

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-10-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10071 of 2006

Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Represented by its Managing Director,
Salem.

..Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.P.Manimaran

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in I.D.No.61 of 2002 dated 06.07.2004 and quash the same.

For Petitioner : Ms.Rajeni Ramadoss

For Respondent-1 : Labour Court

For Respondent-2 : Mr.V.Prakash,
Senior Counsel for
Mr.K.Sudalai Kannu.

सत्यमेव जयते
O R D E R

The Award of the Labour Court dated 06.07.2004 passed in I.D.No.61 of 2002, is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation (Salem) Limited. The second respondent was employed as a Conductor in the writ petitioner-Transport Corporation from 02.04.1993. On 15.04.1994, when the second respondent was on duty in Thenkanikottai to Arulalam route, the bus was checked by the Checking Inspectors of the writ petitioner-Transport Corporation at Anthevanapalli, while the bus proceeded from Arulalam to Thenkanikottai. It was found that

the second respondent-employee had collected Rs.2.20 each from 40 passengers, who had travelled from Salivaram to Thenkanikottai and issued already sold tickets. As such, the second respondent had re-sold the already issued tickets and thereby misappropriated the funds of the writ petitioner-Transport Corporation.

3. On verification of the cash bag, it was found that Rs.68.95 was short. On account of the misconduct committed by the second respondent-employee in this regard, as per the Standing Orders of the writ petitioner-Transport Corporation, a charge sheet was issued to the second respondent-employee in proceedings dated 16.04.1994. As the explanations submitted by the second respondent-employee on 22.04.1994, was not satisfactory, a domestic enquiry was conducted by following the principles of natural justice and the second respondent-employee fully participated in the enquiry proceedings. The Enquiry Officer submitted a report, holding that the charges framed against the second respondent were proved. Accepting the findings of the Enquiry officer and considering the fact that the allegations are serious in nature, a second show cause notice was issued on 24.08.1995 and consequently, the punishment of dismissal from service was imposed in order dated 03.11.1995.

4. The second respondent-employee raised an industrial dispute in I.D.No.61 of 2002 before the first respondent, challenging the order of dismissal after a lapse of seven years from the date of passing of the order. The first respondent-Labour Court set aside the order of dismissal and directed the writ petitioner-Transport Corporation to reinstate the second respondent-employee in service with 25% back wages and other benefits from 09.03.2001 to till the date of Award. Thus, the writ petitioner-Transport Corporation is constrained to move the present writ petition.

5. The learned counsel appearing on behalf of the writ petitioner-Transport Corporation contended that the second respondent-workman was joined in the writ petitioner-Transport Corporation on 02.04.1993 and his services were regularised with effect from 01.02.1994. Thereafter on account of the allegation of misconduct, the second respondent-workman was dismissed from service on 03.11.1995. Thus, within a period of two years, the second respondent-workman had suffered punishments and his previous history, during the short span of service, is extracted hereunder:-

Sl.No.	Date of Misconduct	Nature of Misconduct	Punishment Awarded
I	05.09.1993	Fill up the Invoice in advance	Warned

Sl.No.	Date of Misconduct	Nature of Misconduct	Punishment Awarded
II	07.03.1995	Performed duty without Name badge	Rs.15/- Fined
III	24.03.1995	Fare not collected and ticket not issued for 1 passenger	Rs.10/- Fined
IV	27.03.1995	Fare not collected and ticket not issued for 1 passenger	Rs.20/- Fined
V	15.04.1994	40 Tickets resale	Dismissed

6. The learned counsel appearing on behalf of the writ petitioner-Transport Corporation further contended that the industrial dispute itself was raised by the second respondent-workman after a lapse of seven years from the date of dismissal. The second respondent-workman was dismissed from service on 03.11.1995. An industrial dispute was raised in the year 2002, after the lapse of seven years. No reason has been furnished in the petition filed by the second respondent-workman before the Labour Court and the Labour Court also made a finding in this regard. The Labour Court in its Award found that the petition was filed after the lapse of seven years and the second respondent-workman has not stated any reason for the said delay in raising the industrial dispute. The Labour Court further found that though the order of dismissal was issued on 03.11.1995, the industrial dispute was raised after the lapse of seven years and the reason also has not been furnished in the petition filed by the second respondent-workman, however, the Labour Court come to the conclusion that the writ petitioner-Management has not established the charges by filing necessary documents and therefore, the punishment of dismissal issued by the writ petitioner-Transport Corporation to the second respondent-workman is improper.

7. The learned counsel for the writ petitioner-Transport Corporation states that the second respondent-workman had hardly worked for about two years in the writ petitioner-Transport Corporation and within a period of two years, the second respondent-workman had suffered five punishments on earlier occasions (extracted supra) and finally a charge sheet was issued for the misappropriation of funds of the writ petitioner-Transport Corporation and based on the proved charges, the second respondent-workman was dismissed from service. Therefore, the writ petitioner-Transport Corporation had not maintained the records for many years. The records relating to the enquiry proceedings were not available at the

time of adjudication before the Labour Court, more specifically, after the lapse of seven years. Thus, there is no infirmity in respect of the actions of the writ petitioner-Transport Corporation against the second respondent-workman.

8. It is further contended that the conduct of the domestic enquiry by the writ petitioner-Management was admitted by the second respondent-workman before the Labour Court. In this regard, in paragraph-6 of the Award, the Labour Court categorically found that the second respondent-workman was dismissed from service after conducting the domestic enquiry. However, the second respondent-workman had not raised any objection regarding the procedures followed during the course of domestic enquiry conducted by the writ petitioner-Transport Corporation. Thus, the Labour Court also did not decide the fairness of the enquiry as a preliminary issue. In this regard, the Labour Court arrived at a conclusion that no such adjudication is required in respect of the domestic enquiry as the second respondent-workman had not raised any objection regarding the procedures followed for the conduct of the domestic enquiry by the writ petitioner-Management.

9. This apart, the Labour Court, in paragraph-9, found that the writ petitioner-Management made a submission before the Labour Court that the industrial dispute was raised after the lapse of seven years and further the second respondent-workman was dismissed from service after conducting domestic enquiry. However, those documents were missing in the writ petitioner-Transport Corporation and therefore, the writ petitioner-Management was not in a position to submit all those documents in relation to the domestic enquiry. The second respondent-workman submitted accordingly the letters sent by him to the writ petitioner-Management. The three letters sent by the second respondent-workman to the writ petitioner-Management alone were marked as documents before the Labour Court.

10. At the outset, it is contended by the learned counsel for the writ petitioner-Transport Corporation that the allegation against the second respondent-workman was grave misconduct and he was dismissed from service after conducting domestic enquiry. The industrial dispute itself was raised after the lapse of seven years and the second respondent-workman had not furnished any reason for such huge delay. The Labour Court though recorded findings in this regard granted the relief of reinstatement with back wages of 25% from 09.03.2001 onwards. Thus, the Award is perverse and liable to be scrapped.

11. The learned Senior Counsel, appearing on behalf of the second respondent-workman, disputed the contentions raised on behalf of the writ petitioner by stating that the petition

filed by the second respondent-workman reveals that on account of certain misconduct, there was an erroneous entry, which resulted in framing of the charges. The bona fide mistake committed by the second respondent-workman was converted as a charge and therefore, framing of the charges itself is untenable.

12. The petition filed before the Labour Court by the second respondent-workman reveals that on account of work pressure, the second respondent-workman has committed certain mistakes in making entries and such entries resulted in framing of charges. It is further contended that law of limitation is inapplicable in respect of raising the industrial dispute during the relevant point of time and belated raising of industrial dispute would not constitute a ground to reject the dispute itself. Thus, the Labour Court moulded the relief in favour of the second respondent-workman and there is no infirmity as such. The entertainment of the industrial dispute by the Labour Court considering the delay is within its jurisdiction and therefore, this Court need not go into those powers of the Labour Court as the delay was taken into account by the Labour Court at the time of entertaining the industrial dispute and accordingly, the quantum of punishment was considered and therefore, the relief was moulded in favour of the second respondent-workman.

13. The writ petitioner-Management had not filed any documents to establish or to prove the charges framed against the second respondent-workman. The copies of the domestic enquiry and the manner in which the domestic enquiry was conducted, were not filed before the Labour Court. The Labour Court in its findings categorically held that the writ petitioner-Management failed to establish the charges against the second respondent-workman. Thus, the Labour Court was inclined to mould the relief and passed an Award reinstating the second respondent-employee in service with 25% back wages and other benefits from 09.03.2001 to till the date of Award. Thus, there is no infirmity, as such, in respect of the Award passed by the Labour Court.

14. In support of the contentions, with reference to the delay of seven years in raising an industrial dispute, the learned Senior Counsel, appearing on behalf of the second respondent-workman, cited a judgment of the Hon'ble Supreme Court in the case of Raghbir Singh vs. General Manager, Haryana Roadways, Hissar [(2014) 10 SCC 301] and the relevant paragraphs-13, 15 and 19 of the abovesaid judgment are extracted hereunder:-

"13. Further, in Sapan Kumar Pandit v. U.P. SEB [(2001) 6 SCC 222 : 2001 SCC (L&S) 946] , it is held by this Court as

under: (SCC p. 228, para 15)

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government has chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination". (emphasis supplied).

15. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate Government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in Avon Services case [Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, (1979) 1 SCC 1 : 1979 SCC (L&S) 15] referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services [Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, (1979) 1 SCC 1 : 1979 SCC (L&S) 15]

and Sapan Kumar Pandit [(2001) 6 SCC 222 : 2001 SCC (L&S) 946] cases referred to supra.

19. Hence, we are of the opinion, having regard to the facts and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government."

15. In yet another judgment of this Court in the case of S.Vedaraj vs. Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Nagapattinam [decided on 05.03.2012 in WP No.17439 of 2004] and the relevant paragraph-12 of the abovesaid judgment is extracted hereunder:-

"12. Secondly, this writ petition is opposed by the first respondent on the ground that the petitioner is guilty of laches. The learned counsel for the first respondent would submit that the petitioner though was terminated from service on 07.10.1985, he raised the industrial dispute only in the year 1996. Thus, there is a delay of 11 years. The said delay has not been explained away by the petitioner. On the ground of delay, according to the learned counsel, the petitioner is not entitled for the relief as sought for before the Labour Court."

16. The learned Senior Counsel appearing on behalf of the second respondent-workman reiterated that there is no distinction with reference to Section 10 and Section 2-A of the

Industrial Disputes Act, 1947. Though the Supreme Court dealt with the case of a reference to be made by the Government, the point of delay was well considered by the Supreme Court and therefore, the said principle is to be followed with reference to the facts and circumstances of the case on hand. The delay will not vitiate the entire proceedings. The prescription of three years of time limitation came into effect only from the year 2010. Since the present case falls before the amendment, the delay cannot be a vital factor for the purpose of disallowing the claim of the second respondent-workman.

17. The learned counsel for the writ petitioner-Transport Corporation opposed the said proposition by stating that the facts and circumstances considered by the Supreme Court may not be applicable in respect of the present case. The reference to be made by the Government and the related facts dealt with by the Supreme Court cannot be considered for the purpose of the present writ petition as it is a straight case where the employee was dismissed from service in the year 1995 and an industrial dispute was raised in the year 2002, after a lapse of seven years and the decision of the Apex Court may not have any benefit for the purpose considering the case of the workman.

18. With reference to the second judgment (cited supra) on 05.03.2012 passed by the learned single Judge of this Court, the learned counsel for the writ petitioner-Transport Corporation reiterated that the reasons for the delay was well furnished in that case and in the present case, no reason has been given by the workman for such a long delay. Therefore, the facts cannot be equated and this judgment is also of no avail to the workman.

19. Considering the arguments, this Court is of the considered opinion that it is an admitted fact that the second respondent-workman was appointed on 02.04.1993 and his services were regularised with effect from 01.02.1994. Within a short span of time, the second respondent-workman had suffered four punishments respectively on 05.09.1993, 07.03.1995, 24.03.1995 and 27.03.1995. Further, it is admitted fact that the charges were framed during the year 1995 and after conducting a domestic enquiry, the second respondent-workman was dismissed from service in order dated 03.11.1995. Thus, the second respondent-workman hardly served about two years and seven months. Within a short span of service, the second respondent-workman had involved in certain misconducts. As far as the past conduct of the second respondent-workman is concerned, the Labour Court had not adjudicated any such issue. As far as the delay in raising the industrial dispute is concerned, the learned Senior Counsel for the second respondent-workman said that the point of

previous history was not raised by the writ petitioner-Management itself. However, the point of delay is to be considered by this Court.

20. Admittedly, there is a delay of seven years in raising the industrial dispute. A perusal of the claim petition filed by the second respondent-workman in I.D.No.61 of 2002, there is no reason furnished for such a long delay of seven years. In the absence establishing any reason for such delay, the Labour Court also admitted that no reason has been furnished by the second respondent-workman in respect of huge delay of seven years. However, the Labour Court came to the conclusion that the writ petitioner-Management has not established the charges by way of filing documents and therefore, the second respondent-workman is entitled for the relief.

21. As far as the judgment of the Hon'ble Supreme Court of India in the case of Raghubir Singh vs. General Manager, Haryana Roadways, Hissar (cited supra), the relevant facts in that particular case is that in 1976, the appellant joined the Haryana Roadways as a Conductor. On 10-8-1993, the appellant was charged under Section 409 of the Penal Code in a criminal case at the instance of the respondent for alleged misappropriation of the amount collected from tickets and not depositing the cash in relation to the same in time. The appellant was arrested by the jurisdictional police and sent to judicial custody on 15-9-1994. Further, on 21-10-1994 the services of the appellant were terminated by the General Manager, Haryana Roadways, Hissar, the respondent herein. On 15-11-1994, the appellant upon being released on bail was given an oral assurance by the respondent that he will be reinstated to the post after his acquittal by the Court.

22. On 11-7-2002, upon being acquitted by the Court of Judicial Magistrate, First Class, Hissar, in CrI. Case No. 33-I of 1994, the appellant reported to join his duty, but he was informed by the respondent that his services stood terminated w.e.f. 21-10-1994. The appellant served the demand notice upon the respondent which was not acceded to and therefore, the industrial dispute with regard to the order of termination from his services was raised before the conciliation officer. On failure of the conciliation proceedings before him, the industrial dispute was referred by the State Government in exercise of its statutory power under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short "the Act") to the Labour Court, Hissar for adjudication of the existing industrial dispute in relation to the order of dismissal of the appellant from his services. After adjudication of the points of dispute referred to it, the Labour Court vide its award dated 22-5-2009 declared that the termination of the appellant from his services

was illegal and passed an award of reinstatement of the appellant with 60% back wages from the date of issuance of demand notice till publication of the award and full back wages thereafter, till reinstatement.

23. With this background, let us now examine the proposition laid down by the Hon'ble Supreme Court in paragraph-13 of its judgment in Raghbir Singh (cited supra). In paragraph-13, the Apex Court referred to the judgment in the case of Sapan Kumar Pandit vs. U.P.SEB [(2001) 6 SCC 222]. In that case, the Supreme Court made a finding that "High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination".

24. Paragraph-19 of the judgment in Raghbir Singh (cited supra) of the Hon'ble Supreme Court is to be considered, wherein the Supreme Court held that "we are of the opinion, having regard to the facts and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government".

25. Thus, the contention of the learned Senior Counsel for the second respondent-workman that there is no distinction with regard to Section 10 and Section 2-A of the Industrial Disputes Act, 1947 may not have relevance. Ultimately, the point of delay considered by the Supreme Court in that case is with reference to those facts. However, the Hon'ble Supreme Court decided the delay coupled with the facts and circumstances of the case. The facts in that case was that the workman was facing a criminal case during the relevant point of time. Though he was dismissed from service in the year 1994, the criminal case was ended with an order of acquittal on 11.07.2002 and therefore, the Apex Court came to the conclusion that the delay from 1994 to 2002 i.e., the date of acquittal, cannot be held against the workman.

26. Even in ordinary circumstances, whenever departmental disciplinary proceedings and criminal case were filed against the workman/employee, the Department or Corporation is empowered to consider the claim of the workman/employee after the disposal of the criminal case. If an employee was acquitted in a criminal case, then the punishments imposed against him can be reviewed with reference to the punishments, the findings are based on the judgment of the competent Criminal Court. Therefore, raising a dispute, after the disposal of criminal case, which was ended in with an order of acquittal in favour of an employee, cannot be compared with the order of dismissal issued and raising an industrial dispute after seven years without furnishing any reasons for the delay.

27. Undoubtedly and admittedly, the law of limitation was not applicable during the relevant point of time when the industrial dispute was raised. However, any such huge delay is to be explained in normal circumstances. Unexplained huge delay cannot be condoned in a mechanical manner as the same would cause prejudice to the parties to defend their case. As the documents, witnesses and other aspects may lost their significance and on some occasions, as happened in the present case, the documents itself may not be available or found missing. So many mitigating circumstances may arise on account of the long delay in raising an industrial dispute. Those factual circumstances and the happenings are also to be considered and if the reasons stated for such delay is genuine and acceptable, then there is no bar in entertaining the industrial dispute by the Labour Court and not otherwise. However after the amendment, the Labour Court is bound to look into the limitation of three years.

28. Thus, it is not as if in the absence of any prescription to law of limitation, the party can approach the Court at any point of time. Persons, who have slept over their rights, cannot wake up one fine morning and knock the doors of the Court, to redress their grievances. Such stale claims cannot be entertained.

29. The present case is one, where the writ petitioner-Management itself was unable to furnish relevant documents such as enquiry proceedings, charges etc. Thus, those documents relating to the enquiry process were missing. However, the workman also not raised any objection with regard to the procedures followed by the writ petitioner-Management for conducting the domestic enquiry. Thus, the Labour Court has not taken up the preliminary issue regarding the fairness of the enquiry conducted by the writ petitioner-Management.

30. The Labour Court mainly arrived a conclusion on

the basis that the writ petitioner-Management had not submitted any documents to establish the charges. When the fairness of domestic enquiry was not disputed by the workman and the Labour Court also had not decided the preliminary issue regarding the fairness of the enquiry, there is no reason to take another view regarding the punishment imposed. When the fairness of the enquiry with reference to the findings of the Labour Court are accepted by the workman, then there is no error in imposing the punishment of dismissal from service as the proved charges are regarding the misconduct of misappropriation of funds of the writ petitioner-Transport Corporation. Such allegations of misappropriation cannot be viewed leniently and that too, the second respondent-workman had hardly worked for two years in the writ petitioner-Transport Corporation and within a short span of service, the second respondent-workman had involved in such allegations of misconduct regarding the misappropriation of funds of the writ petitioner-Transport Corporation.

31. Law or principles of limitation has got a definite purpose and object. Long delay in instituting the legal proceedings may cause prejudice to the parties concerned. Evidences or documents may not be available or would have been destroyed. No one can expect even the State may preserve such documents for an unspecified period. In such an event effective adjudication may not be possible. Courts may not be in a position to provide complete justice to the parties. All these factors are the consequences when the litigations are entertained after a lapse of many years, the memory of the witnesses may be fade off.

32. Under these facts and circumstances, this Court has no hesitation in coming to the conclusion that the Labour Court has committed an error in passing an Award of reinstatement with 25% back wages with effect from 09.03.2001 onwards. Consequently, the Award of the Labour Court dated 06.07.2004 passed in I.D.No.61 of 2002 is quashed and accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

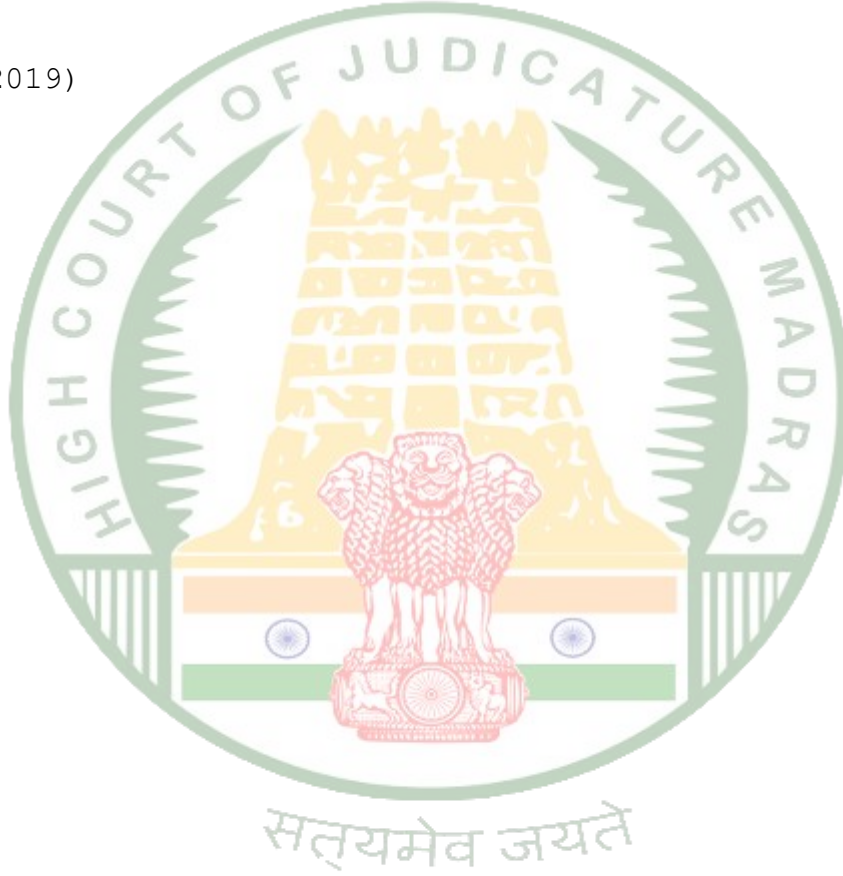
1.The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.S.Rajeni Ramadoss, Advocate, S.R.No. 88312

+1cc to Mr.K.Sudalaikannu, Advocate, S.R.No. 88640

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