M/S. Cognizant Technology Solutions ... vs The Special Joint Commissioner Of ... on 29 May, 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 29.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 682 of 2020
and
W.M.P.Nos. 810, 812, 2417, 5302 of 2020 and 25633 of 2

M/s. Cognizant Technology Solutions Pvt. Ltd,
Menon Eternity Building,
New No.365, Old No.110,
St.Marys Road, Alwarpet,
Chennai – 600 018.
rep. by its Authorised Signatory

Vs.

1.The Special Joint Commissioner of Labour,
The Appellate Authority under the
Tamil Nadu Shops and Establishments Act, 1947
Commissionerate of Labour,
Chennai – 600 006.

2. Thiru. Sivakumar Krishnamurthy,
S/o. Krishnamurthy Rajagopal,
Flat. 4A, No.46, 48, 50 Unnamalai Ammal Street,
T.Nagar, Chennai – 600 017.

Prayer in W.P.
To issue a Writ of Certiorari calling for the records of the 1st respond
in TSE-1/1of 2016 and quash its order dated 18.10.2019 and pass such fur

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or other orders as this Hon'ble Court may deem fit and proper in the
circumstances of the case and thus render justice.

Prayer in W.M.P.No. 810 of 2020
To dispense with the production of the original order of the 1 st Respon
dated 18.10.2019 in TSE-1/1 of 2016 and pass such or other orders as thi
Hon'ble Court may deem fit and proper in the circumstances of the case a
thus render justice.

Prayer in W.M.P.No.812 of 2020
To grant Interim Stay of operation of the order of the 1st Respondent da
18.10.2019 in TSE-1/1of 2016 pending disposal of the Writ Petition and p
such further or other orders as this Hon'ble Court may deem fit and prop
the circumstances of the case and thus render justice.

Prayer in W.M.P. No. 2417 of 2020
To initiate appropriate action against Mr.S.Rajagopal and M/s. Cognizant
Technology Solutions Pvt. Limited, Mr.Rajagopal for deposing false affid
on instructions given by M/s. Cognizant Technology Solutions Pvt. Limite
the perjury committed by them by submitting false statement in affidavit
08.1.2020.

Prayer in W.M.P.No. 5302 of 2020
To punish the Managing Director and S.Rajagopal, Associate Director Lega

1st Respondent / Petitioner as per Section 45-A of Tamil Nadu Shops and
Establishments Act, 1947.

Prayer in W.M.P.No.25633 of 2023
Prayed before this Hon'ble Court that these additional grounds may also
taken on record while deciding the writ petition.

Appearance of Parties:

For Petitioner : Mr.Srinath Sridevan, Senior Counsel,
For P.M.N.Bhagavath Krishnan, Advocate

For Respondent 1 : Mr.R.Kumaravel, AGP

For Respondent 2 : Mr.N.L.Rajah, Senior Counsel
For M/s.Rohini Ravikumar and S.Mahesh Kumar,
Advocates.

JUDGMENT

Heard.

2.The Petitioner is a software company and a subsidiary of Cognizant Technology Solutions Inc., based in New Jersey, United States of America. In the present writ petition, the Petitioner challenges the order dated 18.10.2019 passed by the 1st Respondent, the Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947, in proceedings bearing TSE-1/1 of 2016.

3.The Appellate Authority (1st Respondent), by her well-considered order dated 18.10.2019, finally passed the following order:— "Issue No.6 : To what remedy the appellant is entitled to.

153. In fine, in view of extensive discussions on various issues, the Authority holds that the dispensing with the services of the appellant by the respondent-management is that i) the termination of services of the appellant was not for reasonable cause, ii) that the respondent has not satisfied the Appellate Authority as to the subjective satisfaction based on which the appellant was terminated from service based on documents and evidence, iii) that the termination of service of the appellant is not "termination simpliciter" but one of "punitive" in nature, iv) since the termination of service cast stigma, the respondent-management, before dispensing with the services of the appellant has not conducted any domestic enquiry as mandated under Section 41 of Tamil Nadu Shops & Establishments act, 1947 and v) that the evidences let in by the respondent during the course of enquiry in the appeal before the Appellant Authority was held not supported the contention of the respondent – management.

154. Therefore, the Authority directs that the order dt. 21.12.2015 terminating the services of Thiru.Sivakumar Krishnamurthy, the appellant herein, is set aside and the appellant be reinstated into service with continuity of service, full back wages and all consequent and attendant benefits as prayed for by the appellant."

4.The sole question that arises for consideration in the present writ petition is whether the order passed by the Appellate Authority on 18.10.2019 is fair, proper, and legally sustainable, or whether it stands vitiated by any error, including the allegation of mala fides attributed to the officer concerned.

 Although the issue lies within a narrow compass, it is unfortunate that both parties have been embroiled in protracted litigation, approaching this Court on multiple occasions over the same subject matter. For what is essentially a straightforward dispute, the course of action adopted by the parties has resulted in undue consumption of judicial time and avoidable expenditure of public resources.

5.It becomes necessary to set out the prior litigation initiated by the parties, not only against each other but also involving the statutory Appellate Authority, who was unfortunately drawn into the public domain, with her conduct being subjected to scrutiny in the course of the proceedings. The actions of both parties, in this regard, warrant strong disapproval. Merely because the Petitioner is a

multinational software company and the 2nd Respondent a software professional, neither is entitled to institute multiple rounds of litigation over a singular issue, namely, the legality and justification of the 2nd Respondent's termination.

6.The 2nd Respondent, who was employed with the Petitioner Company in the capacity of Associate Director, filed an appeal dated 18.01.2016 under https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 (hereinafter referred to as the Shops Act), challenging his termination order dated 21.12.2015. The appeal was taken on file by the 1st Respondent as TSE-

1/1 of 2016, and notice was issued to the Petitioner Management. Pursuant to such notice, the Petitioner filed its answer statement dated 07.05.2016. In response, the 2nd Respondent filed a rejoinder dated 30.05.2016.

7.Observing that his appeal was being unduly delayed without being taken up for hearing, the 2nd Respondent filed W.P. No. 15829 of 2018 before this Court, seeking a direction to the 1st Respondent to dispose of his appeal expeditiously. This Court, by order dated 28.06.2018, issued the following direction:— "Considering the limited relief sought for in this writ petition, the first respondent is directed to consider the appeal filed by the writ petitioner in T.S.E.No.1/01/2016 on merits and in accordance with law and by providing reasonable opportunity to all the parties concerned and pass orders as early as possible preferably within a period of four months from the date of receipt of a copy of this order."

8.The 2nd Respondent subsequently filed a Contempt Petition, being https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) Cont. P. No. 283 of 2019, against the Appellate Authority, alleging wilful disobedience of this Court's order dated 28.06.2018. After issuing notice to the Appellate Authority and considering the submissions, this Court found no contempt made out and accordingly dismissed the petition by order dated 16.04.2019.

9.The 2nd Respondent once again approached the 1st Respondent by filing an interim application, I.A. No. 6 of 2018, seeking permission to mark certain additional documents. The said application was rejected by the Appellate Authority by order dated 07.09.2018. Aggrieved by the rejection, the 2nd Respondent filed yet another writ petition, W.P. No. 30351 of 2018, seeking to quash the said order. This Court, by order dated 12.12.2018, disposed of the writ petition with the following directions:— "2. The learned counsel for the petitioner has agreed that the application filed by him is not in the correct format. The petitioner should have filed an application for marking of the additional documents, pending appeal filed before the appellate authority. But the appellate authority without considering the application on merits dismissed the said application by stating that the issue to be decided at the time of final disposal of the main appeal.

2. In view of the aforesaid submission made by the learned counsel for the petitioner, the order passed by the 1 st https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) respondent is liable to be set aside. Therefore, with the consent of parties, this Court is inclined to

pass the following order.

"(i) The Writ Petitioner is permitted to file a fresh application with the proper prayer to receive the additional documents, if so advised within a period of one week.

(ii) If any such application is filed after serving notice on the other side and the said application is in order, the appellate authority shall number the application and dispose of the same as expeditiously as possible preferably within a period of three (3) weeks thereafter.

(iii) as instructions, both the parties have undertook that they will co-operate for the enquiry. Hence, both the parties are directed to co-operate for further proceedings"

3. Accordingly, the Writ Petition is disposed of with the above directions."

10.The 2nd Respondent also filed another writ petition, W.P. No. 26925 of 2019, seeking a direction to transfer the pending TSE Case No. 1/01/2016 from the present Appellate Authority who was also made as a named party to another competent authority. This Court, by order dated 09.09.2019, disposed of the writ petition and issued the following directions:— "2.The learned counsel for the petitioner would submit that there was an enormous delay in adjudicating the appeal filed before the second respondent in TN.S.E.No.01/01/2016. The learned counsel also states https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) that after filing the written statements, the bundles were found missing and there was an enormous delay even to proceed with the matter by the second respondent. Though, certain grievances are addressed by the learned counsel for the petitioner, the learned counsel appearing on behalf of the respondent brought to the notice of this Court that missing bundle was reconstructed and arguments were completed and orders were reserved in the said appeal on 06.09.2019. it is brought to the notice of this Court that in normal circumstances, orders will be passed within a period of 30 days from the date on which they were reserved. Once, the orders were reserved by the Competent Authority, there is no point in transferring the appeal to some other Competent Authority and this Court does not interfere once the appeal was fully heard and the orders were reserved.

3.In the present case, appeal was heard fully and orders were reserved on 06.09.2019. This being the factum of the case, the second respondent is directed to pass orders on merits and in accordance with law as expeditiously as possible preferable within a period of six weeks from the date of receipt of copy of this order.

4.With these directions, the writ petition stands disposed of."

11.Aggrieved by the aforesaid order, the 2nd Respondent filed a writ appeal in W.A. No. 3367 of 2019 before a Division Bench of this Court.

However, even before the disposal of the said appeal, the 1st Respondent proceeded to pass a final order in TSE Case No. 1/01/2016 dated 18.10.2019. In the said order, it was recorded that the 2nd Respondent had filed 109 documents, which were marked as Exhibits A1 to A109. On behalf of the

Petitioner Management, 82 documents were filed and marked as Exhibits R1 to R82. The Petitioner Management also examined Mr. T. Hemanth Kumar https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) (Manager – HR) as AW1, while the 2nd Respondent examined himself as RW1.

The order passed by the 1st Respondent, which was in favour of the 2nd Respondent, extended across 154 paragraphs.

12.Upon learning of the final order passed by the 1st Respondent Appellate Authority, the 2nd Respondent sought permission to withdraw the writ appeal before the Division Bench. However, the Petitioner opposed the withdrawal and, in the course of their submissions, also levelled certain allegations against the Appellate Authority. In view of these developments, the Division Bench, by order dated 06.11.2019, passed the following directions:— "When the matter is called today, the learned Counsel for the appellant seeks permission of this Court to withdraw the appeal stating that an order has been passed by the appellate authority in T.S.E.No.1/01/2016 on 18.10.2019.

2.However, Mr.Anand Gopalan, learned Counsel appearing for the third respondent objected the withdrawal of the appeal stating that the appellant has got a favourable order from the very same authority against whom the appellant made allegations in the earlier hearing and therefore, he intends to withdraw the appeal. Moreover, he pointed out that in the vacation Court, there was an oral observation made by the Court, not to pass any order and inspite of the same, the appellate authority has passed an order. However, the learned Counsel for the appellant denied the same.

3.It is seen from the records that when the matter was argued on https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) 17.10.2019, Mr.N.L.Raja, learned Counsel appearing for the appellant pleaded for transfer of the case from the very same authority who passed the order stating that bundle was missing with the authority and inspite of the absence of the bundle, hearing took place and therefore, no justice would be done if the same officer is allowed to pass orders. The said submission was recorded and the matter was adjourned today.

4.In the meantime, the appellate authority has passed an order in favour of the appellant. Hence, Mr.Anand Gopalan, learned Counsel for the third respondent would submit that there is a serious malpractice in the order passed by the authority. Therefore, considering the allegations made by the appellant in the earlier hearing and the way in which the order has now came to be passed by the appellate authority, this Court directs the Registrar (Vigilance), High Court of Madras to seize all the records including the notes of the stenographer and the hard disk in which the word file has been stored. Further, some sample copies of the orders passed by the appellate authority in similar appeals shall also be seized."

13.Subsequently, when the writ appeal was listed before the regular First Division Bench on 08.01.2020, the Bench took note of the earlier order dated 06.11.2019 and proceeded to pass the following order:— "3. The contention of the learned counsel for the third respondent is that pursuant to the aforesaid directions, the records have been made available with the Registrar-Judicial of the High Court.

4.He also contends that there are certain allegations which deserve to be investigated, inasmuch as it is only after this writ appeal was filed, that an order of transfer of proceedings came to be passed by https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the officer in question against whom allegations had been made and therefore, the veracity and probative value of that order is yet to be tested on the basis of the records which are lying with the Registrar-Judicial. In view of this, he submits that even if the appellant is praying for withdrawal of the appeal, the rights of the third respondent should be kept preserved to approach the appropriate forum in respect of any such allegations that have been made against the officer concerned.

5.Having considered the submissions raised, we accept the request of the learned Senior Counsel for the appellant to withdraw the Writ Appeal, which is hereby dismissed as withdrawn.

6.We also direct the Registrar-Judicial to maintain the xerox copy of the entire proceedings and send the originals back to the office concerned from where it had been received. The original records and the CD as well as whatever that has been retrieved by the Registrar, an inventory thereof shall be prepared and the entire records shall be remitted back to the office concerned to be preserved by it with a due receipt of the same. In the event any party chooses to rely on any document or otherwise, it shall be without prejudice to their rights to contest the correctness or otherwise of the proceedings before the officer.

The Writ Appeal is, accordingly, dismissed as withdrawn. There shall be no order as to costs. Consequently, C.M.P.No.21622 of 2019 is also dismissed."

14.It was thereafter that the Petitioner filed the present writ petition, W.P. No. 682 of 2020. When the matter was taken up for admission on 13.01.2020, a learned Single Judge passed the following order:— "2. Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioner submitted that the petitioner reasonably apprehends that https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the impugned order was not passed by the concerned official, who is said to have passed such order. An additional Affidavit filed by the petitioner dated 13.01.2020 states that the petitioner has reasons to believe that the order passed by the first respondent was not passed in the normal course of the proceedings and that the petitioner also has reasons to believe that the order has not been authored by the authority, who has signed the impugned order. Apart from raising the above preliminary objections against the impugned order, the merits of the said order are also challenged by raising very many grounds in this writ petition.

3. The merits of the above contentions raised on behalf of the petitioner have to be gone into and decided only after completion of the pleadings and hearing the respective counsels.

4. Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of the second respondent contended that the above allegation made by the petitioner is totally baseless and without any substance. He further submitted that the second respondent would file a detailed counter affidavit disputing all the above contentions.

5. Considering the above stated facts and circumstances, more particularly, the preliminary objections raised by the petitioner against the authority, who is said to have passed the impugned order, as if she has not signed the impugned order, this Court is of the view that the original file/documents connected with the impugned order are necessary to be perused by this Court.

6. Hence, the learned Additional Government Pleader for the first respondent is directed to file a counter affidavit and also produce the original file before this Court at the time of next hearing.

7. In view of the above stated facts and circumstances, there will be an order of status quo till 23.01.2020. Post the writ petition on 23.01.2020."

15.Subsequently, when the matter was listed on 29.01.2020, the Court passed the following order:— "(1/2) Mr.D.Suriyanarayanan, learned Additional Government Pleader informed that the Special Joint Commissioner of Labour, Chennai, has addressed a letter dated 23.01.2020 to the Registrar (Vigilance) of this Court, requesting for return of the case records so as to enable them to produce the same before this Court in this writ petition. He further submitted that the records were received from the Registrar (Vigilance) this morning. Accordingly, he has produced the records before this Court.

2. The Registrar(Judicial) is directed to keep the said records in a sealed cover. Post the writ petition on 07.02.2020 for further hearing.

(2/2) The second respondent filed an affidavit dated 21.02.2020 and sought for a direction to the petitioner to pay the wages under Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947.

2. In the affidavit, it is stated that the second respondent has not been gainfully employed elsewhere and that he does not have any income through salary. In support of such contention, he has filed the typed set of papers containing Form-26AS Annual Tax Statement under Section 203AA of the Income Tax Act, 1961, for the financial years 2015-2016, 2016-2017, 2018-2019 and 2019-2020.

3. In the reply affidavit filed by the writ petitioner against the above claim of the second respondent, it is stated that the last drawn wages of the second respondent was Rs.2,44,664/- per month and once, the second respondent is paid with huge sum every month, the writ petitioner would not be in a position to recover the amount, if they succeeded in the main writ petition.

 However, the reply affidavit does not dispute or disprove the claim of the second respondent that he has not gainfully employed anywhere.

4. Section 41A of the Tamil Nadu Shops and Establishments Act, 1947, contemplates that during pendency of the proceedings before this Court, full wages last drawn by the Employee is liable to be paid by the Employer, if the employee had not been employed in any establishment during such

period and an affidavit by such person had been filed to that effect.

5. In view of the above statutory position and in view of the affidavit filed by the second respondent as discussed supra and in view of the reply affidavit filed by the writ petitioner in not disputing or disproving the above claim of the second respondent, this Court is of the view that the second respondent is entitled to receive the last drawn wages from the petitioner during the pendency of this writ petition.

6. Accordingly, the writ petitioner is directed to pay the last drawn salary every month to the second respondent from the date of filing of the writ petition till the disposal of the writ petition. In view of the order passed under Section 41A of the Tamil Nadu Shops and Establishments Act, 1947, the status quo already granted is extended until further orders."

16.In compliance with the directions issued by the Division Bench, the Commissioner of Labour, Chennai – 6, addressed the following communication to the Registrar (Vigilance) of this Court, the contents of which are reproduced below:— Lt. dt. 6.11.2019 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) Sub : Directions issued in W.A.No. 3367/2019 – Regarding. Ref : Letter No. 745/2019/VC, dt. 6.11.2019 from Registrar (Vigilance), High Court of Madras, Chennai

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I submit that pursuant to the letter cited in the reference cited, all the records including the exhibits filed by both parties in TSE No.1/01/2016 (Krishnamurthy Sivakumar Vs. Cognizant Technology Solutions Pvt. Ltd) on the file of the Appellate Authority, Tamil Nadu Shops & Establishments Act and two sample orders passed by the Appellate Authority in similar cases.

Sd/-

for Commissioner of Labour.

17.Thereafter, both the Petitioner and the 2nd Respondent sought permission to open the sealed cover and obtain copies of the documents contained therein. This Court, by order dated 02.02.2024, passed the following directions:— "2. On 31.01.2024 this Court opened the sealed cover to peruse the seized materials. The learned counsel for the petitioner as well as 2 nd respondent filed memo's seeking permission of this Court to peruse the materials in the sealed cover and make copies of the material retrieved from the seized hard disk.

3. As the issue involved in the writ petition pertains to the circumstances under which the impugned order was passed, I am of the view that the permission sought for in the memo's filed by the petitioner and the 2nd respondent is to be granted. The petitioner and 2nd respondent are permitted to peruse the materials in the sealed cover by filing appropriate search application.

 The copies of the seized records as also the hard disks shall be made by the Registry and the Parties shall be charged for the expenses incurred. The parties shall be given the said copies by the Registry on payment of the amounts incurred towards making of the copies."

18.When the matter was taken up before this Court, learned counsel for the Petitioner, without prejudice to the Petitioner's contentions, placed on record a settlement proposal,which reads as follows:— Settlement Proposal A Monthly gross wages Rs. 2,44,664/-

B If WP IS DISMISSED: Back wages from Rs.1,15,07,363/-

December 22nd 2015 to December 2019.

47 months and 10 days C Total Sec. 41A payment paid thus for Rs.1,51,06,029/- D Future payment from Mar 2025 to Nov Rs. 22,01,976/-

2025 (till superannuation) E Amount payable, if WP is dismissed Rs.1,37,09,339 Without prejudice to the pending WP, it is proposed that Cognizant will pay Item D in full, plus 25% of Item B.[Rs.22,01,976/- plus Rs.28,76,844/-] totalling to Rs.50,78,820/-, on condition that the termination order dated 21st December 2015 of Mr.Sivakumar Krishnamoorthy from the rolls of the Company will stand."

19.Prior to the filing of the said memo,the Petitioner had filed an additional affidavit dated 20.02.2025, wherein the payments made pursuant to Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947 were detailed. The particulars of the payments are as follows:— "It is submitted that as on January 2025, the Petitioner herein has paid a total sum of Rs.1,48,61,365/- (Rupees One Crore Forty-Eight lakhs Sixty one Thousand Three hundred and Sixty five) to the 2nd Respondent herein in full compliance of the provisions of Sect. 41A. The Petitioner herein has been complying with the order of this Hon'ble court scrupulously making payment every month from January 2020. The Petitioner herein is also filing a Statement (at Pg.59 of the Additional Paperbook filed by the Petitioner) which shows the payments made to the Petitioner as on date. The same may also be taken on record and marked as Ex.R84."

20.However, in the Dates and Events filed on 24.04.2025, the 2nd Respondent submitted the following remarks in response to the aforesaid statement:— "The Petitioner in this instant case, once again submits a false affidavit before this Hon'ble Court in response to the application by the 2nd Respondent for payment of salary u/s 41-A of the Shops and Establish act, the false submission of monthly gross wages of 2,44,664/- was taken on record and the order directing the payment of the submitted amount was passed by this Hon. Court. It can easily be verified from the Petitioner's record that the submission made by the Petitioner before the Hon'ble Court is false. An interim order directing the payment of the arrears with the applicable penalty is prayed herewith."

21.When the matter was taken up on 27.03.2025, both parties filed a joint memo requesting that the dispute be referred to mediation before a named https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) Senior Advocate. In view of the said request, this Court, by order dated 27.03.2025, appointed the agreed-upon Senior Advocate as Mediator and directed the parties to appear before the Mediation Centre on 07.04.2025. As per the records received from the Mediation Centre, an interim report was submitted indicating that further discussions were scheduled for 18.04.2025.

However, when the matter was next listed on 22.04.2025, both sides informed the Court that the mediation had failed, and accordingly, requested that the matter be heard and decided on merits.

22.Learned counsel for the Petitioner filed an additional typed set dated 21.04.2025 enclosing the proceedings of the mediation. This action is highly inappropriate. Once a mediator is appointed and the mediation process is initiated, the proceedings conducted therein are strictly confidential and have no bearing on the adjudication before this Court. In the interest of propriety and to preserve the sanctity of the mediation process, this Court deems it inappropriate to take note of or rely upon such materials. Counsels accordingly advised to treat mediation proceedings as strictly private and refrain from placing them on record or referring to them during arguments before this Court.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm)

23.Before this Court, the Petitioner has filed an extensive compilation of documents comprising two volumes of typed sets, Volume I containing 153 pages and Volume II containing 337 pages. In addition to these, the original typed set filed along with the writ petition comprises 112 pages. The Petitioner has also filed an additional typed set containing 59 pages of further documents.

24.The 2nd Respondent has filed two volumes of typed sets comprising a total of 783 pages. Not satisfied with that, he has filed a further set of two additional volumes, running into 838 pages. Both sides advanced elaborate arguments supported by legal precedents. Apart from oral submissions, learned counsel for the Petitioner also filed written arguments dated 29.04.2025, a copy of which was duly served on the opposing counsel.

25.The Petitioner has raised serious objections regarding the conduct of the 1st Respondent in the course of passing the impugned order, alleging invidious behaviour and misconduct. These allegations are directed against an officer who is a senior woman official holding the rank of Joint Commissioner of Labour in the Labour Department. Notably, the officer has not been impleaded in her personal capacity in the present writ petition, and hence, any https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) allegations concerning her conduct fall outside the scope of legal scrutiny by this Court in these proceedings. In any event, the only references made by the Petitioner in this regard appear in paragraphs 25 to 28 of the affidavit filed in support of the writ petition, wherein mention is made of the records maintained by the officer having been handed over to the Vigilance Department and the parties being permitted to peruse the same.

26.It is significant to note that, despite having perused the records, no affidavit has been filed making specific allegations regarding the conduct of the officer, who has been impleaded only in her official capacity. In response to the averments made in the affidavit referred to above, the 2nd Respondent filed a detailed counter affidavit dated 21.01.2020. Thereafter, the Petitioner filed an additional affidavit dated 13.01.2020, wherein certain direct allegations were levelled against the 1st Respondent Officer. In paragraph 2 of the said affidavit, the following averment was made:— "I state that the Petitioner has reasons to believe that the order passed by the 1st Respondent was not passed in the normal course of proceedings. I state that the Petitioner also has reasons to believe that the order has not been authored by the authority who has signed the impugned order. A comparison of the order impugned with that of any other order authored by the concerned authority would itself reveal the same. I state a forensic audit of https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the hard disk of the computer from and in which the document was generated would also reveal the same. I state that the hurry in which the order has been passed despite the writ appeal filed the Respondent was pending may also be considered by this court. It is humbly prayed that this court may kindly investigate the same."

27.It is pertinent to note that the Appellate Authority who passed the impugned order was subjected to criticism by both parties—both prior to and subsequent to the passing of the order. The 2nd Respondent not only instituted three writ petitions against the said authority but also impleaded her by name in Contempt Petition No. 283 of 2019. Additionally, in W.P. No. 26925 of 2019, the 2nd Respondent arrayed the officer in her personal capacity as a party respondent and sought transfer of the pending case to another authority.

However, all such efforts on the part of the 2nd Respondent proved unsuccessful.

28.Pursuant to the notice issued by this Court, the 1st Respondent filed a counter affidavit dated 28.02.2020. With specific reference to the allegations concerning W.P. No. 26925 of 2019, the following averment was made in paragraph 8 of the counter affidavit:— "It is further submitted that it is not correct to say as stated by the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) counsel for the petitioner in W.P.No.26925 of 2019 that after filing the written statement the bundles were found missing and it is also not correct to say that the missing bundles were reconstructed as stated by the counsel for the respondent management. The statements of the counsels for both sides are factually incorrect."

29.It was only upon the 2nd Respondent filing Writ Appeal No. 3367 of 2019 that the Petitioner, as a respondent therein, took the opportunity to raise complaints before the Division Bench. Acting on those representations, the Division Bench directed that all records be submitted to the Vigilance Department of this Court. In relation to those proceedings and actions, the 1st Respondent, in her counter affidavit dated 28.02.2020, made the following averments:— "9. It is submitted that not satisfied with the above order of the Hon'ble High Court, the 2nd respondent herein filed a Writ Appeal in No. 3367 of 2019 reiterating his plea to transfer the proceedings to some other Authority. It is also submitted that the Division Bench of this Hon'ble Court has not either granted stay to the above order or restrained the Appellate Authority in any manner from passing the order in the appeal in TSE-1/1 of 2016.

10. It is submitted that since the Hon'ble Division Bench has not either granted any stay or passed any restrain order and since the time granted by the Hon'ble High Court in W.P.No.26925 of 2019 was nearing, complying with the direction of the Hon'ble Court, the Appellate Authority passed the order dt. 18.10.2019 in in TSE-1/1 of 2016." "19. It is submitted that in Para 26 of the affidavit the Petitioner https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) alleged that despite an oral order passed by the Hon'ble Court on 10.10.2019 holding that the 1st Respondent should not pass any final orders in the matter, the 1st respondent passed the impugned order. In this connection it is neither any oral observation nor any oral order was passed by the Hon'ble Court in the hearing held on 10.10.2019. Presuming, without admitting, that if at all any oral observation or order had been passed, either the Writ Appellant or the Respondent or the Government Pleader would have taken note of that and immediately communicated to the Appellate Authority. More particularly by the Writ Appellant who was only seeking direction to transfer the appeal to some other Appellate Authority." "20. It is respectfully submitted that in the guise of filing an additional affidavit to the writ petition, the Petitioner once has once again raised the infructuous issue. This action of the writ petitioner cast a doubt that the writ petitioner with some hidden motive, again and again raising the very same issue by casting uncalled for aspersions against the Appellate Authority."

30.If the allegations made by the Petitioner against the statutory Appellate Authority are to be taken at face value, it would render it virtually impossible for any authority to discharge its quasi-judicial functions. The request made in the additional affidavit for a comparative analysis or forensic audit of the impugned order with other orders passed by the same authority is wholly unwarranted and mischievous. Every adjudicatory authority develops their own style of drafting orders over time, and judicial craftsmanship is an evolving process. There is no singular or definitive manner of writing an order, and variation in style cannot, by itself, give rise to suspicion or justify scrutiny.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) Entertaining such requests would seriously undermine the independence and integrity of quasi-judicial authorities and cannot be countenanced by this Court.

31.The Supreme Court, while dealing with allegations of corrupt practices by a judicial officer, has held that the correctness of the order passed by such an authority is not the basis for disciplinary action. However, the officer may still be held accountable if his conduct falls within the categories of misconduct identified by the Court. In Union of India v. K.K. Dhawan, reported in (1993) 2 SCC 56, the Supreme Court observed as follows:— "It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii)if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii)if he has acted in a manner which is unbecoming of a government servant;

(iv)if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

None of the allegations made against the 1st Respondent fall within the categories of misconduct enumerated by the Supreme Court in the decision cited above.

32.In the present case, despite facing attacks from both sides, the 1st Respondent Authority remained steadfast and proceeded to pass a detailed and reasoned order, which is now under challenge in this writ petition. A notable aspect is that in the written submissions filed by the learned counsel for the Petitioner, dated 29.04.2025 and extending to 16 pages, there is not a single reference to the serious allegations that had earlier been raised with much vehemence in the pleadings. This entire episode appears to be much ado about nothing. It was also improper on the part of the Petitioner to level grave and unsubstantiated allegations without impleading the officer in her personal capacity, thereby denying her an opportunity to respond. What began with considerable noise has ultimately culminated in a mere whimper. This Court has no hesitation in rejecting the allegations made against the 1st Respondent Authority and will proceed to adjudicate the matter solely on the merits of the impugned order.

33.Before the 1st Respondent Authority, both parties filed a joint memo dated 06.09.2019, wherein they mutually agreed to exchange the documents that had been marked and to submit a consolidated compilation to facilitate adjudication by the authority. The joint memo filed by the learned counsel on both sides reads as follows:— Joint Memo On behalf of both the parties, copies of documents which are already marked as Exhibits as detailed below are filed herewith for the use of this Hon’ble Court and for the disposal of the Appeal.

Appellant’s Side	Respondent’s Side
Ex.A1 to Ex.A109	Ex.R1 to Ex.R82

Dated at Chennai, this the 6th day of September 2019 Sd/- Sd/-

Counsel for Respondent Counsel for Appellant Accordingly, this Court shall confine itself to the materials that were placed https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) before the Appellate Authority and examine whether the Authority has duly considered both the oral and documentary evidence and rendered a decision in accordance with law.

34.It is an admitted fact that the appeal filed by the 2nd Respondent was directed against the termination order issued by the Petitioner dated 21.12.2015. However, prior to that, the Petitioner had issued an earlier termination order dated 07.05.2015. In the said order, after setting out various references, the operative portion reads as follows:— "Further to the second show cause notice dated 31/03/2015 which was received by you on 01/04/2015 & to your e-mail explanation for the same was received at our office on 02/04/2015. We have scrutinized the same and found that explanation is vague and irrelevant to the facts of your case.

We also evaluated all the case facts / past history records of yours and we could not find any mitigating / extenuating evidences to levy a lesser punishment. Hence we are confirming the punishment of Termination of your services on you as indicated in the second show cause letter.

Please note that your services with our organization stand terminated with effect from 08/05/2015, and two months of pay in lieu of notice is being paid along with full & final settlement.

You are directed to return the official laptop & accessories / SIM card which was given to you to Arun Kumar Vijayamoorthy, HR Manager mobile number 9952009977 on or before 15th May 2015 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) to enable us advise your Full & final settlement."

35.Within a span of seven months from the issuance of the earlier order, the Petitioner proceeded to pass a second termination order dated 21.12.2015.

The following excerpts from that order are reproduced below to shed light on the intent and approach of the Petitioner Management:— We are hereby rescinding the Order of Termination dated 7th May 2015 and are treating you as being in service, as if there was no termination.

..... Unfortunately, despite your wealth of experience per your resume in Data Warehousing, in your earlier employment, you have not displayed your mettle while you were in our service.

We have to record that your employment with us from 1st August 2013 to 21st December 2015 has cost us not less than Rs.72,23,109/- (Rupees Seventy Two Lakhs Twenty Three Thousand One hundred and Nine only) without any consideration from your end.

We are satisfied that you were given adequate opportunities unfortunately you have failed to avail this opportunity for reasons not known to us. In our view, it is not in our mutual interest to continue our relationship. In view of the foregoing, we are constrained to put an end to your employment, which we hereby do with immediate effect by offering 60 days salary in lieu of notice period.

With your past experience, you should be in a position to secure employment elsewhere.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) We hereby furnishing a statement of your dues as given below:

Credit:

· Salary for the period 01.11.2014 to 8.12.2015 · 60 days salary in lieu of notice period · Other dues, if any · Differential Gratuity Deductions:

· Statutory deductions · Applicable Income-tax · Payments credited to your bank account for the period 01.11.2014 and 08.05.2015 (Salary + Accrued Flexible benefits) · Gratuity Paid The eligible amount would be credited to your bank account (Bank A/c #:000101016963, Bank : ICICI Bank) as per our records. Your other dues, if any, will be settled in due course.

You are requested to receive the payment in token of your acceptance of the cessation of your employment.

In the event of contingency arising we reserve our rights to justify the termination before appropriate legal Forum.

In case the order of termination is viewed as affront to your dignity and self-respect, you may consider of submitting your resignation which will duly accepted waiving the notice period and maintaining the payments made in terms of this letter. However, you must exercise this option within a week of receipt of this communication.

Authorised Signatory, Satish Jayaraman, Vice president – Human Resources" https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm)

36.The Petitioner Management significantly altered its approach in effecting the removal of the 2nd Respondent, as is evident from the distinct change in language between the two termination orders. It is relevant to note that the 2nd Respondent was initially issued a show cause memo dated 21.10.2014, pursuant to which a domestic enquiry was initiated. The Enquiry Officer, by report dated 23.03.2015, concluded that the charges of misconduct levelled against the 2nd Respondent stood proved on the basis of both oral and documentary evidence. Relying on the said report, the Petitioner issued a second show cause notice dated 31.03.2015 to the 2nd Respondent. The operative portion of that notice reads as follows:— "The enquiry officer submitted the enquiry report dated 23/03/2015 (enclosed) finding the charges levelled against you as proved.

In light of the above the misconducts proved against you being gross, you are directed to explain in writing within 48 hours from the receipt of the letter why a disciplinary action including Termination of your services cannot be taken against you.

If you fail to submit the explanation with this prescribed time, it will be presumed that you admit the charges and have no explanation to offer and we will be constrained to proceed with the disciplinary action as deemed fit without any further reference to you."

37.Pursuant to the issuance of the second show cause notice, the first termination order dated 07.05.2015 was passed, which was, without doubt, a https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) dismissal for misconduct. However, that order was subsequently rescinded, and a fresh termination order dated 21.12.2015 was issued, characterising the separation as termination for a reasonable cause and accompanied by payment equivalent to one month's notice pay. The reason for this abrupt shift in approach is not difficult to infer. Section 41(1) of the Tamil Nadu Shops and Establishments Act, 1947, reads as follows:— "Notice of dismissal.

(1)No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months 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 charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose."

38.A plain reading of the above provision indicates that an employer has two courses of action available: first, to terminate the services of an employee for a reasonable cause by issuing one month's notice or paying one month's salary in lieu of notice; and second, to dismiss an employee for misconduct, in which case, if a domestic enquiry is conducted and the charges are substantiated by satisfactory evidence, the question of notice or notice pay does not arise. In either scenario, the Appellate Authority constituted under Section 41(2) is empowered to examine the validity and justification of the employer's https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) action, as mandated by the following provision:— "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."

39.In light of the appellate powers conferred upon the Authority to review the employer's action under Section 41(2), the Petitioner Management, in the present case, appears to have deliberately opted to proceed under the first limb of Section 41(1), i.e., termination for a reasonable cause, rather than pursue the course of dismissal for misconduct, which would have required the recording of satisfactory evidence through a properly conducted enquiry.

Judicial precedents have consistently held that the "reasonable cause" for dispensing with an employee's services must be evident from the order itself and cannot be supplemented by extraneous material at a later stage. It is likely that, foreseeing difficulty in substantiating the charges of misconduct through evidence, the Petitioner Management chose instead to defend the termination on the ground of reasonable cause.

40.The Petitioner, a multinational corporation backed by a team of legal advisors and having engaged several senior counsels over the course of this https://www.mhc.tn.gov.in/judis (Uploaded

on: 29/05/2025 02:51:42 pm) litigation, has nonetheless demonstrated a conspicuous inability to issue a legally sound termination order. The record reflects a pattern of inconsistency and experimentation, with the second termination order being issued after a delay of seven months, likely on the basis of fresh legal advice. In this context, it is apposite to refer to the judgment of the Hon'ble Supreme Court in L. Michael v. Johnston Pumps India Ltd., reported in (1975) 1 SCC 574, wherein the Court held as follows:— "The manner of dressing up an order does not matter. The Court will lift the veil to view the reality or substance of the order." "The Tribunal has the power land, indeed, the duty to X-ray the order and discover its true nature, if,he object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simpliciter, such action is bad and is liable to be set aside"

41.The Supreme Court has also cautioned employers against adopting a strategy of evasion or duplicity in matters of termination. In Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, reported in (1980) 2 SCC 593, the Court observed as follows:— "Masters and servants cannot be permitted to play hide and seek https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) with. the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a G punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal. even if full benefits as on simple termination, are given and non-injurious terminology is used.

On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.

What is decisive is the plain reason for the discharge. not the strategy of a non-enquiry or clever avoidance of stigmatizing epithets. If the basis is not misconduct, the order is saved." https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm)

42.It is important to note that under the provisions of the Tamil Nadu Shops and Establishments Act, particularly Section 41(2), the Appellate Authority is empowered to follow the procedure prescribed under Rule 9(3) of the Tamil Nadu Shops and Establishments Rules, 1948, which reads as follows:

> "9(3) : The procedure to be followed by the appellate authority (Deputy Commissioner of Labour), when hearing appeals preferred to him under sub-section (2) of section 41 shall be summary. He shall record briefly the evidence adduced before him and then pass orders giving his reasons therefor. The result of the appeal shall be communicated to the parties as soon as possible. Copies of the orders shall also be furnished to the parties, if required by them."

43.This Court has consistently taken the view that where no domestic enquiry is conducted by the employer prior to the dismissal of an employee, fresh evidence cannot be introduced for the first time before the appellate authority. However, the Hon'ble Supreme Court, in United Planters Association of Southern India v. K.G. Sangameswaran, reported in (1997) 4 SCC 741, clarified the legal position and held as follows:— "From a perusal of the provisions quoted above. it will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved in the appeal is very wide. Even if the evidence is recorded in the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) domestic enquiry and the order of dismissal is passed thereafter, it will still be open to the appellate Authority to records. if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte of no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidenced to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer." "In view of the above decisions, there remains no doubt that the Appellate Authority has jurisdiction to take evidence at the appellate stage and to come to its own conclusion about the guilt of the delinquent employee."

44.Relying on the above decision, the Petitioner Management sought to lead evidence before the Appellate Authority to justify the termination. This attempt, however, was opposed by the 2nd Respondent. The Appellate Authority addressed this issue under Issue No. 5, discussing it extensively from paragraphs 89 to 102 of the impugned order. The final findings regarding the permissibility of recording evidence before the authority were rendered in paragraphs 100 to 102, which are extracted below:— "100. While summing up the dictum of the Hon'ble Supreme Court of India in the above decision, it could be understood that (i) either party should make an application to lead evidence, (ii) the Appellate Authority should allow them to lead evidence / additional evidence (iii) if the domestic enquiry was defective, deficient, incomplete (iv) if domestic enquiry was not held at all and (v) in respect of the articles of charges framed against the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) delinquent officer.

101. It has also been opined by the Apex Curt that the pending proceedings keep the employer and the employee in a state of confrontation generating further misgivings and bitterness. It is, therefore, of paramount, importance that such proceedings should come to an end at the earliest so as to maintain industrial peace and cordial relations between the management and the labour.

102. In view of the findings in the above judgment, this Authority holds that, the Appellate Authority is well within its jurisdiction, to allow the respondent-management to lead evidence / additional and accordingly both sides filed documents cross-examined the other side witness so as to enable this Authority to come to its own decision in the matter."

45.The decision of the Appellate Authority in this regard is legally unassailable, as it is in consonance with binding judicial precedents. Upon being permitted to lead evidence, the Petitioner examined Mr. T. Hemanth Kumar, Manager – HR, as AW1. He submitted his proof affidavit dated 30.08.2016. In paragraphs 5 and 9 of the said affidavit, he set out the circumstances that led to the rescission of the earlier termination order and also articulated the reasons why the 2nd Respondent ought not to be reinstated. The relevant portions of those paragraphs are extracted below:— "5. Accordingly on 21st Dec 2015, an order was passed rescinding the earlier order of termination on 7.5.2015 and terminating his services on the ground of incompatibility for employment, amounting to "reasonable cause" within the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) meaning of Section 41(1) of TNSE Act. I state that the said order of termination is perfectly justified and valid in law." "9. In the aforesaid circumstances, it is for the consideration of this Hon'ble Authority whether the Respondent could continue to repose confidence in him any longer and keep him in employment and whether he had not committed a breach of the confidentiality agreement which he had entered into with the Respondent making him unfit for further employment with the Respondent."

46.The Appellate Authority has rightly proceeded to adjudicate the issue in accordance with law. In paragraph 105 of the impugned order, the Authority enumerated eight distinct imputations levelled against the 2nd Respondent.

With regard to the first imputationpertaining to revenue forecasting and alleged mishandling by the 2nd Respondent, the Authority, in paragraph 110, found no merit in the allegation. The relevant finding recorded in paragraph 110 is as follows:— "But, this issue was, neither taken up in the answer statement nor in the written arguments filed by the respondent. Moreover, this issue was also not raised when the appellant was cross-examined by the respondent-side. The only document i.e. Ex.R2 which speaks about the revenue forecast and subsequent e-mail correspondences between officers in various departments of the respondent company. Other than this, the respondent-management has not even contested this issue. It is also to be noted here that the base document is the termination order dt. 21.12.2015. That order reads out the said allegation. But, the respondent- management, instead of justifying the allegation and going into the details of what the forecast was, what the shortfall was, what was https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the reason for that, who was responsible, if solely responsible how and jointly responsible what is the extent of responsibility on the part of the appellant for such a shortfall and deficiency, has sidelined the said issue. Instead, marked certain email correspondences and accuses the appellant of indulging in intemperate use of language in the official correspondence."

47.With respect to the second imputationthat a serious complaint had been raised by one of the Petitioner's clients in March 2012 for which the 2 nd Respondent was allegedly responsible, the Appellate Authority, after a detailed analysis of the evidence in paragraphs 112 to 116, concluded in

paragraphs 117 and 118 that the 2nd Respondent was not guilty of the alleged misconduct. The relevant findings are as follows:— "117. Reading from the termination letter dt. 21.12.2015, points raised by the appellant and respondent in their counter, the cross- examination of respondent witness (RW1) goes to show that there was no specific complaint in respect of the appellant and even assuming without admitting, if at all anything, there is nothing to point a finger at the appellant to make him responsible for the complaint.

118. In view of the discussion above, the Authority comes to the conclusion that the respondent has not established as to the allegation of a serious complaint by one of their valuable clients and also failed to fasten the cause of the complaint on the appellant, if at all one as mentioned in the termination order dt. 21.12.2015."

48.With respect to the third imputationthat the 2nd Respondent, instead of https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) addressing areas of concern, engaged in unwarranted self-justification and attempted to shift blame, the Appellate Authority recorded the following finding in paragraph 121:— "The Authority read Ex.R3 carefully. It is true that there was exchange of emails. The plain reading of the emails shows that they were had with the appellant since he was the Senior Manager of the Project. But, it does not seem to be attributing specific instance for which the appellant was solely responsible and as a Senior Manager of the Project the appellant was also replying to the emails. Moreover, in respect of the serious complaint said to have been made by one of the clients, the Authority held that the respondent did not establish the charge."

49.As for the fourth imputationrelating to the placement of the 2nd Respondent in the Corporate Deployable Pool (CDP) with effect from 01.08.2013, purportedly due to various incidents necessitating such action, the matter was examined in detail by the Appellate Authority in paragraphs 123 to 145 of the impugned order. After meticulously referring to the documents and oral evidence, the Authority, in paragraphs 143 to 145, recorded the following findings:— "143. The reports of the Global Compliance Cell in Ex.R4 and Ex.R5 have not concluded that the contents of complaint were made with malicious intention or for any extraneous reasons. If at all anything adverse had been pointed out, in the opinion of the respondent-management, the respondent-management was well within its powers to take disciplinary action against the appellant https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) and the said Policy spells out such action may end in termination of service also.

144. But, it is explicit that the respondent-management did take disciplinary action by issuing show cause notice dt. 21.10.2014 and after conducting domestic enquiry the appellant was terminated from service by an order dt. 7.5.2015. It is not made known as to the report of the Investigation Team of the Global Compliance Cell has anything to do with the disciplinary action taken by the respondent. Curiously, it is also to be noted here that the said termination order dt. 7.5.2015 was unilaterally rescinded by the respondent-management after the appellant challenged the said order before this Authority. The letter dt. 21.12.2015 rescinding the termination order dt. 7.5.2015 reads that "We are hereby rescinding the order of termination dated 7th May 2015 and are treating you as being in service, as if there was no termination." It is more curious to note that the very same letter

dt. 21.12.2015 which rescinds the earlier termination order dt. 7.5.2015 became an order to terminate the services of the appellant.

145. In view elaborate discussions above, the Authority holds that there is no justification on the part of the respondent-management to terminate the services of the appellant which originated on the recommendation of the Investigation Report of the Global Compliance Cell that the appellant be placed in the Corporate Deployable Pool."

50.The sixth imputation pertained to the allegation that the 2nd Respondent failed to attend a counselling session scheduled for 25.09.2014 and insisted that all communications be conducted via electronic mail. With regard to this allegation, the Appellate Authority recorded the following finding in paragraph 146:— https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) "146. This is one of the reasons cited in the terminated order dt. 21.12.2015. The respondent's concern is that the appellant did not co-operate with the respondent – management in finding a suitable placement after he was placed in the Corporate Deployable Pool. But it was not contended by the respondent that this also weighed the termination of services of the appellant. Needless to mention here that this had happened after the appellant was placed CDP, which itself is found to be contrary to the principles and policy of the respondent-organization."

51.With respect to the seventh imputationthat the 2nd Respondent failed to exhibit tolerance and sufficient adaptability to circumstances, the Appellate Authority examined the issue in detail in paragraph 147 and arrived at the following conclusion:— "The respondent-management filed many email correspondences between the appellant and his high officials and peers. Though the respondent claims that appellant failed to display tolerance and adequate temporal adjustments, the first report of the Global Compliance Cell that we were well with the appellant peers, Manager, etc. In such a situation, it is incumbent on the part of the respondent to justify their action in pointing out those incidents also one of the reasons which weighed much on the termination of services of the appellant. Moreover, admittedly, there were exchange of emails between the appellant and various other colleagues and superior officers in the respondent-organization. In such event, without even finding out the reasons behind such email exchanges and not attempting even to find out who was at fault, it cannot be concluded that the appellant was at fault and he should not have been penalized."

52.The eighth and final imputation pertained to an alleged loss of Rs.

72,23,109/- caused by the 2nd Respondent to the Petitioner Company during https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the period from 01.09.2013 to 21.12.2015, purportedly without justification or due consideration. This issue was examined in detail by the Appellate Authority in paragraphs 148 to 152 of the impugned order. The relevant portion is extracted below:— "148. The respondent contends that the appellant i) was in the Corporate Deployable Pool from September 2013 to October 2014 ii) was under suspension between November 2014 and 7.5.2015 (the date of first termination order, iii) After first termination dt. 7.5.2015 and subsequent rescinding the previous termination and termination of service dt. 21.12.2015. In all, the respondent contends that the appellant was drawing salary for 28 months without any contribution on this part.

149. The respondent in their reply statement in para 10 placed before this Authority stated that when an employee above the level of Manager is placed in Corporate Deployable Pool, he / she will be exempted from reported for work with eligibility to receive full salary and other benefits.

150. Admittedly, the appellant was placed in the Corporate Deployable Pool in September 2013 and continued to be in CDP until he was removed from the services of the respondent- organization. To be more specific, that in the interregnum, according to the respondent, the appellant was under suspension from November 2014 and 7.5.2015 (the date of first termination order). Then the first termination order was rescinded by an order dt. 21.12.2015 and till then the appellant continued to be in CDP.

151. The claim of the respondent is superfluous in so far as the claim that the appellant caused a loss of Rs.72,23,109/- to the respondent – organization as the appellant was rightfully eligible to drawn salary and other benefits as long as he continues to be in CDP as the policy of the respondent-organisation does not spell out as to how long an employee in CDP to be eligible to draw salary and other benefits. As set out by the respondent, it is also to be noted here that the appellant was under suspension from November 2014 to 7.5.2015 (the date of first termination order)

152. Taking all those situations and the policy of the respondent- organization, the claim of the respondent-management that the appellant caused a loss of Rs.72,23,109/- to the respondent-organisation is indefensible and this cannot be one of the reasons which led to the termination of the services of the appellant."

53.The position taken by the Petitioner before the Appellate Authority, as detailed in paragraphs 24 to 27 of the answer statement dated 07.05.2016, is summarised as follows:— "24. It is submitted that in order to be fair to the Petitioner, the Respondent even suggested that he could submit his resignation and leave the service voluntarily so as to avoid termination of employment at the hands of the Respondent.

25. It is submitted that the termination of employment of the Petitioner was for a reasonable cause and the same was fully justified apart from being valid in law.

26. It is submitted that the decision of the Respondent in terminating the employment of the Petitioner is bonafide, honest and justified.

27. It is further submitted that the termination was not by a punitive action but it was a case of the frustration of the contract of employment."

54.It is evident that the Petitioner did not rest its case on the initial dismissal of the 2nd Respondent pursuant to a domestic enquiry culminating in the termination order dated 07.05.2015. On the contrary, that order was rescinded after a lapse of seven months, and the Petitioner proceeded to terminate the 2nd Respondent's services under the first limb of Section 41(1) of the

Act, i.e., for a reasonable cause, accompanied by payment of one month's salary in lieu of notice. The decision to lead evidence before the Appellate Authority was made solely to justify the subsequent termination order dated 21.12.2015, which formed the subject of the appeal. The Petitioner cannot be permitted to blow hot and cold in the matter of the 2nd Respondent's termination, having shifted its stance in the course of proceedings.

55.The circumstances under which the Petitioner was permitted to lead evidence, despite the objection raised by the 2nd Respondentwere addressed by the Appellate Authority while deciding Issue No. 5, and the relevant portion of the order has already been extracted above. Nevertheless, learned counsel for the Petitioner contended that the Authority failed to properly consider the legal principles laid down by the Hon'ble Supreme Court in Sangameswaran's case (cited supra). In that case, the Supreme Court, while interpreting the scope of Section 41 of the Act, held that the authority had not keep in mind the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) parameters of the powers exercisable under Section 41and in paragraph 27 of the judgment had observed as follows:— "….. It has already been seen above that the Appellate Authority has to come to its own conclusion on the guilt of the employee concerned. Since the Appellate Authority has to come to its own conclusion on the basis of the evidence recorded by it , irrespective of the findings recorded in the domestic enquiry, the rule laid down in Ratna's case (supra) will not strictly apply and the opportunity of hearing which is being provided to the respondent at the appellate stage will sufficiently meet his demands for a just and proper enquiry."

56.Once the Petitioner consciously abandoned the course of action involving dismissal pursuant to a domestic enquiry, by rescinding the termination order and issuing a fresh order citing a reasonable cause for termination under Section 41(1), it must either stand or fall by the reasons stated in that subsequent order. The Petitioner cannot be permitted to revert to the earlier position or resurrect the original enquiry proceedings. However, in the written submissions, particularly in paragraph 19.2, learned counsel for the Petitioner sought to contend that a domestic enquiry had in fact been conducted and that the 2nd Respondent was fully aware of the charges. Further, in paragraph 19.3, it was argued that the fresh termination order dated 21.12.2015 did not invalidate or obliterate the earlier disciplinary proceedings initiated by https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the Petitioner.

57.This question is no longer res integra. In the context of proceedings under the Industrial Disputes Act, the Supreme Court in Neeta Kaplish v.

Presiding Officer, Labour Court, reported in (1999) 1 SCC 517, held that where a domestic enquiry is found to be vitiated, and the employer seeks to justify the dismissal by leading fresh evidence, no part of the earlier enquiry proceedings or the materials relied upon therein can be used by the management. The Court observed as follows:— "Learned counsel for the appellant contended that in spite of the direction by the Labour Court to the respondent-management to lead evidence, it was open to the Management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer, including the evidence recorded by him, and it was under

> no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved. It was also contended that under Section 11-A, the Labour Court had to rely on the "materials on record" and since that enquiry proceedings constituted "material on record", the same could not be ignored. The argument is fallacious.
>
> The record pertaining to the domestic enquiry Would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) the counsel for the respondent, within the meaning of Section 11- A as the enquiry proceedings, on being found to be bad, have to be ignored altogether."

58.The Appellate Authority was, therefore, justified in considering only the evidence adduced before it and in disregarding the domestic enquiry that preceded the first termination order. The second contention advanced by the Petitionerthat the termination order dated 21.12.2015 is not stigmatic and amounts merely to a termination simplicitercannot be accepted. This issue has already been addressed earlier, where it was held that the authority is entitled to pierce the veil and examine the true intent and motive behind the employer's action. In this context, the Supreme Court in Mahendra Singh Dhantwal v.

Hindustan Motors Ltd., reported in (1976) 4 SCC 606, held as follows:— "It is true that on the face of the order of termination the company invoked clause (1) of the agreement and even so it was open to the Tribunal to pierce the veil of the order and have a close look at all the circumstances and come to a decision whether the order was passed on account of certain misconduct. This is a finding of fact which could not be interfered with under article 226 of the Constitution unless the conclusion is perverse, that is to say, based on no evidence whatsoever."

59.Another submission advanced by the Petitioner is that the Appellate Authority misread Exhibit R20 by not interpreting it in the manner urged by the Petitioner. However, a perusal of the impugned order reveals that the Authority https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) has, in paragraph 43, thoroughly considered the scope and content of Exhibit R20 and recorded a reasoned finding of fact. Such a factual determination, arrived at after due appreciation of evidence, does not warrant interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution.

60.This Court, in its decision in Bharat Overseas Bank Ltd. v. The Appellate Authority under the Tamil Nadu Shops and Establishments Act, reported in 2003 (4) LIC 4024, elaborated on the limited scope of interference with an order passed under Section 41(2) of the Act. The relevant observation is as follows:— "7.7. Unless the finding of the Tribunal is perverse, it is impermissible for the High Court to exercise the jurisdiction under Article 226 of the Constitution of India to interfere with such findings of the Tribunal, either for insufficiency of the evidence or on the possibility of another view different from that of the Tribunal, as held by the Apex Court in INDIAN

OVERSEAS BANK V. I.O.B. STAFF CANTEEN WORKERS' UNION reported in 2000 (4) SCC 248.

7.8. Accordingly, the findings and the decision of the appellate authority can be interfered with by exercising the power of judicial review under Article 226 of the Constitution of India, under the following circumstances:

(i) if the findings and the decision of the tribunal is based on no evidence;

(ii) if the findings of the tribunal could not be reached by an ordinary prudent man, applying the Wednesbury's principles, and

(iii) if the findings of the tribunal is perverse and suffers from an error apparent on the face of the record."

61.The final submission of learned counsel for the Petitioner was twofold. The first limb of the argument was that the Appellate Authority lacked the jurisdiction to direct reinstatement with all attendant benefits. It is indeed well-settled that under Section 41 of the Tamil Nadu Shops and Establishments Act, the Appellate Authority does not possess the power to order reinstatement;

the authority may, for stated reasons, set aside the order of termination, thereby leaving the parties to work out their respective rights. However, a Division Bench of this Court has examined the legal effect of a termination order being set aside under the Shops Act in The Tata Iron and Steel Co. Ltd. v. G. Ramakrishna Ayyar, reported in 1950 LLJ 1043 (Mad), and held as follows:

> "…. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher authority. That authority reverses the decision of the employer and the result is that the order of the employer is set aside. It is no longer in existence. It follows that the effect of the original order of the employer also disappears and it is as if the order is nonesse. Though, therefore, it may not be quite accurate to say https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) that the employee will entitled to reinstatement in service, yet the result of the order of the appellate authority is virtually the same. Probably, the result 6T the appellate order is even Better than an order of reinstatement. It is as if the employee had never been properly dismissed from service." Accordingly, while the direction issued by the Authority in paragraph 154 of the impugned order, stating that the 2nd Respondent should be reinstated with all benefits, may not strictly conform to the statutory limits of its power under Section 41, it does not, by itself, vitiate the order. This is because the core of the Authority's decision is that, upon the termination being set aside, the legal consequence is that the termination is deemed non-existent in the eyes of law.
>
> As a natural corollary, the employee becomes entitled to all attendant benefits.

Thus, the observation made in paragraph 154 merely reflects the inevitable outcome flowing from the setting aside of the termination order.

62.The second limb of the argument advanced by the Petitioner is that, having lost confidence in the 2nd Respondent, the Authority ought not to have ordered his reinstatement. However, it must be examined whether a mere plea of loss of confidence, without substantiating material, is sufficient to bind the Authority to accept such a contention. In this regard, reference has already been https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) made to the judgment of the Supreme Court in L. Michael v. Johnston Pumps India Ltd., reported in (1975) 1 SCC 574, wherein the Court elaborated on the concept of "loss of confidence" and made the following observations:— "To hit below the belt by trading legal pharses is not Industrial Law." "Loss of confidence is no new Armour for the management; otherwise security of tenure, ensured by the new industrial Jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neo- formula. Loss of confidence in the Law will be the consequence of the Loss of Confidence doctrine."

63.However, learned counsel for the Petitioner placed reliance on the judgment of the Supreme Court in The Workmen of Sudder Office, Cinnamara v. Management of Sudder Office, reported in (1972) 4 SCC 746, and referred to the following passage from the said judgment:— "28. It was the stand taken by the management that it has lost confidence in the workman and that action was taken under Clause 9 of the standing orders by terminating the services simpliciter. That was challenged by the union that the order has been so worded as to camouflage the real intention of the management, namely to dismiss the employee for misconduct. The Labour Court, no doubt, held that the action must have been taken under Clause 10(a)(2) of the standing orders for misconduct which resulted in the passing of the order under the https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) cloak of Clause 9 of the standing orders, and that Clause 9 has been invoked only as a camouflage. If this finding of the Labour Court was supported by the union and the workman before the High Court, and accepted by the High Court, the position would have been entirely different. On the other hand, before the High Court, the counsel for the workman quite clearly conceded that he is not placing reliance on the finding of the Labour Court that Clause 9 has been invoked only as a camoullage.

29. Added to this there is the other crucial circumstance, namely, the Labour Court not having accepted the plea of the union that the management was prompted by mala fides, victimisation and unfair labour practice, when it passed the order of termination. Therefore, before the High Court all the other surrounding circumstances, namely, camouflage, victimisation, unfair labour practice and mala fides had to be eschewed from consideration."

64.Relying on the above judgment, learned counsel for the Petitioner contended that the alleged loss of confidence in the 2nd Respondent constituted a reasonable ground for termination. It was further submitted, as recorded in paragraph 20(d) of the written submissions, that it is well-settled law that reinstatement with back wages is not automatic, and that the Appellate Authority had failed to assign any specific reasons for granting such relief.

65.It is pertinent to note that both the Industrial Disputes Act, 1947 and the Tamil Nadu Shops and Establishments Act, 1947 were enacted respectively by the Central Legislature and the then Provincial Assembly in the same year.

However, the Industrial Disputes Act underwent a significant amendment in 1971, whereby Section 11A was introduced. This provision conferred upon the Labour Court not only appellate jurisdiction but also the authority to interfere with the quantum of punishment imposed by an employer. Under Section 11A, the Labour Court is empowered to do the following:— "..is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

66.While certain States have amended their respective Shops and Establishments Acts to confer discretion on the appellate authority to deny reinstatement and instead grant alternative reliefs where appropriate, no such amendment has been introduced in the Tamil Nadu Shops and Establishments Act. However, it is noteworthy that under the Tamil Nadu Catering Establishments Act, 1958, the Appellate Authority has been expressly https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) conferred such discretion under Section 19(2)(b), which reads as follows:— "The appellate authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case."

67.In the absence of any discretionary power conferred upon the Appellate Authority under Section 41 of the Tamil Nadu Shops and Establishments Act, the plea advanced by the learned counsel for the Petitioner cannot be accepted by this Court. While it is true that "loss of confidence" may, in appropriate cases, constitute a reasonable cause for termination, the Appellate Authority, in the present case, has declined to accept that justification. This finding of fact, having been rendered after due consideration, is not open to interference by this Court in exercise of its writ jurisdiction.

68.In light of the foregoing discussion, Writ Petition No. 682 of 2020 stands dismissed. Consequently, W.M.P. Nos. 810 of 2020 and 812 of 2020 are also dismissed. However, it is clarified that since the 2nd Respondent has been paid monthly wages in accordance with Section 41-A of the Tamil Nadu Shops and Establishments Act, 1947, any alleged shortfall in such payments, as https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) claimed by the 2nd Respondent, may be agitated and pursued by him in the manner known to law.

69.With respect to the two miscellaneous petitions filed by the 2nd Respondent—W.M.P. Nos. 2417 of 2020 and 5302 of 2020—this Court is not inclined to grant any relief, particularly in view of the substantial judicial time already expended due to the multiplicity of proceedings initiated before this Court. Accordingly, both W.M.Ps stand dismissed.

70.In W.M.P. No. 25633 of 2023, as arguments have already been advanced by the parties, the petition has become infructuous and is accordingly dismissed. However, considering that the Petitioner Management, despite its institutional resources, levelled serious allegations against a quasi-judicial authority—namely, the 1st Respondent—without impleading the said officer in her personal capacity, and in light of the considerable judicial time expended in addressing those unsubstantiated claims, this Court finds that imposition of costs is warranted. The allegations having been found to be baseless, the Petitioner is directed to pay costs of Rs. 1,00,000/- (Rupees One Lakh only), which shall be remitted to the Tamil Nadu Labour Welfare Fund, established https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) under the Tamil Nadu Labour Welfare Fund Act, 1972 (T.N. Act 36 of 1972), Chennai – 600 006.

29.05.2025 ay NCC : Yes / No Index : Yes / No Speaking Order / Non-speaking Order To The Special Joint Commissioner of Labour, The Appellate Authority under the Tamil Nadu Shops and Establishments Act, 1947 Commissionerate of Labour, Chennai – 600 006.

https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm) DR. A.D. MARIA CLETE, J ay Pre-Delivery Judgment made in and W.M.P.Nos. 810, 812, 2417, 5302of 2020 and 25633 of 2023 29.05.2025 https://www.mhc.tn.gov.in/judis (Uploaded on: 29/05/2025 02:51:42 pm)