
(1980) 10 MAD CK 0025
In the Madras High Court
Case No : Writ Petition No. 5141/80

Needle Industries Ltd.

APPELLANT

Vs

The Additional Commissioner for Workmen's Compensation
Madras Teynampet and Others

RESPONDENT

Date of Decision : 28-10-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2A

Citation : (1982) ILR (Mad) 39 : (1986) 1 LLJ 408

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

1. This Writ Petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High

Court, dated 12th May, 1980 and made herein, and the Counter affidavits filed herein and the records relating to the order relevant to the

aforesaid prayer on the file of the 1st respondent comprised in the return of the 1st Respondent herein to the writ made by the High Court and

upon hearing the arguments of M/s. M. R. Narayanaswami for M/s. T. S. Gopalan, P. Ibrahim Kabilla and P. Raghunathan, Advocates for the

Petitioner, and of Mr. S. Govind Swaminathan Advocate for the 1st Respondent and of Mr. N. G. R. Prasad for M/s. Row and Reddy Advocates

for the 2nd Respondent the Court made the following orders :-

2. This writ petition raises an interesting question which may require the attention of the Legislature as to the exact scope of the appellate authority

under S. 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as the Act).

3. The facts are as under :

The second respondent was in the employ of the writ petitioner as a Junior Officer. On 12th January, 1979 he wrote a letter addressed to the

Secretary of the writ petitioner as follows :

I shall be thankful if you will kindly relieve me from services from 12th January, 1979.

This may be treated as a formal letter of resignation from me.

On this, the following communication emanated from the management on 12th January, 1979 itself :

We are in receipt of your letter of to-day's date tendering your resignation from the services of our company. Your resignation has been accepted

and in view of your special request we are pleased to enclose herewith cash Rs. 2,960/- representing two months' salary for notice Period.

Thereafter, the accounts were settled as under :

Dr. Account No. 101 Date 12th January, 1979

Pay Mr. C. R. Ramaswamy.

Towards Notice period salary for two months Rupees Two thousand nine hundred and sixty only. Rs. 2,960/-.

Received the above amount.

Sd/-

C. R. Ramaswamy.

Mr. C. R. Ramaswamy 24th February, 1979.

Dear Sir,

We advise having credited your Saving Bank Account No. 4673 with Bank of India Mylapore, Branch with Rs. 1669/- in full and final settlement

of your salary and allowances account consequent to your resignation from our services as per details given below :

Salary for 12 days in Januar :

Rs. Rs.

Basic 464-52

HRA 69-68

TA 38-71

----- 572-91

Towards professional services

rendered during 1978 1,068-39

Salary in lieu of 21 days annual leave 934-84

2,576-14

A. Compulsory savings & Deductions :

Provident Fund (Till 12th March, 1979) 286-50

Superannuation premium (Till 31st

March, 1979) 360-00

income tax 73-00

----- 719-50

1,856-64

B. Voluntary Savings & Expenses :

Insurance Premium

(Jan. & Feb.) 111-64

Co-operative Society 25-00

Sick Club 1-00

Profession-Tax 50-00

----- 187-64

1,669-00

Yours faithfully,

For Needle Industries (India) Ltd., Sd/-. ----- Ref : Pors : CRR 26th
February, 1979

Mr. C. R. Ramaswamy,

33, Mangaduswamy Iyer St.,

Nungambakkam, Madras-34

Dear Sir,

As may be observed from our letter of the 24th inst. Insurance premium has been deducted from the dues payable to you in respect of demands

received from the L.I.C. for the months of January and February, 1979. We shall be thankful if you will kindly make your own arrangements of

remittance of premium from March, 1979 onwards.

4. Your subscription to Co-operative Society and sick club has been recovered only for the month of January.

5. For settlement of your dues from Co-operative society necessary application may please be made to the society direct. Please also forward

your application for closure of Provident Fund Account early for being transmitted to the Trustees for further action.

6. Application for payment of Gratuity will be sent to your shortly for your completion and return.

Yours faithfully,

for Needle Industries (India) Ltd.,

Sd/-

Company Secretary

Accounts Department for information.....

CASH VOUCHER Date : 28th Feb., 1979

Dr. Account No.

Pay Mr. C. R. Ramaswamy

towards Professional services rendered

during 1978

Rupees One thousand and sixty eight and paise thirty nine only

Rs. 1,068-39 Received the above amount

Sd/-

C. R. Ramaswamy.

Our Ref : Pers : C.R.R. 17th March, 1979

Mr. C. R. Ramaswamy,

33, Mangaduswamy Iyer St.,
Nungambakkam, Madras-34

Dear Sir,

In continuation of our letter PERS : C.R.R. dated 26th February, 1979 we forward herewith Form "I" to enable you to apply for closure of your

Gratuity Account, which please complete sign and return to us at an early date.

7. A sum of Rs. 10,837-50 is due to you in respect of Gratuity for seventeen years of service. Please forward to us a stamped receipt on the

following lines :

Received from Needle Industries (India) Dated 10, Bishop Waller Avenue, South, Mylapore, Madras 600 006, a sum of Rs. 10,837-50 (Rupees

Ten thousands eight hundred and thirty seven and paise fifty only) in full and final settlement of my Gratuity Account.

On receipt of the above from and the Receipt, we shall arrange for settlement.

Yours faithfully

for Needle Industries (India) Ltd.

Sd/-

Company Secretary

P.S. Pl. expedite your Provident Fund closure appln. form.

Our Ref : Pers : C.R.R. 22nd March, 1979

Mr. C. R. Ramaswamy,

33, Mangaduswamy Iyer St.,

Nungambakkam, Madras-34

Dear Sir,

We write in continuation of our letter PERS : C.R.R. Dated 24th February, 1979.

As you have been granted an increment from 1st January, 1979, a sum of Rs. 210-56 in respect of salary and allowances, Notice period salary

and salary in lieu of Annual leave becomes payable to you as under :

Payable Paid Balance

Salary upto 12th January,

1979 at the revised rate

of Rs. 1275/- p.m.

Basic 493-55

HRA 74-03

TA 38-71

----- 606-29 572-91 33-38

Notice Period Salary 3,132-50 2,960-00 172-50

Salary in lieu of

21 days annual leave 993-27 934-84 58-43

4,732-06 4,467-75 264-31

Less :

Provident Fund 17-75

income tax 36-00

53-75

210-56

This amount has been credited to your S.B. A/c. No. 4673 with Bank of India, Mylapore Branch.

Yours faithfully,

for Needle Industries (India) Ltd.

Sd/- -----

Company Secretary.

The Petitioner was called upon to file the required statement to enable the writ petitioner to file the Income Tax return.

This being so, 20th January, 1979, the second respondent wrote to the petitioner the following letter :

Respected sir,

8. I wish to bring the following facts for your kind consideration and pray for justice.

9. I am employed in the Madras Office of the Company and have put in 17 years of unblemished service.

10. On the 10th instant, Mr. Kingsley, the Secretary of the Company sent for me and showed me an anonymous letter and accused me of having

written it myself or that I had inspired someone else to write that letter. As far as I can remember the letter stated that Mr. Kingsley shouted at his

subordinated including women without reason and also misbehaves with women.

11. Shocked at this baseless accusation I went to Mr. Kingsley's house accompanied by my wife and tried my best to convince him that I was

loyal to him and the Company and having no grievance against him, denied that I wrote or inspired the writing of the said letter.

12. On the 12th instant, I was again sent for and after shouting at me and repeating the same accusation, informed that disciplinary action would be

taken against me and that I would be dismissed and would lose my Provident Fund and Gratuity and forced me to give a letter of resignation. I

pleaded for two months time so that I can find another job and then Mr. Kingsley said he would give me two months salary and this was paid in

cash my resignation was accepted. I was dazed and stunned at his threats and shouting, and acted as stated above in fear.

13. In those circumstances I submit that the resignation was forced out of me under duress, and is invalid and not binding on me. The manner in

which I have been treated is opposed to elementary justice and the accusation against me is absolutely baseless.

14. I have been advised not to take any precipitate action but to appeal to you for justice. I humbly implore you to consider what I have stated

above, and request that my purported resignation be cancelled, and I be permitted to rejoin duty. Needless to say I shall pay back the two months

salary which was forced on me.

Yours obediently,

Finding that no action was taken on these representations, he preferred an appeal on 28th May, 1979 to the first respondent, purporting to be

under S. 41 of the Act. It is necessary to note the nature of the appeal filed by

the second respondent because very much turns upon this. After narrating the circumstances under which the letter of resignation came to be addressed, it is stated; in paragraph 5 thus :

The Secretary exercised so much pressure and coercion that he compelled the appellant to then and there sign a letter of resignation which was dictated by the Secretary himself. As soon as the letter of resignation was forced upon the appellant the Secretary grabbed the piece of paper and took photostat copies of the same immediately inspite of the protest of the appellant that he was being coerced to do something which he had no desire to do. The Secretary immediately sent for a stenographer and dictated the letter of acceptance of the resignation then and there.

15. But for these threats and coercion that emanated from the appellant would never have resigned and it is submitted that the resignation letter issued by the appellant cannot be in law a resignation.

Then in paragraph 8 it is continued :

It is submitted that the non-employment of the appellant has resulted only because of the coercion and threats exercised by the Secretary of the respondent company. The resignation letter issued by the appellant was not issued out of his own free will but on the contrary, was forced on him.

Therefore, in law it cannot be said that the appellant had voluntarily terminated his services with the respondent.

Finally in paragraph 9 the following prayer is contained :

It is therefore prayed that this Honourable Court may be pleased to declare that the non-employment of the appellant as a result of the forced resignation that was coerced out of him is unjustified and not for any reasonable cause.

Under Rule 9 of the rules made under the Act, an appeal ought to be filed within thirty days from the date of service of the order terminating the

services with the employer. Of course, there is a proviso to the rule. That says :

Provided that an appeal may be admitted after the said period of thirty days if the appellant satisfied the appellate authority that he had sufficient cause for not preferring the appeal within that period.

Having regard to this provision the second respondent preferred an interlocutory application for the condonation of the delay. That was opposed

by the writ petitioner (employer). In paragraph 4 of the counter it was stated thus :

The petitioner has approached this Hon"ble Court on the footing that there was an order of termination on 12th January, 1979. Even assuming

without admitting that there was an order of termination on 12th January, 1979, the appeal under S. 41(2) should have been filed within 30 days of

the order of termination and in the instant case by 11th February, 1979. It would appear that the petitioner has filed the appeal on 28th May,

1979, i.e., after a delay of more than three months. The respondent does not admit the reasons given by the appellant for the condonation of the

delay and in any event they are neither genuine nor justified calling for the exercise of discretion by this Hon"ble Authority in favour of the

appellant.

In addition to the above, the counter traverses the merits of the case of the second respondent before the authority with which we are not

concerned ourselves. However, it is necessary on my part to refer to those allegations by which the jurisdiction of the first respondent was

questioned.

In paragraph 3 it was stated :

It is no doubt true that the petitioner was working as an officer in the respondent Company under my direct supervision and control in the

Registered Office of the Company at Madras. The cessation of employment of the appellant was brought about by his letter of resignation dated

12th January, 1979 which was duly accepted on the same day by the respondent. There was therefore no termination of employment of the

appellant by the respondent giving a cause of action for the appellant to invoke S. 41(2) of the Tamil Nadu Shops and Establishment Act.

16. The appeal was taken up for hearing by the first respondent, the appellant authority constituted under the Act. A few witness were examined

on the side of the appellant before it. At that stage this writ petition has come to be preferred for prohibition to prohibit the first respondent from

proceeding further with the hearing of the appeal or incidental matters filed by the second respondent under S. 41 of the Act.

Mr. M. R. Narayanaswamy, learned counsel for the petitioner wards off the preliminary objection as to the participation in the enquiry so as to

disable him to raise the plea of jurisdiction by contending that there was nothing wrong in the petitioner seeking an adjudication on the condonation

of delay, that if he were to succeed, that would be the end of the matter; but on the contrary, if he fails, the enquiry would take place by an

authority, according to him, which has no jurisdiction. Therefore, the participation in the enquiry in regard to condonation of delay, cannot be put

against the petitioner. In support of this reliance is placed on Palvannam Pillai (since deceased) and Others Vs. Ganpathy Ayyar alias Salavady

Ayyar and Others, . The learned counsel also cites the passage from Halsbury's Laws of England 4th edition (Vol. 1) in paragraph 130. Moving

on to merits, the petitioner contends, the Court should certainly come to the rescue of the petitioner who seeks a prohibition when it is established

on the facts alleged by the second respondent that he has no jurisdiction and more so, when the first respondent proposes to assume jurisdiction

which, according to him, it has not in law. In support of this proposition The Management of Express Newspapers Ltd. Vs. Workers and Staff

Employed under it and Others, is cited.

17. As per the wording of S. 41 of the Act, no employer shall dispense with the services of a person 1) except for a reasonable cause; or 2) by

way of misconduct, where there is no dispensation with the service by the petitioner, the employer, but the dispensation was brought about by the

act of resignation, the court can have no jurisdiction. This is all the more so when in the appeal all that the authority could hold in under S. 41(2)

there was no reasonable cause nor was the employee guilty of the misconduct alleged. Then again, it can merely uphold or set aside the order of

termination and cannot exercise a discretion like the Courts established under the Industrial Law which are entrusted with powers under S. 11-A

of the Industrial Disputes Act or the authorities constituted under the Catering and Establishment Act. What is required to be noted in this case is, if

there is no termination by the employer the fact that the resignation was brought about by coercion is not a matter which falls within the jurisdiction

of the authority, because the authority will then be assuming jurisdiction like that of a civil court as to whether the resignation was voluntary or not

which falls totally outside the purview of S 41(2) of the Act. Ammapet Handloom Weavers" Cooperative Productions and Sales Society v.

Kadalamuthu (K.S.) and other 1969 II L.L.J.52 is cited for the proposition that this Court in a case arising under S. 41 of the Act took the view

that when a workman failed to turn up, if his name was removed from the register or rolls, that would not amount to termination. Citing The

Lakshmi Vilas Bank Ltd., Karur v. L. S. Pattabi Chettiar and another it is contended that superannuation does not tantamount to premature

termination. M/s. Southern Roadways, Bangalore v. K. Padmanabhan and another 1979 L.I.C.224 is cited for the contention as to how the matter

could be approached under S. 2-A of the Industrial Disputes Act. In conclusion Mr. Narayanaswamy submits that unless and until the premature

termination by the dispensation with the services of the employee is brought about by an act attributable to the employer, S. 41(2) cannot clothe

the authority with jurisdiction.

18. Mr. S. Govind Swaminathan, learned counsel for the second respondent does not take any serious objection as to the maintainability of the

writ petition. Nor does he say that the petitioner because it had participated in the enquiry is relation to the condonation of delay that would

preclude the petitioner from filing the writ petition. It is his further submission that the averments in this connection came to be made in the counter

affidavit only to show the lack of bona fides of the writ petitioner.

19. The learned counsel relies on The Lakshmi Vilas Bank Ltd., Karur v. L. S. Pattabi Chettiar and another (supra) and relies strongly upon

certain observations made by the learned Judge there to the effect that if resignation was made as a cloak for dispensation with the services, the

matter would be different. From this it is sought to be argued that in such a case the first respondent will have every jurisdiction. Then again, M/s.

Southern Roadways Ltd., Bangalore v. K. Padmanabhan and another (supra) is also pressed into service. That was a case of resignation. On

these rulings it is submitted that there is every jurisdiction for the authority to go into the question of resignation because, but for the coercion there

was no resignation. Therefore, the act that is attributable to the management is coercion. Coercion removed, no resignation. If this contention is not

upheld, this device would be adopted by every employer and the purpose of providing a quicker remedy under the Act would be defeated. Lastly

it is submitted that the Act being a social welfare legislation made in furtherance

of the employees working in Shops, Commercial Establishments, Restaurants, Theatres, etc., a liberal interpretation must be pleaded having regard to the trend of law.

20. I will straightaway dispose of the contention urged last by Mr. Govind Swaminathan, the learned counsel for the second respondent. It is true, the Tamil Nadu Shops and Establishments Act, 1947 is an Act which provides for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments. It is undoubtedly a social welfare legislation. It does confer certain protections for the employees. One such protection is found under S. 41 of the Act to which I will make a detailed reference a little later. But we are here on the question of jurisdiction. Merely because it is a social welfare legislation, the Court cannot do Violence to the explicit language and confer on the authority which, the legislature in its wisdom has not chosen to confer. That will be as if the Court is legislating. In so far as the appellate authority under S. 41 is a creature of the statute, that authority must trace its jurisdiction to the statute. Here what is the gravamen of the charge ? The second respondent does admit the writing of the letter of resignation of 12th January, 1979. But, according to him, it was brought about by the coercion of the management. That is the reason why his prayer before the appellate authority which I have already extracted says "this Honourable Court may be pleased to declare that the non-employment of the appellant as a result of the forced resignation that was coerced out of him is unjustified and not for any reasonable cause." If the factum of writing the letter of resignation is admitted, at once the case of the second respondent falls to the ground. As to how, I will easily demonstrate. A careful reading of sub-s. (1) will clearly show the dispensation of services of an employee must be attributable to the employer. That is because of the language of the sub-section to the effect that no employer shall dispense with the services of a person employed." Therefore, the act must be attributable to the employer. In this case, what is the act that is attributed. Not that it brought about dispensation with the service, but it brought about the letter of resignation by coercion. In a case of resignation, therefore, there is no dispensation with the service at all. To say that because the management brought about the letter of resignation by coercion, it

would tantamount to dispensing with services is an argument which passes my comprehension. Then again, if the appellate authority is conferred

with the jurisdiction to enquire into the question as to whether the resignation was brought about by coercion and therefore it is not a voluntary

abandonment, it would amount to assumption of jurisdiction like a Civil Court enquiring into the question whether a particular contract is vitiated by

anyone of the supervening elements spoken to under Ss. 15 to 22 of the Contract Act. The Authority, as stated above, being a creature of the

statute, must trade its power or jurisdiction only to the specific provisions of the state, and it cannot assume role of a Civil Court. Besides, what is it

that the employee can complain ? (1) His services have come to be dispensed with without a reasonable cause; and (2) that he was not guilty of

the misconduct alleged. There are the two aspects which alone could be enquired into under sub-s. (2) of S. 41 above extracted.

21. As to the scope of jurisdiction now, I will usefully refer to *Ammapet Handloom Weavers' Co-operative Production and Sales Society Ltd., v.*

Kadalaimuthu (K.S.) and others (supra), Justice Khailasam (as he then was) in dealing with a case where the employer after waiting for 1-1/2

months presumed that the employee had stopped away from service and removed his name from the list of employees, held that the order of

removal of the employee cannot amount to dispensing with the services, but only making a record of the fact that the employees had failed to turn

up and that they were no more in the employment and the Society was under no obligation to wait indefinitely and it acted within its rights in

removing the names of the employees from the list of employees. Therefore, according to the learned Judge, such a case would not fall under S. 41

of the Act. Consequently the order was quashed. This case definitely supports the petitioner to a greater extent.

22. Now I will move on to *The Lakshmi Vilas Bank Ltd., Karur v. L. S. Pattabhi Chettiar and another (supra)* which is relied on by Mr. Govind

Swaminathan. Justice Ismail (as he then was) went into the question and held.

The employee of the bank at the time of his joining service, gave his age and date of birth in his written application and also in a letter. The bank

subsequently called upon all its employees to produce the school certificate or records in support of the age. The bank in regard to some staff like

watch-man who has no educational background accepted the medical certificate and horoscope in support of the age. The concerned employee instead of producing the school records as required by the bank produced the medical certificate and horoscope in support of the age. The bank did not accept the medical certificate and horoscope. Subsequently the bank on the basis of the age given by him at the time of his appointment retired him from service in accordance with service rules.

23. The appeal Preferred by the employee under S. 41 of the Shop Act was allowed on the ground that bank gave no explanation for not accepting the medical certificate and horoscope produced by the employee and no notice was given as required under S. 41(1) of the Madras Shops and Establishments Act.

24. Allowing the writ petition preferred by the bank, held that the retirement of an employee on reaching the age of superannuation according to service rules would not come within the scope of S. 41. From the very nature of the Language employed in S. 41(1) only a premature termination of the services of an employee could be brought within the scope of that section, thereby meaning a premature termination as the termination of the services of an employee prior to the period fixed in a contract of service, if there is one, or a termination of service prior to the period fixed for retirement on reaching the age of superannuation prescribed either in a contract of service, if there is one, or in the rules or regulations governing such service. Consequently if there is a contract of service and the contract of service itself prescribes the period of service, the termination of service of the employee pursuant to the expiry of such period of employment could not fall within the scope of the S. 41(1). Equally if there are terms in the contract of service or provisions in the rules applicable to the service providing for the retirement of the employee on reaching the age of superannuation, such a case also cannot fall within the scope of S. 41(2). The dispensing with the service for a reasonable cause or the dispensing with the service on a charge of misconduct, both of them, contemplate a termination of service anterior and prior to the date on which the service would come to an end automatically either as a result of the terms on the terms on the contract of service or as a result of a rule application to the service in question.

25. It may happen in a particular case that the retirement was used by the employer as a cloak for dispensing with the services of an employee

where the motive for dispensing with the service is something different. In the event different position may possibly result because no person will be

allowed to evade the obligations imposed on him by law by having recourse to a cloak or guise under which he can take refuge in order escape

from such an obligation.

In the course of the judgment, Justice Ismail (as he then was) observed :

It may happen in a particular case the retirement was used by the employer as a cloak for dispensing with the services of an employee where the

motive for dispensing with the services is something different. In that event a different position may possibly result because no person will be

allowed to evade the obligation imposed on him by law by having recourse to a cloak or guise under which he can take refuge in order to escape

from such an obligation.

Certainly I do not mean to understand this observation as to hold that in a case of resignation albeit it being disputed as not voluntary but brought

about by coercion, the learned Judge considered that an authority exercising jurisdiction under S. 41 of the Act could go into the question whether

the resignation was brought about by the supervening circumstances by coercion. Therefore, this ruling does not help the respondent. Yet, one

other case that is relied on is M/s. Southern Roadways Ltd., Bangalore v. K. Padmanabhan and another (supra). That was a case which arose

under S. 2-A of the Industrial Disputes Act. No doubt, in that case the workman alleged that his tendering of resignation was under threat. The

question arose whether the dispute was referable to the Labour Court. The Court held thus :

When an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute relating to such

discharge, dismissal, retrenchment or termination is required to be treated as an industrial dispute notwithstanding the fact that no other workman

or any Union of workman has sponsored such a dispute.

If an employer secures resignation of any of his employees by force or against his will, in substance it amounts to the termination of the services of

the concerned employee. It is to cover such cases of termination brought about

in any form whatsoever the Legislature has designedly used the words "or otherwise terminates the services" in S. 2-A. The question whether in a given case the resignation was tendered voluntarily or secured under duress, is a question of fact. Therefore, if a workman complains that he has not tendered his resignation voluntarily but his resignation was secured under threat or coercion and by that process the termination of his services is brought about, such a dispute between an individual workman and the employer is squarely covered by the provisions of S. 2-A of such a case falls within the scope of the words "otherwise terminates the services." In the present case the workman complained that his resignation was secured under threat and by that method his services were terminated by the employer. Therefore, the State Government was competent to refer the dispute to the Labour Court.

One important fact which cannot be lost sight of is, S. 2-A of the Industrial Disputes Act is comprehensively worded as to include "or otherwise terminate the services of an individual workman". Normally in the context in which this phraseology occurs, it would mean ejusdem generis.

Therefore, I find great difficulty in accepting the ratio of this ruling. With great respect, I beg to differ. Nonetheless, it is not for me to examine

whether some other interpretation on the language of S. 2-A of the Industrial Disputes Act is permissible because no such language occurs in S. 41

of the present Act. Hence this ruling does not support the respondent.

26. For these reasons I conclude that the petitioner is entitled to succeed.

27. Turning to the conduct of the writ petitioner in participating in an enquiry in relation to the condonation of delay, what is the other conduct that

is expected of the petitioner ? The appeal under S. 41 ought to have been filed as per Rule 9, within thirty days from the date of service of the

order. In the instant case no order is served. The second respondent brings about his own termination and yet when he filed the appeal on 28th

May, 1979, he preferred an application for condonation of delay. As rightly contended by the learned counsel for the petitioner if it were to

succeed and see to it that the delay is not condoned, all the botheration will be over. So as a reasonable employer, he did oppose the condonation

of delay. But on that score it cannot be said that the conduct is such as to preclude the questioning of jurisdiction of the appellate authority.

28. In this case no factual investigation is involved. On the facts as averred in the appeal, prohibition is sought. Therefore, on this score also

prohibition cannot be denied. In relation to the conduct, it is worthwhile referring to Sri. Lakshmi Narayana Theertha Swamiyar of Sri Shivur Mutt

v. The Commissioner, Hindu Religious Endowments Board, Madras (supra). A Division Bench of this Court consisting of justice Satyanarayana

Rao and Justice Rajagopalan, held :

Mr. Seshachalapathi, learned counsel for the Endowments Board, raised the preliminary objection, that we should not issue a writ of prohibition

as the petitioner has his ultimate remedy by way of suit if a scheme came to be framed by the proper authorities under the new Act and that the

application is therefore premature. It must be remembered that we are dealing with a writ of prohibition and not certiorari. A writ of prohibition lies

to prevent an inferior tribunal from exceeding its jurisdiction or even from exceeding its jurisdiction or even from assuming a jurisdiction which does

not vest in it under law. It also lies if a provision of a statute is contravened by the tribunal or even if any principles of law are contravened. In

deciding the question, whether a writ of prohibition should issue or not, the existence of an alternative remedy is, in our opinion, an irrelevant

consideration when the complaint is that an inferior tribunal is exceeding its jurisdiction or is assuming a jurisdiction not vested in it by law. If the

tribunal is permitted to exercise that jurisdiction which is objected to, if it exercises it wrongly, the mischief would be done, before the alternative

remedy is availed of. It is unnecessary to insist upon a party complaining that he should first suffer and submit himself to the jurisdiction which is

being wrongly exercised or is wrongly exceeded and then take advantage of the alternative remedy. In Halsbury, Volume IX, page 883 (Hailsham

edition) the position is thus stated :

The Court, in deciding, whether or not to grant a writ of prohibition, will not be fettered by the fact that an alternative remedy exists to correct the

absence or excess of jurisdiction or an appeal lies against such absence or excess. Similarly the fact that an appeal on the merits of the case has

already failed, or that the party applying for prohibition has himself initiated the proceedings in the inferior Court, is not material to the decision of

the Court, to grant or to refuse the writ.

Decisions in England, as is evident from this passage have gone even to the length of helping a person aggrieved notwithstanding the fact that he

was the very person who first initiated the proceedings and invoked the jurisdiction of the inferior court. The objection raised by Mr.

Seshachalapathi, in our opinion, has no force and must be rejected as it is not supported by any authority. The analogy of the position in the case of

a writ of certiorari does not apply here.

The passage from Halsbury's Laws of England referred to therein is presently stated in Halsbury's Laws of England, 4th edition in paragraph 130

thus :

In deciding whether or not to grant an order of prohibition, the Court will not be fettered by the fact that an alternative remedy exists to correct the

absence or excess of jurisdiction, or that an appeal lies against the absence or excess. Similarly, the fact that an appeal has already failed on the

merits of the case, or that the party applying for prohibition has himself initiated the proceedings in the inferior Court, is not material to the decision

of the Court to grant or to refuse the order.

Applying the above ruling I hold that certainly it is not expected of the employer to suffer a decision by submitting to the jurisdiction and thereafter

seek certiorari. So long as, as observed above, no factual investigation is involved, and on the admitted fact as appears in the appeal before the

authority, when a prohibition is sought making out total lack of jurisdiction, this Court cannot hesitate to issue such a writ. The position is very

clearly so in the instant case. Consequently the petitioner succeeds and the rule nisi is made absolute.

29. There is some force in the contention of Mr. Govind Swaminathan that if jurisdiction were to be denied to the appellate authority in this case,

frequent resort to this questionable method will be head by the employers and thereby deprive the employee of the benefit of the social welfare

legislative measures. But it is a matter in which the Legislature must bestow its urgent attention and it is worthwhile to remember that Courts are to

interpret law on the plain language of the statute and not legislate. Thus though something could be said in favour of the contention of Mr. Govind

Swaminathan, it cannot on that score be held that jurisdiction can be conferred on the appellate authority.

30. In the peculiar circumstances of the case, I make no order as to costs.