
(2011) 08 MAD CK 0274

In the Madras High Court

Case No : Writ Petition (MD) No. 3630 of 2006 and W.P. M.P. (MD) No. 3886 of 2006

The Management

APPELLANT

Vs

The Appellate Authority (Assistant Commissioner of Labour)
and M. Nagarajan

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Madras Village Panchayats Act, 1950 — Section 5(1)

Tamil Nadu Shops and Establishments Act, 1947 — Section 1(3), 2(3), 41(2)

Citation : (2011) 08 MAD CK 0274

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V.O.S. Kalaiselvam, for the Appellant; D. Muruganandam, Additional Government Pleader for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner prays for issuance of a Writ, in the nature of Certiorari, to quash the order passed by the Appellate Authority, in exercise of power u/s 41(2) of the Tamil Nadu Shops and Establishments Act 1947.

2. The second Respondent herein was employed as Salesman in a fair price shop on 08.01.2000, on temporary basis in pursuance to the Resolution passed by the Petitioner. After the second Respondent had put in more than four years of service, he was terminated. It is not in dispute that the appointment of the second Respondent was against permanent vacancy.

3. The case of the Petitioner, is that as the appointment of the second Respondent was not made in terms of the Tamil Nadu Co-operative Societies Rules, therefore, the services were terminated, after issuance of a show cause notice.

4. Feeling aggrieved by the order of termination, the second Respondent filed an

Appeal u/s 41(2) of the Tamil Nadu Shops and Establishments Act, 1947.

5. An objection was taken by the Petitioner, with regard to the jurisdiction of the Appellate Authority, to entertain the Appeal, on the ground that the Respondent Society was situated within a village panchayat, therefore, the Tamil Nadu Shops and Establishments Act, 1947, was not applicable to it.

6. The learned Appellate Authority rejected the plea, holding that two other employees, whose services were terminated like that of the second Respondent, had filed Appeal u/s 41(2) of the Act, and the Petitioner took No. objection to the jurisdiction of the Appellate Authority, to entertain the Appeal.

7. After rejecting the preliminary objection as referred to above, the Appeal filed by the second Respondent was accepted, and the order of dismissal was set aside, vide order dated 10.10.2005.

8. The reasons for passing the order, was that the instruction of the Government with regard to termination of services of the employees who were not appointed through employment exchange was not applicable to the employees, who were recruited prior to 2001.

9. After passing of the order of reinstatement with consequential benefit of continuity of service and backwages, an application was moved by the second Respondent, undertaking therein to forego back wages and relief of continuity of service but prayed for re-employment.

10. This offer was accepted by the Management and the order passed in Appeal was modified, ordering re-employment of Respondent No. 2.

11. Challenging the order, the Petitioner has filed this writ petition, on the ground of jurisdiction of the first Respondent to entertain the Appeal.

12. The reasoning given by the Appellate Authority, to hold that it had the jurisdiction, cannot be sustained in law, as the conduct of the parties cannot give jurisdiction to an Authority, which is not vested under the Act.

13. It is also well settled, that one wrong exercise of power cannot give jurisdiction to exercise the power. Subsequently, it is brought to the notice of the Authority / Court that it has No. jurisdiction.

14. The question to be decided is whether the first Respondent had the jurisdiction to entertain the Appeal.

15. The term "Commercial Establishment" is defined u/s 2(3) of the Tamil Nadu Shops and Establishments Act, to reads as under:

2(3) "Commercial Establishment" means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishment as the State

Government may by notification declare to be a commercial establishment for the purposes of this Act.

The Petitioner admittedly fall within the definition of "commercial establishment".

16. The contention of the learned Counsel for the Petitioner, that in view of Section 1(3)(iii) of the Act, the establishment of the Petitioner will not be covered under the Act, as it is situated in the village panchayat, which is not classified by the State Government, as Class I Panchayats u/s 5(1)(a) of the Madras Village Panchayats Act, 1950.

17. This contention of the learned Counsel for the Petitioner cannot be accepted, as after coming into force of Tamil Nadu Panchayat Act 1994, the earlier Acts stood repealed by the new Act. In this Act, there is No. categorisation of panchayats in different classes. The Tamil Nadu Panchayat Act 1994, defines the Panchayat to mean a Village Panchayat, a Panchayat Union Council or a District Panchayat constituted under the Act.

18. The Bank establishment within the panchayat would be covered under the Panchayat Act 1994, and in view of the definition of industrial establishment, the Petitioner will fall within the jurisdiction of the Appellate Authority. The contention of the learned Counsel for the Petitioner, therefore, deserved to be rejected.

Vinod K. Sharma, J. Dpn/

19. No. other point has been urged.

20. Otherwise also, No. ground is made out to exercise, extra ordinary writ jurisdiction, to interfere with the order passed by the Appellate Authority, as the order was passed with the consent of the Petitioner, after the second Respondent had given up his claim for back wages and continuity of service. In view of the consent, having been given, this Court is not inclined to exercise the extra ordinary writ jurisdiction to interfere with the impugned order.

21. Finding No. merit, this writ petition is dismissed.

22. No costs.

23. Consequently, the connected W.P.M.P.(MD) No. 3886 of 2006 is closed.