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W.P.No.35883 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35883 of 2015

And

M.P.No.1 of 2015 and W.M.P.No.22353 of 2016

M/s.STUD India

Represented by its Authorised Signatory

N.Shankar

... Petitioner

Vs.

1.The Appellate Authority appointed under the
TNSE Act 1947, and Deputy Commissioner of
Labour (Minimum Wages),
Chennai – 6.

2.G.Parvathinathan

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari call for the records of the impugned Order in TNSE Appeal No.II/8 of 2014 dated 11.10.2015 allowing the appeal filed by the second respondent herein U/s.41 (2) of the Tamil Nadu Shops and Establishment Acts 1947, against the petitioner herein praying to set aside the order dated 03.04.2014 by which the second respondent herein was terminated from service with effect from 03.04.2014 and to quash the same as unconstitutional, illegal and unlawful.



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W.P.No.35883 of 2015

For Petitioner : Mr.S.Sathya Narayanan

For Respondents : Mr.K.Surendran for R1
Additional Government Pleader
Mr.A.Maheshnath for R2

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of the order in TNSE Appeal No.II/8 of 2014 dated 11.10.2015 allowing the appeal filed by the second respondent U/s.41 (2) of the Tamil Nadu Shops and Establishment Acts 1947, against the petitioner herein praying to set aside the order dated 03.04.2014 by which the second respondent herein was terminated from service with effect from 03.04.2014 and to quash the same as unconstitutional, illegal and unlawful.

2.The case of the petitioner is that the second respondent joined the petitioner company as Assistant General Manager cum Senior Operator on 18.01.2013 though he was appointed by the petitioner company on 20.11.2012. The second respondent was allowed to take care of the entire management affairs and also dealings with the vendors as well as clients, however, the second respondent stooped to the level of creating delivery challans at his own and sending the same



W.P.No.35883 of 2015

to the supplier without doing any job work and as such he misappropriated a sum of Rs.1,24,580/-, which is seen from the invoice raised by M/s.Sakthi Enterprises. Hence, the petitioner issued show cause notice to the second respondent on 26.03.2014.

3.The further case of the petitioner is that the second respondent instead of giving his explanation, sent his resignation on the same day through e-mail. On 27.03.2014, the petitioner sent e-mail reply to the second respondent refusing to accept his resignation on the ground of financial irregularities and the second respondent was suspended from service. Thereafter enquiry was conducted and the second respondent was terminated from service on 03.04.2014. Thereafter, the second respondent filed appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 seeking to set aside the order of termination dated 03.04.2014.

4.The further case of the petitioner is that after the termination of the second respondent, the petitioner found further malpractices and misappropriation of funds and hence the petitioner lodged police complaint dated 18.02.2015, for which CSR No.112 of 2015 dated 19.02.2015 was issued and since there was no progress in the



W.P.No.35883 of 2015

investigation, the petitioner filed Crl.O.P.No.5748 of 2015 before this Court and pursuant to the order of this Court dated 08.04.2015, F.I.R. in Crime No.1216 of 2015 dated 06.06.2015 was registered against the second respondent and the same was marked as Ex.R19 before the first respondent, however, the first respondent passed the impugned order directing the petitioner to reinstate the second respondent in service with continuity of service and all attendant benefits. Hence, this writ petition.

5.The learned counsel appearing for the petitioner submitted that though the second respondent sent his resignation through e-mail, since he was involved in misappropriation of funds, his resignation was not accepted and enquiry was conducted and since the Enquiry Officer drawn proven minute, he was terminated from service. However, the first respondent passed the impugned order on the ground that the petitioner did not lodge police complaint immediately after commission of misappropriation of funds and that the petitioner failed to include the name of M/s.Sakthi Enterprises in the F.I.R., which is clearly perverse finding and is liable to be set aside.



W.P.No.35883 of 2015

6.The learned counsel appearing for the second respondent submitted that the sum and substance of the allegations against the second respondent is that the second respondent prepared bogus bills by issuing cheque in favour of M/s.Sakthi Enterprises, however, no staff of M/s.Sakthi Enterprises was examined by the petitioner before the first respondent. The learned counsel further submitted that the second respondent was terminated from service without conducting any enquiry and further submitted that no document was marked on the side of the petitioner with regard to the enquiry conducted by them, thereby the first respondent passed the impugned order directing the petitioner to reinstate the second respondent in service with continuity of service and all attendant benefits, which warrants no interference.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The facts of the case is not in dispute. Admittedly, the petitioner made allegations against the second respondent, due to which, the second respondent sent his resignation through e-mail on

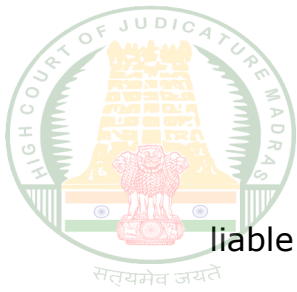


W.P.No.35883 of 2015

on 26.03.2014. On 27.03.2014, the petitioner sent e-mail reply to the second respondent refusing to accept his resignation on the ground of financial irregularities and the second respondent was suspended from service and the second respondent was terminated from service on 03.04.2014 within seven days from the date of reply. This itself shows that enquiry was not conducted in the manner known to law, which is clear violation of principles of natural justice. Admittedly, the second respondent rendered service only for one year and two months.

9.In view of the strained relationship between the petitioner and the second respondent, ordering reinstatement is not sustainable one. However, considering the service rendered by the second respondent to the petitioner Management, this Court is of the opinion that a sum of Rs.2 Lakhs would be a justifiable compensation to the second respondent.

10.The petitioner Management is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) in full quit to the second respondent, within a period of four weeks from the date of receipt of a copy of this order, failing which, the petitioner Management would be



W.P.No.35883 of 2015

liable to pay interest at the rate of 7.5% p.a., from the date of writ petition till the date of actual payment.

11.The writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

18.03.2025

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Appellate Authority appointed under the TNSE Act 1947, and Deputy Commissioner of Labour (Minimum Wages), Chennai – 6.



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M.DHANDAPANI,J.
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