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**(1989) 09 MAD CK 0011**  
**In the Madras High Court**  
**Case No : W.A. No. 358 of 1989**

Automac (M) (P) Ltd.

APPELLANT

Vs

Deputy Commissioner of Labour and Another

RESPONDENT

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**Date of Decision :** 12-09-1989

**Acts Referred:**

Factories Act, 1948 — Section 2  
Industrial Disputes Act, 1947 — Section 25, 25

**Citation :** (1989) 09 MAD CK 0011

**Hon'ble Judges :** Sathia Dev, J;Padmini Jesudurai, J

**Bench :** Division Bench

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## **Judgement**

1. Petitioner in W.P. 4823 of 1989 is the appellant herein. He preferred this writ petition to quash the order of the first respondent in T.S.E. No.

18 of 1988 dated March 3, 1989. On the learned Judge by order dated April 4, 1989 having dismissed the writ petition on the ground that the

Supreme Court had repeatedly pointed out that the High Court should not intervene and stop proceedings based on a Preliminary issue, this writ

appeal is preferred.

2. Appellant-petitioner claims that originally the company was a proprietary concern in 1963. The second respondent was appointed as an

Accountant in November, 1963, at a time when the factory was located in D-I Ambattur Industrial Estate, Madras and the office was functioning

at Door No. 12 Barnaby Road, Kilpauk Madras. In 1967, the firm was converted into a private limited Company, and the office was shifted to

No. 15, Wallers Road, Mount Road and the factory continued to be run at Industrial Estate, Ambattur. In 1971, the office was shifted to second

floor of the Administrative Buildings in the Ambattur factory premises. In 1978

the office was again shifted to No. 15, Wallers Road, Madras - 2.

Once again in 1980 the office was shifted to the place where the factory is located. While the second respondent was employed in the factory, a

memo of charges was issued on January 9, 1988 claiming that he had defrauded the company of vast sums of money and an enquiry was held, and

ultimately, an order of dismissal came to be passed. Aggrieved with this order, he filed an appeal under S. 41(2) of the Tamil Nadu Shops and

Establishments Act, 1947 in App. No. 18 of 1988 before the Deputy Commissioner of Labour (Appeals), Madras. It is while filing the reply-

statement, second respondent had claimed that though the factory and the office are at present situated in the same premises, the office staff

constitute a separate and distinct department, and it had connection with the factory for the purpose of service conditions, and therefore, the

reliance placed by the appellant on G.O.Ms. No. 543 (Dev.) dated February 10, 1950 to contend that the first respondent has no jurisdiction to

entertain the appeal is misconceived. This has resulted in a preliminary issue having been raised relating to the jurisdiction of the first respondent,

and the first respondent made a note on November 2, 1988 stating that the objections were overruled and that the reasons for the same will find

place in the final order. Therefore, W.P. No. 14400 of 1988 was filed and this Court by order dated January 24, 1989 directed the first

respondent to pass a speaking order on the preliminary objection. It resulted in the impugned order being passed on March 3, 1989 holding that

under the facts and circumstances of the case, when none of the provisions of the Factories Act had been extended to the second respondent, the

first respondent has the necessary jurisdiction to proceed with the appeal. It is this order which is now assailed in this writ appeal.

3. Mr. Dwarakanathan, learned counsel for the appellant-petitioner, relies upon G.O.Ms. No. 543, Development, dated February 10, 1950 which

reads as follows :-

In exercise of the powers conferred by S. 6 of the Madras Shops and Establishments Act 1947 (Madras Act 34 of 1947) and in supersession of

the Development Department notification No. 1085 dated November 5, 1948 published at page 1101 of Part I of the Fort St. George Gazette,

dated November 16, Governor of Madras hereby exempts permanently all

persons employed in any kind of work in factories and governed by the Factories Act 1948 (Central Act LXII of 1948) from all provisions of the Madras Shops and Establishments Act 1947.

4. His respectful submission is that, when all persons employed in any kind of work in a factory are permanently exempted from the provisions of

the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as the Act) the first respondent had no jurisdiction to entertain the

appeal preferred by the second respondent. To sustain this plea, he relies upon the decision reported in S.G. Chemicals and Dyes Trading

Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, wherein the Supreme Court has held that the work of making

payment of salaries, overtime, conveyance allowance, medical allowance etc. relating to workmen in a factory which the Divisional Office carries

on for the factory, cannot be done without such a Divisional Office, and there being a complete functional integrality between the two, and when

the Divisional Office is closed down, it will be part of the factory, and therefore, S. 25 of the Industrial Disputes Act would apply. It was a case

wherein in understanding the expression "an undertaking of an industrial establishment" S. 25-O by specifically referring to the facts and

circumstances relating to the functions of the Churchgate Division of the Trombay factory, and on arriving at the conclusion that they are neither

separate nor independent but integrally, connected establishments altogether, such a decision was arrived at. It is not a decision which lays down a

proposition that any one discharging clerical or accounting functions is a factory worker.

5. Management of Binny Ltd. (B and C Mills), Madras-12 Vs. K. Elumalai and Asst. Commissioner of Labour, Madras-6, is a decision of this

Court under the Act with reference to the same G.O. and it was held that the concerned person was working as a Fire Brigade with Token No. 7

in the Madras Mills, and when the factory had been registered under the Factories Act, and he being a "worker" under S. 2(1) and connected with

the manufacturing process as defined in S. 2(k) and 2(m) of Factories Act, an appeal under S. 41(2) of the Act would apply. R. Ganapathy

Subramaniam Vs. Enfield India Ltd., Madras, The Additional Commissioner for Workmens" Compensation Madras-4, relied upon is a Division

Bench decision of this Court wherein it was held that on the evidence recorded, it is found that packing is done in the premises, and that the

concerned workman was connected with the manufacturing process within the meaning of S. 2(k) of the Factories Act, and even though separate

functions may be carried on in different departments, they are licensed for the manufacturing purpose under the Factories Act, therefore the appeal

filed under the Act was not maintainable. In concluding his submission, he refers to the decision reported in C. Rly. workshop, The Works

Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others, in which it was observed that Factories Act being a social welfare

enactment, it should receive a liberal construction without doing violence to the language, and that a person doing manual work has to be held as an

employee under the Act, if employed in connection with the work of the factory. This decision relied upon by firm cannot be of any assistance to

him, because it is also necessary for the appellant to show that the work carried on by the second respondent is connected with the manufacturing

process.

6. Abdul Latif Vs. Karamat Ali, , is the decision of the learned Judge of the Allahabad High Court holding that the definition of "worker" in

Factories Act not only includes a person employed in the manufacturing process but also includes a person employed in any other kind of work

incidental to the manufacturing process, and that keeping of accounts in a factory is a work incidental to such a process. Rohtas Industries Ltd. Vs.

Shri Ramlakhan Singh and Others, is the decision of the Supreme Court which holds that by reading the definitions of "worker" and "industry" in

the Factories Act together, it is quite reasonable and legitimate to hold that he must be a person employed in the premises of the precincts of the

factory.

7. Therefore, all these decisions proceed on the basis of facts and circumstances of each case and on finding out whether the concerned person

would be a "worker" as defined in S. 2(1), and whether he works in a "factory" as defined in S. 2(m), and whether he is concerned with the

manufacturing process, as defined in S. 2(k) of the Factories Act. If the nature of work discharged by him is such that it is incidental to the

manufacturing process, then he would be a worker under that Act.

8. In the instant case, it has been found that none of the provisions of the Factories Act has been made applicable to second respondent and right

from the beginning, his service conditions had been governed by the Tamil Nadu Shops and Establishments Act. As stated earlier, the Office

premises had been shifted more than once to different places, and finally, it started functioning in the administrative block in the factory premises.

Hence, the contention of the learned counsel for the appellant that because it is located within the area which is registered under the Factories Act,

the administrative office could straightway become factory premises, cannot be accepted. It is the particular nature of duties which are discharged

and which alone could be taken into account. In State of Uttar Pradesh Vs. M.P. Singh, S.P. Sabharwal and R.K. Lahri, the Supreme Court held

that field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane used in the factory are not

employed either in the precincts of the factory or in the premises of the factory or in the premises of the factory, and therefore, the provisions of the

Factories Act would not apply. Once it is made out that the provision of the Factories Act are not applicable to the second respondent, and when

the appellant had not varied his service conditions, the provisions of the aforesaid G.O. cannot be applied to the instant case.

9. As far as G.O. Ms. No. 543 is concerned the exemption could be made applicable only in respect of persons who are employed on any kind of

work in a factory, and "governed by the Factories Act 1948". It is not merely sufficient to show that a clerk carries on work within the area

registered under the Factories Act, but it must also be shown that he is "governed" by the provisions of the Factories Act. The expression "or any

kind of work" would not straightway get included within its field any other kind of person employed by a factory. As referred to in the last of the

decisions of the Supreme Court, even though the field workers are employed in the factory, they are not working in the precincts of the factory. A

clerk or an Accountant may be found physically working in the administrative block inside the factory campus, but it must also be shown that the

provisions of the Factories Act had been applied to those persons. Unless the Management shows that the persons who are working in a factory

registered under that Act are "governed" by the provisions of the Factories Act, the said G.O. cannot be invoked by the Management.

10. Therefore, the preliminary issue having been rightly decided upon, this writ appeal is dismissed with costs, and the first respondent is now directed to proceed further with the matter, and dispose of it expeditiously. Counsel's fee Rs. 250.