

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.6565 of 2018

The Management of Soundararaja Mills Ltd.,
Nedungadu (Post)
Karaikal 609 603
rep.by its Assistant General Manager .. Petitioner

-vs-

1. The Presiding Officer
Industrial Tribunal cum Labour Court
Puducherry
2. K.Mohandoss .. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorari, calling for the
records of the first respondent in I.D.(L) No.40 of 2012 and
quash its preliminary award dated 16.06.2012 and the final award
dated 06.10.2017.

For Petitioner :: Mr.S.Haroon for
M/s T.S.Gopalan & Co.

ORDER

This writ petition is directed against the preliminary and
final awards dated 16.6.2012 and 6.10.2017 passed by the
Industrial Tribunal cum Labour Court, Puducherry in I.D.(L)
No.40 of 2012.

2. Learned counsel for the petitioner, vehemently assailing
the impugned award, submitted that the approach adopted by the
first respondent-Industrial Tribunal cum Labour Court setting
aside the order of termination passed against the second
respondent giving a reason that the petitioner management
miserably failed to produce the copy of the enquiry report, is
wholly unacceptable, since the Court has already held against
the petitioner management that the domestic enquiry held was
unfair and improper. Moreover, the report of the domestic
enquiry was also available with the first respondent. Adding
further, he submitted that it is a settled legal position that

once the Labour Court comes to the conclusion that the domestic enquiry was not held fairly and properly and passed a preliminary award, it is the duty of the Labour Court to give a fresh chance to the management to establish that there was a fair and proper enquiry held. But in the second stage, when the petitioner management has produced almost 93 documents against the second respondent to establish the charge levelled against him, particularly on the ground that the complainants have not been examined before the Court would be a vital point to establish the charge against the second respondent. Admittedly, as a matter of fact, when the complaints given by the Maistry Mahalingam and Supervisor Aranga Karthikeyan were exhibited as Ex.M13 and Ex.M14 and when these documents clearly speak about the misconduct committed by the second respondent, the first respondent ought not to have set aside the order of termination passed against the second respondent on the ground that the complainants have not been examined before the Court to prove the complaint given by them against the second respondent.

3. I do not find any merit whatsoever in the submissions made by the learned counsel for the petitioner. When the petitioner management has passed the order of termination against the second respondent on the ground that the charges levelled against him are all established beyond anybody's imagination, it is the bounden duty of the petitioner management to re-establish the fact that there was a fair and proper enquiry held against the second respondent even before the Industrial Tribunal cum Labour Court when the correctness of enquiry followed by the dismissal order was questioned by the second respondent. In the case on hand, the first respondent, after considering all the 93 documents exhibited on the petitioner's side and the documents produced by the second respondent, came to the conclusion in its preliminary award dated 16.6.2012 that the enquiry held against the second respondent was not fair and proper and thereafter the petitioner management having been given the golden opportunity to re-establish their case that there was a fair and proper enquiry, miserably failed to establish the same. In that view of the matter, the first respondent Labour Court has rightly come to the conclusion that although the petitioner management has exhibited 93 documents, they have not filed the enquiry report submitted by the enquiry officer before the Court. Although the learned counsel for the petitioner contended that the report of the enquiry officer was very much available on the file of the Court, he has miserably failed to show before this Court the said exhibit marked before the first respondent. This Court could also see from the documents marked from Ex.1 to Ex.93 that no such report of the enquiry officer was ever marked. Therefore, this Court is unable to disagree with the finding given by the first respondent Labour Court that the petitioner

management miserably failed to place before the Court the copy of the enquiry report.

4. Secondly, the complaints given by the Maistry Mahalingam and the Supervisor Aranga Karthikeyan were exhibited as Ex.M13 and Ex.M14. But curiously enough, it is not known how the petitioner management could take support from these exhibits without producing the complainants. Unless the complainants were examined before the Labour Court to prove that the said exhibits are the complaints given by them against the second respondent, the petitioner management cannot find fault with the reasoning given by the first respondent Labour Court.

5. The learned counsel for the petitioner also submitted that when there are two charges framed against the second respondent, namely, the misconduct of go-slow in work marked as Ex.M10 and the complaints given by the complainants in Ex.M13 and Ex.M14, the first respondent has come to the conclusion that the complaints Ex.M13 and Ex.M14 cannot be accepted for the reason that the complainants, namely, Maistry Mahalingam and Supervisor Aranga Karthikeyan were not examined. So far as Ex.M10 relating to the misconduct of go-slow in work is concerned, the petitioner has fairly established the said charge.

6. Again this Court finds that the said argument does not hold water. The reason is that when the copy of the report of the enquiry officer finding the second respondent guilty in respect of the first charge marked as Ex.M10 was also not made available before the Labour Court, the Labour Court, in my considered opinion, taking note of the factor that the second respondent, who had put in 17 years of service, should not have been visited with the punishment of termination from service without there being any charge proved against him, thought it fit to interfere with the order of termination. Therefore, this Court is not inclined to interfere with the impugned award. Accordingly, the writ petition is dismissed. Consequently, W.M.P.No.8157 of 2018 is also dismissed.

Sd/-
Assistant Registrar(co)

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Sub Assistant Registrar

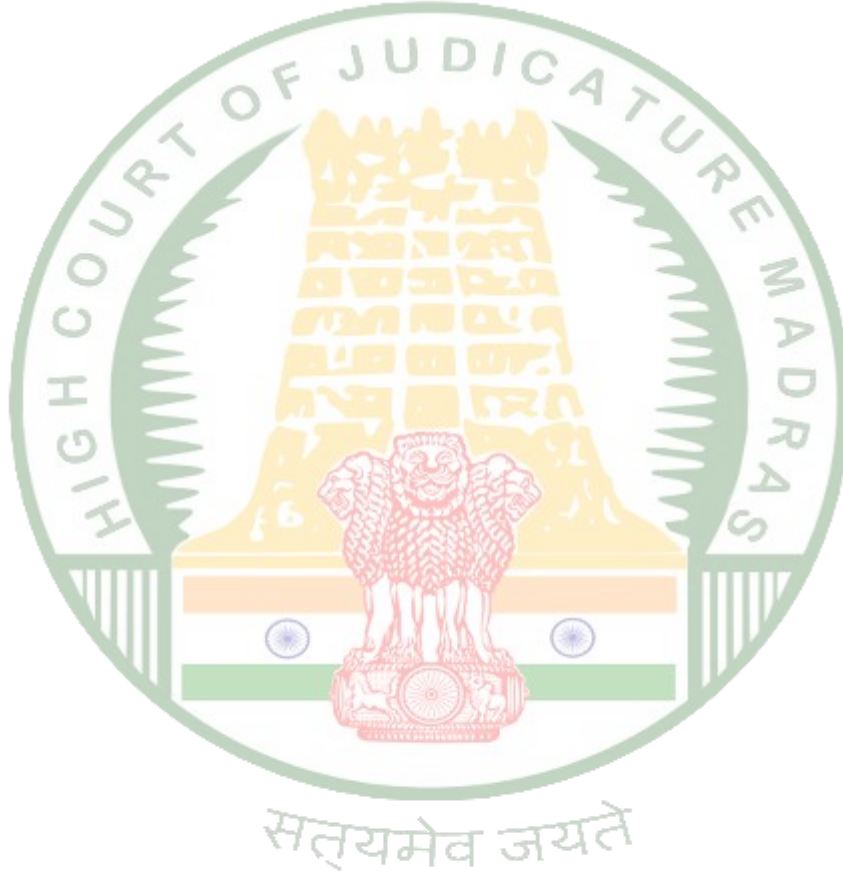
To

1. The Presiding Officer
Industrial Tribunal cum Labour Court
Puducherry

+1cc to M/s.T.S.Gopalan & Co., Advocate Sr.No.21653

RR(CO)
sm:10.4.2018

W.P.No.6565 of 2018



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