



WP.No.30856 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30856 of 2017

& WMP.No.33779 of 2017

Continental DataGraphics
Technical Services Pvt. Ltd.,
Chennai-89 rep.by its
Authorized Signatory

...Petitioner

Vs

1.The Special Deputy Commissioner
of Labour (Appeals), Teynampet,
Chennai-6.

2.Lavernne Ann Mathews

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Prohibition thereby prohibiting the first respondent from proceeding further with the hearing of the appeal in TNSE II/7/2017 under Section 41 of the Tamil Nadu Shops & Establishments Act.

For Petitioner	:	Mr.S.Saiprasad for M/s.Mithal Reddy
For R-1	:	Mr.M.S.Premkumar, GA
For R-2	:	No appearance



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ORDER

This is a petition filed by the petitioner seeking to issue a Writ of Prohibition prohibiting the first respondent from hearing the appeal filed by the second respondent.

2. The facts leading to filing of this case are as follows :

(i) The second respondent was serving in the petitioner company as Assistant Manager - Purchasing & Facilities from May 2014. In 2016, the petitioner company, having felt that the post of Assistant Manager - Purchasing & Facilities became redundant, had discussions with the second respondent, who also agreed to have a smooth exit. Further, on 04.7.2016, she tendered her resignation and sought to be relieved even on the same day. The petitioner company accepted the resignation of the second respondent and relieved her from the services with immediate effect while making it clear that the second respondent would continue to be bound by the non solicit obligations as stipulated in the contractual engagement. The second respondent agreed to that without any demur or protest.



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(ii) Thereafter, vide e-mail dated 16.7.2016, while returning the various properties of the company such as Dell laptop with cable, iPhone 6, Tata Photon Data Card and two Airtel Data Cards, stated that she was illegally terminated from the services and also sought to settle the dues immediately. Further, she went to the office of the petitioner and voluntarily handed over the properties to the petitioner company. The petitioner also credited the dues payable to the second respondent to the tune of Rs.3,48,743/- to the second respondent and this was informed to the second respondent vide communication dated 19.7.2016.

(iii) As an afterthought, the second respondent made a complaint of sexual abuse against the officials of the petitioner. However, it was closed after enquiry. She also issued a legal notice dated 24.8.2016 alleging forceful resignation. To the said legal notice, the petitioner gave a suitable reply dated 07.10.2016.

(iv) In spite of the said reply given by the petitioner through a counsel, the second respondent filed an appeal before the first respondent seeking to hold that the denial of employment to her from 04.7.2016 was arbitrary, illegal and contrary to law and also to direct the petitioner to reinstate her



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into services with back wages, continuity of service and all other attendant benefits.

(v) As there was a delay in filing the appeal before the first respondent, the second respondent filed I.A.No.1 of 2016 seeking to condone the delay of 75 days in filing the appeal and it was allowed by order dated 15.9.2017. Therefore, the petitioner is before this Court seeking to prohibit the first respondent from hearing the appeal filed by the second respondent.

3. When the matter came up for admission 28.11.2017, this Court granted an order of status quo until further orders.

4. Learned counsel for the petitioner submitted that the 1st respondent has no jurisdiction to entertain the appeal filed by the 2nd respondent under Section 41 of the Tamil Nadu Shops & Establishments Act. He further submitted that a similar issue has already been dealt with by this Court in the order dated 18.7.2017 in W.P.No.36767 of 2003 wherein this Court, following the decision of the this Court in the case of M/s.Needle Industries



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Ltd. Vs. Additional Commissioner for Workmen's Compensation, Madras, Teynampet and others [reported in 1986 (1) LLJ 408], had allowed the writ petition. It is further contended by the learned counsel for the petitioner that since the issue raised in this writ petition is squarely covered by the said decision in W.P.No.36767 of 2003 dated 18.7.2017, similar orders may be passed and the writ petition may be allowed.

5. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent. Though the second respondent was served and she also entered appearance through a counsel, none appears on behalf of her today when the case is called nor she is present in court today.

6. In the decision relied upon by the learned counsel for the petitioner the question came up for consideration was relating to the exact scope of the Appellate Authority under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 and ultimately, the learned Single Judge allowed the writ petition filed by the management. The decision of the learned Single



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Judge was confirmed on appeal filed by the employee by a Division Bench of this Court in the case of C.R.Ramaswami Vs. M/s.Needle Industries (I) Ltd. & Another [reported in MANU/TN/0538/1980] wherein the Division Bench of this Court has held as under:-

“Thus, merely from a reading of the Section it is clear that sub Section (1) contemplates an employer dispensing with the services of a person employed and sub Section (2) contemplates the said person employed after such dispensing with his services preferring an appeal before the second respondent herein on the ground that there was no reasonable cause for dispensing with his services on the ground that he had not been guilty of misconduct as held by the employer. Consequently, before s.41(1) can be invoked, the employer must have dispensed with the services of the person employed and sub Section(2) must be based upon the employer dispensing with the services of the person employed, and there, being no reasonable cause for such action or the employee not being guilty of misconduct as held by the employer. In the present case as we have pointed out already, the appellant herein was relieved from his post in the service of the first respondent not on the basis of any initiative taken by the first respondent to dispense with the services of the appellant, but at the request of the appellant himself who tendered his resignation on 12th January, 1980. The contention is that even though the resignation letter was admittedly submitted by the appellant herein and pursuant to that letter he was relieved from the services on that date itself, still, in view of the stand taken by the appellant herein that that letter was obtained from him by coercion and threat, it will amount to the employer dispensing with the services of the appellant and consequently, the Appellate Authority, namely, the second respondent has no jurisdiction to go into the question in the appeal preferred by the appellant herein. We are unable to accept this contention. The second respondent is a creature of the statute and any



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power which he can exercise has to be traced to the statutory provisions which had created him and conferred powers on him. We have already indicated that having regard to the language of sub Section 41(1) and 41(2). There must be first an action on the part of the employer dispensing with the services of an employee and if that action is absent, there is no question of a person like the appellant filing an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, In fact, the foundation for invoking the jurisdiction of the second respondent under Section 41(2) is the fact thta the first respondent has dispensed with the services of the appellant. When the appellant sent his resignation letter, he requested the first respondent to relieve him on that date itself and the first respondent accepted the resignation letter and relieved him from his duties. Certainly, that will not constitute the employer, namely, the first respondent hrein, dispensing with the services of the employee, namely, appellant herein.”

From the above decision, it is clear that only when there arises a situation where, the employer had dispensed with the services of the employee, Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 would apply. However, in the present case, admittedly, the 2nd respondent having tendered her resignation seeking to relieve her from service and the same being duly accepted by the employer, viz., the petitioner management, the question of dispensing with the services of the employee does not arise. In the absence of any circumstance for invoking Section 41(1) of the Act and the appeal filed before the 1st respondent being



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without jurisdiction, the said appeal is not maintainable. Accordingly, the 1st respondent is hereby restrained from entertaining the said appeal.

7. Accordingly, this Writ Petition is allowed in the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To

The Special Deputy Commissioner
of Labour (Appeals), Teynampet,
Chennai-6.



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M.DHANDAPANI, J

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