



W.P.No.9755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.9755 of 2023

and

W.M.P.No.9839 of 2023

M/s.Bharti AXA Life Insurance Company Limited,
Represented by its Regional HR Manager
Mr. Rajkumar,
R Gopalapuram Branch No. 30/32,
Conron Smith Road Gopalapuram,
Chennai 600 086
Registered office at Unit No. 1904 19th Floor,
ParineerCrecenzo G Block,
Bandrakurla complex, BKC Road Near MCA Club,
Bandra (East) Mumbai 400 051

... Petitioner

Vs.

1.K.Arivuaaisa

2.The Special Joint commissioner of Labour
Commissionerate of Labour,
4th Floor, Teynampet
Chennai 600 006

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, directing to call for the records from the respondent no.2 herein relating to the impugned order in award No.TNSE-I/27/2021 dated 25.11.2022 and quash the same.



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For Petitioner : Mr.R.Bharath Kumar
For Respondents :
(for R1) : M/s.B.Mohan
(for R2) : M/s.M.Murali, Govt. Advocate

ORDER

Challenging the order passed by the 2nd respondent dated 25.11.2021 in No.TNSE-I/27/2021, the petitioner company is before this Court.

2. The brief facts preceding the filing of the Writ Petition is herein below set out.

3. The 1st respondent was associated with the petitioner company as a Senior Relationship Officer-DD between the periods 24.08.2011 till 23.01.2014. In the Month January 2014, she had resigned from the services of the petitioner company and her resignation was accepted by the petitioner company on 13.02.2014. The 1st respondent once again made a request to rejoin the petitioner company and considering her request she was once again appointed as a Relationship Manager-DD in Direct Distribution-SSF vide Offer cum Appointment letter dated 27.02.2014.

4. In the month of November 2016, the Reporting Manager of the



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petitioner company as well as its Human Resource Team were of the

opinion that the 1st respondent's performance was not satisfactory.

Therefore, she was counseled by the Reporting Manager on various occasions to improve her performance so as to meet their agreed targets.

Despite such counselling, the 1st respondent was not able to achieve the targets. Consequently, she was placed under a Performance Development

Plan of the petitioner company vide their letter dated 19.07.2018. She was

notified that her performance would be reviewed for the duration for the

1st July 2018 till 30 September 2018 and she was expected to achieve the

expected targets. She was also put on notice that her performance would be

monitored on an ongoing basis during this duration.

5. Since the 1st respondent's performance was very poor despite all the opportunities granted to her, the petitioner was left with no other

alternative except to terminate her services vide notice of termination dated

24.10.2018. The 1st respondent who received the said notice approached

the Manager seeking a safe exit and therefore her termination letter was

not put up on the attendance portal. Though the management was waiting

for her to put down her papers, however, the 1st respondent did not do so.

Thereafter, the 1st respondent started absenting herself from work.



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Consequently, the petitioner company had issued a show cause notice dated 06.11.2018 informing the 1st respondent that she has been unauthorisedly abstaining herself from duties and the notice of termination dated 24.10.2018 due to non performance was also attached to the said show cause notice. The 1st respondent had neither responded to the show cause notice nor reported for duty. Therefore, by letter dated 10.11.2018 her services were terminated.

6. Challenging the termination order, the 1st respondent had filed an Appeal Petition before the 2nd respondent in No.TNSE-I/27/2021. The 1st respondent alleged that her services were terminated without any enquiry and without affording her an opportunity to explain herself. The termination therefore was absolutely unfair and against the principles of natural justice.

7. The petitioner management had filed a counter denying the allegations made by the 1st respondent and contended that the order of dismissal was in accordance with law.

8. The 2nd respondent held that the dismissal order to be bad on the ground that unauthorised absence from service is a misconduct and the



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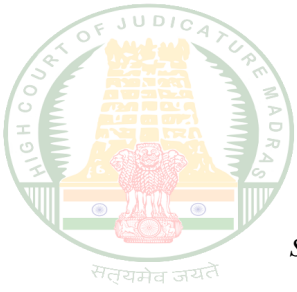
mandatory procedure set out under the Tamil Nadu Shops and Establishments Act, 1947, has to be followed before terminating the services of an employee. However, in the instant case, the same has not been followed. Therefore, the dismissal of the 1st respondent with one month's salary without prior notice and without seeking an explanation was held to be unsustainable. It is challenging the said order, the petitioner is before this Court.

9. Heard the learned counsel on either side.

10. The only issue to be considered in this Writ Petition is whether the termination was a valid one. Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 would read as follows:-

" 41. Notice of dismissal.

(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by



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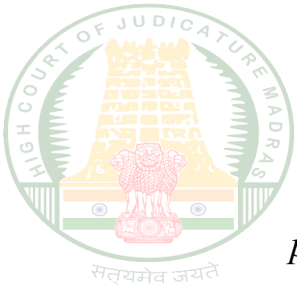
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satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(2A) [The appellate authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such person. For the aforesaid purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any



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person and examining him on oath;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witnesses

(2B) The appellate authority, may, after giving notice in the prescribed manner to the employer and the person employed, dismiss the appeal or direct the reinstatement of the person employed, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.]

[Inserted by Tamil Nadu Act 9 of 2017, Section 2 (with effect from 01.04.2017)]

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed.

11. Therefore, the provisions of this Section clearly contemplate certain procedures to be followed before terminating the services of an



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employee. Admittedly, no such procedure has been followed prior to the termination of the services of the petitioner. Therefore, the order passed by the 2nd respondent is very much in order and I see no reason to interfere with the same.

12. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.07.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1. The Special Joint commissioner of Labour
Commissionerate of Labour,
4th Floor, Teynampet
Chennai 600 006

P.T. ASHA. J.,



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