



WEB COPY



W.P.No.30

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.30774 of 2017

and

WMP.No.33704 of 2017

1. The Management of M/s. JNTL CONSUMER HEALTH (INDIA) Private Limited,
Rep. by its Managing Director,
Arena Space, Behind Majas Bus Depot,
Off. J.V.L.R. Jogeshwari (East), Mumbai- 400 060.

2. V.S.Shirodkar,
Vice President (HR and Administration)
M/s. JNTL CONSUMER HEALTH (INDIA) Private Limited,
Rep. by its Managing Director,
No.30, Forjett Street, P.B.No.9301,
Mumbai-400 036.

3.M/s. JNTL CONSUMER HEALTH (INDIA) Private Limited,
Rep. by its Sales Manager (South),
Consumer Products Division, 499, Anna Salai,
Chennai-600 018.

(P1 TO P3 ARE CAUSE TITLE AMENDED AS PER
ORDER DATED 27.02.2024 IN WMP.27207/2023 IN WP.30774/2017)

...Petitioners

vs.



W.P.No.30

1.Appellate Authority under Tamilnadu Shops
and Establishment Act-1947,
Special Deputy Commissioner of Labour,
DMS Compound, Tyenampet,
Chennai-600 006.

2.P.Vasudevan

...Respondents

Writ petition is filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari, to call for the records
connected with TNSE-5/2009 on the file of the first respondent, Appellate
Authority under the Tamilnadu Shops and Establishment Act and quash
the order dated 21.10.2016 passed by the 1st Respondent.

For Petitioners : Mr.Sanjay Mohan
for Mr.S.Ramasubramaniam & Asso.
For Respondents : Mr.P.Sanjaygandhi,
Government Advocate for R1
Mr.K.M.Ramesh, Senior Counsel
for Mr.M.Ravi
for R2

ORDER

Writ petition is filed challenging the order of the Appellate Authority
under the Shops and Establishments Act dated 20.10.2016 and to quash the
same.



2. The 2nd respondent joined the services of the 1st respondent as Territory Representative and was promoted to Zonal Manager. On 01.01.1995, the 2nd respondent was promoted and in the promotion order a clause was incorporated about the transfer of service. As per the said clause the 2nd respondent was liable to be transferred anywhere in India. On 29.11.1999, the management transferred the 2nd respondent to its head quarters at Dimapur. The 2nd respondent disobeyed the transfer order by not reporting for duty at the head quarter, at Dimapur. On 12.06.2000, a chargesheet cum enquiry notice was sent to the 2nd respondent for enquiry on 26.06.2000. As the 2nd respondent disobeyed the order of transfer an enquiry was conducted and for the said purpose one Mr. Sathe was appointed as Enquiry Officer. On 26.06.2000, enquiry proceedings were conducted in which the 2nd respondent participated. Thereafter the enquiry officer submitted his report holding that the misconduct of deliberate disobedience of the order of supervisor was proved. Based on the enquiry officer's report, the petitioner's service was terminated on 03.11.2000. The 2nd respondent thereafter, initially filed civil suit in O.S.No.8095 before City



W.P.No.30

Civil Court, Chennai and the same was dismissed vide order dated 29.12.2005. Against the dismissal order, 2nd respondent preferred an appeal in A.S.No.619 of 2006 before the Additional City Civil Court and the same was also dismissed vide order dated 24.04.2008. Thereafter the 2nd respondent filed an appeal in T.S.E 5 of 2019 under the Tamilnadu Shops and Establishments Act, which was allowed vide the impugned order dated 21.10.2016. Challenging the impugned order the petitioner has filed the above writ petition.

3. The learned counsel for the petitioners submits that the only ground on which the appeal was allowed was that the 2nd respondent though given 80 days time for submitting his explanation to the enquiry officers findings as per letter dated 14.09.2000, was terminated before the said period lapsed. The learned counsel submitted that entire approach of the Appellate Authority was not in consonance with law and therefore prayed that the writ petition may be allowed.



W.P.No.30.

4. The learned counsel for the 2nd respondent on the other hand submitted that though the Appellate Authority referred to the various documents filed by the 2nd respondent as well as the petitioners, it failed to consider any of the documents. The counsel prayed that in the event, this Court decides to allow the writ petition, the matter should be remanded to the Appellate Authority for fresh consideration.

5. I have heard both the learned counsels and I have perused the materials placed on record.

6. A bare reading of the impugned order shows that the Appellate Authority did not consider the matter on merits but short circuited the same, by relying on the letter dated 14.09.2000. The appellate authority held that, as the impugned termination order was passed within the period of 80 days granted for submitting the reply of the 2nd respondent, the impugned termination order could not be sustained. In my view, the approach of the Appellate Authority is unsustainable. The Appellate



W.P.No.30

Authority should have gone into the merits of the matter also, more so, when several grounds were raised by the 2nd respondent and abundant evidence was placed before the authority. I am therefore of the view that the impugned order cannot be sustained. Hence the impugned order is set aside.

7. The learned counsel for the petitioner's submits that there was absolutely no explanation given by the 2nd respondent for disobeying the order of transfer and therefore no purpose would be served in remanding the matter. The learned counsel for the 2nd respondent on the other hand submits that even in his letter requesting for VRS, the 2nd respondent had made it clear that he had an old mother to attend to and hence there was justification. Without going into the merits of the case either ways, I am of the view that matter should be remitted to the Appellate Authority to consider the matter afresh on merits and in accordance with law, on the basis of the evidence already filed. The impugned order is therefore set aside and the Appellate Authority is directed to dispose of the Appeal on



W.P.No.30

merits in accordance with law within a period of twelve (12) weeks from the date of receipt of a copy of this order.

In view of the above writ petition is allowed. No costs. Consequently connected WMP is closed.

27.02.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



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W.P.No.30774 of 2017

N.MALA,J

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To
The Special Deputy Commissioner of Labour,
The Appellate Authority, under Tamilnadu Shops
and Establishment Act-1947,
DMS Compound, Tyenampet,
Chennai-600 006.

W.P.No.30774 of 2017

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