

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2019

CORAM

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

W.P.No.8735 of 2016
and
W.M.P.No.7720 of 2016

The Management,
Karamalai Estate,
M/s.The Periya Karamalai Tea and Produce Company Limited,
Represented by its Deputy Manager Legal - Arun Govind,
Karumalai Bazaar (P.O.),
Valparai (Taluk),
Coimbatore District- 642 130. ...Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.S.Jayakumar,
Karumalai Lower division,
C/o. General Secretary,
Anaimalai Ambedkar Thotta Makkal Sangam (LLF),
35, New Market,
Valpari (Taluk),
Coimbatore - 642 127. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for the records of the first respondent in I.D.No.711 of 2008 and quash its preliminary order dated 11.10.2012 and consequential final award dated 10.07.2015.

For Petitioner : Mr.S.Ravindran
Senior Counsel
for Mr.S.Bazeer Ahamed

For R1 : Labour Court

For R2 : Mr.R.Munuswamy

O R D E R

The award dated 11.10.2012, passed by the first respondent in I.D.No.711 of 2008 is under challenge in the present writ petition.

2. The writ petitioner is the Management, Karamalai Estate, M/s.The Periya Karamalai Tea and Produce Company Limited. The learned Senior Counsel appearing for the writ petitioner has made submissions that the second respondent committed an act of grave misconduct and the Assistant Field Officer viz., Mr.B.Venkataraman lodged a complaint against the second respondent. The Second respondent took it as an affront, abused and threatened B.Venkataraman with dire consequences. This incident was witnessed by one Mr.Muthusamy, Assistant Forest Officer. Consequently, both of them gave a written complaint to the group Manager and a show cause notice was issued to the second respondent and the second respondent refused to receive the show cause notice. Thereafter, a charge sheet was issued and the second respondent/delinquent submitted his explanations, both for show cause notice as well as to the charges framed in the Charge Memorandum. The Management found that the explanations submitted were not satisfactory and ordered for domestic enquiry. The domestic enquiry was conducted, complainants Mr.Venkataraman and Mr.Muthusamy were examined and in addition to them, Mr.Manisekaran and Mr.K.V.Seetharaman were also examined, to establish charges framed against the second respondent/workman. The Enquiry Officer submitted his report on 10.10.1998, holding that the charges filed against the second respondent were duly proved and he was found guilty of all the charges filed against him. Along with the enquiry, the second show cause notice was issued and also quantum of punishment to be imposed was also stated. The second respondent did not submit any reply to the notice and consequently, writ petitioner/Management imposed punishment of dismissal from service on the second respondent. The Management filed an Approval Petition under section 33(2)(b) of the Industrial Dispute Act before the Industrial Tribunal. The Industrial Tribunal considering the facts and circumstances, granted the approval as prayed for by the petitioner/Management. In the said approval order, it was specifically observed that the second respondent had not disputed the validity of the domestic enquiry held against him. Thus, the second respondent has raised the Industrial dispute before the first respondent in I.D.No.711 of 2008.

3. The learned senior counsel appearing on behalf of the writ petitioner/Management reiterated that there is an absolute perversity in the finding of the Labour Court. In view of the fact that the Labour Court has proceeded on an erroneous finding that the complainant was not examined, while, the preliminary issues were adjudicated and while

adjudicating the preliminary issue regarding fairness of the domestic enquiry, the Labour Court erroneously held that the complainant was not examined. Contrarily, the complainant, Mr.Venkataraman was examined before the Enquiry Officer and the documents were filed before the Labour Court, by the petitioner/Management. Thus, it is an error apparent committed by the Labour Court and even during the final adjudication the same error was recorded and accordingly, the Labour Court passed an award in favour of the second respondent.

4. In view of the fact that the Labour Court had proceeded the issues on the basis that the complainant was not examined during the enquiry. The Labour Court arrived a conclusion that the order of dismissal is perverse and invalid. Contrarily, the complainant was examined by the petitioner/Management and it is pertinent to note that the deposition of the complainant Mr.Venkataraman is enclosed in the additional typed set of papers filed by the writ petitioner/Management, more specifically, in page No. 44. A perusal of the said documents, would reveal that the complainant Mr.Venkataraman was examined by the enquiry officer and he said about entire incident as well as the allegations against the second respondent.

5. This being the factum, the Labour Court had committed an error apparent in not considering the deposition of the complainant and contrarily proceeded on the basis that a complainant himself was not examined before the enquiry proceedings.

6. Under these circumstances, this Court is of an opinion that the Labour Court proceeded the entire issues based on the incorrect factual details and therefore, the case on hand is a fit one for remitting the matter back for reconsideration.

7. Under these circumstances, the preliminary order dated 11.10.2012 and the consequently final award dated 10.07.2015 passed by the first respondent in I.D.No.711 of 2008 are quashed. The first respondent is directed to restore the Industrial Dispute and proceed with fresh adjudication by affording opportunity to all of the parties concerned, decide the issues based on the materials available as well as documents produced and pass final award as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

8. The learned counsel of the writ petitioner made submission that at the time of the admission of the present writ petition, the writ petitioner/Management had deposited a

sum of Rs.3,00,000/- before the first respondent/Labour Court. In this regard, the writ petitioner is at liberty to file an appropriate application for withdrawal of the said amount with accrued interest. In the event of filing any such application, the first respondent is directed to disburse the deposited amount with accrued interest as expeditiously as possible.

9. Accordingly, Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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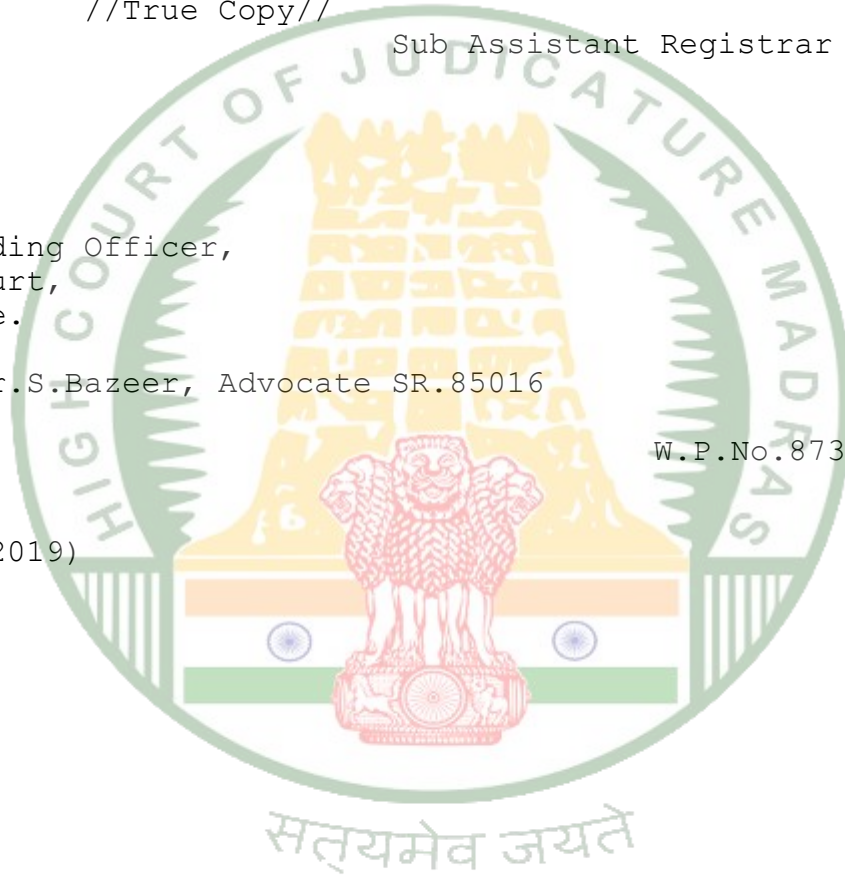
To

The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.S.Bazeer, Advocate SR.85016

W.P.No.8735 of 2016

NMI (CO)
CB(18/11/2019)



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