



WEB COPY



W.P.No.23406 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.23406 of 2023
and
W.M.P.13013 of 2024

Shell India Markets Pvt Ltd.,
Represented by M.Karthikeyan, ER/IR Advisor,
Shell Business Operations
II Floor Campus 4-A,
RMZ Millenia Business Park,
143, Dr.M.G.R.Road,
Perungudi,
Chennai – 600 096.

...Petitioner

Vs.

1. The Appellate Authority under Tamil nadu,
Shops and Establishment Act 1947,
Joint Commissioner of Labour (Minimum Wages)
DMS Complex,
Chennai – 600 006.

2. Sunil Muralidhar Panicker

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent and quash the impugned order dated 31.05.2023 made in TNSEII/I.A/02/2020 and direct the first respondent to reject the appeal in T.N.S.E.1/2022.



W.P.No.23406 of 2023

For petitioner : Mr.M.Vijayan
for King and Patridge
For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
For R2 : No appearance

ORDER

This writ petition is filed to quash the order dated 31.05.2023 made in TNSEII/I.A/02/2020 and direct the first respondent to reject the appeal in T.N.S.E.1/2022.

2. It is submitted by the learned counsel for the petitioner that on receipt of a complaint dated 31.05.2019 from a women employee against the second respondent, the petitioner organization has issued show cause notice dated 03.06.2019 to the second respondent and initiated proceedings against him as per the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and on conclusion of the enquiry, the second respondent was terminated from service.



3. Aggrieved by the said termination, the respondent has preferred an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishment Act, 1947 before the first respondent. The petitioner organization has filed I.A. In the said appeal stating that the first respondent appellate authorities has no jurisdiction as the second respondent should have filed an appeal under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

4. It is submitted by the the learned counsel for the petitioner that the petitioner has submitted his arguments on 08.12.2022 before the women presiding officer and the first respondent authority in I.A.02 of 2020 which was filed questioning the jurisdiction of the first respondent authority in entertaining the appeal of the second respondent. It is also submitted that subsequent to the submission of the arguments the said women Presiding Officer was transferred. However, the new male Presiding Officer who has taken charge has passed impugned orders dated 31.05.2023 without hearing the petitioner and therefore, sought for setting aside the same.



5. The learned Additional Government Pleader representing the first respondent has submitted that basing on the material available on record including the written submissions submitted by the petitioner organization, impugned orders dated 31.05.202 have been passed.

6. Heard both sides and perused the materials available on record.

7. The principles of natural justice requires fair opportunity has to be given to the petitioner organization to make submissions in respect of I.A.2 of 2020 filed by the petitioner challenging the jurisdiction of the appellate authority under the Tamil Nadu Shops and Establishment Act, 1947. However, as submitted by the learned counsel for the petitioner though, he has made submissions before the women Presiding Officer on 08.12.2022, after her transfer, her successor male officer has passed orders dated 31.05.2023. Once the submissions were made before the women Presiding Officer and if the women Officer is not able to dispose of the same on account of her transfer, then the successor officer is expected to re-open the same and give opportunity to make their submissions to both the parties. However, the officer has disposed of the I.A.2 of 2020 on 31.05.2023 without hearing both the parties.



W.P.No.23406 of 2023

WEB COPY

8. Therefore, keeping in view of the submissions, since opportunity was not given to the petitioner organisation and the respondent to make their submissions, this Court is of the opinion that the said impugned orders can be set aside and matter can be remanded back it to the first respondent authority with a direction to dispose of the same by giving fresh opportunities to the petitioner organisation and respondent and to dispose of the same afresh.

9. In view of the above, this writ petition is disposed of by setting aside the impugned orders dated 31.05.2023 and the matter is remanded back to the first respondent authority to hear the petitioner as well as the respondents and decide the I.A.No.2 of 2020 on merits as quickly as possible not later than six weeks from the date of receipt of a copy of this order. Connected W.M.P is closed. No costs.

29.07.2024

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Index	:	Yes/No
Internet	:	Yes/No
Citation	:	Yes/No



WEB COPY



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Dr.D.NAGARJUN,J

vca

To

The Appellate Authority under Tamil nadu,
Shops and Establishment Act 1947,
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