



W.P.(MD)No.8435 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P(MD).No.8435 of 2020

and

W.M.P.(MD)Nos.7822, 12401 and 12399 of 2020

The Management,
Poorman Depot (Vanavil),
7,Chidambara Nagar,
Tuticorin - 628 008.
represented by its Managing Partner

... Petitioner

Vs

1.The Appellate Authority under the
Tamilnadu Shops and Establishments Act,
(Joint Commissioner of Labour)
Tirunelveli.

2.Senthil Nayagi

3.Brinda KUmari

4.Essakiammal

5.Selvajothi

... Respondents



W.P.(MD)No.8435 of 2020

Prayer:- Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ calling for the records relating to the impugned order dated 20.3.2020 passed by the 1st respondent in T.N.S.E.A.No.01/2017 T.N.S.E.A.No. 02/2017 T.N.S.E.A.No.3/2017 and T.N.S.E.A.No. 04/2017 and quash the same as illegal

For Petitioner	:	Mr.M.Jerin Mathew for M.E.Ilango
For R1	:	Mr.G.Suriyanantha Additional Government Pleader
For R2 to R5	:	Mrs.M.Nandhini Priyadharshini for Mrs.D.Geetha

ORDER

Heard the learned counsel on either side.

2. The writ petitioner is a private departmental store. The private respondents herein filed appeals before the appellate authority under the Tamil Nadu Shops and Establishments Act, Tirunelveli, under Section 41 of the Act. By the impugned order dated 20.03.2020 all the appeals were



W.P.(MD)No.8435 of 2020

allowed and the management was directed to reinstate the claimants.

Questioning the said order, the present writ petition has been filed.

3. The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for. His primary contention is that the management had taken a specific stand that the claimants had not worked in the shop in question continuously for a period of six months and that therefore their appeals were not maintainable. The learned counsel submitted that the management can only deny the averments put forth by the applicants and that they cannot be expected to prove the negative. Since the claimants had not placed any materials to show that they had worked in the petitioner's shop continuously for a period of six months, the authority erred in allowing their appeals.

4. The learned counsel appearing for the private respondents submitted that the impugned common order deserves to be sustained.



W.P.(MD)No.8435 of 2020

WEB COPY

5. I carefully considered the rival contentions and went through the materials on record. The proposition projected by the learned counsel for the petitioner that one cannot be expected to prove the negative, is beyond cavil. In this case, the claimants have been working in a departmental store. It is not the case of the departmental store that they are having a regular register containing the list of permanent and casual employees. If according to the management, the private respondents were employed only occasionally and during festival times, then they must have placed documents in that regard. When a worker is pitted against the management, while ofcourse the rules of evidence will not change, the mode of appreciation will definitely be different. Section 106 of the Evidence Act is to the effect that if there are certain facts which are within the especial knowledge of a person, then the burden of proof of the same is on that person.

6. The registers regarding employment would be only with the petitioner and the workman will not have any access to the same. It is seen



W.P.(MD)No.8435 of 2020

WEB COPY

from the impugned order that the workers filed I.As seeking copies of certain documents and that even though the IA were allowed the documents were never furnished. More than anything else, the management failed the cross examine the witness who was examined on the side of the employees. Not only the management failed to cross examine the employees' witness but also did not adduce any contra evidence. It is because of these four reasons, namely a) non furnishing of documents which were ordered to be produced; b) failure to cross examine the employees' witness; c) failure to adduce any evidence on their side and d) non-production of attendance and other registers, that led to the allowing of the appeals. The appellate authority has only ordered reinstatement of the petitioner's. Back wages have not been ordered. In this view of the matter, the order impugned in this writ petition does not call for interference. The petitioner/ management is directed to reinstate the private respondents immediately.

7. Accordingly, this writ petition stands dismissed. When the authorities under the Act dispose of the appeals, they must catalogue the witnesses examined and the documents marked. In the judgment of any



W.P.(MD)No.8435 of 2020

WEB COPY

civil Court or criminal Court these details will be found after the body of the judgment. The authorities would be well advised to adopt the very same practice. No costs. Consequently, connected miscellaneous petitions are closed.

09.03.2023

NCC : Yes/No
Index :Yes/No
Internet :Yes / No

pnn

To

The Appellate Authority under the
Tamilnadu Shops and Establishments Act,
(Joint Commissioner of Labour)
Tirunelveli.



WEB COPY



W.P.(MD)No.8435 of 2020

G.R.SWAMINATHAN, J.

pnn

W.P(MD).No.8435 of 2020
and
W.M.P.(MD)Nos.7822, 12401 and 12399 of 2020

09.03.2023