



W.P.No.24688 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

CORAM

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No.24688 of 2024

G.Sivakumar

.. Petitioner

Vs

1.P.Amirthakandesan

Proprietor of S.Panduranga Chettiar Traders
Fertilizer, Pesticides, Seeds and Cement
No.33-C, T.V.N. Road,
Ulundurpet – 606 107.

2.The Labour Assistant Commissioner,

Integrated Labour Office Building,
Government Industrial Training Building,
Abdulapuram, Vellore – 632 010.

..

Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.No.E2/2014/2023 dated 04.06.2024, quash the same and direct the second respondent to conduct an enquiry as contemplated under Section 41(2) of The Shops and Establishments Act.



W.P.No.24688 of 2024

For Petitioner .. Mr.G.Surya Narayanan
For Respondents .. Mr.C.Munusamy for R1
Mr.K.Tamilvendan,
Government Advocate for R2

ORDER

The writ petition is filed challenging the order dated 04.06.2024 made in Na.Ka.No.E2/2014/2023 and consequently to direct the second respondent to conduct an enquiry as contemplated under Section 41(2) of The Shops and Establishments Act, 1947.

2. It is the case of the petitioner that he was employed with the first respondent from 2007 upto 2021. He was a permanent employee. All of a sudden, on 17.11.2021, without any reasonable cause, he was not allowed to enter the work space and was terminated from service. The first respondent is an establishment within the meaning of Section 41(2) of The Shops and Establishments Act, 1947 (hereinafter 'the Act') and as such aggrieved by his non-employment, he had filed an appeal dated 12.06.2023 before the second respondent under Section 41(2) of the Act. However, by oversight, without proper application of mind, treating the same as if



W.P.No.24688 of 2024

it is a dispute and as if the petitioner has approached the second respondent for conciliation, the impugned order was passed as if the conciliation has failed and a failure report is drawn up by way of impugned order.

3. I have heard Mr.G.Surya Narayanan, learned counsel for the petitioner, Mr.C.Munusamy, learned counsel for the first respondent and Mr.K.Tamilvendan, learned Government Advocate for the second respondent.

4. On a perusal of the impugned order dated 04.06.2024, it can be seen that the exercise is carried out as if the petition is under Section 2-A of The Industrial Disputes Act, 1947. On the contrary, on a perusal of the appeal filed by the petitioner, it can be seen that it is filed under Section 41 of the Act and it is filed in the proper format and it is with the relief to reinstate the petitioner with backwages and to permit him to continue in service with all monetary benefits. Therefore, it is an obvious error on the part of the second respondent to treat the same as a conciliation with reference to petition under Section 2-A of The Industrial Disputes Act. In view thereof, the writ petition is allowed on the following terms:



W.P.No.24688 of 2024

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4.1 The impugned order dated 04.06.2024 made in Na.Ka.No.E2/2014/2023 stands quashed;

4.2 The second respondent is directed to take the said appeal on file as an appeal under Section 41 of the Act and enquire into the same in accordance with law and pass final orders thereon. The said exercise shall be completed within a period of six months from the date of receipt of a copy of this order;

4.3 All the contentions of both parties are left open and this Court has not gone into the merits or otherwise of the relevant contentions of both parties.

There shall be no order as to costs.

12.12.2024

Index:No
Neutral Citation:No
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W.P.No.24688 of 2024

To

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WEB COPY



W.P.No.24688 of 2024

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.24688 of 2024

12.12.2024

Page 6 of 6