

Shasun Chemicals and Drugs Ltd. Vs V. Duraiswamy and another

Court: Madras High Court

Date of Decision: April 6, 2009

Citation: (2009) 123 FLR 520

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: P. Valliappan, for the Appellant; Arunkumar for R.I. and C. Prabakaran, for the Respondent

Final Decision: Allowed

Judgement

S. Palanivelu, J.

The Civil Revision petition is filed to strike off the plaint in O.S. No. 9024 of 2008 on the file of the VII Assistant City

Civil Court at Chennai.

2. The first respondent was appointed as operator from 1993 in the petitioner's establishment. The petitioner issued order of Deputation on

12.9.2008 to the first respondent and three others which was also published in the newspaper on 27.11.2008 stating that ""Due to Exigencies of

work, you are deputed to work at M/s. Total Drugs and Intermediates Pvt. Ltd., Gaddapothoram, Kazipallai Village, Medal: District, Andra

Pradesh with effect from 15th September, 2008"". This order was challenged by the employees including the first respondent before the learned VII

Assistant Judge, City Civil Court, Chennai, in a suit to declare the said order as null and void. Earlier, the first Respondent filed an application for

interim stay under Order XXXIX Rule 1 C.P.C. and the petition was dismissed. The petitioner presently has come forward with this petition under

Article 227 of Constitution of India.

3. Mr. P. Vaillappan, learned Counsel for the petitioner would submit that the dispute between the petitioner and the first respondent squarely

comes within the purview of the provisions of the Industrial Disputes Act and the forum prescribed therein will have, the jurisdiction to try the

matter and the Civil Court has no jurisdiction to try the same. Consequently, the learned Counsel for the first respondent would submit that the fact

of transfer of an employee to other State on deputation is not covered by the standing order and the Civil Court had got every power to decide the

matter.

The learned Counsel for the petitioner would draw attention to the decisions of this Court, in which, identical situations arose wherein the transfer

orders were challenged before the Civil Court. The decisions are as follows: Rajaiah v. Southern Roadways Ltd. 1991 2 MLJ 72, The

Management of Tamil Nadu Mercantile Bank Ltd. and Another Vs. T. Venkatesan, Madura Coats Ltd. and Millennium Mills Vs. Devadoss

Sathraj, In all the cases this Court has taken a similar and consistent view that if the employee is aggrieved by an order of transfer the matter will

have covered by the Industrial Disputes Act and Civil Court has no jurisdiction. In between Prasar Bharti and Others Vs. Amarjeet Singh and

Others, The Apex Court has made a clear distinction between the terms, ""transfer and deputation"". It is hold that transfer is limited to equivalent

post in the same cadre and in the same department, whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit

the opposite indications.

4. As far as the facts of the present case are concerned, whether it is a transfer or deputation, the matter will be covered by the provisions of the

Industrial Disputes Act. In the considered opinion of this Court, the first respondent would not seek remedy before Civil Court challenging the

order of deputation and he should have gone to the appropriate forum for necessary legal remedies. In such view of this matter, the plaint in O.S.

No. 9024 of 2008 has to be necessarily struck off from the file of the VII Assistant City Civil Court, Chennai.

5. In fine, the Civil Revision Petition is allowed. No. costs. Consequently, connected miscellaneous petition is closed.