

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2008

CORAM:

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE V.DHANAPALAN

Writ Appeal No.1517 of 2006

K.Govindasamy .. Appellant/Petitioner

vs.

1.Deputy Commissioner of Labour
Labour Office, Balasundaram Road
Coimbatore.

2.The Coimbatore District Central
Co.operative Bank Ltd.,
State Bank Road, Coimbatore-18,
rep. by its Special Officer.

.. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letter Patent Act against
the order dated 03.03.2004 made in W.P.No.4846 of 2004.

WP.No.4846 of 2004 :

The Writ Petition filed under Article 226 of the Constitution of
India, for the issuance of Writ of Certiorari to call for the records of
the first respondnet in TNSE4/2001 the order dated 05.10.2003 and quash
the same.

For appellant : Mr.R.Krishnasamy

For respondents : Mr.D.Sreenivasan (AGP) for R.1
Mrs.Narmadha Sampath for R.2

JUDGEMENT

(Delivered by S.J.MUKHOPADHAYA, J)

The appellant, who was a Manager of the second respondent,
Coimbatore District Central Co.operative Bank Ltd., (hereinafter
referred to as Co.operative Bank), retired from service on 30.10.1999.
After his retirement, he was dismissed from service by an order dated

30.06.2001. Being aggrieved, he preferred an appeal under Section 41 of the Tamil Nadu Shops and Establishments Act, 1947, before the first respondent, Deputy Commissioner of Labour, Coimbatore, which was not entertained and by the impugned order dated 05.10.2003, it was rejected in T.N.S.E.No.4 of 2001 on the ground that the Manager cannot claim any benefit under the provisions of the Tamil Nadu Shops and Establishments Act, 1947. The order having been affirmed by the learned single Judge by the impugned order dated 03.03.2004, the present appeal has been preferred.

2. From the order dated 05.10.2003, it is clear and evident that the appellate authority, first respondent, while referring to Section 4 (1)(a) of the Tamil Nadu Shops and Establishments Act, 1947, held that, persons who are Managers are exempted from claiming any benefit under the provisions of the said Act. The learned counsel appearing for the appellant has brought to our notice G.O.Ms.No.4074 Industries, Labour and Housing (Labour) dated 05.10.1966. The said order was passed by the Governor of Madras in exercise of the powers conferred under Section 5 of the Madras Shops and Establishments Act, 1947, declaring that all the provisions of the said Act shall apply to the class of persons mentioned in clause (a) of sub-section (1) of Section 4.

3. This Court, in the case of Management of Madras Atomic Power Project Employees Consumer Co-operative Stores Ltd., vs. Deputy Commissioner of Labour (2000 (II) L.L.J. 1451), having noticed the said provision, held that the notification of Government exempting co-operative societies from the purview of Tamil Nadu Shops and Establishment Act, does not exclude Section 41, and employee of co-operative society even in the position of management can therefore seek remedy against termination of service before authority under the Tamil Nadu Shops Act and not before the Registrar.

4. So far as the merit is concerned, the learned counsel for the appellant referred to number of decisions of this Court and the Supreme Court and suggested that no order of dismissal can be passed once the employee had attained the age of superannuation. The learned counsel appearing on behalf of the Co-operative Bank while accepting that in view of the Government Order cited supra, the first respondent, appellate authority can decide the appeal of a Manager, including the appellant, submitted that the Bank has a right to dismiss the employee even after retirement.

5. We have heard the counsel for parties and noticed the rival contentions.

6. In the present case, as we find that the appellate authority had jurisdiction to decide the appeal preferred by the appellant, but it was wrongly rejected, we are inclined to interfere with the said order. So far as the merit of the claim and counter claim is concerned, it is left

open to the appellate authority to decide the same in accordance with law. We, accordingly, set aside the order dated 05.10.2003 passed by the first respondent, appellate authority in T.N.S.E.No.4 of 2001 and the order of the learned single Judge dated 03.03.2004 in W.P.No.4846 of 2004 and remit the case to the first respondent (appellate authority) to decide the appeal on merits in accordance with law within two months from the date of receipt of or production of a copy of this order.

The writ appeal is allowed with the above said observations. There shall be no order as to costs. The Miscellaneous Petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. Deputy Commissioner of Labour
Labour Office, Balasundaram Road
Coimbatore.

2. The Coimbatore District Central
Co-operative Bank Ltd.,
State Bank Road, Coimbatore-18,
rep. by its Special Officer.

1 cc To Mr.R.Parthiban, Advocate, SR.71734.
1 cc To Mr.C.Murugan, Advocate, SR.41382.
2 cc To The Government Pleader, SR.41577.

W.A.No.1517 of 2006

VM(CO)
RVL 11.08.2008

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