

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.10.2018
CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA
W.P.No.1710 of 2018
and W.M.P.No.2128 of 2018

R.Prabu

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management,
K.N.M.Mills (P) Ltd.,
Coimbatore - 19.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the records from the 1st respondent, quash the preliminary order passed by the 1st respondent Labour Court dated 15.09.2017 in I.D.No.27 of 2012 as illegal, arbitrary and contrary to law and consequently, hold that the domestic enquiry conducted by the 2nd respondent in respect of the show cause notice dated 01.06.2011 is in violation of principles of natural justice and unfair.

For Petitioner : M/s.Balan Haridas
For Respondents : Court - R1
Mr.S.Saravanan for R2

O R D E R

This writ petition has been filed by the workman, challenging the order passed by the Labour Court dated 15.09.2017, in I.D.No.27 of 2012. The impugned order passed by the Labour Court reads as under:

"In the result, preliminary order is passed holding that the enquiry officer has conducted the domestic enquiry as against the petitioner in a fair and proper manner by observing the principles of natural justice and the findings of the enquiry officer in his report dated 21.07.2011 is valid under law. For further proceedings, call on 03.10.2017."

2. Though this order is styled as interim order, the perusal of the order would go to show that it cannot be construed as preliminary order or interim order, just because the order reads as if there are further proceedings. The main issues to be considered by the Labour Court were a) whether the enquiry was fair and proper b) whether the findings were fair. All the two issues have been considered.

3. The learned counsel appearing for the Management relied upon the Judgment of this Court dated 15.06.2012, rendered in W.P.No.(MD) No.14192 of 2011, wherein, it has been held that writ petition cannot be entertained against the preliminary order of the Labour Court, holding that enquiry is fair or not fair.

4. The learned counsel for the workman relied upon the decision of this Court, dated 19.01.2017, rendered in W.P.No.15080 of 2016, wherein, the proposition is that in exceptional circumstances, even the writ Court can interfere with the preliminary award, especially when the preliminary award is on the basis of perverse reasoning. The very object of holding that the writ petitions are not maintainable as against the preliminary award is to avoid multiplicity of proceedings and to save time.

5. So far as this case is concerned, the reason adduced by the Labour Court for arriving at the conclusion that the procedure followed is fair and proper is apparently incorrect on the face of the record. The adjournment granted for five times is not for examination of witnesses on the side of the workman. The five days granted are for examination of Management witnesses and for cross examination. On the very same day, when the evidence on the side of the Management was concluded, it cannot be expected that the witnesses on the side of the workman would commence. The workman needs some breathing time to analyze the pros and cons of the evidence tendered on the side of the Management and to bring the required witness, who support his side of the case.

5.1. The dates and events furnished would prima facie show that sufficient opportunity ought to have been given to the workman to lead evidence. There being no sufficient opportunity granted to the workman to lead evidence, the finding that the procedure adopted is fair and proper is liable to be set aside. Consequently, the finding regarding the validity of the report dated 21.07.2011 of

the enquiry officer is also liable to be set aside. Accordingly, the same are set aside. The matter is remitted back to the Labour Court with a direction to consider the contention afresh and to pass orders in accordance with law, within a period of two months from the date of receipt of a copy of this order.

6. With the above observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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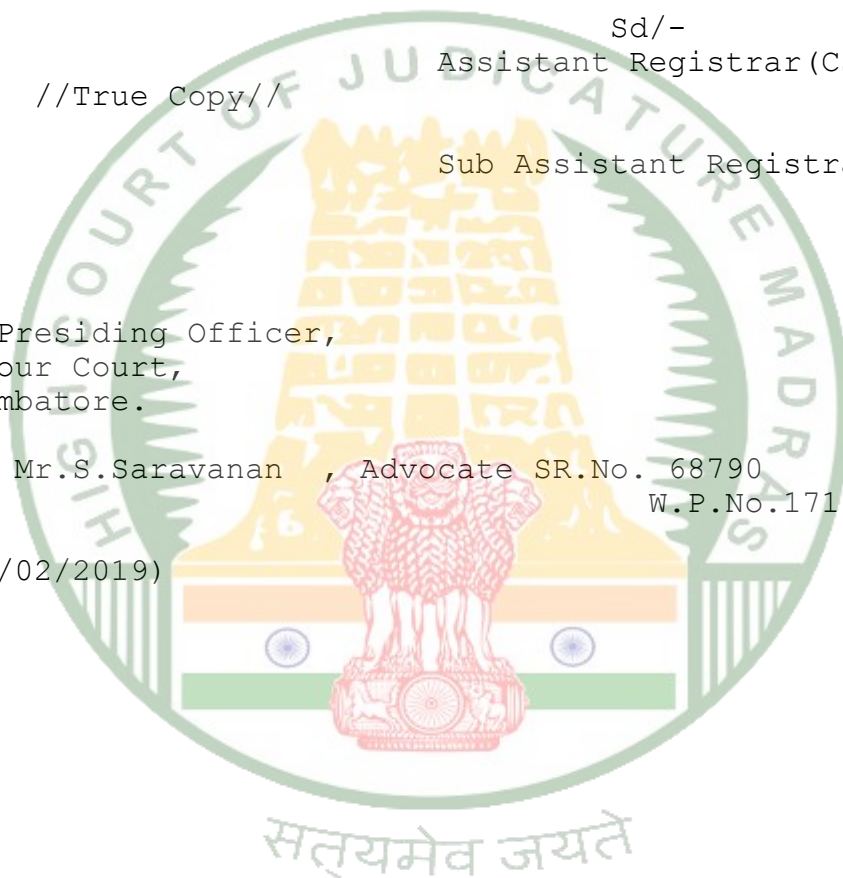
To

1. The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.S.Saravanan , Advocate SR.No. 68790

W.P.No.1710 of 2018

A.SK(12/02/2019)



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