

W.P.(MD).Nos. 2787 of 2024 & 8726 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON :30.07.2025

ORDER PRONOUNCED ON : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.2787 of 2024 & 8726 of 2025

and

WMP(MD).Nos.2780 of 2024 & 6535 of 2025

WP(MD).No.2787 of 2024

The Secretary,
A-1449, Madura Coats Employees Co-operative Stores
2/3. Arapalayam Cross Street, Ponnagaram
Madurai 625 016

....Petitioner

Vs

1.A.Pitcham

2.The Joint Commissioner of Labour, Madurai
(The Appellate Authority under
Tamil Nadu Shops and Establishment Act, 1947)
Bharathi Ula Road, Race Course
Madurai 625 002

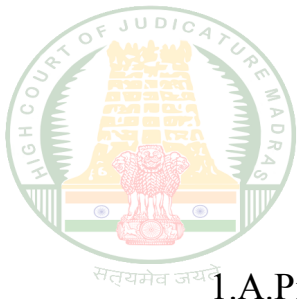
3.The Deputy Registrar of Co-operative Societies
Office of the Joint Registrar of Co-operative Societies
1st Floor, TPK Road, Near Palanganatham Roundana
Madurai 625 003

....Respondents

WP(MD).No.8726 of 2025

The Secretary, A-1449,
Madura Coats Employees Co-operative Stores
2/3, Arapalayam Cross Street, Ponnagaram
Madurai 625 016

....Petitioner



W.P(MD).Nos. 2787 of 2024 & 8726 of 2025

Vs

1.A.Pitcham

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2.The Presiding Officer,
Labour Court
Madurai

3.The Joint Commissioner of Labour, Madurai
Bharathi Ula Road, Race Course,
Madurai 625 002

....Respondents

Prayer in WP(MD).No.2787 of 2024: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order in TNSE 01/2021 dated 16.08.2021 passed by the Joint Commissioner of Labour, Madurai being the 2nd respondent herein ordering for reinstatement of A.Pitcham being the 1st respondent herein as illegal and quash the same.

Prayer in WP(MD).No.8726 of 2025: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order in C.P.No.41 of 2021 dated 16.11.2024 passed by the Presiding Officer, Labour Court, Madurai being the 2nd respondent herein ordering for payment of wages which is Rs.2,62,138.50 within three months from the receipt of this order, failing which an interest at the rate of 6% thenceforth to A.Pitcham being the 1st respondent herein and quash the same as illegal.

(In both the writ petitions)

For Petitioner : Mr.T.Joshua

For Respondents : Mr.M.Pounraj for R1

:Mrs.D.Farjana Ghoushia
Special Government Pleader for R2 & R3



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COMMON ORDER

WEB COPY These two writ petitions have been filed by the management of Madura Coats Employees Co-operative Stores challenging the order passed by the appellate authority under Tamil Nadu Shops and Establishment Act, 1947, Madurai and the order of the Labour Court, Madurai in C.P.No.41 of 2021.

(A). Factual Matrix:

2.The first respondent herein was working as a salesman in a Co-operative Store was issued with a charge memo on 04.11.2019. The charges could be summarized as follows:

a)Violation of the terms and conditions of service conditions of the respondent stores and total disregard of the order of the President by disobeying his instruction to hand over charge.

b)Causing a stock deficit of Rs.1,34,635.50 in the Self Service Division at Ponnagaram and the same not properly accounted for by him as salesman thereby committing a serious irregularity.

c)Misappropriating goods and stocks to the tune of Rs.1,00,657/- at K.K.Nagar Self Service Division by falsely entering larger amounts of credit sales in the books than the actual sales made to Thirumohur Perumal Temple



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d)Not having adjusted advance amount of Rs.2,96,245.02 availed by him over a period of time in the Ponnagaram Vegetable Section as the same is found outstanding in Sundry Debtors head of account and the same found reported in the Audit Report under the long outstanding entries in Sundry Debtors Head of Account for the financial year 2018-2019. While the advance amount is stated to have been availed for procuring vegetables and other related stocks, he had not utilized it fully for that purpose and had used the above said amount for his personal purpose and hence, the same remains neither adjusted nor accounted for property.

c)Having acted in breach of trust and dishonestly and thereby shirking his responsibilities.

3.A domestic enquiry notice was addressed to the delinquent 27.11.2019 calling upon him to appear for the enquiry on 07.12.2019. The said notice was returned as 'Unclaimed'. Another notice was sent to the employee on 21.12.2019 calling upon him to appear for the enquiry on 26.12.2019. The same was also returned to the sender. The management received an explanation to the charge memo on 12.01.2020. Since the delinquent had not appeared for the enquiry and the notices were returned as 'Unserved', a paper publication was made on 14.01.2020 in a daily called



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'Vanakkam India' instructing the delinquent to appear for enquiry on 18.01.2020. The delinquent had not appeared for the enquiry.

4. On 14.02.2020, the enquiry officer has submitted a report to the effect that all the charges as against the petitioner stood proved. The second show cause notice was issued to the delinquent on 27.02.2020. The said letter was also returned as 'unserved'. On 14.03.2020, an order of dismissal came to be passed. On 09.06.2020, the delinquent addressed a communication to the management as a reply that to the second cause notice. In the said explanation, he had submitted that he has not received any notice for the enquiry. The delinquent had further stated that he was not paid subsistence allowance during the period of suspension.

5. The delinquent had filed an appeal before the appellate authority under Tamil Nadu Shops and Establishments Act invoking Section 41(2) of the Act. In the grounds of appeal, the delinquent has specifically raised a ground that he had not received any notice relating to the domestic enquiry and therefore, he could not appear.

6. In the counter filed by the management, it was pointed out that though notices were issued to the delinquent, he had not received the said notice and therefore, he was set exparte and a report was submitted. It was further pointed out by the management that the workmen was provided with sufficient opportunity, but the same was not utilized by him. The delinquent



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has examined himself as PW1 and marked Exs.P1 to P8. However, none was examined on the side of the management and no document was marked. The appellate authority arrived at the following findings:

- a)The domestic enquiry has been concluded as exparte. However, no document relating to the conduct of the enquiry, the issuance of notice and recording of evidence has been produced.
- b)Though the management in their counter had contended that they have made publication in a newspaper, the name of the newspaper has not been mentioned.
- c)The enquiry has been conducted without providing proper opportunity and in violation of the principles of natural justice.

7.Based upon the above said findings, the appellate authority had proceeded to allow the appeal and directed reinstatement. Challenging the same, the management has filed WP(MD).No.2787 of 2024.

8.The delinquent had filed computation petition before the Labour Court, Madurai in C.P.No.41 of 2021 claiming wages for the non-employment period ie. between 16.03.2020 to 31.10.2021 to a tune of about Rs.2,62,138/-. The said claim petition was allowed on the ground that already the order of dismissal has been set aside by the appellate authority under Tamil Nadu Shops and Establishments Act and despite request to the management, has not chosen to reinstate the delinquent. Challenging the said



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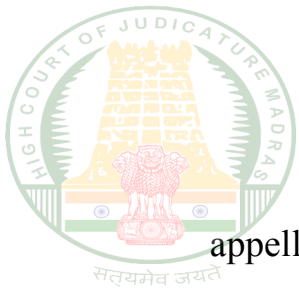
order of the Labour Court, the management has filed WP(MD).No.8726 of 2025.

9.Since the issues in both the matters are inter-connected, they are tagged together and a common order is being passed.

(B) Submissions of the counsels appearing on either side:

10.According to the learned counsel for the petitioner management, two enquiry notices were issued to the delinquent on 27.11.2019 and 21.12.2019. Though the delinquent was aware of the notices, he had wantonly not received those notices. Even though a paper publication was made on 14.01.2020 for appearance of the delinquent on 18.01.2020, the delinquent has not appeared. In such circumstances, the appellate authority was not right in arriving at a finding that the delinquent was not provided with ample opportunity.

11.The learned counsel for the petitioner had further submitted that if an opportunity has been provided by the appellate authority, they would have filed all the documents connected with the enquiry and they would have established the fact that enquiry was conducted in a fair and reasonable manner after following the principles of natural justice. Without providing any opportunity to the management, the appellate authority has proceeded to allow the appeal ordering reinstatement. He had further pointed out that the seriousness of the delinquency has not been taken into consideration by the



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appellate authority. In case, if the appellate authority has arrived at a finding that the delinquent was not provided with adequate opportunity or there was a violation of the principles of natural justice, the management should have been provided with an opportunity to let in further evidence.

12.The learned counsel for the management had further submitted that the petitioner had misappropriated a huge sum, by falsifying the ledger accounts and has not accounted for the advance of Rs.2.96 lakhs availed by him for purchase of vegetables. The delinquent has acted in breach of trust and dishonesty. Though he was provided with full opportunity before the domestic enquiry, having not utilized the same, cannot take such a defence before the appellate authority.

13.Per contra, the learned counsel appearing for the respondent/delinquent submitted that the delinquent did not receive the enquiry notice. Paper publication has been made in an unknown newspaper called 'Vanakkam India' and therefore, the same cannot be considered to be a proper service upon the delinquent. He had further submitted that the management cannot be provided with a second opportunity to let in evidence before the appellate authority by remitting the matter. He had further submitted that as on today the delinquent is a senior citizen and any order of remand could cause great prejudice to him.

14.Heard both sides and perused the material records.



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(C). Discussion:

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15.The first two enquiry notices addressed to the workman have been returned as 'unclaimed'. Thereafter, a paper publication has been made in an obscure newspaper called 'Vanakkam India' on 14.01.2020 intimating the date of hearing as 18.01.2020. Due to non appearance of the delinquent, he had been set exparte and an exparte enquiry report has been submitted to the management on 14.02.2020. The second show cause notice was issued to the delinquent on 27.02.2020 and the same has also been returned and the order of dismissal has been passed on 14.02.2020. No efforts have been taken by the management to serve notice upon the delinquent personally or through a well known newspaper. The publication of the enquiry notice in an unknown newspaper should only be construed to be an act on the part of the management to prevent workman from participating in the enquiry proceedings. Therefore, it is a clear case there is violation of the principles of natural justice in conducting domestic enquiry.

16.The delinquent in his grounds of appeal filed before the appellate authority has raised a ground that he was not provided with opportunity during domestic enquiry. Though the same is disputed by the management by filing a counter, no documents have been filed on the side of the management to establish the manner of enquiry. The management has not examined any one on their side nor filed any document to establish the fact that the notices



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were served through post or paper publication was effected. The management has not not availed any opportunity to let in evidence to establish the charges as against the delinquent.

17.The issue that now arises for consideration is whether the management can be provided with a second opportunity to let in evidence before the appellate authority in order to prove the charges as against the delinquent.

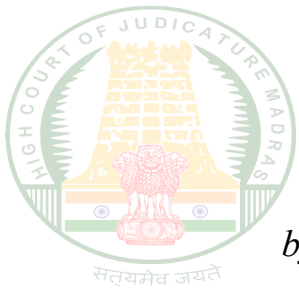
18.The scope of the powers of the appellate authority under Tamil Nadu Shops and Establishment Act can be understood by following the judgments of the Hon'ble Supreme Court and the Division Bench judgment of our High Court.

19.The learned Single Judge of this Court in a judgment reported in **(1970) 2 LLJ 364 (Kotak and Company Vs. Additional Commissioner for Workmen's Compensation and another)** in paragraph No.33 and 34 has held as follows:

“33.With regard to the holding of such enquiry, three possible situations may be contemplated:

1)the employer does not hold any enquiry at all and simply passes an order dispensing with the services of the employee on grounds of certain misconduct;

2)the employer makes a farce of conducting an enquiry without bona fide intending to conduct any such enquiry as contemplated



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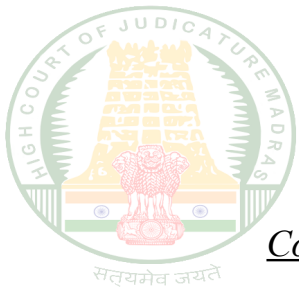
by the statute and thereafter passes an order of dismissal;

3)the employer bona fide conducts an enquiry, but subsequently it is found to be defective by the appellate authority.

34.As far as the first case is concerned, it does not present any difficulty and the result is that there had been a failure to comply with the mandatory statutory requirements. As far as the third case is concerned, the employer had bona fide conducted an enquiry; but the same had been determined to be defective by the appellate authority. In that case, it cannot be said that there had been a violation or contravention of the statutory requirements by the employer and therefore, the appellate authority will be perfectly justified in remedying the defect in the enquiry by taking additional evidence and considering the question of the misconduct against the employee on merits and disposing of the appeal on that basis.....”

20.The Hon'ble Supreme Court in a judgement reported in **(1975) 3 SCC 254 (Remington Rand of India Limited Vs. R.Jambulingam)** in Paragraph No.8 has held as follows:

“8.The jurisdiction of the Commissioner is an appellate jurisdiction and is of wider scope unlike that of the Tribunal in an application under section 33 of the I.D. Act. The Commissioner is competent to rehear the matter completely and come to its own conclusion after re-appreciation of the evidence. There is no legal bar in entertaining additional evidence if that is necessary in the interest of justice. The rule of law which has been laid down by this.



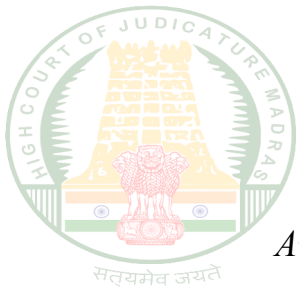
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Court with regard to jurisdiction of the Industrial Tribunal in an application under section 33 of the I.D. Act in interfering with the order of dismissal passed in a domestic enquiry, is not applicable to the case of an appeal before the Commissioner provided for under section 41 of the Shops Act....”

21.The Hon'ble Supreme Court in a judgment reported in **(1997) 4 SCC 741 (United Planters Association of Southern India Vs. K.G.Sangameswaran and another)** in paragraph Nos.21 and 28 has held as follows:

“21.....In view of the wide jurisdiction of the Appellate Authority, it cannot be legally argued that the jurisdiction of the Appellate Authority to record evidence would be limited only to those cases where no evidence was recorded at the domestic enquiry and the principles of natural justice were violated. In addition to such cases, namely, cases in which an opportunity of hearing was not given to the employee or the principles of natural justice were, in any way, violated, the Appellate Authority shall also have jurisdiction to record evidence, if necessary, in order to come to its conclusion on the vital question whether the employee was guilty or not of the charges framed against him.

28.In the instant case the appellant has contended that the respondent did not participate in the domestic enquiry in spite of an opportunity of hearing having been provided to him. He was also offered the inspection of the document but he did not avail of that opportunity. He himself invoked the jurisdiction of the Appellate



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Authority and the order of dismissal passed against him was set aside on the ground that the appellant did not hold any domestic enquiry. it has already been seen above that the Appellate Authority has to come to its own conclusion on the guilt of the employee concerned. since the Appellate Authority has to come to its own conclusion on the basis of the evidence recorded by it, irrespective of the findings recorded in the domestic enquiry the rule laid down in Ratna's case (supra) will not strictly apply and the opportunity of hearing which is being provided to the respondent at the appellate stage will sufficiently meet his demands for a just and proper enquiry.”

22. The Hon'ble Division Bench in a judgement reported in **(2015) 1 LLJ 568 (The Special Officer, Chennai Central Co-operative Bank -vs-The Appellate Authority /Assistant Commissioner of Labour, Tamil Nadu Shops and Establishments Act, Chennai and another)** in paragraph Nos.12 and 13 has held as follows:

12. The above cited judgments of the Division Bench of this Court and the Hon'ble Supreme Court, provide a fitting answer to the contention of the learned counsel for the appellant that the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 was wrong in permitting the second respondent to adduce evidence in the appeal without rendering a finding to the effect that either there was no enquiry preceding the order of dismissal or that the enquiry conducted was not fair and proper.



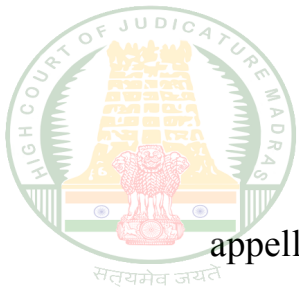
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13. In the light of the above said judgments of this Court as well as the Hon'ble Supreme Court laying down the principles of law governing the powers of the appellate authority under the Tamil Nadu Shops and Establishments Act, 1947 to reappraise the evidence and record additional evidence, we are of the considered view that the contention of the learned counsel for the appellant that the first respondent /appellate authority under the Tamil Nadu Shops and Establishments Act, 1947, committed an error in allowing the second respondent to lead evidence at the stage of appeal without at the first instance expressing a finding as to the fairness and propriety or otherwise of the domestic enquiry, is untenable and the same has got to be discountenanced.”

23.A cumulative reading of the judgment of the Hon'ble Supreme Court and our High Court would clearly reveal that the appellate authority shall have jurisdiction to record evidence even in cases where an opportunity of hearing was not given to the employee.

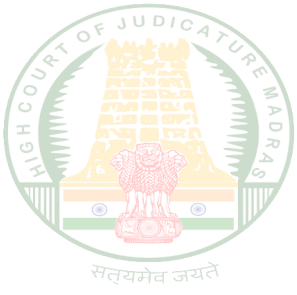
24.For letting in evidence before the appellate authority, it is not a precondition that the appellate authority should first arrive at a finding that the domestic enquiry was not conducted in a fair manner. In the present case, the appellate authority has arrived at a conclusion that the enquiry has not been conducted in a fair manner after giving ample opportunity to the delinquent. The management should have been called upon to produce all the records to establish the charges as against the delinquent. Instead the



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appellate authority has proceeded to set aside the order of dismissal and has ordered reinstatement. Considering the fact that serious charges of misappropriation have been made as against the delinquent, the management should have been given an opportunity to let in evidence before the appellate authority. Therefore, this Court is of the considered opinion that the order of the appellate authority is vitiated and therefore, it is liable to be set aside and the matter should be remitted back to the appellate authority for fresh consideration.

25.The delinquent had filed C.P.No.41 of 2021 before the Labour Court, Madurai seeking wages for the non employment period from the date of dismissal. The said petition has been allowed. Challenging the same, W.P. (MD).No.8726 of 2025 has been filed by the management. A perusal of the order of Labour Court reveals that it is solely based upon the order passed by the appellate authority under Tamil Nadu Shops and Establishment Act. Since this Court has set aside the order of the appellate authority and decided to remit the matter back to him, the order of the Labour Court shall be kept in abeyance till a final decision is arrived at by the appellate authority under the Tamil Nadu Shops and Establishment Act.



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26.In view of the above said deliberations, this Court is inclined to

pass the following orders:

a)WP(MD).No.2787 of 2024 stands allowed and the matter is remitted back to the file of the second respondent.

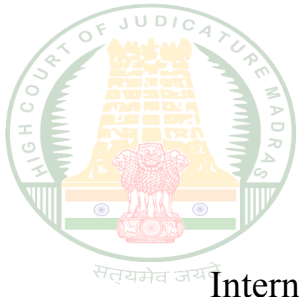
b)The management is at liberty to let in evidence to prove the charges and the delinquent can also let in contra evidence, if he is so advised. The appellate authority under the Tamil Nadu Shops and Establishment Act shall dispose of the appeal within a period of four months from the date of receipt of a copy of this order.

c)The order passed in C.P.No.41 of 2021 dated 16.11.2024 on the file of the Labour Court, Madurai shall be kept in abeyance till the disposal of the appeal by the appellate authority under the Tamil Nadu Shops and Establishment Act.

d)Depending upon the outcome of the appeal, the delinquent would be at liberty to enforce the order of the Labour Court in C.P.No.41 of 2021.

27.Accordingly both the writ petitions are disposed of on the above said terms. No costs. Consequently, connected miscellaneous petitions are closed.

06.08.2025.



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To

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Labour Court
Madurai

2.The Joint Commissioner of Labour, Madurai
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Bharathi Ula Road, Race Course
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3.The Deputy Registrar of Co-operative Societies
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1st Floor, TPK Road, Near Palanganatham Roundana
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4.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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Pre-delivery common order made in

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