



W.P.(MD)No.7203 of 2018

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 14.02.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P.(MD)No.7203 of 2018**

S.Sudhagar

... Petitioner

Vs.

1.The Deputy Commissioner of Labour,  
Dindugal.

2.The Chairman and Board of Director,  
M/s. International Agricultural Processing Private Limited,  
No.332/5A, Perenai Road, Musuvanuthu- 624219.  
Nilakottai Taluk, Dindugal District.

3. IAP Farm Services Private Limited,  
No.2, Karumbu Salai Road, Balaji Nagar- 624208  
Nilakottai Taluk, Dindugal District.

4. The Factory Manager,  
International Agricultural Processing Private Limited,  
No.332/5A, Perenai Road, Musuvanuthu- 624219,  
Nilakottai Taluk, Dindugal District.

... Respondents



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**PRAYER** : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of 1<sup>st</sup> respondent in T.N.S.E.A.P I.A.No.2/17, 4/17 and 6/17 dated 29.11.2017 and quash the same as arbitrary and illegal and in consequence thereof direct the 1<sup>st</sup> respondent to conduct the enquiry and complete the same in accordance with the provisions of Tamil Nadu Shops and Establishments Act, within the period stipulated by this Court.

|                |   |                               |
|----------------|---|-------------------------------|
| For Petitioner | : | Mr.P.Ganapathi Subramanian    |
| For R1         | : | Mrs.K.Christy Theboral        |
|                |   | Additional Government Pleader |
| For R2 to R4   | : | Mr.J.Anand Kumar              |

### **ORDER**

This writ petition has been filed challenging the impugned order passed by the first respondent dated 29.11.2017 and to quash the same and consequently direct the first respondent to conduct an enquiry and complete the same in accordance with the provisions of Tamil Nadu Shops and Establishments Act.



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2. The case of the petitioner is that he was appointed as an Accountant by the second respondent and promoted as Manager Accounts on 01.04.2006 and additional charge of Manager - purchase was given to him from 01.04.2007. Thereafter, on 01.04.2008, he has been promoted as Deputy General Manager in the second respondent Company and then transferred to the third respondent to look after the purchase and finance departments activities. He has principally and wholly employed in the third respondent Company from the year 2009 – 2010 onwards and his salary payment was recognised in the third respondent's balance sheet and factum of the same was reflected in the audited balance sheet, which was filed with the Registrar of Companies and Department of Income Tax. He has raised his objection with regard to non-payment of ESI, Gratuity and Provident Fund dues etc., in time to the Management. Dissatisfied with his instructions, on 25.11.2016, the second respondent forced him to vacate from office immediately. After one month, the second respondent issued a show cause notice dated 29.12.2016, alleging that he was absented without their permission. The petitioner has submitted his explanation on



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19.01.2017. However, the fourth respondent has terminated the petitioner from service 03.03.2017 onwards.

3. It is the further case of the petitioner that as against the order of termination, he has preferred an appeal before the first respondent, who is an appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 along with condone delay petition in I.A.No.2 of 2017. He has also filed another petition in I.A.No.6 of 2017, seeking direction to the respondents 2 to 4 to produce the original year end journal vouchers through which transfer of his salary payment were recorded in third respondent's books of accounts and other documents pertaining to period from 2012 to 2017 before the first respondent. The respondents 2 to 4 filed a petition to reject his claim on the ground that the provisions of Factories Act, 1948 is applicable and his service was not covered under the provisions of Tamil Nadu Shops and Establishments Act. The first respondent has allowed the I.A.No.4 of 2017 preferred by the respondents and rejected the main petition preferred by him on 29.11.2017, by accepting the plea of the respondents that the issue is covered under the provisions of Factories Act, 1948 and his



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application is not maintainable under the provisions of Tamil Nadu Shops and Establishments Act. Challenging the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner would submit that admittedly the petitioner is the employee of the third respondent and he is not the employee of the fourth respondent factory. However, the first respondent has passed the impugned order as if the petitioner is the employee of the fourth respondent and removed from service, which is not sustainable one.

5. Though the third respondent appointed the petitioner as Deputy General Manager as well as the Director of the said Company, however, he was not performed as the Director of the Company and he only performed as the Deputy General Manager under 100% shares of the third respondent Company held by the second respondent Company. Further, the State Government issued G.O.(Ms).No.4074, Industries, Labour and Housing (Labour) dated 05.10.1996, by exercising the power under Section 5 of the



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Madras Shops and Establishments Act, 1947. Hence, the rejection order passed by the establishment authority is not sustainable one and there is no exemption in respect of the third respondent Company and the exemption is only in respect of the fourth respondent factory. Hence, the conclusion arrived by the first respondent that the petitioner is the employee of the fourth respondent factory is liable to be interfered with. Accordingly, he prayed for allowing this writ petition. In support of his contention, he has relied on a judgment of this Court in the case of ***Madras Atomic Power Project Employees Consumers Co. op Stores v. Deputy Commissioner of Labour*** reported in ***2000 (III) CTC 738***.

6. The learned counsel appearing for the private respondents would submit that admittedly the petitioner is the Director of the third respondent Company and also the employee of the fourth respondent factory and he served in the capacity of Deputy General Manager. Though the petitioner employed in the fourth respondent Factory, the Deputy General Manager is a managerial capacity and the person, who employed in the factory make a claim under the Factories Act not under the Shops and



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Establishments Act. Hence, the claim made by the petitioner before the establishment authority is not sustainable. Hence, he prayed for dismissal of this writ petition.

7. The learned Additional Government Pleader appearing for the first respondent would submit that already the petitioner has received the entire benefits and thereafter the authority has passed the impugned order, which is not sustainable one.

8. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the respondents 2 to 4.

9. The petitioner claimed that the third respondent Company is a Trading Company and have been in the field of purchasing raw gherkin from farmers and agents, since its incorporation from the year 2003 and its parent company ie., second respondent manufacturing company engaged in manufacturing pickles and its Managing Director is appointed as an



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occupier under the provisions of Factories Act, 1948. The petitioner was appointed as an Accountant by the second respondent and additional charge Manager-purchase was given on 01.04.2007. Thereafter, he was promoted as Deputy General Manager in the year 2008 in the second respondent Company and transferred to the third respondent Company to look after the purchase and finance department activities. Further, the petitioner was appointed as Director in the third respondent Company in the year 2007, even though virtually having no interest in the share capital. He wholly employed in the third respondent Company from the year 2009 - 2010 onwards and his salary payment was recognised in the third respondent's balance sheet and factum of the same was reflected in the audited balance sheet, which was filed with the Registrar of Companies and Department of Income Tax.

10. Further, even on perusal of the typed set of papers makes it clear that the petitioner was appointed as the Director in the second respondent Company. Apart from that, the petitioner also employed in the fourth respondent factory, which was registered under the Factories Act,



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1948 and he employed in the factory in the managerial capacity. The employee under the Factories Act has no exemption from the purview of the Shops and Establishments Act and the Shops and Establishment authority discussed the involvement of the petitioner in the fourth respondent factory. Once the fact finding authority arrived at a conclusion that the petitioner come under the purview of Factories Act and not under the Shops and Establishment Act, to take a different view, no material was placed before this Court. Hence, this Court is not inclined to interfere with the order impugned in this writ petition. Accordingly, this Writ Petition is dismissed. No costs.

**14.02.2018**

akv

To

- 1.The Deputy Commissioner of Labour,  
Dindugal.
- 2.The Chairman and Board of Director,  
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**M.DHANDAPANI,J.**

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