

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.04.2019

Delivered on: 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.15172 of 2011

A.Chandrasekaran

...Petitioner

Vs.

1. Presiding Officer,
Labour Court,
Cuddalore.

2. The Special Officer,
Kallakurichi Sugar Mills Limited,
Moongil Thuraipattu,
Villupuram District.

3. Mr.M.Rajendrdan, IAS,
(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,
Parrys Corner, Chennai.

...Respondents

सत्यमेव जयते

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records from the 1st respondent, quash the preliminary award of the 1st respondent dated 27.4.2010 in I.D.No.11 of 2005 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 Petitioner : Mr.Balan Haridoss

For Respondents : Mr.A.S.Thambuswamy for R2

ORDER

This writ petition has been filed by the petitioner, seeking for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the preliminary award dated 27.4.2010 in I.D.No.11 of 2005 and the final award passed by 1st respondent dated 26.10.2010 in I.D.No.11 of 2004 and quash the same as illegal, arbitrary and contrary to law and consequently direct 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

2. The facts which gave rise to the filig of the Writ Petition are briefly stated hereunder:

The petitioner/workman was employed in 2nd respondent establishment. While working as Senior Assistant in the 2nd respondent Co-operative Mills, he was placed under suspension by order dated 11.10.2000. A charge memo dated 4.11.2000 was issued alleging that the petitioner received illegal gratification for securing permanent status for 7 seasonal employees, while holding office of the Secretary of the Welfare Association. Explanation given by the petitioner denying the allegations on 15.11.2000, having been found not satisfactory, domestic enquiry was initiated. The enquiry was conducted on different dates from 30.11.2000 to 5.1.2001 during which witnesses on behalf of the Management were examined.

3. In the midst of the enquiry, on 5.1.2001, the petitioner/workman submitted a letter claiming that subsistence allowance has not been paid to him which disabled him to attend the enquiry. The enquiry was thereafter fixed on 5.1.2001, 9.1.2001 and 17.1.2001, when the petitioner did not participate in the enquiry proceedings on the ground that subsistence allowance was not paid. Ultimately, the enquiry officer set the petitioner/workman ex parte and concluded the enquiry proceedings and submitted his report on 17.1.2001 holding the charges proved.

4. Subsequent to the submission of final report, on 18.1.2001, the petitioner was paid subsistence allowance. On payment of the subsistence allowance, the petitioner requested the enquiry officer to reopen the enquiry, which request was acceded to on 20.1.2001. On 20.1.2001, the petitioner requested

for production of certain documents and witnesses for examination due to which the enquiry was postponed to 02.03.2001 and, thereafter, to 17.03.2001 on which date also the petitioner/workman did not attend the enquiry and, therefore, the workman was set exparte on 17.3.2001 and enquiry report was submitted.

5. Though the petitioner feigned ignorance relating to the enquiry fixed on 17.3.2001 by sending a telegram on 19.3.2001, however, the report having been submitted by the enquiry officer on 17.3.2001, a second show cause notice was issued to the petitioner/workman on 23.3.01 enclosing a copy of the enquiry report. Extension of time was sought for by the petitioner/workman to submit his explanation. However, vide final order dated 17.4.2001, the 2nd respondent dismissed the petitioner from service.

6. Against the said dismissal, the petitioner raised an industrial dispute u/s 2A of the Industrial Disputes Act, 1947, which was taken on file as I.D. No.11 of 2004. In the proceedings before the Labour Court, a preliminary issue was raised as to whether the enquiry was fair and proper. After affording opportunity to the parties to the lis, the Labour Court passed a preliminary award on 27.4.2010 holding that the domestic enquiry was conducted in a fair and proper manner and further held that the findings of the enquiry officer were not perverse and, accordingly, adjourned the hearing of the dispute to a future date for fixing the quantum of penalty u/s 11-A of the Act.

7. After rendering a finding on the preliminary issue, the first respondent/Labour Court proceeded to pass final Award on 26.10.2010, dismissing the I.D. filed by the petitioner/workman. The Labour Court has found that the charge of illegal gratification against the petitioner was found established and the findings rendered in the domestic enquiry were valid and acceptable. According to the Labour Court, the evidence which was let in before the domestic enquiry was sufficient enough to hold the petitioner guilty of the charges and the Labour Court has given elaborate reasons in support of its award as found in paragraphs 8 and 9, which are extracted as under:

"8. Learned authorized representative appearing for the respondent argued that the witnesses Srinivasan, Gopal, Govindan, Pazhanivel, Velayutham, Thambusamy and Sekar who submitted Ex.M1 to M7 complaints before the

Special Officer of the respondent/management were examined in the domestic enquiry, as per Ex.M14 domestic enquiry proceedings, they clearly deposed that they paid Rs.5000/- each to this petitioner with reference to their applications for making them as permanent employees in the respondent/ management, the domestic enquiry conducted against the petitioner was held to be fair and proper by the order of this court dated 27.04.2010, this court already held that the findings of the domestic enquiry officer is not perverse, after passing of Ex.M18 dismissal order this petitioner preferred appeal Ex.W20 before the Commissioner, Department of Sugars/ Registrar of Co-operative Sugar Factories, Chennai, that appeal was dismissed, the witnesses who lodged the complaints before the Special Officer of the respondent/management clearly deposed in their examinations before the domestic enquiry officer that they have paid Rs.5000/- each to the petitioner with reference to their applications for making them as permanent employees in the respondent/management, during their examination this petitioner asked questions that while the witnesses were paying the amount of Rs.5000/- to this petitioner who were present at that time and the witnesses were accompanied by whom at the time of making payment of Rs.5000/- to this petitioner, such questions asked by the petitioner clearly proved the involvement of the petitioner in receiving Rs.5000/- from the witnesses, the petitioner under the comafledge of the union leader involved in indiscipline and corrupt practices, the involvement of corrupt practices by the petitioner was clearly proved by the statements of the witnesses during their examination in the domestic enquiry proceedings, the domestic enquiry officer clearly stated in his report Ex.M15 that the charges against the petitioner were clearly proved, the respondent/management issued Ex.M16 first show cause notice and Ex.M17 second show cause notice to the petitioner, the explanation submitted by the petitioner was not acceptable, so the respondent/management passed Ex.M18 permanent dismissal order against the petitioner, Ex.M18 dismissal order was passed after considering the misconducts, indiscipline behavior and corrupt practices committed by the petitioner. Ex.M18

dismissal order is valid in law, the petitioner is not entitled to any relief as prayed for in this petition and the petition may be dismissed.

9. In this case in deciding the preliminary issue, this court passed order dated 27.04.2010 that "the domestic enquiry held against the petitioner is fair and proper and the finding of the enquiry officer is not perverse, for further enquiry in this regard to the quantum of punishment, this industrial dispute is posted to 10.05.2010". So it is clear that while deciding the preliminary issue, this court already decided that the domestic enquiry held against the petitioner is fair and proper and the finding of the enquiry officer is not perverse. So in these circumstances, the arguments advanced by the learned counsel for the petitioner that on perusal of the statements and the evidence deposed by the witnesses during domestic enquiry proceedings do not prove the charges against the petitioner is not acceptable. On perusal of Ex.M1 to M7 it is clear that the temporary seasonal employees of the respondent/management gave Rs.5000/- each to the petitioner with reference to their applications for making them as permanent employees in the respondent/management when the petitioner was the union leader of the employees of the respondent/management, in the counter filed by the second respondent it is stated that there was no recognized union with the respondents/sugar mill and this petitioner did not have the status of the union leader, considering the exhibits filed on both sides, on considering Ex.M18 proceedings that if the petitioner is permitted to continue in the service in the respondent/management, it would be detrimental the efforts taken by the respondent/management to maintain discipline and control in the respondent/management, hence it was decided by the respondent/management that the petitioner was permanently dismissed from service and considering the gravity of the corrupt practices committed by the respondent, as stated by the witnesses in Ex.M1 to Ex.M7 and in their evidence this court is of the opinion that it cannot be decided that the punishment of the dismissal of the petitioner from the

respondent/management is not proportionate to the gravity of the misconducts of the corrupt practices committed by the petitioner. The minor discrepancies in the evidence of the witness do not reduce the strength of the evidence by the witness regarding commission of corrupt practices of the petitioner. Hence in these circumstances the arguments advanced by the learned counsel for the petitioner is not acceptable. So the petitioner is not entitled the relief to set aside the dismissal order, he is also not entitled to the relief of reinstatement with continuity of service, with back wages, other attendant benefits and also compensation. This point is decided accordingly."

8. As against the preliminary as well as the final award, a Writ Petition was filed in W.P.No.15172 of 2011 wherein, several grounds were raised in assailing the preliminary as well as the final Awards of the Labour Court. The grounds that were raised for consideration before this Court in the Writ Petition were that the subsistence allowance had not been paid to the workman during the period of suspension, no approval petition has been filed under Section 33(2)(b) of the Industrial Disputes Act and the Labour Court has exceeded its jurisdiction by concluding that the finding of the domestic enquiry was valid while passing the preliminary Award. The learned single Judge of this Court who disposed of the said Writ Petition on 16.7.2014 negating the contentions of the petitioner/workman in regard to the grounds raised as to non-payment of substance and also the non-filing of the approval petition under Section 33(2)(b) of the Act. However, in regard to the conclusion of the Labour Court that the domestic enquiry finding was not perverse was not in order, since such finding cannot be given in a preliminary award since the Labour Court is only vested with a power to render a finding only as to the fairness of the domestic enquiry conducted against the workman and not about the findings. While holding so, the learned Judge while upholding the award otherwise, directed the Labour Court to pass final Award. The order of the learned Judge was taken on appeal before a Division Bench of this Court in W.A.No.299 of 2015. After hearing the appeal, the learned Bench allowed the appeal solely on the ground that the learned single Judge has not decided the correctness of the final award dated 26.10.2010 as the petitioner/workman impugned both the preliminary and final award before the learned single Judge. The learned Judge, according to the Division Bench, has wrongly directed the Labour Court to pass final Award when final Award itself was the subject matter

of the Writ Petition. The Division Bench while adverting to the submissions of the learned counsels appearing for the parties, has allowed the appeal having observed as under:

"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 that 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."

9. The learned counsel for the writ petitioner, Shri Balan Haridoss would submit that in view of the order of the learned single Judge being set aside by the Division Bench, all the issues are now left open to the petitioner to urge before this Court. However, the learned counsel was confronted by this Court that in paragraph 11 of the Judgment of the Division Bench as extracted above, it was clearly mentioned that the order of the learned single Judge was being set aside solely on the ground that the learned single Judge has not decided the correctness of the final Award dated 26.10.2010, the learned counsel would submit that he would confine his argument to the correctness of the final Award passed by the Labour Court.

10. Shri Balan Haridoss learned counsel would submit that the Labour Court has failed to appreciate all the complaints given against the petitioner were identically worded and therefore, the same were prepared by the Management in order to victimize the petitioner/workman for being a Union activist. He would draw the attention of this Court to certain portions of the evidence given in the domestic enquiry that the complaints were dictated by the Management. Therefore, he would submit that the entire charge against him was a concocted one and has no factual basis at all. The learned counsel, in fact, would also urge this Court to simultaneously deal with the issue of non-payment of subsistence allowance and also the non-filing of approval petition under Section 33(2)(b) of the I.D. Act as according to the learned counsel, that once the order of the learned single Judge was set aside and the matter was remanded, all the issues were left wide open for the petitioner to urge before this Court, notwithstanding the expression 'solely' used in paragraph 11 of the judgment.

11. Per contra, the learned counsel for the second respondent would submit that the finding of the learned single Judge of this Court in regard to the preliminary award of the Labour Court cannot be assailed once again since that portion of the order had remained untouched by the Division Bench. Therefore, the Labour Court on appreciation of the conduct of fair and proper domestic enquiry, proceeded to hold that the charges framed against the petitioner were found established and

had given a detailed reasoning as extracted above. Therefore, the final Award of the Labour Court does not call for interference as the same does not suffer from any infirmity whatsoever. In fact, the Labour Court has held that the minor discrepancy in the evidence does not take away the strength of the evidence, otherwise available against the petitioner/workman. According to the learned counsel, the petitioner cannot be allowed to harp on certain minor contradictions or discrepancies in the evidence when there was a overwhelming evidence otherwise pointing towards the guilty of the petitioner/workman. He would therefore, urge this Court to dismiss the Writ Petition as devoid of merits and substance.

12. Heard the learned counsels for the petitioner as well as 2nd respondent/Management. Perused the materials, Award of the Labour Court, orders passed by the learned single Judge as well as the Division Bench of this Court.

13. As regards the correctness of the final award passed by the Labour Court dated 26.10.2010 as extracted supra, detailed reasons given by the Labour Court in paragraphs 8 and 9 which were extracted above, cannot said to be unreasonable or unacceptable, calling for interference of this Court. Once the finding of the Labour Court in its preliminary award about the fairness of the enquiry in favour of the Management, has been upheld by the learned single Judge which was also not varied by the Division Bench's decision, the only issue that has to be seen further is, whether the finding of the Enquiry Officer in the domestic enquiry, is in order. The Labour Court has given detailed reasons as to how the charges framed against the petitioner were found established by the cogent evidence given by the co-employees in regard to the illegal gratification paid by them to the petitioner. Therefore, the Labour Court has finally held that the petitioner was not entitled to any relief and dismissed the industrial dispute. This Court is unable to find anything wrong or infirmity in the order or in the conclusion reached by the Labour Court while passing the final Award.

14. Even assuming that this Court is called upon to consider all the objections originally raised by the petitioner in the previous round of litigation, the findings given by the learned Judge of this Court in regard to non-payment of subsistence allowance and also non-filing of approval petition under Section 33(2)(b) of the Act, do not call for any fresh consideration, since there was no change in the circumstances after the finding was rendered by the learned Judge of this Court. In fact, the

Writ Appeal was allowed solely on the ground that the learned Judge has failed to appreciate that the challenge before him was inclusive in regard to the final Award and proceeded to direct to pass the final Award and therefore, the scope of the present Writ Petition is only to see whether the final Award is in order or whether the same is liable to be interfered with. As concluded above, this Court does not think that there is any scope for interference as the finding of the Labour Court as far as the final Award is concerned, is well founded and cannot be faulted with. In any event, this Court is in agreement with the finding of the learned Judge in regard to the other objections raised by the petitioner herein, the learned Judge has given elaborate reasons in regard to both objections in paragraphs 13 to 22 which are extracted hereunder:

"13. I have carefully considered the rival submissions.

14. To show that the writ petitioner was made to defend himself in the enquiry without payment of subsistence allowance, Mr. Balan Haridas, learned counsel for the petitioner furnished a statement showing details of the subsistence allowance paid to the petitioner. As per the said statement, the subsistence allowance payable for the period from 11.10.2000 upto 08.01.2001 was paid by way of cheque on 23.01.2001. The subsistence allowance payable for the period from 09.01.2001 to 28.02.2001 was paid by way of cash, perhaps on 28.02.2001. (The date of payment is not indicated). The subsistence allowance for the period from 01.03.2001, upto 31.03.2001 was also paid by way of cash. Since, the petitioner was dismissed from service by an order dated 17.04.2001, the payment of subsistence allowance for the month of April 2001 was of no consequence.

15. As can be seen from the affidavit of the writ petitioner in support of the writ petition, the enquiry was posted to 17.01.2001 and the petitioner refused to participate on the ground that subsistence allowance was not paid. But as per his affidavit, subsistence allowance was paid on 18.01.2001 and hence the petitioner made a request to the enquiry officer to reopen the enquiry. Accordingly the enquiry was reopened and it was held on 17.03.2001. By 17.03.2001, the entire subsistence allowance payable up to 28.02.2001 had already been paid. Therefore there was no justification for the writ petitioner not appearing for the enquiry on 17.03.2001.

16. As a matter of fact the non appearance of

the petitioner on 17.03.2001, even according to his affidavit, was not due to non payment of subsistence allowance. As per para 4 of his affidavit, his non appearance on 17.03.2001 was due to the wrong nothing of the date of enquiry as 19.03.2001. in such circumstances, the first contention of the learned counsel for the petitioner that the enquiry is vitiated for non payment of subsistence allowance, cannot be accepted. Hence the first contention is rejected.

17. The second contention relates to section 33 of the Industrial Disputes Act. According to the petitioner, the Employees Union of the Co-operative Sugar Mills, raised an Industrial Dispute alleging Unfair Labour practice on the part of the Sugar Mills. The grievance of the petitioner is that by a letter dated 04.04.2001, the Labour Officer, Cuddalore, advised the Management of the Co-operative Sugar Mills, not to take any action or proceeding against the employees including the writ petitioner herein. The order of dismissal from service was passed on 17.04.2001, after the letter of the Conciliation Officer dated 04.04.2001. Therefore it is the contention of Mr. Balan Haridas, learned counsel for the petitioner that the Management ought to have obtained permission under Section 33 of the Industrial Disputes Act, before imposing penalty.

18. In support of the above contention, the learned counsel for the petitioner relies upon the decision of the Constitution Bench of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs Ra, Gopal Sharma (2002) 2 Supreme Court Cases 244. The said decision arose out of a reference made to a Five Member Bench, for considering the question as to whether an order of dismissal becomes ineffective from the date it was passed or from the date of non approval of the order, if an approval is granted under Section 33 (2) (b) and whether the failure to make an application under Section 32(2)9b rendered the dismissal inoperative. The Supreme Court Held in the said case that the failure to make an application under Section 33 (2) (b) for approval, would make the order of dismissal or discharge invalid and void.

19. Though the law on the applicability of Section 33(2) (b) is fairly well settled by the decision of the Constitution Bench, the case on hand stands on a different footing. In this case,

the petitioner was placed under suspension by an order dated 11.10.2000 and the enquiry itself was over on 17.03.2001. second show cause notice was issued on 23.03.2001 and the order of dismissal was passed on 17.04.2001. it is only after the petitioner was placed under suspension that the Union appears to have gone before the Conciliation Officer. The Industrial Dispute raised post facto, appears to be a ruse to outwit the disciplinary proceedings.

20. In *Essorpe Mills Limited Vs. Presiding Officer, Labour Court*, (2008) 7 Supreme Court Cases 594, the Supreme Court was concerned with a case relating to the dismissal of a few workmen, passed without complying with the provisions of Section 33 (2)(b) of the Act. A learned Judge of this Court allowed a writ petition of the workman on the ground of non compliance of Section 33(2)(b). The judgment of the Hon'ble Judge was confirmed by the Division Bench and the Management went on appeal to the Supreme Court. The Supreme Court took note of the Constitution Bench judgment in *Jaipur Zila Saahakari Bhoomi Vikas Bank Ltd.* Yet the Supreme Court came to two conclusions one in paragraph 8 and another in paragraph 10. In Paragraph 8, the Supreme Court held that on the facts of that case, no Conciliation proceeding was pending in the eye of law on the date of dismissal of the workman. The theory of deemed invocation of Conciliation Proceeding under Section 20(1) was also rejected by the Supreme Court.

21. In paragraph 10, the Supreme Court indicated that the Conciliation Officer, unlike the Labour Court or an Industrial Tribunal, has no power of adjudication. Therefore the Supreme Court held in para 10 that the dismissal cannot be stated to be invalid. Though the correctness of the view expressed by the Supreme Court, may be in doubt in view of the express language of Section 33, it is seen from the letter dated 18.10.2000 submitted by the Trade Union that the only dispute raised by the management was that no action can be taken against the office bearers of the Union. A careful look at Section 33(1)(b) and Section 33 (2) (b) would show that for invoking any one those two provisions, the order of dismissal or punishment should be "for any misconduct connected with the dispute". In order words, the object behind Section 33 is to prevent the employer from taking any action against

the workman, when an Industrial Dispute is pending, but the prohibition is only in relation to a proceeding initiated in connection with any misconduct relating to the dispute.

22. After a disciplinary proceedings is initiated against the workman, the Union cannot make the disciplinary action itself the subject matter of dispute and claim the application of Section 33. The disciplinary proceedings always commence with the issue of a charge memo. By making the suspension order or the charge memo itself the subject matter of a Conciliation Proceeding, the Union cannot take shelter under Section 33. In this case, the order of suspension of the writ petitioner was issued on 11.10.2000 and that itself was made the subject matter of Conciliation Proceeding. Therefore, it is not possible to accept the contention that an order of dismissal could not have been passed without following the mandate of Section 33(2) (b). Hence the Second contention is also rejected."

15. The above findings of the learned single Judge and the conclusion reached by him are perfectly valid and do not call for a relook into the same. In the said circumstances, the reliance placed by the learned counsel for the petitioner on the decision of the Constitution Bench reported in "(2002) 2 SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Versus Ram Gopal Sharma and others)" does not help the petitioner to advance his case and the same cannot be applied to the factual matrix in the present set of circumstances.

16. For the above said reasons, this Court does not find any merit in the Writ Petition and therefore, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

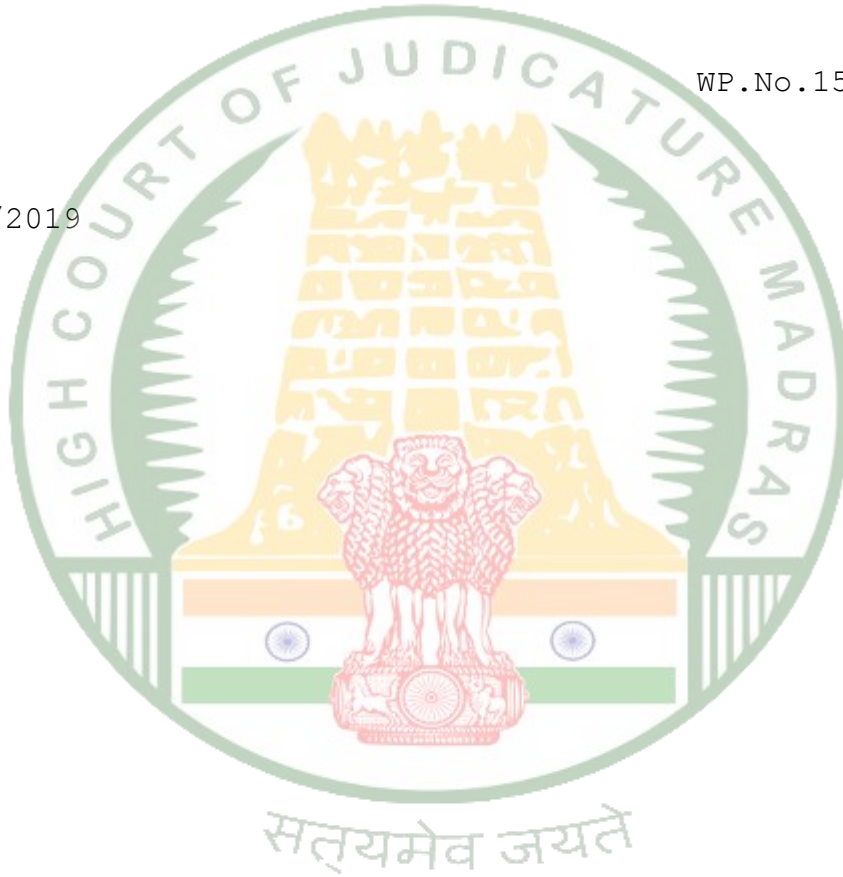
Suk
To

Presiding Officer,
Labour Court,
Cuddalore.

+lcc to Mr.Balan Haridas, Advocate Sr.37282
+lcc to Mr.A.S.Thambusamy, Advocate Sr.37787

WP.No.15172 of 2011

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