
(1992) 08 MAD CK 0058
In the Madras High Court

L. Subbian

APPELLANT

Vs

The Deputy Commissioner of Labour and Another

RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 4, 4(1)(a), 41(2), 5

Citation : (1993) 1 MLJ 174

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—The writ petition is taken up with the consent of the parties. Mr. T.S. Gopalan has stated that he has filed vakalat today for the second respondent.

2. The prayer in the writ petition is to issue a certiorarified mandamus calling for the concerned records of the first respondent in TNSE Case No. 1 of 1989 and quash the order made therein with a consequential direction to the first respondent to dispose of the appeal on merits. The petitioner was employed for more than 35 years in the second respondent-company as a Supervisor drawing a salary of Rs. 2,075 per mensem. On 1.11.1988 the second respondent stated that the management had changed hands and the services of the petitioner were no longer required. The petitioner protested stating that he was entitled to continue in service till attained the age of 58 years. But his services were terminated by oral orders from 1.11.1988. Against the oral order of termination, the petitioner sent a letter on 2.12.1988 and demanded restoration of services. The second respondent sent a letter slating that further time was required to send a, reply. Subsequently, the petitioner received a lawyer's notice dated 6.1.1989 to which he sent a reply on 1.8.1989 As the second respondent was not inclined to restore the petitioner to service, the petitioner filed an appeal to the first Respondent, as he is competent authority to hear an appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947.

3. The appeal was contested on several grounds. One of the same was that the appeal was filed out of time. The first respondent passed an order in which he

has discussed at length the question of condonation of delay, but he has not given a definite finding as to whether the delay is condoned. However, he proceeded to hold that a person employed in a position of management in any establishment, is exempted from the purview of the Act by virtue of Section 4(1) (a) of the Tamil Nadu Shops and Establishments Act. Thus, holding that the Act will not apply to the petitioner herein, he dismissed the appeal. Aggrieved by the same, the petitioner has preferred this writ petition.

4. The view taken by the first respondent that the Act will not apply to the petitioner is clearly erroneous. Section 4(1)(a) of the Tamil Nadu Shops and Establishments Act provides that nothing contained in the Act shall apply to the persons employed in any establishment in a position of management. But, Section 5 thereof empowers the Government to issue a notification applying all or any of the provisions of the Act to any class of persons or establishments mentioned in Section 4 of the Act, other than those mentioned in clauses (c) and (f) of Sub-section (1). Thus, with regard to Section 4(1)(a) of the Act, the Government is entitled to issue a notification to the effect that the Act will apply to persons covered by the said sub-section.

5. The Government has issued a notification G.O.Ms. No. 4074, Industries, Labour and Housing (Labour), dated 5th October, 1966 by exercising the powers conferred u/s 5 of the Act, applying all the provisions of the Act to the class of persons mentioned in Clause (a) of Sub-section (1) of Section 4. Thus, the Act applied to all persons who are employed in any establishment in a position of management. Hence, the Act will apply to the petitioner also, though he is employed as a Supervisor, in a position of management. Hence, the first respondent is clearly wrong in dismissing the appeal of the petitioner on that ground.

6. In the result, the order of the first respondent in TNSE Case No. 1 of 1989 dated 20.4.1992 is quashed and the matter is remanded to the file of the first respondent for fresh disposal in accordance with law. As the first respondent has not decided any of the questions including the question of limitation raised before him by the parties he shall consider the entire appeal and decide all the questions raised by the parties, in accordance with law.

7. The writ petition is allowed accordingly. There will be no order as to costs.