

C. Umapathy Vs. the Manager (Marketing), Tamilnadu Dairy Development Corporation, Madras and Two ors.

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Court : Chennai

Decided On : Dec-07-1981

Reported in : (1984)ILLJ248Mad

Judge : S. Nainar Sundaram, J.

Acts : Tamil Nadu Shops and Establishments Act, 1947 - Sections 41(2);
[Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 5870 of 1979

Appellant : C. Umapathy

Respondent : The Manager (Marketing), Tamilnadu Dairy Development Corporation, Madras and Two ors.

Advocate for Pet/Ap. : Mr. Fenn Walter T

Judgement :

ORDER

1. The petitioner claimed that he was 'a person employed' within the meaning of the Tamil Nadu Shops and Establishments Act, 1947, herein after referred to as the Act, with the Tamil Nadu Dairy Development Corporation, hereinafter referred to as the Corporation, as a Sales Assistant. There was an inspection of the depot

in which the petitioner was working on 15th December, 1975 and he was found absent, leaving the transactions of the depot in charge of an outsider. On this basis, the petitioner's services were terminated on 29th December, 1975. The petitioner approached the third respondent under S. 41(2) of the Act. The Corporation put forth two contentions before the third respondent. One is, the services of the petitioner were governed by a contract, marked in the case as Ex. R. 1. and hence he cannot be deemed to be a 'person employed' within the meaning of the Act and the provisions of the Act would not apply to his case. The second contention is that the petitioner was, admittedly absent during the inspection on 15th December, 1975 and hence the Corporation was justified in terminating his services. The third respondent went into these questions and on the first contention raised by the Corporation, held that the provisions of the Act would apply to the case of the petitioner, but the second contention of the Corporation was upheld by the third respondent. The result was, the appeal of the petitioner was dismissed. The petitioner challenges the order of the third respondent in the present writ petition.

2. Mr. Fenn Walter T., learned counsel for the petitioner relying on the ratio of a Division Bench of this Court, consisting of Veeraswami, C.J., and Varadarajan, J., as he then was, in *Zenith Lamps and Electricals v. Additional Commissioner* 1973 II L.L.J. 445 would urge that when the Corporation did not hold an enquiry at all, the third respondent erred in holding an enquiry and relying on the evidence placed before him to uphold the order of termination passed by the Corporation against the petitioner and coming to the conclusion that the petitioner is guilty of misconduct.

3. Mr. N. G. R. Prasad, learned counsel appearing for respondents 1 and 2 wants to sustain the order of the third respondent by pointing out that Act would not apply to the case of the petitioner and submits that the finding of the 3rd respondent that the Act would apply to the case of the petitioner is not based on an analysis of the salient features of the contract, marked in this case as Ex. R-1, and the evidence placed in this case, and the discussions on this aspect by the third respondent are very cursory and far from satisfactory. Learned counsel for respondents 1 and 2 would further submit that since the petitioner was not found at the depot, which

was put in his charge, during the inspection on 15th December, 1975, the Corporation terminated his services for a reasonable cause and such termination cannot be equated to dismissal on a charge of misconduct so that it can be stated that it ought to have the support of satisfactory evidence recorded at an enquiry held for the purpose. In this view, learned counsel for respondents 1 and 2 would state that the ratio of the Division Bench of this court, referred to above, has no application to the facts of this case.

4. On going through the order of the 3rd respondent, I find that he has not discussed the salient features of Ex. R. 1 the contract entered into between the petitioner and the Corporation, to find out as to whether the petitioner can be characterised as 'a person employed' within the meaning of the Act, Equally so, the third respondent has not discussed the evidence placed by the parties on this aspect. It is contended on behalf of the petitioner that the Corporation cannot, in the present writ petition canvass the findings which have gone against it before the third respondent, and on that ground, sustain the order of the third respondent. I am not able to sustain this approach of the petitioner. The reasons are as follow :-

The ultimate order passed by the third respondent has ensured to the benefit of the Corporation. Hence, there is no scope for the Corporation to approach this Court independently agitating over this aspect. The Supreme Court in *Northern Railway Co-operative Credit Society Ltd. v. Industrial Tribunal Jaipur* : (1967)11LLJ46SC was prepared to apply the principles of rule 22 of Order XLI of the Code of Civil Procedure in the matter of an industrial tribunal even though in the rules of the Supreme Court there was no rule analogous to rule 22 of Order XLI of the Code of Civil Procedure and held that the party is entitled to support the decision of the tribunal even on grounds which were not accepted by the tribunal or on other grounds which may not have been taken notice of by the tribunal while they were patent on the face of the record. Learned Judges of the Supreme Court referred to two Judgments of the same court, one is *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji* : [1965]1SCR712 and the other in *Powari Tea Estate v. Barkataki* 1965 11 L.L.J. 102. In my view, the same principles should be invoked in writ jurisdiction also while canvassing orders passed by authorities similar to the third respondent. There is no scope for the party who has ultimately succeeded

before the statutory tribunal and authority to approach this Court under Article 226 of the [Constitution of India](#) for the only purpose of canvassing a particular finding which has gone against him. There is a possibility that a relevant aspect or assessed and considered would have led to a finding being rendered on that aspect in favour of the party concerned. It would be equitable for this court, in the exercise of its jurisdiction under Art. 226 of the [Constitution of India](#), to permit such a party to canvass those aspects and support the ultimate order of the tribunal or authority on grounds, which have been negated by it. In *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji* (supra) the Supreme Court observed as follows : 'Apart from that, we think that while dealing with the appeal before it, this court has the power to decide all the points arising from the judgment appealed against and even in the absence of express provision like Order XLI Rule 22 of the Code of Civil Procedure, it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Consideration of justice, therefore, requires that this court should in appropriate cases, permit a party placed in such a position to support the judgment in his favour even upon grounds which were negated in that judgment.'

The above observations indicate a salutary principle and on the basis of equity and justice the same could be applied to writ jurisdiction also. Since I have found that apart from bare reference to Ex. R-1 there has been no discussion of its contents or of the other evidence on record on this aspect, it is not possible to sustain this finding of the third respondent against the Corporation. Then, the only course open to this court is to remit the matter back to the third respondent for adjudication on this question afresh.

5. There is yet another reason as to why I feel obliged to remit the matter back to the third respondent. The case of the Corporation is that services of the petitioner were terminated for a reasonable cause, in that he did not fulfil his obligations stipulated under the contract. The Corporation does not want to say that the

services of the petitioner were terminated on a charge of misconduct. On the other hand, the third respondent has sustained the order of termination as if it was passed on a charge of misconduct and that too, on the evidence placed before him. The petitioner had his own grievance over this approach and only in this context reliance was placed on the ratio of the Division Bench of this court in *Zenith Lamps and Electricals v. Additional Commissioner (supra)*. On the other hand, learned counsel for respondents 1 and 2 submits that the contention of the Corporation that the services of the petitioner were terminated for a reasonable cause as per the terms of the contract, has not been considered at all by the third respondent. But the petitioner on the one hand and respondents 1 and 2 on the other have got their own grievance over the reasoning of the third respondent. I find that these grievances of the parties are justifiable because the third respondent has gone at a tangent while dealing with the matter and, of course, ultimately held the case in favour of the Corporation. If it is a case of termination for a reasonable cause, it would be distinct and separate from the case of termination on a charge of misconduct. In the latter case, it ought to have been preceded by a domestic enquiry. If there had been no domestic enquiry at all, then the charge of misconduct cannot get sustained by the evidence adduced before the third respondent. As pointed out by the Division Bench in *Zenith Lamps and Electricals v. Additional Commissioner (supra)* when there is no enquiry at all held by the management, the appellate authority under S. 41(2) of the Act cannot hold a trial, take evidence and then satisfy himself as to whether the removal was justified or not. In the instant case, there is a failure on the part of the third respondent to probe into the case of justification put forth by the Corporation with regard to the order of termination. As pointed out above, the Corporation does not want to equate this order of termination as one having been passed on a charge of misconduct. These factors oblige me to interfere in writ proceedings and remit the matter back to the third respondent for fresh disposal. Accordingly the writ petition is allowed and the matter will stand remitted back to the third respondent for him to consider the same afresh. The third respondent will first deal with the question as to whether the provisions of the Act, would be attracted to the case of the petitioner. For a complete adjudication of the matter, the third respondent would also deal with the case of the Corporation as to whether the services of the

petitioner were terminated for a reasonable cause, as per the contract of service. Equally so, the third respondent will decide the question as to whether the termination of the services of the petitioner would amount to termination on a charge of misconduct and if so, whether such an order can be upheld in the absence of a domestic enquiry preceded by it. After deciding the above relevant aspects, the third respondent will pass appropriate final orders as per his findings. There will be no order as to costs in this writ petition.

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