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W.P.No.29658 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.29658 of 2015

M.Mytheen

..Petitioner

Vs.

1.The Deputy Commissioner of Labour,
(Appellate Authority), Salem – 7.

2.The General Manager,
Talema Electronic (India) Private India Limited,
Electronic Industrial Estate,
Suramangalam, Salem – 636 005.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its TSEA 5/2002 dated 29.12.2014 (received on 19.03.2015) confirming the order of termination passed by the 2nd respondent in its TAL/PER/102/055/2002 dated 05.03.2002 and quash the same and consequently direct the 2nd respondent to grant all consequential and attendant benefits to the petitioner.



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For Petitioner : Mr.N.Balamuralikrishnan

For 1st Respondent : Mrs.M.Jayanthi
Additional Government Pleader

For 2nd Respondent : Mr.M.R.Raghavan

ORDER

The petition has been filed challenging the order of the 1st respondent dated 29.12.2014, wherein, it is held that the 2nd respondent establishment comes under the Factories Act and hence it will not fall within the Tamil Nadu Shops and Establishments Act.

2. The application filed by the petitioner alleging that the 2nd respondent falls under the Tamil Nadu Shops and Establishments Act has been dismissed on the ground of jurisdiction on 31.12.2003. While the same was challenged by the petitioner in W.P.No.22295 of 2004 this Court has passed an order dated 12.03.2013 holding that the 2nd respondent has to prove that it does not fall within the ambit of Tamil Nadu Shops and Establishments Act. In the said judgment it has been observed as follows:-



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13. At this juncture, it will be useful to refer to the decision of a Division Bench of this Court reported in I L.L.J. (1992) 15 (Automac (M) (P) Ltd., and Deputy Commissioner of Labour and Another), wherein it is held as follows:-

"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 works 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



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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."

14. From the above, it is clear that it is for the second respondent to prove that the petitioner will be governed by the Industrial Disputes Act or any other Act. Even before this Court, the second respondent is not clear or prove as to which Act is applicable or the petitioner is entitled to invoke either the Industrial Disputes Act or The Shops and Establishments Act or Industrial Establishments Act. Anyhow, because the stand taken by the second respondent before the the Labour Officer, Salem, the petitioner has approached the first respondent under the Shops and Establishments Act. In these circumstances, the order passed by the first respondent has to be set aside and accordingly, the same is set aside.

15. The next question that arises for my consideration is that when the case against the three security men ended in acquittal and their dismissal has been set aside on the ground that the charges have not been proved, the charge on which the petitioner was also dismissed from service for his delinquency in supervising the said three security men, who are entitled for



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reinstatement, cannot hold good. However, it is for the first respondent to decide this issue on the basis of the materials available before it on merits and in accordance with law.

3. As the Act applicable to the case of the 2nd respondent Institution was under confusion, this Court has set aside the order, and directed the 1st respondent to re-consider and dispose of the matter afresh after giving opportunity to the 2nd respondent to produce relevant materials. In pursuant to this, the impugned order has been passed on 29.12.2014 holding that the 2nd respondent Company will not fall under the purview of Tamil Nadu Shops and Establishments Act.

4. Now the limited argument raised by the learned counsel for the petitioner is that the very same reasons have been subscribed in the earlier order challenged by him before this Court in W.P.No.22295 of 2004 and now once again the very same reasons have been given for passing the impugned order.

5. But, from the order of the High Court it is seen that during the earlier impugned order there was a cloud as to the Act under which



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the 2nd respondent's Company is covered. Now the impugned order has been passed after considering the materials produced by the 2nd respondent in pursuant to the directions of this Court. Therefore, the argument of the petitioner that the present order has also been passed on the same line in which the earlier order challenged before this Court is not acceptable. Since the petitioner Company did not fall under the purview of the Tamil Nadu Shops and Establishments Act, the petitioner is not entitled to maintain any appeal under the said Act. Hence, it has been rightly rejected.

6. The learned counsel for the petitioner submitted that due to the nature of work assigned to the petitioner, he will not come under the definition of 'workman' under the Factories Act and hence the Act applicable to his case would be Tamil Nadu Shops and Establishments Act.

7. When the institution of petition itself will not fall under the Tamil Nadu Shops and Establishments Act, the individual cannot claim any exception stating that he is covered under the Tamil Nadu Shops and Establishments Act.



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8. In compliance of the directions of this Court, the 1st respondent had considered the documents produced by both sides and analysed that the 2nd respondent Company does not fall under the purview of the Tamil Nadu Shops and Establishments Act. Only on that scope the appeal filed by the petitioner has been dismissed. When the 1st respondent lacks jurisdiction, the petitioner cannot expect the appeal to be dealt by him.

9. As I feel that there is no reason to interfere with the order of the 1st respondent, this writ petition stands **dismissed**. No costs.

26.09.2024

dsa
Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order / Non-speaking order

To:-

The Deputy Commissioner of Labour,
(Appellate Authority), Salem – 7.



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R.N.MANJULA, J.

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