



W.P.(MD)Nos.20062 of 2017 & 26533 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)Nos.20062 of 2017 & 26533 of 2019

and

W.M.P.(MD)No.16321 of 2017

W.P.(MD)No.20062 of 2017

The Management/Administrator,
Madura Coats Employee's
Co-operative Stores Ltd.,
3, Arappalayam Cross Road,
Madurai.

... Petitioner

Vs.

1.The Appellate Authority Under
Tamil Nadu Shops and Establishments Act/
The Deputy Commissioner of Labour,
Madurai.

2.K.Vani

... Respondents

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PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in T.N.S.E.No. 2/2015 dated 04.07.2017 and quash the same.

For Petitioner : Mr.P.R.Prithiviraj

For Respondents : Mr.S.Shanmugavel,
Addl. Govt. Pleader for R1
Mr.C.Appadurai for R2

W.P.(MD)No.26533 of 2019

K.Vani

... Petitioner

Vs.

1.The Deputy Commissioner of Labour
and Appellate Authority Under
Tamil Nadu Shops and Establishments Act,
Madurai.

2.The Secretary,
Madura Coats Workers Co-operative Store Ltd.,
Madurai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to reinstate the petitioner in

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order to comply with the order passed by the 1st respondent dated 04-07-2017 in case number TNSE2/2015 and consequently direct them to pay all monetary benefits.

For Petitioner : Mr.C.Appadurai

For Respondents : Mr.S.Shanmugavel,
Addl. Govt. Pleader for R1
Mr.P.R.Prithiviraj for R2

COMMON ORDER

For the sake of convenience, the parties are referred to as per their array in W.P.(MD)No.20062 of 2017.

2. Heard Mr.P.R.Prithiviraj, learned counsel for the petitioner Management, Mr.S.Shanmugavel, learned Additional Government Pleader for the first respondent and Mr.C.Appadurai, learned counsel for the second respondent.



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3. The petitioner herein filed W.P.(MD)No.20062 of 2017 aggrieved by an order dated 04.07.2017 passed by the respondent No.1, under Section 41 of “the Tamil Nadu Shops and Establishments Act, 1947” (hereinafter referred to as “the Act 1947”) setting aside the order of dismissal dated 31.07.2008, passed by the petitioner herein dismissing the respondent No.2 from service. The first respondent allowed the appeal filed by the respondent No.2 under Section 41 of the Act 1947 on coming to the conclusion that the respondent No.2 herein was in service as on 04.05.1998 ie., prior to issuance of G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.03.2001 and as such, the order passed by a Division Bench of this Court in W.A.Nos.2501 of 2001 batch, dated 24.10.2002 is not relevant to this case and also on the ground that the petitioner herein failed to afford an opportunity to the respondent No.2 before issuing the order of dismissal dated 31.07.2008. Thus, the respondent No.1 came to the conclusion that the order of dismissal dated 31.07.2008, which was appealed before him, was issued in violation of the principles of natural justice, especially in the contest of mandatory requirement of putting the employee concerned on notice as required under Section 41 of the Act 1947.



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4. A perusal of the order of dismissal dated 31.07.2008 does not show that the respondent No.2 herein was afforded any opportunity nor put on notice before issuing the said order. During the course of hearing this matter and also on perusal of the records, there is nothing to show that the respondent No.2 was afforded any opportunity before issuing the order of dismissal dated 31.07.2008. As already noted above, the first respondent appellate authority came to the conclusion that the respondent No.2 herein has been in service as on 04.05.1998 and the order of dismissal came to be issued on 31.07.2008 ie., almost after a period of a decade.

5. The factual finding that was recorded by the appellate authority that the respondent No.2 was an employee in the year 1998 is not seriously disputed. In the absence of any dispute, the question of applying the order passed by the Division Bench of this Court in W.A.Nos.2501 of 2001 batch dated 24.10.2002, especially clause (vi) at paragraph 19, does not arise. If the said clause is not applicable, then the petitioner is under legal obligation to follow the procedure contemplated under Section 41 of the Act 1947.



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Admittedly in the instant case, such a procedure was not followed and no notice was issued to the respondent No.2, before passing the order of dismissal dated 31.07.2008.

6. In the light of the above, this Court does not find any error or illegality in the impugned order passed by the respondent No.1 warranting interference of this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. This Court also has thoroughly convinced that the respondent No.1 is very much justified in setting aside the order of dismissal while denying the backwages to the respondent No.2. In the circumstances, this Court does not find any merit in W.P.(MD)No.20062 of 2017 and the same is accordingly dismissed.

7. W.P.(MD)No.26533 of 2019 has been filed by the respondent No.2 seeking implementation of the order dated 04.07.2017 passed by the respondent No.1. In view of the dismissal of W.P.(MD)No.20062 of 2017, there cannot be any impediment for allowing the writ Petition filed by the respondent



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No.2. Accordingly, W.P.(MD)No.26533 of 2019 is allowed, directing the petitioner in W.P.(MD)No.20062 of 2017 to implement the order dated 04.07.2017 as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order. As the respondent No.1 came to the conclusion that the order of dismissal dated 31.07.2008 was passed in violation of the procedure contemplated under Section 41 of the Act, 1947, the petitioner is granted liberty to take appropriate action strictly in accordance with law.

8. Accordingly W.P.(MD)No.20062 of 2017 is dismissed and W.P. (MD)No.26533 of 2019 is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral Citation: Yes / No
Index : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

vsm

To

The Appellate Authority Under
Tamil Nadu Shops and Establishments Act/
The Deputy Commissioner of Labour,
Madurai.

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