



WEB COPY



W.P.No.9528 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
(Special Original Jurisdiction)

Reserved on : 25.02.2025

Pronounced on : 02.04.2025

PRESENT:

**THE HON'BLE DR. JUSTICE A.D. MARIA CLETE**

W.P.No. 9528 of 2020

and

W.M.P.Nos.11629 of 2020, 35779 of 2024

The Management  
of M/s. Nipro India Corporation Pvt. Ltd.,  
Door No.59, 4<sup>th</sup> Floor, Krishna Building,  
Flat no.41, 1<sup>st</sup> Avenue, 100 Feet Road,  
Ashok Nagar, Chennai – 600 083.

...Petitioner

Vs.

S.Shankar,  
Plot No. 124, Door No.27/1, Aani Street,  
Chinmaya Nagar Stage – II,  
Virugambakkam,  
Chennai – 600 092

...Respondent

Prayer in W.P.No.9528 of 2020

To issue orders, directions or Writs, particularly a Writ in the nature of Writ of Certiorari calling for the records of the Special Joint Commissioner of Labour, Chennai, the Appellate Authority under the Tamil Nadu Shops and Establishments Act relating to the order dated 14.10.2019 allowing the Appeal in TNSE-1/7 of 2014 and quash the same and issue such further or other orders or directions as this Honourable Court may deem fit and proper in the facts and circumstances of the case.



W.P.No.9528 of 2020

Prayer in WMP No. 11629 of 2020

WEB COPY

To grant an order of ad-interim stay of the order of the Special Joint Commissioner of Labour, Chennai, the Appellate Authority under the Tamil Nadu Shops and Establishments Act dated 14.10.2019 in TNSE-1/7 of 2014 in so far as the direction to pay back wages and all attendant benefits is concerned pending disposal of the above mentioned Writ Petition.

Prayer in WMP No. 35779 of 2024 (filed by the Respondent)

To direct the respondent herein / petitioner in W.P.No.9528/2020 to pay the last drawn wages to the petitioner herein / respondent in W.P.No.9528/2020 every month from the date of the order dated 14.10.2019 till the disposal of the above writ petition and pass such further or other orders.

Appearance of Parties

For Petitioner : M/s.Janani Shankar,  
Shruti Raina and Samudra Sarangi  
Advocates  
For Respondent : M/s.R.Arumugam, A.S.Thambusamy,  
B.Anand, U.Padmanabhan  
and Jebamary, Advocates

JUDGMENT

Heard.

2. The writ petition has been filed by the Management challenging the order dated 14.10.2019 passed by the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947 (Special Joint Commissioner of



WEB COPY

Labour, Chennai) in TNSC-1/7 of 2014. By the impugned order, the Appellate Authority allowed the appeal preferred by the Respondent, set aside the order of termination dated 27.08.2012 (marked as Ex.P3), and directed the Petitioner-Management to reinstate the Respondent with back wages and other attendant benefits.

3. On 24.07.2020, when the writ petition was taken up for admission, notice was ordered. Subsequently, on 05.08.2024, this Court recorded the following:

“In fact, the respondent is offering a settlement either for reinstatement or payment of backwages. The management is also gracious enough to offer the backwages provided the worker could produce the income tax returns in order to show that he was not gainfully employed elsewhere during the interregnum. Since the expectation of the management is also found to be reasonable, the worker can accommodate the said request and see that the dispute is resolved.”

4. Pursuant to the direction of this Court, the Respondent filed a typed set of documents, including copies of his Income Tax Returns, hospital discharge summary, and other relevant records. He also filed W.M.P. No. 35779 of 2024, seeking a direction to the Petitioner to pay the last drawn wages on a monthly basis from the date of the impugned order, i.e., 14.10.2019, until the disposal of the writ petition, as contemplated under



W.P.No.9528 of 2024

Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947.

No orders have been passed on the said petition thus far. The Respondent filed a counter affidavit dated 28.06.2024, supporting and justifying the impugned order.

5. The facts leading to the filing of the present writ petition are as follows: The Respondent was appointed as a District Sales Officer and had served the Petitioner-Company for over 450 days. The appointment order dated 01.06.2011 was filed and marked as Ex.P1. His last drawn salary was Rs.78,226/-. However, his services were terminated by an email dated 27.08.2012, which was filed as Ex.P3. The contents of the said termination order addressed to the Respondent read as follows:

August 27 2012

“Mr.S.Sankar,

You were appointed as Regional Manager NDI – South, vide appointment letter from Nipro India Corporation Pvt. Ltd dated 1<sup>st</sup> June, 2011

This is with reference to you insubordination and non-discipline working leading to the lack of business to the company and unwillingness to work as per the instructed company business manager.

Your performance has been consistently been observed for last 6 months by your business managers and was currently reviewed by the company management with the Sales reporting and target; found that your performance is inconsistent and monthly lowering of Sale affecting the business of company by your managers. It has been



WEB COPY



W.P.No.9528 of 2020

observed that your performance rating are below average and you do not meet the minimum benchmark requirement to clear minimum standards that is impacting the business of Nipro in Southern Region for NDI Division. You are not suitable for job for which your services were requisitioned.

Further, the communication delays by you to your Business managers also have confirmed in the series of email and telephonic communication from March 31<sup>st</sup> 2012 till August 25<sup>th</sup> 2012; and further to company management, where it has been established as a fact that your actions towards the growth of company's business are not as per the company requirement and repeated ignoring guidelines of the management is observed and highlighted by your business managers to you. However, no address of the of the improvement is been seen by your managers and division from your end business development in the region.

Considering the gravity of misconduct the company management has taken the decision to hereby terminate your services. It has thus been decided to dispense with your services w.e.f. 31<sup>st</sup> August 2012. The company hereby waives your notice period as per clause annexure 1 of your appointment letter. You will be relieved from your duties on 31<sup>st</sup> August 2012. You are hereby relieved of your duties subject to clearance of dues.

Company shall compute your dues and send it to you on your permanent address.”

6. Aggrieved by the order of termination, the Respondent filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. The Petitioner, in turn, filed I.A. No. 15 of 2013 challenging the maintainability of the appeal before the Appellate Authority. Since the appeal had been filed with a delay of 219 days, the Respondent also filed a



petition seeking condonation of the said delay. By order dated 06.08.2014, the Appellate Authority condoned the delay. Insofar as the question of maintainability was concerned, as it required a detailed enquiry, the Authority directed that the issue be heard and decided along with the main appeal.

7. In the main appeal, numbered TNSC-1/7/2014, the Respondent examined himself as a witness and produced 15 documents, which were marked as Exs.P1 to P15. On behalf of the Petitioner-Management, one Mr. R. Ramesh, Manager of the Company, was examined, and 8 documents were filed, marked as Exs.R1 to R8.

8. The Appellate Authority framed six issues for consideration. On the first issue, it held that the Petitioner is a commercial establishment within the meaning of the Tamil Nadu Shops and Establishments Act. On the second issue, it concluded that the Respondent qualifies as a "person employed" as defined under Section 2(12) of the Act. As to the third issue, the Authority found that the Respondent's earlier attempt to seek relief under the Industrial Disputes Act was misconceived, as that was not the proper forum; having not pursued that remedy, the Respondent was entitled to invoke the remedy available under Section 41(2) of the Act. On the



WEB COPY

fourth issue, the Authority held that the exemption under Section 4(1)(b) of the Act—applicable to persons whose work involves travelling, and those who are canvassers and caretakers—would not apply to the respondent. Consequently, the management’s objection on that ground was overruled.

9. On the fifth issue, the Appellate Authority found that the dismissal of the Respondent was in clear violation of Section 41(1) of the Tamil Nadu Shops and Establishments Act. It held that there was no reasonable cause for termination, and since the order of termination alleged misconduct without conducting any prior enquiry, it was rendered void. With respect to the sixth issue, in paragraph 72 of the impugned order, the Authority observed as follows:

“In view of the discussions above, for the reasons that (i) the provisions of Tamil Nadu Shops & Establishments Act, 1947 attracted in respect of the respondent-company, (ii) the appellant is a “person employed” within the meaning of Section 2(12) of Tamil Nadu Shops & Establishments Act, 1947, (iii) the appeal filed by the appellant is not hit by the principles of res judicata, (iv) the exemption under Sec.4(1)(b) of the Tamil Nadu Shops & Establishments Act, 1947 is not applicable to the appellant, (v) since the termination of service of the appellant is for misconduct coupled with under-performance / poor performance, the respondent- management did not comply with the express provisions of Tamil Nadu Shops & Establishments Act, 1947 in giving one month notice or one month pay in lieu of



WEB COPY



W.P.No.9528 of 2020

notice and (vi) since stigma is attached to the order of termination as it is for misconduct coupled with under-performance / poor performance, not conducting any enquiry held for that purpose supported by satisfactory evidence as mandated under Sec.41 of Tamil Nadu Shops & Establishments Act, 1947, the appeal filed by Thiru.S.Shankar (appellant) is allowed. The order of termination dated 27.8.2012 issued by M/s. Nipro India Corporation Private Limited, Chennai (respondent) is set-aside and the respondent-management is directed to reinstate the appellant in service with back wages and all attendant benefits.”

10. Challenging the impugned order, learned counsel for the Petitioner not only advanced oral arguments but also filed written submissions dated 27.02.2025, accompanied by supporting decisions. The primary contention was that the Respondent was terminated for a reasonable cause, namely, poor performance. However, the Appellate Authority found that the termination was not only purportedly for a reasonable cause but also amounted to a dismissal for misconduct. A perusal of paragraph 2 of the termination order clearly indicates that the case falls within the realm of dismissal for misconduct. Crucially, no enquiry, as mandated by law, was conducted prior to the termination. Paragraph 2 of the termination order reads as follows:

“This is with reference to you insubordination and non-discipline working leading to the lack of business to the



W.P.No.9528 of 2020

company and unwillingness to work as per the instructed company business manager”

WEB COPY

11. Learned counsel for the Petitioner relied on the decision of this Court in **Allied Sales Corporation v. Deputy Commissioner of Labour**, reported in 1997 (3) LLN 531, to contend that where termination is based on unsatisfactory performance and not on any allegation of misconduct, a domestic enquiry is not required. According to the Petitioner, the existence of a reasonable cause would suffice. However, this is not a case where the Petitioner issued an innocuous order of termination; rather, the termination order served as a cloak for what was, in substance, a dismissal for misconduct. In fact, the very language employed in the termination order makes it evident that the Respondent was dismissed on grounds of insubordination and lack of discipline.

12. The Petitioner also relied on the decision of this Court in **Tata Consultancy Services Ltd. v. J. Crossley** in W.P. No. 27881 of 2005, dated 02.02.2021, to contend that where an authority passes an order without proper appreciation of evidence, such an order would be deemed perverse, warranting interference under Article 226 of the Constitution. However, in the present case, the impugned order is a detailed and



WEB COPY

reasoned one, running into 72 paragraphs, and addresses all objections raised by the Petitioner. It cannot, by any stretch, be characterized as a perfunctory or non-speaking order.

13. Reliance was also placed on the judgment of the Calcutta High Court in **Shyam Sundar Pal v. Union of India**, reported in 1981 SCC OnLine Cal 370, to contend that an employer is under no legal obligation to retain an employee who is found to be unsuitable or unfit for the position held. In such a context, the use of the expression "unsatisfactory performance" in the order of termination cannot be construed as casting a stigma or carrying any blemish.

14. Learned counsel further contended that due notice had in fact been given to the Respondent, and that the finding of the Appellate Authority in this regard was erroneous. In support of this contention, reliance was placed on the decision of this Court in **State Bank of India v. Additional Commissioner for Workmen's Compensation & Another**, reported in 1975 SCC OnLine Mad 24, to argue that where a reasonable cause for termination exists, the mere non-issuance of notice would not render the termination invalid, provided that the wages due to the workman—



including for the period of one month's notice—are duly paid.

WEB COPY

15. The alternative submission of the counsel was that even if it is a case of misconduct, the order of termination cannot be set aside on the sole ground that no enquiry was held. In this context, the counsel placed reliance upon two judgments of the Supreme Court. The first judgment was of the Supreme Court in **United Planters Association of Southern India Vs. K.G.Sangameswaran & Anr.** reported in 1997 (4) SCC 741 and the counsel placed reliance upon the passages found in paragraphs 27 to 29. The second decision was that of a Division Bench judgment of the Madras High Court in **Alitalia Linee Aeree Italiane, S.P.A Vs. Iqbal Y.Munshi & Anr.** reported in 2003 (3) LLN 307. Reliance was placed on para 25 wherein it was observed as under:-

“.... . When we see the order of the appellate authority, it is clear that he has given a specific finding that the termination was brought about for the misconduct on the part of the employee. He, however, refused to go into that question and skirted the same by holding that the said misconduct was not proved in the previous enquiry. That is the only reason why he proceeded to allow the appeal. In the wake of the law in the United Planters case, that was obviously not permissible. There was evidence allowed before him of the misconduct and he was bound to consider whether there was ny misconduct on the part of the respondent. The appellate authority not having done that, it would have been better had the learned single Judge instead of confirming the order remanded the matter to the appellate



authority for reconsideration on that aspect.”

WEB COPY

16. However, the ratio laid down in the *UPASI* case (supra) has been subsequently explained and distinguished by various benches of this Court.

A Division Bench of this Court, in **Santhanaraman v. Management of Needamangalam Co-operative Agricultural Bank Ltd., rep. by its President, Needamangalam, Tiruvarur**, reported in 2007 (8) M.L.J. 96, and later followed by a learned Single Judge in **The Management of Arasoor Primary Agricultural Co-operative Bank Ltd. v. Appellate Authority**, reported in 2010 (3) LLJ 761, held as follows:

“The Supreme Court vide its judgment in *United Planters Association of Southern India v. K.G. Sangameswaran and Anr.* reported in 1997 (2) LLN 73 (SC) held that the power of the authority to take evidence is akin to the power u/s 11A of the I.D. Act. In the present case, such a request of the management cannot be conceded. In the counter statement filed before the authority dated September 5, 2000, no such plea was taken by them and hence no further opportunity need to be given.

The Supreme Court in [Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another](#), has held that in the absence of plea by the management, it is not open to the authority to permit them to lead evidence afresh before the authority. If only the management had asked for such relief, this Court would have granted such a request in the light of the judgment of the Supreme Court and in the light of the judgment of the Division Bench of this Court in *Santhanaraman v. Management of Needamangalam Co-operative Agricultural Bnk*



WEB COPY



W.P.No.9528 of 2020

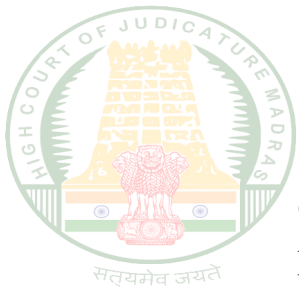
Ltd. Rep. by its President, Needamangalam, Tiruvarur (2007) 8MLJ 96. Hence, W.P. No. 30232/2002 deserves to be dismissed.”

17. Subsequently, in a later decision, another learned Judge of this Court, in **The Management, HDFC Bank Ltd. & Others v. The Appellate Authority under the Shops and Establishments Act, Deputy Commissioner of Labour, Coonoor & Another**, in W.P. No. 7564 of 2021 dated 22.07.2021, held as follows:

“The Appellate Authority is empowered to accept the evidence of the employer in support of the charges framed against the employee and he cannot straightaway set aside the order of dismissal of an employee. In case, the employer does not seek permission to let in evidence, then it is open to the Authority to pass orders setting aside the order of dismissal of the employee, depending upon the merits of the case and available records”

18. In similar circumstances, in the context of the Industrial Disputes Act, the Hon'ble Supreme Court has held that the Management is required to specifically seek permission to adduce evidence in support of its allegations in the pleadings before the adjudicating authority. In **Karnataka State Road Transport Corporation v. Lakshmiddevamma & Another**, reported in (2001) 5 SCC 433, the Court observed as follows:

“It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before labour court / tribunal but essentially the rules of natural justice are to be



WEB COPY



W.P.No.9528 of 2020

observed in such proceedings. Labour courts / tribunal have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court / tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions.”

19. In the present case, neither in the reply statement filed before the Appellate Authority nor in the interim application was there any plea by the Petitioner-Management seeking, in the alternative, permission to lead evidence to substantiate the allegations of misconduct against the Respondent. The essence of law is that, in the absence of such a request, there is no duty cast upon the court or authority to suo motu invite the Management to adduce evidence. Accordingly, this contention is liable to be rejected.

20. Learned counsel for the Petitioner next contended that the relief of reinstatement with back wages, as granted by the Appellate Authority, was not appropriate in the facts of the case, particularly as the employer had lost confidence in the Respondent's services. It was further submitted that reinstatement was not feasible since the position formerly held by the



Respondent no longer exists. In support of these submissions, reliance was placed on the following judgments:

WEB COPY

- a. Assam Oil Company Limited Vs. Workmen, AIR 1960 SC 1264
- b. Air India Corporation, Bombay Vs. V.A.Rebellow & anr., 1972 (1) SCC 814

21. In **Assam Oil Company Ltd.'s** case, reliance was placed on paragraphs 12 and 13, wherein the Supreme Court held that while the ground of loss of confidence by the employer should not be unduly magnified, in the peculiar facts of that case, reinstatement was not considered appropriate and compensation was awarded instead. However, it is pertinent to note that the said decision arose under the provisions of the Industrial Disputes Act. In contrast, under the Tamil Nadu Shops and Establishments Act, the Appellate Authority is empowered only to set aside an order of termination. Similarly, in the **Air India Corporation case**, the Supreme Court held that where a bona fide loss of confidence is established, the order of removal is not open to challenge. It was further held that the employer's opinion regarding the employee's suitability for the assigned role, even if ultimately erroneous, is not subject to judicial review, provided it was formed in good faith.

22. As already noted, the issue of loss of confidence can be



WEB COPY

considered only if the order of dismissal is first found to be justified on the basis of the alleged misconduct. In the present case, the dismissal order dated 27.08.2012 (Ex.P3) contains no reference to any such ground; rather, the plea of loss of confidence was raised for the first time during the course of litigation, as an alternative argument. In this context, it is relevant to refer to the decision of the Supreme Court in **L. Michael & Another v. M/s. Johnston Pumps India Ltd.**, reported in (1975) 1 SCC 574, wherein the theory of loss of confidence was elaborated as follows:

“The law is. simply this : The Tribunal has the power land, indeed, the duty to X-ray the order and discover its true nature, if ,he object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new Armour for the management; otherwise security of tenure, ensured by the new industrial Jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neoformula. Loss of confidence in the Law will be the conse- quence of the Loss of Confidence doctrine.”

23. The learned counsel for the Petitioner further relied on the following three decisions of the Supreme Court to argue that full back



WEB COPY

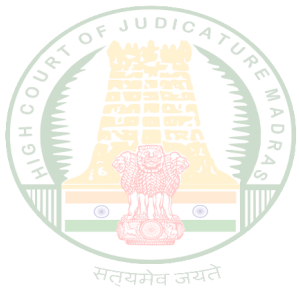
wages cannot be awarded unless the employee proves that he was not employed elsewhere and also demonstrates the efforts made to secure alternative employment.

- a. Syed Azam Hussaini Vs. Andhra Bank Limited, 1995 1) SCC 557
- b. Sain Steel Products Vs. Naipal Singh & Ors, 2003 (4) SCC 628
- c. General Manager, Haryana Roadways Vs. Rudhan Singh, 2005 (5) SCC 591

24. A review of the above three judgments reveals that they arose under the Industrial Disputes Act, where the industrial courts have the discretion to award back wages based on the specific circumstances of each case, including the issue of proving continued unemployment. However, in a subsequent ruling, the Supreme Court in **Deepali Gundu Surwase v. Kranti Junior Adhyapak & Others**, reported in (2013) 103 SCC 324, held as follows:

“33. The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition



of the employer and similar other factors.

WEB COPY

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.



WEB COPY



W.P.No.9528 of 2020

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame.



WEB COPY



W.P.No.9528 of 2020

Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra)*.

vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal (supra)* that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.” [Emphasis added]

25. However, in the aforementioned judgment, the Supreme Court settled the latest position regarding the burden of proof. According to the decision, it is the employer's responsibility to prove that the employee was employed elsewhere after dismissal. In the present case, the Management has not pleaded anywhere regarding the alleged subsequent employment of the Respondent. Therefore, the contentions raised on this issue must be rejected.

26. In a further attempt to support their argument, the learned counsel relied on the judgment of the Bombay High Court in **Navin J. Surti v. Modi Rubber Ltd. & Another**, reported in 2004 SCC OnLine Bom 20, which arose under the Bombay Industrial Relations Act, 1946.



WEB COPY

The counsel contended that the burden is on the employee to disclose the efforts made by him to secure alternative employment.

27. However, with regard to the position of an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act and the authority's power to set aside the termination and the consequences thereof, this Court has explained the matter as early as 1950 in the case of **Tata Iron and Steel Co. Ltd. v. G. Ramakrishna Ayyar & Others**, reported in 1950 LLJ 1043 Mad. In that judgment, it was observed as follows:

“4. It is next contended by Mr. Ramakrishna Ayyar that in any event the order of the Commissioner was bad in so far as it directed a reinstatement in service of the first respondent. The argument was that there is no specific provision in the Act which enabled the authority to make an order of reinstatement. He referred us by way of analogy to the jurisdiction of Industrial Tribunals to make orders of reinstatement, but we think such reference is wholly irrelevant. To a certain extent we agree with the learned Counsel, namely, that the authority should not have said that the employee would be entitled to reinstatement. But this is only quarrelling with his language. Actually the legal position is this. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher authority. That authority reverses the decision of the employer and the result is that the order of the employer is set aside. It is no longer in existence. It follows that the effect of the original order of the employer also disappears and it is as if the order is nonesse. Though, therefore, it may not be quite accurate to say that the employee will entitled to reinstatement in service, yet the result of the



WEB COPY



W.P.No.9528 of 2024

order of the appellate authority is virtually the same. Probably, the result 6T the appellate order is even Better than an order of reinstatement. It is as if the employee had never been properly dismissed from service. In this view it is not necessary to quash the order of the appellate authority even in this respect.”

28. Furthermore, the Respondent has filed an affidavit in support of WMP No. 35779 of 2024, in which he stated in paragraph 6 about his deposition before the Appellate Authority. In his deposition, he asserted that he was not gainfully employed and was relying on the support of his brother for sustenance. He also mentioned having suffered a heart attack, which led to significant medical treatment and expenses. In paragraph 9 of his affidavit, the Respondent stated that, due to his inability to live in the city, he had moved to his native place in Tirunelveli. The learned counsel for the Respondent further relied on the counter affidavit dated 28.06.2024, wherein the Respondent stated that the Petitioner-Management failed to adduce any evidence to prove that he was gainfully employed elsewhere.

29. In light of the foregoing, no grounds have been made out to interfere with the impugned order of the Appellate Authority dated 14.10.2019, and accordingly, the writ petition stands dismissed. Consequently, WMP.No. 11629 of 2020 is also dismissed. As for WMP No. 35779 of 2024, since the Respondent has succeeded in the writ



W.P.No.9528 of 2024

petition, he may pursue his rights to claim the benefits of the impugned order in the appropriate forum. With this liberty, WMP No. 35779 of 2024 is closed. The Petitioner is directed to pay a legal fee of Rs. 10,000/- to the counsel for the Respondent.

**02.04.2025**

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

av

Copy to:

The Special Joint Commissioner of Labour,  
DMS office compound,  
Chennai 600 006.



WEB COPY



W.P.No.9528 of 2020

**DR. A.D.MARIA CLETE, J.**

av

Pre-delivery Judgment in  
W.P.No. 9528 of 2020  
and  
W.M.P.Nos.11629 of 2020, 35779 of 2024

02.04.2025