

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.06.2018	Delivered on 09.07.2018
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.299 of 2015
and MP No.1 of 2015

A.Chandrasekaran

... Appellant

versus

1. The Presiding Officer,
Labour Court,
Cuddalore.
 2. The Special Officer,
Kallakurichi Sugar Mills Ltd.,
Moongil Thuraipattu,
Villupuram District.
 3. Mr.M.Rajendran, I.A.S.,
(Former Special Officer
Kallakurichi Co-operative Sugar Mills)
Working as General Manager,
Tamil Nadu Co-operative Milk Producers'
Society, Madhavaram, Chennai
Presently working as Vigilance Officer,
Government Staffs, Near Chennai Collectorate
Parris Corner, Chennai.
- ... Respondents

Appeal filed against the order passed by this Court dated 16.07.2014 passed in W.P.No.15172 of 2011.

Prayer in WP.No. 15172/11: To issue a Writ of Certiorarified Mandamus Calling for the concerned records from the 1st Respondent quash the Preliminary Award of the 1st Respondent dated 27.4.2010 in I.D.No.11 of 2004 and the final award of the 1st Respondent dated 26.10.2010 in I.D.No.11 of 2004 as illegal arbitrary and contrary to law and consequently direct the 2nd respondent to reinstate the petitioner with full back wages continuity of service and all other attendant benefits.

For appellant : Mr.Balan Haridas

For Respondents : Mr.R.Bala Ramesh, for R2
No appearance for R3

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is to the order of the learned Single Judge dated 16.07.2014 made in WP No.15172 of 2011.

2. The said Writ Petition was filed by the appellant challenging the Priliminary Award in ID No.11 of 2004 dated 27.04.2010 and the Final Award passed in the said ID dated 26.10.2010.

3. The appellant who was working as a Senior Assistant in the 2nd respondent Mill was removed from service by an order dated 17.04.2001 for certain delinquencies. The said order of removal was challenged by the appellant before the Labour Court in ID No.11 of 2004. The Labour Court passed a preliminary award in the said ID on 27.04.2010, wherein the Labour Court concluded that the enquiry held against the petitioner is fair and proper and the findings of the Enquiry Officer are not perverse. Subsequently, by a final award dated 26.10.2010, the Labour Court, dismissed the ID holding that the punishment imposed upon the appellant was just and reasonable. Both the Preliminary as well as the Final Award were challenged by the appellant in the above Writ Petition in WP No.15172 of 2011.

4. The learned Single Judge, who heard the Writ Petition appears to have proceeded on the footing that it is only the Preliminary Award that was challenged before him. This is obvious from the opening paragraph of the order of the learned Single Judge, which reads as follows:

"This Writ Petition is filed by the workman of a Co-operative Sugar Mills, challenging the Preliminary Award passed by the Labour Court, Cuddalore, holding that the domestic enquiry held against the petitioner was fair and proper and directing the Industrial Dispute to be posted for further enquiry with regard to the quantum of punishment."

5. Upon hearing the counsel, the learned Single Judge concluded that the findings of the Labour Court to the effect that the enquiry was fair and proper and the findings of the Enquiry Officer were not perverse would amount to putting the cart before the horse. On such conclusion, the learned Single Judge allowed the Writ Petition in part setting aside that finding of the Labour Court, relating to the fairness of the

enquiry proceedings alone and directed the Labour Court to hear arguments both on the question of correctness of the findings and also on the questions that can be gone into under Section 11A of the Industrial Disputes Act. The Labour Court was also directed to pass a final order within a period of 8 weeks from the date of receipt of copy of the order.

6. Aggrieved the appellant is before us by way of this Intra Court Appeal.

7. We have heard Mr.Balan Haridass, learned counsel appearing for the appellant and Mr.R.Bala Ramesh, learned counsel appearing for the 2nd respondent.

8. Mr.Balan Haridass, learned counsel appearing for the appellant would contend that the learned Single Judge was not justified in remitting the matter to the Labour Court for passing a Final Award overlooking the fact that the Final award had already been passed as early as on 26.10.2010. Though, the challenge in the Writ Petition was both the Preliminary as well as the Final Awards passed by the Labour Court, the learned Single Judge had proceeded on the footing that the challenge was only to the Preliminary award. Of course, the learned Single Judge had gone into certain contentions relating to non-compliance with the provisions of Section 33 (2) (b) of the Industrial Disputes Act, while deciding the issue relating to the findings of the Enquiry Officer.

9. Mr.R.Bala Ramesh, learned counsel appearing for the 2nd respondent is unable to sustain the order of the learned Single Judge in view of the fact that the learned Single Judge had not dealt with the correctness of the Final Award dated 26.10.2010, which was also impugned in the Writ Petition. Even though the counsel would invite us to go into the correctness of the final award also, we refrain from doing so inasmuch as the same would deprive any one of the parties the right of appeal.

10. In the above circumstances, we are left without any other alternative, but to set aside the order of the learned Single Judge dated 16.07.2014 and remit the matter to the Writ Court to be heard afresh and decided in accordance with law.

11. The Writ Appeal is allowed by the order dated 16.07.2014 made in WP No.15172 of 2011 is set aside solely on the ground that the learned Single Judge had not decided on the correctness of the Final Award dated 26.10.2010 and the Writ Petition is remitted to the Writ court to be heard and decided afresh in accordance with law. We make it clear th2at we have

not gone into merits of the rival contentions, which are left open to be decided by the Writ Court. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

jv

To

1. The Presiding Officer,
Labour Court,
Cuddalore.

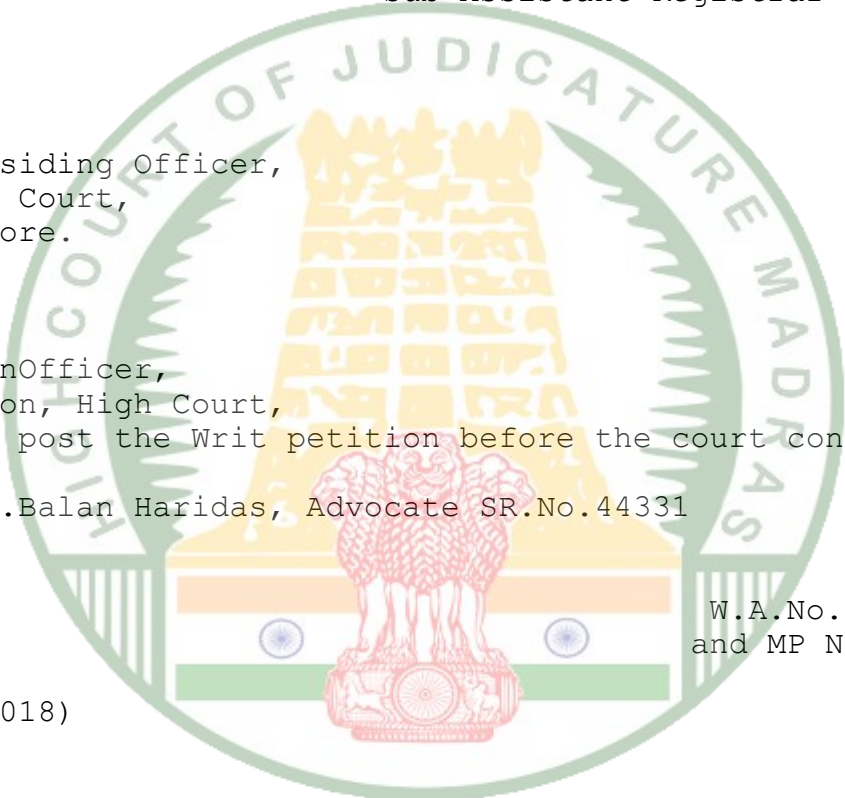
Copy to

The Section Officer,
Writ Section, High Court,
Madras (To post the Writ petition before the court concerned)

+1cc to Mr. Balan Haridas, Advocate SR.No.44331

W.A.No.299 of 2015
and MP No.1 of 2015

SVI (CO)
GN(19/07/2018)



सत्यमेव जयते

WEB COPY