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W.P.No.609 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.609 of 2019
and W.M.P.No.651 of 2019

B. Muthukumar

...Petitioner

versus

1. The Deputy Commissioner of Labour,
(Minimum Wages)
(Appellate Authority under the TNSE Act)
Office of the Commissioner of Labour,
DMS Campus Teynampet,
Chennai-600 006.

2. M/s.Unipres India Pvt. Ltd.,
RNS-6, SIPCOT Industrial Growth Centre,
Vadakkupattu Post,
Oragadam, Sriperumbudur Taluk-603 204.
Kancheepuram District.
Rep., by its Managing Director

...Respondents.

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus to call for the entire records culminated in the 1st respondent's impugned order 30.10.2018 made in TNSE II/2/2016 and quash the same as illegal and consequently direct the 2nd respondent to reinstate the petitioner with



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back wages, continuity of service and all other attendant benefits w.e.f. 19.03.2015.

For Petitioner : M/s.K.M.Ramesh

For Respondents : Mr.K.Tamil Vendan
Government Advocate for R1
: M/s.S.Sai Prasad
for M/s.Sai Raaj Associates for R2

ORDER

This Writ Petition is filed seeking to issue Writ of certiorarified mandamus to quash the orders passed by the first respondents dated 30.10.2018 in TNSE II/2/2016 and direct the second respondent to reinstate the petitioner with backwages, continuity of service and other attendant benefits with effect from 19.03.2015.

2. The facts in brief as per the affidavit filed along with this Writ Petition are as under:

The petitioner is a Cost Accountant and Company Secretary having more than 25 years experience. He was appointed as Deputy General Manager (Finance) and Company Secretary in the second respondent on 03.05.2012, with pay package of Rs.17,00,000/- per annum. On



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19.03.2015, the Managing Director, Vice President and others have threatened the petitioner to submit resignation and they have stated that in case if petitioner is not willing to submit the resignation, they will terminate the petitioner and foist illegal cases against him, intimate the employees forum by wrongly accusing him and deprive the prospective employment and deprive the opportunities of employment with other employment. On account of eminent threat of termination, the petitioner was forced to submit resignation on 19.03.2015. The second respondent has violated all the norms, guidelines, rules enshrined under various labour welfare statutes including the Factories Act and violated the basic fundamental rights guaranteed under the constitution of India. Petitioner was terminated without conducting any enquiry and have not followed any due process as per the law. The second respondent is covered under the provisions of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred as TNSE Act) and the petitioner being Manager will come under the scope and ambit of " Persons employed within the meaning Section 41(1)(a) of the Act". The second respondent violated the principles of natural justice by not providing opportunity to defend himself.



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3. Section 41(3) of the Tamil Nadu Shops and Establishments Act, 1947 provides remedy to the affected persons to approach the Deputy Commissioner of Labour to seek remedy for violations under Section 41 of the TNSE Act. The resignation submitted by him is on account of duress and coercion, thereby, it is not a voluntary resignation. The Management has not attributed any allegations of misconduct against the petitioner. The Management has predetermined and made up their mind to take vindictive action.

4. The petitioner has filed an Appeal Petition under Section 41 (2) of the TNSE Act on 27.01.2016. The petitioner has filed proof affidavit along with documents and also filed written submissions in TSE II/2/2016 and two issues have been framed which runs as under:

“(1) Whether the appeal filed by the Appellant under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947 is maintainable before this forum?

(2) Whether the resignation of the Appellant is tendered under coercion and amounts to illegal



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termination? If so, remedy available to the appellant?"

5. The first respondent who is an appellate authority under TNSE Act on considering the rival contention has ultimately dismissed the appeal holding that the petitioner does not come under the purview of the TNSE Act and thereby declined to decide the issue with regard to forced resignation etc. Aggrieved by the same, the present Writ Petition is filed.

6. It is submitted by the learned counsel for the petitioner that first respondent who is the appellate authority under the TNSE Act has misinterpreted G.O.Ms.No.545 Development Department dated 10.02.1950 decided the case against the petitioner. It is submitted further that the first respondent failed to consider that the person who is holding the post of Deputy General Manager and Company Secretary involved in managerial, financial and Human Resource functions is an officer and not the workmen and also failed to interpret that the petitioner having such position is fully covered under the ambit of the TNSE Act. It is submitted further that the first respondent appellate authority has committed grave



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error in concluding the office of the petitioner is attached with factory. It is submitted further that as per the definition of the worker under the Factories Act 1948 include a person involved in any manufacturing process, cleaning any part of the machinery or premises used for manufacturing process, any other kind of such work connected with the manufacturing process become the worker. According to the petitioner, he has not played any role in the factory premises or in the manufacturing process, consequently, he is not a workmen under the Factories Act. It is submitted further that petitioner was given certain facilities like office car, medical reimbursement, personal telephone, family medical insurance, personal accident insurance etc, thereby, he is not a workmen under the Factories Act, but he will come under the definition “persons employed under the provisions of the TNSE Act”. The petitioner though has mentioned many things in respect of alleged forcible resignation, they are not relevant for the time being as the Labour Court has also got to the issue as to whether the petitioner was forced to submit his resignation, therefore, these aspects need not be considered.

7. Respondent has not filed counter affidavit.



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8. It is submitted by the learned counsel for respondent that the petitioner is covered under the provisions of the Factories Act as such the provisions of the TNSE Act are not applicable to the petitioner.

9. Heard both sides and perused the records.

10. The petitioner has raised Industrial Dispute questioning his forcible resignation. Labour Court having gone through the pleadings of both sides has settled the following two issues.

“(1) Whether the appeal filed by the Appellant under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947 is maintainable before this forum?”

“(2) Whether the resignation of the Appellant is tendered under coercion and amounts to illegal termination? If so, remedy available to the appellant?”



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11. The Labour Court has decided issue No.1 against the petitioner holding that provisions of the TNSE Act are not applicable to the facts of the case and thereby refrained from giving the finding in respect of the forcible resignation. Aggrieved by the orders of the Labour Court in respect of applicability of the TNSE Act, the petitioner has preferred this Writ Petition, therefore, in this Writ Petition also the only aspect to be considered is whether the TNSE Act are applicable to the facts of the case.

12. G.O.Ms.No.545, Development Department dated 10.02.1950 runs as under:

“In exercise of the powers conferred by Section 6 of the Madras Shops and Establishments Act, 1947 (Madras Act 34 of 1947) and in supersession of the Development Department Notification No.1085, dated November 5, 1948 published at Pat 1101 of Part-I of the Fort Saint George Gazette, dated November 16, Governor of Madras hereby exempts



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permanently all persons employed in any kind of work in factories and governed by the Factories Act, 1948 (Central Act LXII, of 1948 from all provisions of the Madras Shops and Establishments Act, 1947.”

13. On considering the above, it is clear that the provisions of TNSE Act will not apply to the persons employed in any kind of work in factories and governed by the Factories Act 1948. According to the learned counsel for the respondent that petitioner being an employee works in factory and governed by the Factories Act, is exempted from the provisions of the TNSE Act, thereby, he cannot invoke the provisions of the TNSE Act, for redressal of this grievances.

14. In the contrary, the learned counsel for the petitioner submitted that the petitioner is working as Deputy General Manager Finance and Company Secretary of the second respondent and he works in the administration side and therefore, he will not come under the exemption of G.O.Ms.No.545, Development Department dated 10.02.1950. Admittedly, the place where the petitioner is working is within the factory



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premises. There is no other premises to the respondent factory. All the officers of the second respondent are within the premises of factory itself. The learned counsel for the petitioner has submitted that petitioner has been working in the administration and office building which is a separate building when compared to the factory building and since the factory building and the administrative building are distinct and separate, it cannot be said that the petitioner is working in the factory.

15. This submission is keenly contested by the learned counsel for the respondent stating that there is no separate building for administration and factory and all buildings are contiguous to one another and the place which is being used for the administration is situated on the first floor of the office canteen which is part of the factory premises. Considering the above, it is clear that there is no separate administrative building away from and other than the factory and hence it cannot be said the petitioner is not working in the factory.

16. Further Section 2(m) of the Factories Act defines what the factory means which runs as under:



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“2 (m) “factory” means any premises including the precincts thereof—

(i) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

But does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Explanation I.—For computing the number of workers for the purposes of this clause all the workers in [different groups and relays in a day shall be taken into account;]

Explanation II.—For the purposes of this clause,



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the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;”

17. On considering the above, the factory includes all the premises where the manufacturing activities are going on, including the precincts thereof. The dictionary meaning of precincts is “ the areas within the walls are perceived boundaries of a particular building or a place”. In one of the dictionary it is also said that the word precincts come from Latin precinctum meaning enclosure, boundary lines”. A precincts is an area that has a clear boundary line around it. On considering the above definition of precincts, it is clear that the entire premises where many building are situated including the factory where manufacturing activities taking place and the administrative building, the canteen and other buildings becomes part of the factory precincts. Therefore, basing on the admitted fact that the administrative office where the petitioner discharges his duty as Deputy General Manager Finance and Company



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Secretary is situated on the first floor of the canteen which is within the premises or precincts of the factory premises, it cannot be interpreted that the petitioner is not working within the factory premises. Therefore, G.O.Ms.No.545, Development Department dated 10.02.1950, squarely applies to the facts of the case.

18. The learned counsel for the respondent has cited an authority decided by the Hon'ble Supreme Court of India on 27.01.1956 in Criminal Appeal No.32 of 1956, between ***Ardeshir H.Bhiwandiwalla Vs. The State of Bombay***, reported in MANU/SC/023/1961 wherein it is observed as under:

“3. The Salt Works extend over an area of about two hundred and fifty acres. Some of the other salt works, however, have even larger areas. The only buildings on this land consist of temporary shelters constructed for the resident labour and for an office. At a few places, pucca platforms exist for fixing the water pump when required to pump water from the sea. When not required, this pump is kept in the office. With the exception of the constructions already mentioned, the entire area of the Salt Works is open. On the sea side, it



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has bunds in order to prevent sea water flooding the salt pans.

Clause (m) of s. 2 of the Act reads :

"'factory' means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, -

but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed."

The relevant portion of the definition of "manufacturing process" in clause (k) of s. 2, reads :

"'manufacturing process' means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale,



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transport, delivery or disposal; or

(ii) pumping oil, water or sewage; or"

4. It is contended for the appellant that the expression "premises" in the definition of the word "factory" means "buildings" and that "mere open land" is not covered by the word "premises" and as there are no buildings except temporary sheds on the Salt Works, the Salt Works cannot be said to be a "factory". We do not agree with this contention. The word "premises" has now come to refer to either land or buildings or to both, depending on the context. The meanings of the word "premises" in various lexicons and dictionaries are given below :

(a) Wharton's Law Lexicon :

"Premises" is often used as meaning "land or houses".

(b) Cochran's Law Lexicon, IV Edition :

"Premises" means "houses or lands".

(c) Black, H. C., Law Dictionary, IV Edition :

"Premises" as used in the estates means -

(i) lands and tenements; an estate; land and buildings thereon; the subject-matter of the conveyance;

(ii) a distinct and definite locality and may mean a room, especially building or other definite area;

(d) Earl Jowitt, Dictionary of English Law :



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"Premises" from this use of the word, "premises" has gradually acquired the popular sense of land or buildings. Originally, it was only used in this sense by laymen, and it was never so used in well-drawn instruments, but it is now frequently found in instruments and in Acts of Parliament as meaning land or houses, e.g., the Public Health Act, 1875, s. 4, where, "premises" includes messuages, buildings, lands, easements, tenements and hereditaments, of any tenure.....

(e) Ballentine, J. A., Law Dictionary with Pronunciation, II Edition :

"Premises" - as applied to land, Webster's New International Dictionary defines the word as follows : The property conveyed in a deed; hence, in general, a piece of land or real estate; sometimes, especially in fire insurance papers, a building or buildings on land; the premises insured.

It is therefore clear that the word "premises" is a generic term meaning open land or land with buildings or buildings alone.

5. The expression "premises including precincts" it has been urged, clearly indicates that in the context of the definition of the word "factory", premises meant only



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buildings as buildings alone can have precincts and there can be no precincts of any open land. The expression "premises including precincts" does not necessarily mean that the premises must always have precincts. Even buildings need not have any precincts. The word "including" is not a term restricting the meaning of the word "premises" but is a term which enlarges the scope of the word "premises". We are therefore of opinion that even this contention is not sound and does not lead to the only conclusion that the word "premises" must be restricted to mean buildings and be not taken to cover open land as well."

19. Learned counsel for the petitioner cited an authority of this Court in W.A.No.358 of 1989, between ***Automac (M) (P) Ltd Vs. Deputy Commissioner of Labour and ors.*** Reported in MANU/TN/0129/1989, wherein it is observed as under:

"8. In the instant case, it has been found that none of the provisions of the Factories Act has been made applicable to second respondent and right from the beginning, his service conditions had been governed by the Tamil Nadu Shops and



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Establishments Act. As stated earlier, the Office premises had been shifted more than once to different places, and finally, it started functioning in the administrative block in the factory premises. Hence, the contention of the learned counsel for the appellant that because it is located within the area which is registered under the Factories Act, the administrative office could straightway become factory premises, cannot be accepted. It is the particular nature of duties which are discharged and which alone could be taken into account. In The State of U. P. v. M. P. Singh MANU/SC/0045/1959 : 1960CriLJ750 the Supreme Court held that field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane used in the factory are not employed either in the precincts of the factory or in the premises of the factory or in the premises of the factory, and therefore, the provisions of the Factories Act would not apply. Once it is made out that the provision of the Factories Act are not applicable to the second respondent, and when the appellant had not varied his service conditions, the provisions of the aforesaid G.O. cannot be applied to the instant case.



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9. As far as G.O. Ms. No. 543 is concerned the exemption could be made applicable only in respect of persons who are employed on any kind of work in a factory, and 'governed by the Factories Act 1948'. It is not merely sufficient to show that a clerk carries on work within the area registered under the Factories Act, but it must also be shown that he is 'governed' by the provisions of the Factories Act. The expression 'or any kind of work' would not straightway get included within its field any other kind of person employed by a factory. As referred to in the last of the decisions of the Supreme Court, even though the field workers are employed in the factory, they are not working in the precincts of the factory. A clerk or an Accountant may be found physically working in the administrative block inside the factory campus, but it must also be shown that the provisions of the Factories Act had been applied to those persons. Unless the Management shows that the persons who are working in a factory registered under that Act are 'governed' by the provisions of the Factories Act, the said G.O. cannot be invoked by the Management.

10. Therefore, the preliminary issue having been



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rightly decided upon, this writ appeal is dismissed with costs, and the first respondent is now directed to proceed further with the matter, and dispose of it expeditiously.....”

20. This authority is not applicable to the facts of the case as it is clearly mentioned in the beginning of the para No.8 of above referred judgment that right from the beginning none of the provisions of the Factories Act has been made applicable to the second respondent and his service conditions are being governed by the TNSE Act.

21. As per employment agreement dated 03.05.2012 of the petitioner, his place of work is mentioned as RNS-6 SIPCOT Industrial Growth Centre, Oragadam, Sriperumbudur Taluk, that means according to the employment agreement he has to work in a place where factory premises is situated. Similarly, Clause 5 in respect of leave eligibility speaks that his entitlement of annual leave is per the provisions of Factories Act, 1948.



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22. Further, on perusal of the impugned award it is clear that the petitioner has admitted during the cross examination as A.W.1 that the respondent has no other office other than Oragadam and that officials from the factory used to come to his office and that the name of the petitioner finds place in form 25 of the register which is marked as Ex.A.6 which is a muster role being maintained under the Factories Act, 1948. Further it is also observed that as per Ex.A.1 the leave entitlement of the petitioner is also as per the Factories Act, 1948. Further, as per the employment agreement dated 03.05.2012, the leave title of the petitioner is also governed under the provisions of the Factories Act, 1948. Therefore, on considering the above, it is clear that the petitioner is being governed by the Factories Act, 1948. Thereby, the provisions of the TNSE Act, are clearly exempted.

23. Learned counsel for the petitioner has submitted that the petitioner being Manager cannot be termed as workers under the Factories Act and that he will fit into the definition of “person employed under 4(1)(a) of the TNSE Act.”



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24. It is the contention of the petitioner that he will come under the person employed as per the provisions of the TNSE Act. Section 212 of the TNSE Act, runs as under:

“(12) ‘person employed’ means—

(i) In the case of a shop, a person wholly or principally employed therein in connection with the business of the shop;

(ii) In the case of a factory or an industrial undertaking, a member of the clerical staff employed in such a factory or undertaking;

(iii) In the case of a commercial establishment other than a clerical department of a factory or an industrial undertaking, a person wholly or principally employed in connection with the business of the establishment, and includes a peon;

(iv) In the case of a restaurant or eating house, a person wholly or principally employed in the preparation or the serving food or drink or in attendance on customers or in cleaning utensils used in the premises or as a clerk or cashier;

(v) In the case of a theatre, a person employed as an operator, clerk, door-keeper, usher or in such capacity as may be specified by the 1[State]



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Government by general or special order;
(vi) In the case of an establishment not falling
under paragraphs
(i) to (v) above, a person wholly or principally
employed in connection with the business of the
establishment and includes a peon;
(vii) In the case of all establishments, a person
wholly or principally employed in cleaning any part
of the premises”

25. As per the above mentioned definition the “persons employed” includes clerical staff employed in a factory or undertaking. According to the learned counsel for the petitioner, the petitioner comes under the definition of person employed. The petitioner is admittedly working as Deputy General Manager Finance and Company Secretary.

26. Now it is required to see the definition of a worker under the Factories Act, 1948. Section 2(l) of the Factories Act, 1948 defines as under:

“2.(l) “worker” means a person employed,
directly or by or through any agency (including a



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contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union; (m) “factory” means any premises including the precincts thereof—

27. Therefore on considering the definition of the person employed under Section 212 of the TNSE Act read with Section 2(l) of the Factories Act, it cannot be said that the petitioner being the Deputy General Manager Finance and Company Secretary of the second respondent company is a clerical staff.

28. The legislature is has made clear distinction between the



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clerical staffs employed in a factory and the officer of managerial and superficial cadre. If the interpretation of the petitioner is accepted all the supervisory and the managerial staff of any factory will come under the definition of the person employed, thereby provisions of the TNSE Act will get attracted. It is specifically mentioned under Section 212 of TNSE Act that only clerical staff employed in the factory will fall under the definition of person employed. Therefore at any stretch of imagination, the Deputy General Manager Finance and Company Secretary of the company cannot be said to be a clerical staff employed in the factory or undertaking. Therefore, his contention that he falls under the definition of person employed under Section 212 of the TNSE Act cannot be accepted.

29. In view of the discussions made above, the petitioner has failed to make out case to set aside the impugned order dated 30.10.2018 made in TNSE -II/2/2016 passed by the first respondent.

30. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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Dr.D.NAGARJUN, J.
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To

1. The Deputy Commissioner of Labour,
(Minimum Wages)
(Appellate Authority under the TNSE Act)
Office of the Commissioner of Labour,
DMS Campus Teynampet,
Chennai-600 006.

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