

(1994) 03 MAD CK 0030

In the Madras High Court

Case No : Special Original Jurisdiction W.P. No. 9118 of 1984

S. Varadarajan

APPELLANT

Vs

Assistant Commissioner of Labour and Another

RESPONDENT

Date of Decision : 23-03-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Minimum Wages Act, 1948 — Section 20(1), 20(2)

Citation : (1994) 2 LLJ 1144

Hon'ble Judges : S.M. Ali Mohammed, J

Bench : Single Bench

Judgement

1. The petitioner herein has filed this writ petition to issue appropriate writs, orders, or directions and in particular issue a writ in the nature of

certified mandamus after calling for the concerned records from the Assistant Commissioner of Labour (Appellate Authority under the Tamil Nadu

Shops and Establishments Act, 1947), the first respondent herein relating to the impugned order dated 15.3.1984 passed in T. N. S. E. Case No.

14 of 1983 and quash the same and consequently direct the first respondent to dispose off the appeal in T. N. S. E. Case No. 14 of 1983.

2. The petitioner in his affidavit, filed in support of writ petition, has averred that he was appointed by the second respondent by their order dated

14.5.1980 as sales representatives and later he was promoted as a Marketing Manager by an order dated 11.5.1982. He had put in nearly two

years and 5 months of service. His services were terminated with effect from 6.10.1982 without any notice or pay in lieu of notice and that, too,

without assigning any reasons. He has further stated that at the time of his termination from service, he was paid a monthly salary of Rs. 600.

3. Against this order of termination, the petitioner sent a representation to Deputy Commissioner of Labour on 7.10.1982 and that petition was

forwarded to the Assistant Commissioner of Labour who is the first respondent and the same was forwarded to the concerned Labour Officer.

The Labour Officer in turn has found that the case of the petitioner will not come under the purview of the Industrial Disputes Act, 1947, since the

petitioner was not a "workman" within the definition of Sec. 2(s) of the Industrial Disputes Act, 1947. Later on the legal advise, the petitioner filed

an appeal under Sec. 41(2) of the Tamil Nadu Shops and Establishments Act, 1947, on 14.2.1983 with an application to condone the delay of

100 days for preferring the appeal. The Assistant Commissioner of Labour (Appellate Authority under the Tamil Nadu Shops and Establishments

Act, 1947) by the impugned order dated 15.3.1984 has dismissed the application. Aggrieved by the said order of the first respondent, the

petitioner has filed this writ petition before this Court to issue appropriate writs, orders or directions and in particular issue a writ in the nature of

certiorarified mandamus.

4. Mr. Chandru, learned counsel for the petitioner submitted that there is grave infirmity in the impugned order. The petitioner, initially bona fide of

the view that his case comes under the purview of the Industrial Disputes Act, 1947 filed application before Deputy Commissioner of Labour to

refer the matter to Labour Court. But later on he came to know, after obtaining legal advise, that his case will come under the purview of Tamil

Nadu Shops and Establishments Act, 1947 and that the petitioner was pursuing his remedy in a wrong forum, namely, the Deputy Commissioner

of Labour, the authority under the Industrial Disputes Act. But when the petitioner obtained the legal advise, he withdrew his application before the

Deputy Commissioner of Labour by making an endorsement and later preferred an appeal before the first respondent, the Assistant Commissioner

of Labour (Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947) and also filed an affidavit giving the reasons for

condoning the delay under the Sub-sec. (2) of Sec. 41 of the Tamil Nadu Shops and Establishments Act, 1947) read with Rule 9 of the Tamil

Nadu Shops and Establishments Rules, 1948. However, the first respondent, instead of condoning the delay and hearing the appeal of the

petitioner, dismissed the same.

5. Mr. Dwarakanathan, learned counsel appearing for the 2nd respondent contended that there is no infirmity or error appearing on that there is no infirmity or error appearing on the face of the impugned order and the contention of the learned counsel for the petitioner is not sustainable.

6. Upon the facts and circumstances of the case, I am of the view, that there is force in the contention of learned counsel for the petitioner, Sec. 41

of the Tamil Nadu Shops and Establishments Act, 1947, reads as follows :

No employer shall dispense with the services of a person employed continuously for a period employed continuously for a period of not less than

six months, except for a reasonable cause and without giving such person at least one month's notice or wages in lieu of such notice, provided

however, that such notice shall not be necessary where the services of such person are dispensed with on a change of misconduct supported by

satisfactory evidence recorded at an enquiry held for the purpose.

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there

was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

Rule 9(2) of the Tamil Nadu Shops and Establishment Rules, 1948 is as follows :

Any appeal under Sub-sec. (2) of Sec. 41 shall be preferred by the person employed within thirty days from the date of service of the order

terminating the service with the employer, such service to be deemed effective if carried out either personally or if that be not practicable, by

prepaid registered post to the last known address when the date of such service shall be deemed to be the date when the letter would arrive in

ordinary course of post".

Provided that an appeal may be admitted after the said period of thirty days if the appellant satisfies the appellate authority that he had sufficient

cause for not preferring the appeal within that period.

The proviso to Rule 9(2) of the Tamil Nadu Shops and Establishment Rules, 1948 make it clear that an appeal may be admitted after the period of

thirty days if the appellants satisfy the appellate authority that he has sufficient cause for not preferring the appeal within that period.

7. The point for consideration in this writ petition is whether the petitioner has shown sufficient cause for condoning the delay of 100 days in preferring the appeal.

8. The reasons given by the petitioner in his affidavit shows that he was pursuing the remedy against his alleged arbitrary termination of services

before authorities constituted under Industrial Disputes Act, 1947, and later after legal advice, when he came to know that his case will come

under the purview of the Tamil Nadu Shops and Establishments Act, 1947, he withdrew the application from the authority constituted under the

Industrial Disputes Act and preferred the appeal before the authorities constituted under the Tamil Nadu Shops and Establishments Act, 1947 with

the prayer to condone the delay of 100 days. The Supreme Court in the ruling reported in Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi

and Another, , considering the matter arisen out of the Minimum Wages Act, 1948 has observed as follows :

An application for a direction on the employer to pay minimum wages and other amounts payable under the Minimum Wages Act may be made

under Sec. 20(2) of the Act to the authority appointed under Sec. 20(1). The first proviso to Sec. 20(2) requires that.

Every such application shall be presented within six months from the date on which the minimum wages or other amount became payable.

The Second proviso to Sec. 20(2) is in these terms :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had

sufficient cause for not making the application within such period.

(3) The authority has a discretion to condone the delay in presenting the application provided sufficient cause for the entire delay is shown to its

satisfaction. This discretion like other judicial discretion must be exercised with vigilance and circumspection according to justice, common sense,

and sound judgement. The discretion is to know through law what is just.

(4) The wording of the second proviso is similar to the provisions of Sec. 5 of the Indian Limitation Act. In Krishna v. Chathappan, I. L. R.(1890)

Mad. 269, the Madras High Court indicated in the following passage how the discretion under Sec. 5 should be exercised :

We think that Sec. 5 gives the courts a discretion which in respect of jurisdiction

is to be exercised in the way in which judicial power and

discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to

advance substantial justice when no negligence nor inaction nor want of bonafides is imputable to the appellant.

This decision received the approval of this Court in *Dinabandhu Sahu Vs. Jadumoni Mangaraj and Others*, and *Ramlal, Motilal and Chhotelal Vs.*

Rewa Coalfields Ltd., . The words "sufficient cause" in the second proviso to Sec. 20(2) should receive a similar liberal construction. "" It is clear

from the above ruling of the Supreme Court that the term "sufficient cause" has to be construed liberally.

9. Following the above ruling of the Supreme Court as the Tamil Nadu Shops and Establishments Act, 1947, is a social welfare legislation, the

proviso to Rule 9(2) of the Tamil Nadu Shops and Establishments Rules, 1948 has to be liberally construed by the Court. I am of the view that the

term "sufficient cause" will include the period bona fide taken by the workman or an employee to redress his remedy in a wrong forum. In this

connection, it is interesting to note that Sec. 14 of the Limitation Act specifically provides for exclusion of time of proceedings bona fide taken in a

court without jurisdiction for the purpose of Sec. 5 of the Limitation Act. Even though the Limitation Act, 1963 will not apply to the special

enactment like the Tamil Nadu Shops and Establishments Act, I am of the view that for the purpose of construing the terms "sufficient cause" the

principles enumerated in Sec. 14 of the Limitation Act, 1963 may be applied. Therefore, I am of the view that if a workmen or an employee bona

fide pursues his remedy in a forum which has no jurisdiction, the period taken in that forum has to be excluded in computing period of limitation and

the same will equally come under the purview of the term "sufficient cause" given in proviso to Rule 9(2) of the Tamil Nadu Shops and

Establishments Rules, 1948.

10. Mr. Chandru, learned counsel for the petitioner referred to the ruling of the Supreme Court reported in *Gujarat Steel Tubes Ltd. and Others*

Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . Wherein Justice Krishna Iyer interpreting the power of High Court under Art. 226 of the

Constitution has observed as follows :

While the remedy under Art. 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Art. 226 is sparing

surgery but the lancet operates where in justice suppurates. While traditional restraints likely availability of alternative remedy hold back the court,

and judicial power should not ordinarily rush in where the other two branches fear, to tread, judicial daring is not daunted where glaring injustice

demand even affirmative action. The wide words of Art. 226 are designed for service of the lowly numbers in their grievances if the subject

belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Art. 226 without being anglo-

philic or anglophobic in attitude.

Dual jurisdiction issues arise here which have been argued at some length before us. The position taken up by Sri Sen was that the High Court

could not under Art. 226. direct reinstatement, and even if it felt that the Arbitrator had gone wrong in refusing reinstatement, the court could only

demolish the order and direct the arbitrator to reconsider the issue. What belonged, as a discretionary power, to a Tribunal or other adjudicatory

body, could not be wrested by the writ court. To put it pithily, regarding the relief of reinstatement the Arbitrator could but would not and the High

Court would but could not."We will deal later with the point that the Arbitrator had himself no power under Sec. 11-A of the Act but did have it in

view of the wide terms of reference. The basis of this submission, as we conceive it is the traditional limitations woven around high prerogative

writs. Without examining the correctness of this limitation, we disregard it because while Art. 226 has been inspired by the royal writs, its sweep

and scope exceed hide bound British processes of yore. We are that we are because our Constitution - framers have felt the need for a pervasive

reserve power in the higher judiciary to right wrongs under our conditions. Heritage used is wisely wide. The British paradigms are not necessarily

models in the Indian Republic. So broad are the expressive expressions designedly used in Art. 226 that any order which should have been made

by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle extent where gross injustice

or fatal illegality and the like are present, inhibit the exercises but do not abolish the power.

On the authority of the above ruling, Mr. Chandru, learned counsel for the petitioner contended that this Court itself can condone the delay instead of remitting the case to the first respondent to exercise his discretion. There is force in the contention of the learned counsel for the petitioner. Upon the facts and circumstances of the case, I feel that it is a fit case to condone the delay of 100 days by this Court as the petitioner was bona fide of the view that his case came under the purview of Industrial Disputes Act and he was pursuing his remedy in a wrong forum. Later on after legal advise when he came to know that his remedy will fall only under the Tamil Nadu Shops and Establishments Act, 1947, he withdrew his application before the authorities under the Industrial Disputes Act and preferred an appeal under Sec. 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. The petitioner has adequately explained the delay of 100 days and as such the delay is condoned. In view of the above infirmity, the impugned order is quashed and the first respondent is directed to hear the appeal afresh and dispose of the same in accordance with law.

11. With the above observation, this writ petition is allowed. Upon the facts and circumstances of the case, there will be no order as to costs.