



WP(MD)No.19892 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.19892 of 2021 and
WMP(MD)No.16599 of 2021**

Management,
Pandiya Vellar Madam,
No.13, Gandhi Road,
Palani, Dindigul District.

...Petitioner

Vs

1.The Authority,
[The Joint Commissioner of Labour],
The Joint Commissioner of Labour Office,
Dindigul, Dindigul District.

2.Subramani

3.N.Ayyasamy

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to impugned order dated 08.02.2021 in TSE.No.3 of 2017 passed by the 1st respondent and quash the same.

For Petitioner : Mr.Rajesh Saravanan.B

For Respondent : Mr.S.Vinodh

No.1

For Respondent : Mr.D.Shanmuga Raja Sethupathi

No.2



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ORDER

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The petitioner Madam has filed this writ petition as against the order passed by the Joint Commissioner of Labour, 1st respondent herein under Section 41(2) of the Tamil Nadu Shops and Establishments Act. The said application was filed by the 2nd respondent workman by invoking the provision under Section 41(2) of the Tamil Nadu Shops and Establishments Act that he has been engaged by the petitioner Madam as a watchman for more than 23 years and he was also provided residence within the premises. While so, he was removed from service by way of notice dated 24.06.2017, affixed in the notice board that he has been removed from service pursuant to the resolution dated 30.06.2017 and he was also directed to vacate the premises. The 1st respondent / the authority under the Tamil Nadu Shops and Establishments Act has allowed the application filed by the 2nd respondent and directed the petitioner Madam to reinstate the 2nd respondent with continuity of service and backwages. Aggrieved over the said order, the management has preferred this writ petition.



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2.The learned counsel for the petitioner submits that the petitioner is a Madam and it does not come under the purview of the Tamil Nadu Shops and Establishments Act. He further submits that the petitioner has taken over the management of the Madam, pursuant to the judgment and decree passed by the learned District Munsif, Palani dated 26.01.2017 and the 2nd respondent was never engaged neither by him nor by his predecessor. The 2nd respondent would not fall under any of the categories defined under Section 2(6) and 2(3) of the Tamil Nadu Shops and Establishments Act.

3.The learned counsel for the 2nd respondent submits that the 2nd respondent was engaged as a watchman and he was continuously engaged for more than 23 years and he was also provided with a residence inside the Madam premises All of a sudden without any valid reason by way of a notice dated 24.06.2017 he was removed from service and was directed to vacate the residence on or before 30.06.2017. Therefore, the 2nd respondent was constrained to approach the 1st respondent under Section 41(2) of the Act.



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4.The learned counsel in support of his contention has also relied on the Section 2(12)(vi) and 2(18) of the Act and submits that the 2nd respondent was engaged as watchman and therefore, he will fall under the category of Section 2(12)(vi) of the Act.

5.This court considered the rival submissions made and perused the materials placed on record.

6.The petitioner was subjected for cross examination during the enquiry proceedings before the 1st respondent, wherein the petitioner has admitted that the 2nd respondent Subramani was engaged as watchman and he has also stayed within the premises of the Madam. The 2nd respondent claims that he had been continuously engaged for more than 23 years and he was provided with quarters within the premises of the Madam. The cross examination of the petitioner by the 2nd respondent would substantiate the claim of the 2nd respondent that he was engaged as a watchman and was also allowed to stay within the premises of the petitioner madam.



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7.The 2nd respondent claims that he has been terminated from service on 24.06.2017 by way of notice. Section 41(1) of the Act prescribes such types of termination and the same is extracted as under:

“41(1) Notice of dismissal.--(1) No employee 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 or 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 satisfactory evidence recorded at an enquiry held for the purpose.”

8.The main contention of the petitioner is that it is only a Madam, which will not fall within the definition of Section 2 of the Act. The Act defines an establishment under Section 2(6) of the Act as under:

“2(6). 'Establishment' means a shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the



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[State] Government may by notification declare to be an establishment for the purpose of this Act.

9. Section 2(3) of the Act defines commercial establishment, which reads as follows:

“2(3). Commercial establishment means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock, bank, broker's office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purpose of this Act.”

10. Clause (vi) of sub section 12 of Section 2 of the Act reads as under:

“2(12)(vi) : In the case of an establishment not falling under paragraphs (i) to (v) above, a person wholly or principally employed in connection with the business of the establishment, and includes a peon;”



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11.The 2nd respondent has taken a specific plea that this Madam is having several properties including commercial complexes, marriage hall, lodge at Door No.13, Gandhi Road, Palani.

12.The counter affidavit has been filed by the petitioner before the 1st respondent. However these allegations made by the 2nd respondent with regard to the commercial establishments run by the petitioner Madam has not been specifically denied by the petitioner. Moreover the petitioner Madam is only a communal organisation and it is not a religious one.

13.Clause (vi) of sub section (12) of Section 2 of the Act deals with an establishment which does not fall under paragraphs 1 to 5, a person wholly or principally employed in connection with the business of the establishment and includes a peon. Therefore, this court is of the view that the 2nd respondent watchman will fall under the definition of clause (vi) of sub section 12 of Section 2 of the Act.



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14. Therefore, this court is not inclined to interfere with the findings of the 1st respondent. Accordingly, this writ petition is dismissed.

05.11.2025

DSK

To

The Authority,
[The Joint Commissioner of Labour],
The Joint Commissioner of Labour Office,
Dindigul, Dindigul District.



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B.PUGALENDHI.J.,

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