

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.6201 of 2015

and

M.P.No.1 of 2015

Tamil Nadu Electricity Board
Represented by Superintending Engineer
Chennai Electricity Division Circle (South)
802, Anna Salai,
Chennai-600 002. Petitioner

vs.

1.The Presiding Officer
II Additional Labour Court
Chennai.

2.V.Balu (Deceased)

3.B.Govarthini

4.B.Premkumar

5.B.Priyadharshini ... Respondents

R3 to R5 substituted as LR's of the deceased R2 vide
order dated 28.06.2019 made in W.M.P.No.20996/2018
in W.P.No.6201 of 2015.

Writ Petition filed under Article 226 of the Constitution
of India praying to issue Writ of Certiorari, calling for the
records of the 1st respondent regarding the preliminary order
dated 27.08.2012 and the consequential award dated 07.01.2013
passed in I.D.No.817 of 2001 and quash the same as arbitrary,
illegal and without jurisdiction.

For Petitioner : Mr.P.R.Dilipkumar

For Respondents : Mr.Balan Haridas
for R3 to R5

O R D E R

This writ petition is filed challenging the preliminary
award dated 27.08.2012 and the final award dated 07.01.2013
passed in I.D.No.817 of 2001.

2. The Tamil Nadu Electricity Board/Management is the petitioner. The second respondent herein filed the above industrial dispute seeking for reinstatement into service with backwages, continuity of service and other attendant benefits. In the preliminary award dated 27.08.2012, the Labour Court found that the domestic enquiry conducted by the Management was not free and in a fair manner and that the same was conducted against the Principles of natural justice. The Labour Court, after holding so, set aside the domestic enquiry conducted by the Management and posted the matter further to prove the charges. Thereafter, the matter was taken up by the Labour Court for trial. The workmen was examined himself as W.W.1 and one Prabhakaran was examined on the side of the Management as M.W.1. No exhibits were marked on both parties. The Labour Court, by taking note of the fact that the Management has not adduced any evidence and proved the charges, except oral testimony of M.W.1, found that the workmen is entitled to get the relief of reinstatement in service with 25% backwages, continuity of service and other attendant benefits. Challenging the above preliminary and final awards, the present writ petition is filed.

3. The learned counsel for the petitioner-Management submitted that since the relevant documents in connection with the charges framed against the second respondent herein were furnished to the police in connection with the criminal case, they were not in a position to file the same before the Labour Court. Therefore, he submitted that the Labour Court is not justified in passing the impugned award.

4. On the other hand, Mr. Balan Haridass, learned counsel appearing for the respondents 3 to 5, by supporting the impugned award, submitted that it is the duty of the Management to prove the charges before the Labour Court, since the proceedings taken in the domestic enquiry itself was set aside by the Labour Court, while deciding the preliminary issue.

5. Heard both sides and perused the materials placed before this Court.

6. It is seen that the second respondent was issued with a charge memo containing two charges. The second respondent filed his explanation denying those charges. Thereafter, the domestic enquiry was conducted. The Enquiry Officer filed his report and based on such report, the second respondent was imposed with the punishment of dismissal from service. The said punishment was challenged before the Labour Court. The Labour Court took up the preliminary issue, as to whether the domestic enquiry conducted by the Management is fair and proper and in accordance with law or in violation of principles of natural justice. The Labour Court, found that the written statement filed by the delinquent before the Enquiry Officer was not considered and that the copies of the

documents relied on by the Management were not furnished to the delinquent along with list of witnesses. It further observed that non-furnishing of those documents is against the principles of natural justice, thereby, preventing the delinquent from cross-examining the witnesses in an effective manner. The Labour Court also found that the Enquiry Officer did not record the statement of the witnesses and however, asked the Workmen to cross-examine the witnesses, which is contrary to law. Therefore, the Labour Court has found that the Enquiry Officer did not follow the principles of natural justice. Thus, the Labour Court found that the domestic enquiry conducted was against the principles of natural justice and consequently, has chosen to set aside the same. The petitioner-Management did not challenge the said preliminary award before this Court immediately, after passing of the preliminary award and on the other hand, they have chosen to challenge the said preliminary award as well as the final award only after passing of the final award. It is pertinent to note that failure to challenge the preliminary award immediately, would go against the interest of the Management, in view of the fact that the Labour Court, while passing such preliminary award, apart from setting aside the domestic enquiry, also called upon the Management to prove the charges before the Labour Court. Therefore, the Management either should have challenged the preliminary award even before the Labour Court has taken up the matter for passing the final award or let in evidence before the Labour Court for the purpose of proving the charges as directed by the Labour Court. In this case, the Management had neither challenged the preliminary award immediately, nor let in documentary evidence before the Labour Court to prove the charges, as directed in the preliminary award.

7. It is contended by the Management that the original documents are with the Police Department and therefore, they were not in a position to produce the same. Needless to state that the Disciplinary proceedings is an independent proceedings and therefore, it is the duty of the Management to prove the charges by conducting domestic enquiry in accordance with law. In this case, the Labour Court has found that the domestic enquiry conducted was not in accordance with the principles of natural justice. Therefore, the Labour Court gave an opportunity to the Management to prove the charges atleast before the Labour Court, while hearing the matter finally. However, the Management did not produce any documents and has not taken any steps atleast to call for those documents from the Police Department. Under such circumstances and in the absence of any documents or material evidence to prove the charges framed against the second respondent, the Labour Court has rightly passed the impugned award, with which, I find no reason or ground to interfere. Thus, this Writ Petition fails and the same is dismissed.

respondents 3 to 5 that the delinquent/second respondent died during the pendency of this writ petition and the legal heirs were brought on record.

9. In view of the dismissal of this writ petition, the petitioner-Management is directed to implement the award of the Labour Court dated 07.01.2013, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mk

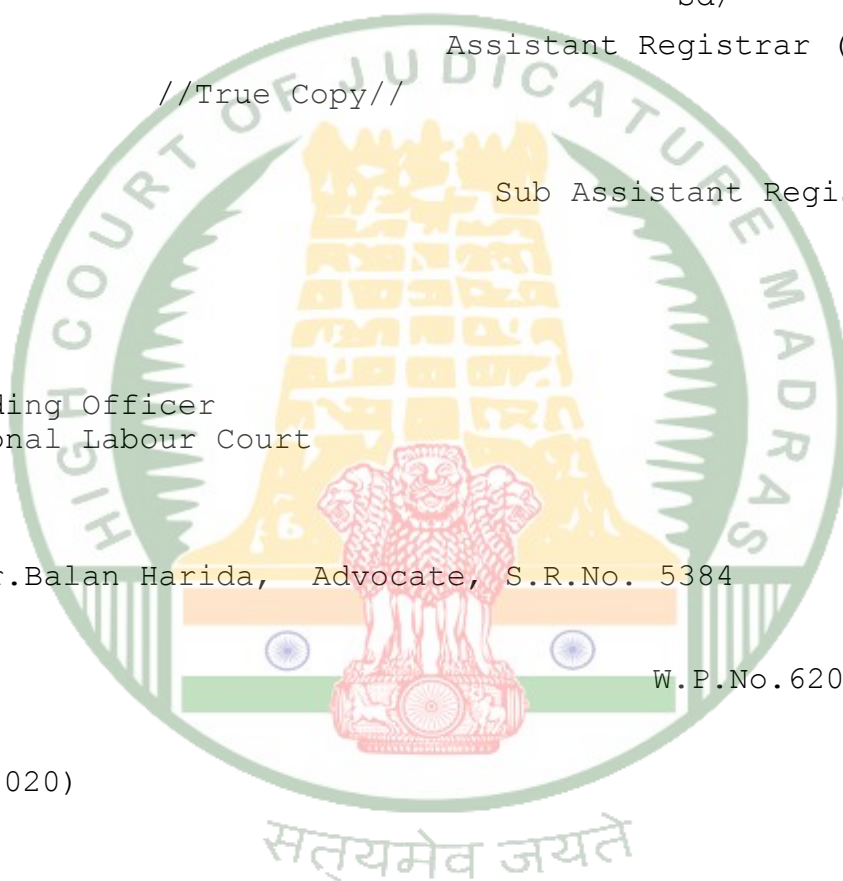
To

The Presiding Officer
II Additional Labour Court
Chennai.

+1cc to Mr.Balan Harida, Advocate, S.R.No. 5384

W.P.No.6201 of 2015

PA (CO)
GN (26/02/2020)



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