



W.A.No.2819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.2819 of 2023
and C.M.P.Nos.23498 and 23499 of 2023**

Maveric Systems Limited
Lords Tower,
Rep. by Mr. Vignesh Muthupandian,
Block No.1, 2nd Floor,
Plot Nos.1 and 2, NP,
Jawaharlal Nehru Salai,
Thiru.Vi.Ka Industrial Estate,
Ekkaduthangal, Chennai – 600 032 ... Appellant/Petitioner

Vs.

1.Ajith Ashutosh Kallem

2.The Joint Commissioner of Labour,
(Authority constituted under Sec.41
of Shops and Establishment Act, 1941)
DMS, Labour Building, Teynampet,
Chennai – 600 006 ...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent against the order passed by this Court in W.P.No.28109 of 2016 dated 06.07.2023, thereby, direct the 2nd respondent to take up the issue of maintainability as preliminary issue and decide the same.



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For Appellant : Mr.Ravi Kumar Paul
Senior Counsel

For Respondents : Mr.John Zakariah for R1
T.Chezhian for R2
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was made by P.Dhanabal,J.)

This Writ Appeal has been filed challenging the order passed by the learned Single Judge made in W.P.Nos.28109 of 2016 dated 06.07.2023, wherein the petitioner herein had filed the writ of mandamus, directing the 2nd respondent to frame a preliminary issue as to the maintainability of the appeal in TNSE Case Nos.I/1 of 2015, filed under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 and render a finding in the same before proceeding with the said appeal on merits.

2. The Writ Court after hearing both sides had disposed of the writ petitions by observing that the grievance of the petitioner is that the second respondent has no jurisdiction to entertain the appeal filed by the first respondent and the petitioner can very well canvass all the issue



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along with the main issue before the 2nd respondent, however filing these writ petitions and stalling the entire proceedings is not sustainable one. As against the said order, the present writ appeal has been filed by the petitioner.

3. Learned counsel appearing for the appellant would contend that the appellant and the first respondent had entered into an agreement for a contractual period of five(5) years in providing Telecom space by operating variety of services for the said contractual period. Since the first respondent did not fulfill the guidelines set out in the said agreement, the appellant had terminated the service of the first respondent prior to the contractual period by informing the respondent that three months remuneration in lieu of notice can be payable and the same can be collected on completion of necessary formalities.

4. While so, the first respondent filed an appeal in Appeal in TNSE No.I/1 of 2015 before the second respondent against the termination of services. Consequently, the appellnat-Management filed a counter to the said appeal, stating that the appeals are not maintainable



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in view of G.O.Ms.No.1410 dated 20.03.1948, which exempts persons employed permanently on contract for a fixed periods from the provisions of Section 41 of Tamil Nadu Shops and Establishment Act 1947.

5. The 2nd respondent without framing preliminary issue as to the maintainability of the appeal filed by the 1st respondent, kept it pending without deciding the issue as to the maintainability and adjourned the appeal periodically for cross-examination. Therefore, the appellant has filed the writ petition directing the second respondent to frame the preliminary issue as to the maintainability of the Appeal under Section 41 of Tamil Nadu Shops and Establishment Act 1947. The learned Single Judge without considering the above said provision under Section 41 of Tamil Nadu Shops and Establishment Act 1947 and G.O.Ms 1410 dated 20.03.1948, disposed the petition to canvass the same before the 2nd respondent. Therefore, the order passed by the Writ Court is liable to be set aside.

6. Learned counsel appearing for the 1st respondent would



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contend that Section 41 of Tamil Nadu Shops and Establishment Act 1947 is applicable to his case and the exemption in G.O 1410 dated 20.03.1948 is not applicable to this first respondent since the contract was terminated before the contractual period. Therefore, the appellant can agitate his defence before the second respondent when the appeal is pending before the second respondent. The appellant also filed a counter in the said pending appeal before the 2nd respondent. Therefore, the Writ Court has correctly disposed of the writ petition by directing the petitioner/appellant to canvass the same before the 2nd respondent/Appellate authority. Therefore, the order passed by the Writ Court is in order and the present Writ appeal is liable to be dismissed.

7. The main contention of the appellant is that as per G.O.Ms. No.337, Development, 30th March, 1948, the applicability of Section 41 of Tamil Nadu Shops and Establishment Act 1947 is exempted for the persons permanently employed on contract for a fixed period. In this context, it is relevant to extract the G.O.Ms. No.337, Development, 30th March, 1948 hereunder:

“In exercise of the powers conferred by Section 6



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*of the Madras Shops and Establishments Act, 1947
(Madras Act XXXVI of 1947, His Excellency the
Governor of Madras hereby exempts permanently
persons employed on contract for fixed periods from the
provisions of Section 41 of the said Act.”*

8. On careful perusal of the aforesaid G.O., permanently persons employed on contract for fixed period are exempted from the provisions of Section 41 of Tamil Nadu Shops and Establishment Act 1947.

9. According to the respondent, since the contract was terminated before the contractual period, the exemption under the G.O.Ms. No.337 for the provisions of Section 41 of Tamil Nadu Shops and Establishment Act 1947 will not attract. At this juncture, the learned counsel appearing for the 1st respondent seeks permission of this Court to grant liberty to the 1st respondent to file a suit before the Appropriate Forum in accordance with law and for limitation purpose, the pendency of the proceedings before the Courts may be excluded under Section 14



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of the Limitation Act.

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10. Learned counsel appearing for the appellant also has no objection to grant liberty to the 1st respondent to seek his remedy before the appropriate forum in accordance with law. Therefore, in view of the submissions made by both the learned counsels and without going into the merits of the case, this Court is inclined to grant liberty to the 1st respondent to initiate appropriate proceedings before Competent Authority in accordance with law and the period in which the matter was pending before the Court shall be excluded for the purpose of Limitation.

11. With the above observation, this Writ Appeal is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

(J.N.B,J.) (P.D.B., J.)
02.04.2024

Index : Yes / No
Internet : Yes/No
Speaking order: Non-speaking order
Neutral citation: Yes/No
msv
To
The Joint Commissioner of Labour,
(Authority constituted under Sec.41



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of Shops and Establishment Act, 1941)

DMS, Labour Building, Teynampet, Chennai – 600 006

J. NISHA BANU, J.

and

P.DHANABAL, J.

msv

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