



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.13556 of 2022
and W.M.P.No.12756 of 2022

T.Anoop Raaj

... Petitioner

Vs.

1. The Special Joint Commissioner of Labour
(Appellate Authority under Tamil Nadu Shops and
Establishment Act, 1947),
Commissioner of Labour
DMS Compound, Teynampet,
Chennai – 600 006.

2. The Managing Director,
Gujarat Co-op Milk Marketing Federation Ltd.,
Amul Dairy Road,
Anand 388 001.

3. The General Manager,
Gurajat Co-op Milk Marketing Federation Ltd.,
No.58 Old No.104, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for
issuance of Writ of Certiorarified mandamus to call for the concerned records
from the first respondent, quash the order of the first respondent dated
11.03.2022 in TNSE-1/IA 3 of 2021 as illegal, arbitrary and contrary to law



W.P.No.13556 of 2022

and consequently direct the first respondent to decide TNSE No.1/19/2008 on its merits and in accordance with law within the time frame stipulated by this Court.

For Petitioner	:	Mr.Balan Haridas
For R1	:	Mrs.M.Jayanthi Additional Govt. Pleader
For R2	:	Mr.P.Raghunathan for M/s.T.S.Gopalan & Co. for R2
For R3	:	No appearance

ORDER

This writ petition has been filed challenging the orders of the first respondent dated 11.03.2022 made in I.A.No.3 of 2021 in TNSE-1/IA 3 of 2021.

2. The petitioner has filed an appeal before the first respondent / appellate authority by challenging his termination. While the appeal was pending before the first respondent the respondents 2 and 3 have filed an application to direct the petitioner to produce certain documents and subject himself for examination. The first respondent had considered the said application and allowed the same and granted the relief as requested by the respondents 2 and 3.



3. Mr.Balan Haridas, the learned counsel for the petitioner, submitted that the above order has been passed by invoking the powers of the first respondent under Section 41 2(A) of the Tamil Nadu Shops and Establishments Act (hereinafter referred as “the Act”). But the said provision is applicable only for summoning and enforcing the attendance of any third persons and not the parties to the proceedings.

4. Mr.P.Raghunathan, the learned counsel for the second respondent submitted that the word “Any person” employed in the provision is applicable to the parties to the proceedings as well and hence the order of the first respondent is only in accordance with the provision.

5. For purposeful appreciation of the matter, Section 41 2(A) of the Act under which the impugned order has been passed is extracted hereunder:

“ 41 2(A): The appellate authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such person. For the aforesaid purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-



W.P.No.13556 of 2022

WEB COPY

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witnesses

6. The above provision would give the powers of a Civil Court to the appellate authority to summon or enforce the attendance of any person and to examine him on oath and compelling the prior production of certain documents and issue commissions for the examination of witnesses. Even though the civil procedure and rules of evidence are not strictly applicable to the quasi judicial proceedings that is being conducted by the first respondent, the Act would say that the authority would have the powers of the Civil Court so far as it relates to production of certain documents and summoning and enforcing the attendances of any person for the purpose of the proceedings.

7. So far as the impugned order is concerned, that has already originated from an application made by the respondents 2 and 3 for seeking production of certain documents on the allegation that the petitioner is working at abroad and that is the reason why he is delaying the proceedings to the extent possible. Admittedly, the appeal has been filed in the year 2008 and it has not yet been



disposed so far. However, it is the contention of the respondents 2 and 3 that the petitioner is making delaying tactics.

8. Section 41 2(A) of the Act would empower the appellate authority to issue certain orders for the purpose of getting the evidence relevant to the proceedings, in case the same is in the custody of any third persons and certain matters are within the knowledge of the third person. However, it is submitted by the learned counsel for the respondents 2 and 3 that the word “any person” would include the parties to the proceedings also. A person who is being a party to the proceedings will always have the burden to prove his contentions. If a party intends to come to the witness box and gets himself examined as a witness, that would give advantage to the other party also to cross-examine. There is no hurdle in compelling a party to the proceedings to appear before the Court for the purpose of examination irrespective of the fact whether the phrase “any person” includes a party or not.

9. So far as the production of a document is concerned, it is always open to a party to the proceedings to issue notice to the other side to call for the production of documents if the documents are proved to be in the custody of a party to whom the notice is issued. Apart from furnishing notice, the appellate



authority can also issue summons for production of documents. The only difference between the notice for producing the documents and the summons issued by the appellate authority for production of documents is the status of the person who is obliged to produce those documents.

10. If a party holding to the documents is a party to the proceedings, the other party need not take the cumbersome process of filing an application to the appellate authority for seeking an order of summons and he himself can issue notice to the other side to produce documents by submitting a copy to the Court. If the other party who is holding the custody refuses to produce the document, that would take the risk of drawing an adverse presumption against him. So far as the third parties are concerned, if they refuse to produce the documents in pursuant to the summons issued to them or refuse to appear before the Court as witnesses, then the authority concerned will have the powers to initiate proceedings for committing contempt. That is the only difference which would be made between the parties to the proceedings and the third parties who are bound to make their appearance as witnesses or produce documents on summons.



11. In the instant case the appellant authority appears to have issued summons to the party to the proceedings which is unnecessary though in the interest of justice the petitioner might be under an obligation to examine himself or produce documents which are said to be in his custody. If the petitioner takes the risk of not examining himself and deprive the other party to subject himself for cross-examination in respect of certain matters within his knowledge and he had also refused to produce the relevant documents which are proved to be in his custody, then he is bound to take the risk of facing an adverse presumption against him. In such a context of the matter, the impugned order passed by the Appellate Authority is unnecessary though it is an irregular order.

12. All that the respondents 2 and 3 wanted from the petitioner is to produce his password and bank passbook in order to prove that he is gainfully employed elsewhere more specifically in overseas. If the petitioner does not find any problem to produce those documents, then it is always open to him to consider this order as a notice to produce documents and leave it to the appreciation of the appellate authority. It is up to the petitioner to make his appearance or not for getting himself examined as witnesses.



W.P.No.13556 of 2022

13. In view of the above observation, this Writ Petition is disposed by considering the impugned order itself as an notice issued to the petitioner to produce documents and the petitioner can produce those documents within a period of two weeks from the date of receipt of a copy of this order and on his failure to produce the same it is up to the appellate authority to pass appropriate orders in the light of the above observation. In view of the long pendency of the matter, the first respondent authority is directed to dispose of the main matter itself, within a period of six weeks thereafter. No costs. Connected miscellaneous petition is closed.

29.10.2024

Index : Yes
Neutral citation : Yes
Speaking Order
bkn



W.P.No.13556 of 2022

WEB COPY

To:

1. The Special Joint Commissioner of Labour
(Appellate Authority under Tamil Nadu Shops and
Establishment Act, 1947),
Commissioner of Labour
DMS Compound, Teynampet,
Chennai – 600 006.



WEB COPY



W.P.No.13556 of 2022

R.N.MANJULA, J.

bkn

W.P.No.13556 of 2022

29.10.2024