, K.K.Nagar, Madurai - 625 020** in W.P(MD).No.1006 of 2009 dated 10.02.2015, wherein at Para 15, it has been held as under:

"15.In view of the Exs.R8 to R10, I hold that the second respondent was terminated based on Resolution dated 15.12.1999 and was given fresh appointment as Clerk with effect from 15.04.2000. The second respondent contended that his service were orally terminated with effect from 18.09.2000. In view of this admission, the second respondent did not work continuously for six months from 15.04.2000 and he is not entitled to invoke provisions under Section 41 of the Tamil Nadu Shops and Establishments Act. The first respondent erred in holding that the second respondent worked continuously from 15.12.1999 to 18.09.2000. As the second respondent did not work continuously for six months, the impugned order of first respondent is liable to



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be set aside."

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In the light of the above, this Writ Petition is dismissed. No costs. The fact that I have dismissed the Writ Petition does not mean that the petitioner should be remediless and it is always open to the petitioner to approach the Civil Court to work out his remedy.

28.06.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps

To

The Deputy Commissioner of Labour
/ Appellate Authority,
Commissionerate of Labour,
DMS Compound,
Teynampet,
Chennai.



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