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W.A.No.2694 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2694 of 2023

and

C.M.P.No.22621 of 2023

1.The Management of TVS & Sons Ltd.,
7-B, West Veli Street, Madurai - 625 001.

2.TVS & Sons Limited, 101, Trichy Main Road,
Salamedu, Villupuram - 605 401.

... Appellants

Vs.

1.The Appellate Authority under Tamil Nadu Shops
and Establishments Act/
The Deputy Commissioner of Labour
(Minimum Wages), Chennai - 600 006.

2.P.Saravanan

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to
set aside the order dated 04.08.2023 made in W.P.No.10534 of 2013.



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For Appellants : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam and Associates
For 1st Respondent : Mr.R.Kumaravel,
Additional Government Pleader
For 2nd Respondent : Mr.V.Prakash, Senior Counsel
for Mr.K.Krishnamoorthy

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Challenge in this appeal is to the order of the writ Court made in W.P.No.10534 of 2013 dated 04.08.2023, in and by which, the writ Court had confirmed the order of the appellate Authority under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947.

2. The issue before the appellate Authority was non-employment of the workman, who was a salesman with the appellant Management. The Shop Authority had found that the workman was not solely responsible for not informing the change in the model of the vehicle to the financier. It was also the finding of the shop Authority that the workman being only a sales person cannot be mulcted with the order of dismissal for not informing the change in



the model of the vehicle to the financier and for making a refund of the difference in the price. On the said findings the shop Authority concluded that the order of dismissal from service was not justified and accordingly set aside the same.

3. Aggrieved the Management filed W.P.No.10534 of 2013 before this Court. The writ Court after analysis of the law relating to the scope of interference in such matters concluded that the jurisdiction under Article 226 of the Constitution of India being only to correct errors of law cannot extend to testing the sufficiency of the evidence based on which the shop Authority had reached its conclusions. On the said premise the writ Court dismissed the writ petition affirming the orders of the shop Authority. Aggrieved the Management is before us by way of this appeal.

4. We have heard Mr.Sanjay Mohan, learned counsel appearing for the appellant and Mr.V.Prakash, learned Senior Counsel assisted by Mr.K.Krishnamoorthy, learned counsel appearing for the 2nd respondent.

5. Mr.Sanjay Mohan, learned counsel appearing for the appellant would vehemently contend that the findings of the Shop Authority are perverse and the



writ Court ought not to have affirmed the finding without going into the evidence and advertent to the reasons assigned by the shop Authority for its conclusion on the evidence on record. He would also point out that the workman was solely responsible for the loss of reputation of the appellant as a leading automobile dealer and therefore retaining the workman in service after he had lost the Trust of the Management would be counter productive and it will lead to indiscipline amongst the other employees of the Management. He would invoke the principle that once the workman has lost the confidence of the employer, reinstatement cannot be the only solution and the question of compensation can be considered.

6. Mr.V.Prakash, learned Senior Counsel appearing for the workman would however submit that once the charges are not proved and the order of dismissal is set aside on the ground that the charges are not been proved, the workman would be automatically entitled to reinstatement. The Authority having not exercised the power, this Court may not order compensation in lieu of reinstatement.

7. We have considered the rival submissions.



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8. We are unable to fault the writ Court for having reached a conclusion that it cannot correct every error of fact and the power of judicial review under Article 226 of the Constitution of India is limited to correction of errors on law. It is the settled position of law that a constitutional remedy is not for correcting every error of the judicial or quasi judicial Authority. The power under Article 226 of the Constitution of India is limited to deciding the correctness of the procedure prescribed and the Writ Court cannot delve into the facts, consider evidence and reach a different conclusion merely because it is possible. At the same time, we find that the employee was removed from service as early as on 20.10.2009. He has been out of service for almost 15 years now. We are also informed that 17B wages have also been paid to the employer. Therefore, we see some force in the contention of the learned counsel for the appellant that this Court can modify the award and direct payment of compensation in lieu of reinstatement and all other claims of workman.

9. When we put this suggestion to the learned Senior Counsel appearing for the workman, after getting instructions, he has agreed to take a compensation of Rs.45,00,000/- and the Management is also not averse to the idea of paying this compensation.



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10. We therefore modify the award as to one for payment of compensation instead of reinstatement and all other claims of workman and fix the compensation at Rs.45,00,000/-. The Management will pay the compensation within a period of three (3) weeks from today. The workman will part with his Bank account details to enable the Management to pay the compensation. The Management shall not deduct any TDS as this sum represents a portion of the wages that would have been earned by the workman over a period of time as held by the Hon'ble Supreme Court in ***U.P.State Road Transport Corporation Vs. Muniruddin*** reported in ***1990 (4) SCC 464***.

11. It is stated that a sum of Rs.61,000/- being the gratuity has been deposited with the Assistant Labour Commissioner - Central. The workman would be entitled to withdraw the said amount along with the interest, if any, accrued thereon.

12. The Management had deposited a sum of Rs.5,00,000/- with the shop Authority as per the directions of this Court and the workman has been allowed



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to withdraw a sum of Rs.2,50,000/- out of the said sum of Rs.5,00,000/-. The remaining sum of Rs.2,50,000/- still remains in deposit and the Management is permitted to withdraw the said sum along with accrued interest, if any.

13. The Writ Appeal is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (C.K.,J.)
09.01.2025

dsa

Index : No
Internet : Yes
Neutral Citation : No
Speaking order



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To

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