



W.P.No.4727 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.07.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

W.P.No.4727 of 2015

and

M.P.No.1 of 2015

M/s.Infreight Logistics Solutions Ltd,
No.19, Patullos Road,
Chennai – 600 002.
represented by its Chief Financial Officer

... Petitioner

-VS-

1.The Special Deputy Commissioner of Labour,
(Appellate Authority under the Tamil Nadu
Shops and Establishments Act),
Chennai – 600 006.

2.K.S.Srikumar
..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent in TSE-1/19/2011, and quash the impugned



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order dated 15.07.2014.

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For petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

R1 : Court

For R2 : Mr.S.Senthilnathan

ORDER

The petitioner management has challenged the order passed by the first respondent primarily on the ground that the first respondent did not have the jurisdiction to entertain the petition in view of Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, (hereinafter called as “Act”) since it is a case of resignation and not termination.

2. The facts which have led to the institution of this petition are set out hereinbelow.

CASE OF THE 2nd RESPONDENT:



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3. The 2nd respondent had joined the services of the petitioner company on 11.09.2008. Thereafter, the petitioner company had forced its employees to resign and join TVS Logistics. However, the 2nd respondent was asked to continue with the petitioner company. Thereafter, the petitioner company had threatened the 2nd respondent to submit his resignation and offered him his basic salary only, which is contrary to the letter of appointment issued to him.

4. The petitioner company had also forced the 2nd respondent to sign the resignation letter dated 01.07.2011 agreeing to resign with effect from 30.09.2011. Though this letter was not accepted by the petitioner company, it had also not allowed the 2nd respondent to discharge his duties. The 2nd respondent submits that though he is ready and willing to attend office, the petitioner company is not giving him work. Therefore, the 2nd respondent would submit that he continues to be in employment and is entitled



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to all the benefits. Since the petitioner company was not permitting him to rejoin duty, the second respondent filed an appeal in TSE-1/19/2011, in which, the petitioner company had taken out a primary defence that the appeal itself is not maintainable as the appellant therein was not entitled to the protection under the Act.

CASE OF THE PETITIONER:

5. Apart from questioning the jurisdiction, the petitioner company had also submitted that the 2nd respondent had joined the service of the petitioner company only to gain experience for a better job. He was also giving out that he would pass all the secret information including the database to the third parties and was also spreading false and misleading allegations about the petitioner company amongst the employees.

6. It is also the contention of the petitioner company that the 2nd respondent was irregular at work and had absented himself



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without his leave being sanctioned. On 04.08.2011, the second respondent had issued a legal notice admitting that he had resigned from his job *vide* letter dated 01.07.2011 and insisted that he would be entitled to work till the closing hours of 30.09.2011. However, the relief claimed in the said appeal was totally contrary to the request made in the legal notice. The petitioner company had also taken a plea that the second respondent was employed in the management cadre and that the provisions of the Act would not apply to him.

7. The petitioner company would submit that in the month of May 2011, their employees were given an option to join the TVS Logistics after resigning from the petitioner company. The second respondent initially opted to join TVS Logistics Solutions Limited, but, subsequently changed his mind and said that he would continue to work with the petitioner company for some time thereby enabling himself to look for a suitable job. It is thereafter, the



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second respondent had submitted a letter dated 01.07.2011 informing the petitioner company of his desire to resign from the services of the company and requesting the company to treat the said letter as three months notice period commencing from 01.07.2011 and ending on 30.09.2011. After the said letter, the second respondent failed to discharge his duties and did not attend office regularly and had also committed breach of the terms of the non-disclosure clause contained in the offer letter. The petitioner company would submit that the appeal itself is vexatious and is devoid of merits.

8. The first respondent, on considering the evidence let in before him both oral as well as documentary, came to the conclusion that since the second respondent's services have been abruptly stopped by not granting work to him, the petitioner company had terminated his service and therefore, the termination order issued by the management is invalid and directed the second



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respondent to file a claim petition before the appropriate forum under the appropriate Act and seek remedy.

9. Challenging this order of the first respondent, the petitioner company is before this Court.

10. Mr.Anand Gopalan, learned counsel representing M/s.T.S.Gopalan and Co., learned counsel on record for the appellant would address his argument primarily on the ground that the appeal was not maintainable under Section 41(2) of the Act, since the second respondent had tendered his resignation. He would refer to the letter dated 01.07.2011 (Ex.A2) given by the second respondent, wherein, he has stated that he was tendering his resignation which has been reiterated in the legal notice dated 04.08.2011 (Ex.A3). He would also submit that the second respondent has not withdrawn the said letter of resignation and therefore, at the closing hours of 30.09.2011, he is deemed to have resigned from service of the petitioner company. He would also



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refer to the oral evidence of the second respondent as W.W.1 where he has stated that from the date of his appointment till the date he had submitted his resignation, he has been working in a managerial post. Therefore, the learned counsel would submit that the second respondent having tendered his resignation, cannot now turn around and state that he has been terminated from service. Further, he has also admitted that he is working in a managerial post. He would submit that therefore, the impugned order requires to be reconsidered.

11. He would also rely upon the judgment in the case of ***C.R.Ramaswami vs. Messrs. Needle Industries (I) Ltd & another*** reported in (1981) 94 LW 87, wherein, a Division Bench of this Court was considering the jurisdiction of the appellate authority in the case of the resignation of an employee. The Bench had held that when the employee has signed his resignation letter requesting the management to accept the same and relieve him from duty, the



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same was not a case of termination, but, a case of resignation and hence, the provisions under Section 41(2) of the Act would not apply to him. The Bench had gone on to state that the provisions under Section 41(2) of the Act do not contemplate the case of letter of resignation being submitted and thereafter, the employee contending that the letter of resignation was obtained under threat and coercion.

12. Per contra, Mr.S.Senthilnathan, learned counsel appearing on behalf of the second respondent would submit that it is no doubt true that the workman had submitted the resignation letter. However, it is the contention of the workman that this resignation letter dated 01.07.2011 was obtained under threat and coercion. Be that as it may, the letter of resignation contemplated three months notice period. However, the petitioner company had not accepted the said resignation letter which is evident from a mere perusal of their reply notice dated 12.08.2011, wherein, they



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have clearly and categorically contended that the resignation letter was not accepted by them. This statement was once again reiterated in the counter statement filed by them. Therefore, in the light of the petitioner company not accepting the resignation, it cannot be stated that the second respondent had resigned.

13. Pending the notice period also, from 03.08.2011, the petitioner company had not assigned the second respondent with any other duty. This fact has been admitted by the petitioner company in their reply notice, wherein, they had admitted that from 03.08.2011 no work had been assigned to the second respondent. Once again, in the counter statement filed before the first respondent, they have reiterated the same. Therefore, it is a clear case of denial of duty and consequently, a termination. He would, therefore, submit that the authority below has rightly allowed the appeal filed by the second respondent herein.



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14. Heard the learned counsel on either side and perused the materials available on record.

15. Since the petitioner company relies upon the provisions under Section 41(2) of the Act to state that the authority below did not have jurisdiction, it would make useful purpose by reading the same which is as follows:

“Notice of dismissal – (1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided, however, that such persons are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose;

(2)The person employed shall have a right of appeal to such authority and within such



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time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(3)The decision of the appellate authority shall be final and binding on both the employer and the person employed.”

A mere reading of this section clearly indicates that it is only an employee whose services had been dispensed with, where he is not guilty of misconduct as held by the employer, could invoke the jurisdiction under the Act.

16. In the instant case, Ex.A2 is the document upon which the petitioner company heavily relies upon to state that the second respondent had rendered his resignation. A reading of the letter would confirm the same. In the said letter, the second respondent has stated as follows:

“.....I hereby tender my resignation from the



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services of your organization. Kindly accept the same and relieve me from all the responsibilities of the company with effect from the closing hours of September 30, 2011 being the three months working notice. In accordance with the clause on notice period, I will be working with your organization till 30th September 2011.”

17. However, in the legal notice which has been issued on 04.08.2011 (Ex.A3), the second respondent has stated that he has been forced to execute the resignation letter. In the said legal notice, it is also stated that the second respondent did not want to make an issue on the forcible resignation sought for. However, the second respondent has in the said legal notice stated that the resignation letter has not been acknowledged by the petitioner company. In the said notice, he has stated as follows:

“...Even that letter was not acknowledged but to the surprise of my client you did not allow him to discharge his duties and attend to normal



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work till 30th September 2011, but took away the Attendance Register from the office of Infreight situated at No.19, Pattulos Road to No.21, Patullos Road.”

18. To the aforesaid notice, the petitioner company has sent a reply notice dated 12.07.2011 marked as Ex.A4, wherein, they have in clear and catergoric terms stated as follows:

“....Since the said letter contained various conditions, our client did not accept the same.”

18.1. This statement is reiterated in the counter statement filed by the petitioner company before the first respondent, wherein, they have reiterated the same as follows:

“... Since, the said letter contained several unreasonable conditions, the respondent herein did not accept the same”



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19. That apart, in the rejoinder to the reply notice, the second respondent has stated that he is deemed to be in continued employment and that he is entitled to all wages and benefits of the office.

20. Be that as it may, considering the fact that the petitioner company has accepted that the resignation letter has not been accepted by them and that they had not allotted work to the second respondent, it is a clear case of termination. In the reply notice, the petitioner company has admitted as follows:

“..... It is true that your client was not assigned duty from 03.08.2011 on account of irregularities and malpractices committed by your client as mentioned supra and due to his continued unauthorized absence from duty.”

This contention has been reiterated in the counter statement filed by them.



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21. Therefore, the finding of the first respondent cannot be found fault with and I see no reason to disagree with the same. The judgment referred to by the petitioner company would not be applicable, since, from the document, it is clear that the petitioner company has terminated the workman by not accepting the resignation letter of the second respondent and by admitting that from 03.08.2011, they had not allotted work to the second respondent.

In the light of the above, this writ petition stands dismissed.
Consequently, connected M.P. stands closed. No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To



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The Special Deputy Commissioner of Labour,
(Appellate Authority under the Tamil Nadu
Shops and Establishments Act),
Chennai – 600 006.



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P.T.ASHA, J.,

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