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W.P.No.10437 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :09.06.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 10437 of 2021

V. Thayumanasamy

...Petitioner

VS-

1. The Joint Deputy Commissioner of Labour
(Appellate Authority under the Shops and Establishment Act),
Thenampet, Chennai.
2. The Director,
Madura South India Corporation Pvt Ltd.,
Rani Seethai Hall Building,
Anna Salai, Chennai – 600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 04.03.2021 in T.N.S.E-I/I.A.3/2020 passed by the 1st Respondent, quash the same and condone the delay of 279 days in filing the appeal against the petitioner dismissal before the 1st Respondent and consequently direct the 1st Respondent to number the petitioner appeal and to take it on his file and to decide the petitioner appeal on merits and in accordance with law within a specified time limit as may be fixed by this Court.



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For Petitioner : Ms.V.Porkodi
For Respondent-1 : Ms. M. Jayanthi
Additional Government Pleader
For Respondent-2 : Mr. P. Nehru

ORDER

Challenging the dismissal of his application seeking to condone the delay of 279 days in filing the appeal, the petitioner-workman is before this Court.

2. It is the petitioner's case that he was appointed as a Clerk by the 2nd respondent, which was then known as M/s "Madura South India Corporation Limited", by order dated 13.09.1997. He had joined duty on 15.09.1997 and after completing his probation period of one year, he was confirmed in the post of Clerk. The 2nd respondent was the distributor of M/s Madura Fabrics of Madura Coats Limited. The 2nd respondent would purchase yarn and cloths from M/s Madura Coats Limited and sell the same to their customers in Southern India. On 01.11.2012, the Chettinad South India Corporation had issued an order transferring the petitioner from M/s.Madura South India Corporation



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Limited to M/s Madura South India Corporation Private Limited, with continuity of service and with the same conditions of service.

3. The petitioner would submit that except for the change in the Company's name from a Limited Company to a private Limited Company, there was no other change. and they continued to do business as before in the same place and address. Although in the main order dated 01.11.2012, it was stated that the terms and conditions of his employment would remain the same, however there was an addition of the words "as found in the Annexure".

4. The petitioner would further submit that he was promoted as a Senior Assistant and in April 2018, he was designated as Officer-Stores. However, neither the emoluments nor the nature of his duties and responsibilities changed and he continued to do the same job.

5. On 07.12.2018, the petitioner was issued with a Deputation Order asking him to serve at Chettinad Mangalore Coal Terminal Private Limited at Mangalore for a period of two years. It was informed

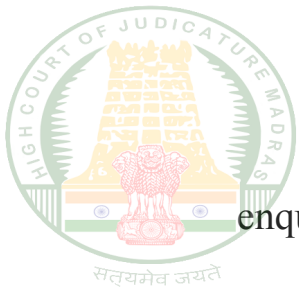


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that the deputation period could be extended. The petitioner was directed to report for duty on or before 17.12.2018. He requested the 2nd respondent to allow him to continue in the same place as his son was suffering from a disability and he had to take care of him. The Director of the 2nd respondent had sent a letter dated 08.12.2018 wherein an impression was given that the petitioner had refused to receive the deputation order when it was served. He was once again directed to report for work at the deputed location without fail. He was warned if the orders were disobeyed, disciplinary proceedings would be initiated against him and a punishment of suspension without pay or termination from service would be issued.

6. On 26.12.2018, a show cause notice was issued to the petitioner stating that he had disobeyed the order of deputation and had been absent for work from 17.12.2018 without permission or leave. An explanation was called for in this regard. The petitioner had given an explanation to the show cause notice in which he had denied the charges against him. He was asked to appear in person for an enquiry on 19.01.2019. Accordingly, the petitioner had also appeared for the



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enquiry. However, to his surprise, he was terminated from service with immediate effect by order dated 18.02.2019. In the termination order, it was stated that the petitioner did not appear for the enquiry and had written a letter dated 18.01.2019 making false allegations against the officials. The petitioner had, on several occasions, approached the Manager(HR) and requested to reinstate him from service. Since he was 47 years old, he would not be in a position to get employment elsewhere. However, the said request was turned down.

7. The petitioner moved an appeal before the 1st respondent under Section 41 of the Tamil Nadu Shops and Establishment Act, 1947 along with an application to condone the delay of 279 days in filing the appeal. Despite giving valid reasons for the delay, the 1st respondent had proceeded to dismiss the application on the ground that it was not filed in time and the reasons were unsustainable. Challenging the same, this writ petition has been filed.

8. A perusal of paragraph 15 of the affidavit filed in support of the application for condoning the delay would indicate that the



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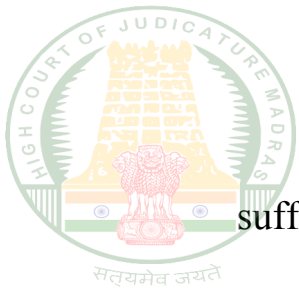
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petitioner has set out the reasons as to why he was unable to file the appeal in time. The petitioner has stated that the sudden order of dismissal put him and his family in a state of shock as their only source of income had come to an end. The petitioner had also approached the management for reinstatement. Meanwhile, on 30.10.2019, he had met with a road accident and suffered injuries which had rendered him immobile for a short period of time. All these put together resulted in the delay.

9. The respondent-Management has filed a counter *inter-lia* contending that the dismissal was on 19.02.2019 whereas the accident was on 30.10.2019. The delay has not been properly explained and therefore, the order of the 1st respondent cannot be found fault with it.

10. Heard the learned counsels on both sides and perused the materials available on record.

11. Rule 9(2) of the Tamil Nadu Shops and Establishments Act, 1947 clearly shows that the 1st respondent can condone the delay on



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sufficient cause being shown. In the instant case, the petitioner has clearly given reasons as to why he was not in a position to file the appeal immediately. The 1st respondent has simply adopted the counter filed by the 2nd respondent and has not taken into consideration the reasons stated in the affidavit filed in support of the application.

12. In the judgment reported in **2019 SCC Online Mad 3924 [G.Jai Praksh Vs Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947 and others]** this Court, while considering a similar application for condoning the delay of 1513 days, had observed that when certain reasons for the delay are given which cannot be said to be unacceptable then the same should be condoned more particularly when the workman has a valid case to be adjudicated.

13. In the instant case, the main ground raised by the petitioner is that he was terminated without giving him a proper opportunity to put forth his case. If that is proved the petitioner/ workman is entitled to succeed in his challenge to the order of termination. **The Division Bench of this Court** in an unreported judgment in **W.A.No.107 of 2025**



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was considering an appeal filed by the Managment challenging the order passed by the Special Joint Commisisoner for Labour condoning the delay in filing the appeal under the Tamil Nadu Shops and Establishments Act, 1947. Relying upon the judgment of the Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M.Krishnamurthy reported in 1998 (7) SCC 123*, the Bench had rejected the appeal filed by the Managment. The petitioner has given reasons for the delay which has been brushed aside. Therefore, the order passed by the 1st respondent dismissing the condone delay application on the ground that sufficient cause has not been shown is set aside. Accordingly, the Writ Petition is allowed. No costs.

09.06.2025

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To,

1. The Joint Deputy Commissioner of Labour
(Appellate Authority under the Shops and Establishment Act),
Thenampet, Chennai.

2. The Director,
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P.T.ASHA, J.,

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