

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2016

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.4309 of 2016 &
W.M.P.No.3648 of 2016

The Superintending Engineer
Tamil Nadu Electricity Board
Mettur Electricity Distribution Circle
Mettur Dam- 01 Salem District. [PETITIONER]

Vs

- 1 The Labour Court
Salem
- 2 S.Duraisamy [RESPONDENTS]

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent order dated 15.07.2015 in I.A.No.unnumbered of 2015 in I.D.NO. 181 of 2006 and quash the same and direct the 1st Respondent to allow the petitioner to lead the evidence and mark the documents.

For Petitioner .. Mr.P.R.Dhilip Kumar

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O R D E R

Heard Mr.P.R.Dhilip Kumar, learned Counsel appearing for the petitioner.

3.Petitioner is the Tamil Nadu Electricity Board, represented by the Superintending Engineer and the challenge in this writ petition is to a docket order passed by the Labour Court, Salem in unnumbered I.A.No..... of 2014 in I.D.No.181 of 2006, dated 15.07.2015.

3.The second respondent/workman raised an Industrial Dispute under section 2A(2) of the Industrial Disputes Act, 1947, which was taken on file by the first respondent in I.D.No.181 of 2006. The first issue which was taken up for consideration by the Labour Court is as to whether the domestic enquiry conducted was fair and proper and accordingly, an order was passed on 12.09.2012, which is being termed as a preliminary order, holding that the domestic enquiry was not fair and proper and the parties were permitted to lead evidence. Though such an order came to be passed, the said order dated 12.09.2012 was not challenged by the workman, but, he appears to have filed a memo before the Labour Court, stating that the Management has got no jurisdiction to lead evidence and therefore, requested the Labour Court to pass the award in the matter.

4.The petitioner filed an objection to the said memo referring to certain decisions and prayed that the memo should be rejected and they should be permitted to lead evidence. The Labour Court thereupon appears to have recalled its earlier order dated 12.09.2012 and such a recall order was made on the memo filed by the second respondent and from the materials placed before this Court, it is seen that the memo was not even treated as a Petition and the memo appears to have been filed in the main Dispute and it is rather doubtful as to whether the procedure adopted by the Labour Court was proper. Thereafter, the petitioner filed an Interlocutory Application, requesting the Management to lead evidence and to mark documents in the Industrial Dispute.

5.It was stated that it is incorrect to state that the Management has not reserved their right to lead evidence in the counter affidavit. In that event, if it is held that the domestic enquiry is vitiated as in the counter statement, the Management has reserved such liberty.

Further, it was contended that the second respondent committed serious misconduct and collected huge amount of electricity bill amount from the consumers of the Board and if the petitioner/ Board is not permitted to lead evidence that would put to irreparable hardships. However, this Interlocutory Application has not been entertained by the Labour Court, as it has not been numbered and the Court rejected it at the threshold holding that already an order has been passed not permitting the Management to lead in evidence.

6.As pointed out earlier, the procedure adopted by the Labour Court in entertaining the memo at the instance of the second respondent and recalling the order which was passed by the Labour Court on 12.09.2012, is in fact a preliminary order and is an incorrect procedure. The Labour Court sought to

revise its own order which in effect is a final order at the preliminary stage. Assuming that certain errors have crept in, then the procedure to be adopted is different and such errors could not have been corrected based on a Memo. Further, this Court is not inclined to render any positive findings on this aspect at this juncture, since the writ petition is disposed of at the admission stage without notice to the second respondent. One more reason for not issuing notice to the second respondent is that the Labour Court did not number the Interlocutory Application filed by the Management, but, rejected it at the threshold. Therefore, this rejection order is an order which is purely between the Court and the Management and it is for the Management to satisfy the Court that the Interlocutory Application is maintainable.

7. Having considered the entire case, this Court is of the view that the Labour Court ought to have entertained the Interlocutory Application, issued notice to the parties, decided as to the correctness of the procedure to be followed, examined full facts and thereafter passed an order on merits and in accordance with law. While doing so, it is also open to the Labour Court to decide the maintainability of the Interlocutory Application, however, rejecting the same at the threshold especially when the procedure adopted by the Labour Court by passing an order on the Memo prima facie is an incorrect procedure.

8. In the light of the above discussion, the Writ Petition is allowed, the impugned order of rejection is set aside and the Labour Court is directed to take on file the Interlocutory Application filed by the Management, number the same, issue notice to the petitioner as well as to the second respondent, hear the parties both on legal and factual matters and pass a reasoned order on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

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-s/d-

Assistant Registrar (CSIII)

True Copy

Sub-Assistant Registrar

rpa

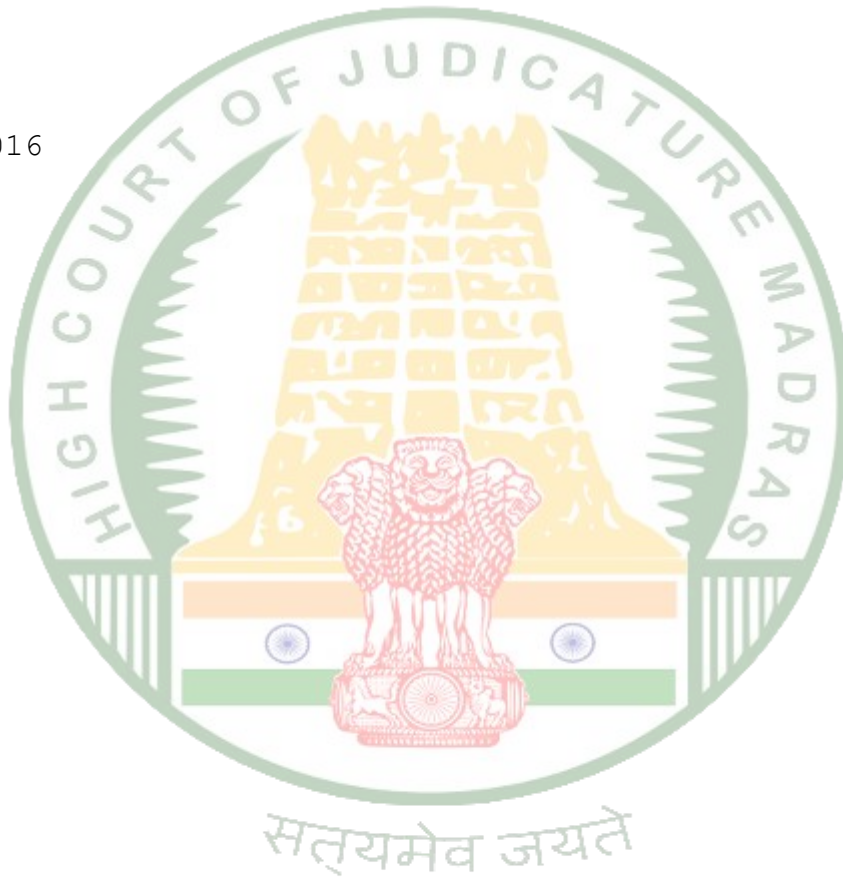
To

1 The Labour Court
Salem

+1 cc to Mr.P.R.Dhilip kumar Advocate sr.7442

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