
(1989) 11 MAD CK 0010
In the Madras High Court

T.C. Srinivasan

APPELLANT

Vs

The Assistant Commissioner of Labour (Appellate Authority
under the Tamil Nadu Shops and Establishment Act) and
Another

RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

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

Citation : (1990) 1 LW 25 : (1990) 1 MLJ 326

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—This writ petition is directed against the order of the first respondent in T.S.E. No. 25 of 1982. That was an appeal

preferred by the petitioner u/s 41 (2) of the Tamil Nadu Shops and Establishments Act, 1947, hereinafter referred to as the Act, with reference to

the second respondent dispensing with the service of the petitioner. The body of the order dated 1.11.1979 dispensing with the services of the

petitioner passed by the second respondent reads as follows:

During my recent visit to the U.K. I came to know from our publishers that the British Government is substantially reducing the subvention on the

ELBS programme, which will result in the ELBS list getting whittled down. This was confirmed by the secretary of BDC. Furthermore the

University Grants Commission has no funds for allocation this year; Consequently there will be no demand for books from the University and

College libraries this season. The unhappy developments will naturally result in a big drop in our Sales which will necessitate a cut-back on our

establishment expenses.

Most regretfully therefore I have to give you this one month's notice of termination of service with us. In order to assist you in finding suitable

employment elsewhere, we are paying you a month's salary in lieu of notice so that you should not have to attend office during the notice period.

The petitioner, of course, received amounts in settlement of his accounts, pursuant to the above order. Yet, the petitioner chose to resort to the

process u/s 41 (2) of the Act, complaining that his services have been dispensed with by the second respondent without a reasonable cause.

According to the petitioner, the factors pleaded in the order dated 1.11.1979, are not at all true and there was no reasonable cause at all for

dispensing with the services of the petitioner. The second respondent while contesting the appeal of the petitioner, reiterated the stand expressed in

the order dated 1.11.1979 and it would also plead that the petitioner having accepted full and final settlement cannot be allowed to maintain the

appeal u/s 41 (2) of the Act. The first respondent accepted the contention of the second respondent that the petitioner having accepted full and

final settlement of his claims pursuant to the order dated 1.11.1979, cannot agitate against the same and dismissed the appeal of the petitioner.

2. Mr. K.N. Ramesh, learned Counsel for the petitioner, would contend that the factors pleaded for dispensing with the services of the petitioner

as per the order dated 1.11.1979, have not at all been proved to be existing at the relevant point of time and no reasonable cause has been made

out and there could not be a waiver by an employee of the statutory provisions beneficial to him and the first respondent erred in not going into the

question as to whether the dispensing with the services of the petitioner by the second respondent was for a reasonable cause, and on the other

hand first respondent viewing the acceptance of the settlement of monetary benefits by the petitioner as conclusive on the question, has rejected the

appeal of the petitioner, and this is not proper.

3. On going through the impugned order of the first respondent, we are inclined to countenance the grievance of the learned Counsel for the

petitioner. After adverting to the respective cases of the parties, the first respondent posed the question for consideration as follows:

A short point for consideration is whether the termination is for a reasonable cause. But, unfortunately, the first respondent did not go into this

question at all and on the other hand, concentrating on the aspect of the full and final settlement of the accounts of the petitioner, held that in view of that, the petitioner cannot agitate the matter u/s 41 (2) of the Act.

4. Mr. Dwarakanathan, learned Counsel for the second respondent did not raise a disputation over the proposition that the employee could not

waive statutory provisions conferring benefits on him. Except where there is dispensing with the services of the employee for reasonable cause or

for proved misconduct in an enquiry conducted therefore, the order of dispensing with the services of an employee by the employer is not to be

countenanced. This is the import of Section 41 (1) of the Act. Hence, in the instant case, there is a need on the part of the Appellate Authority,

namely, the first respondent to go into the question as to whether there was a reasonable cause for the employer, namely, the second respondent to

dispense with the services of the employee, namely, the petitioner. The present case is not a case of dispensing with the services of the petitioner

for a proved misconduct in an enquiry conducted therefore. Obviously there is an omission on the part of the first respondent to go into the

question of reasonable cause and adjudicate over the same. The first respondent is not in order in dismissing the appeal of the petitioner on the

simple ground that he has accepted full and final settlement of his accounts pursuant to the order of termination. If, in fact, no reasonable cause

within the meaning of the provisions of the Act existed and has been made out for dispensing with the services of the petitioner which is a

requirement of law the acceptance of amounts in settlement of monetary benefits by itself will not disable or estop the petitioner from raising the

question of want of reasonable cause. The first respondent is not correct in dismissing the appeal of the petitioner, as he did on the only ground of

acceptance of monetary benefits by the petitioner. The first respondent ought to have gone into and adjudicated upon the question of existence or

otherwise of reasonable cause for dispensing with the services of the petitioner by the second respondent.

5. The above features oblige us to interfere in writ jurisdiction and accordingly the writ petition is allowed and the matter is remitted to the file of the

first respondent for a fresh adjudication after due notice to the parties. The first respondent shall go into the question as to whether the dispensing

with the services of the petitioner by the second respondent was for a reasonable cause and in due satisfaction of the requirements of first part of

Section 41 (1) of the Act. Here we must record that a grievance is being expressed by the learned Counsel for the petitioner that the notice pay

tendered was not for a full month, as required by the statutory provision. Of course, the first respondent has adverted to this contention in the

impugned order and rejected it. But, in view of the present order of remittal, he will examine this question also de novo. No costs.