



W.P. No.26792 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.26792 of 2023
and W.M.P. No.26224 of 2023

G. Thirunavukarasu S/o. A. Govindasamy ... Petitioner

Vs.

The Management,
Industrial Fans (India) Pvt. Ltd.,
Registered Office at: No.29/16, East Road,
West C.I.T. Nagar, Nandanam,
Chennai - 600 035. ... Respondent

PRAYER: The Writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order dated 11.08.2023 passed by the II Additional Labour Court, Chennai in I.A. No.3 of 2023 in C.P. No.31 of 2021 and to quash the same.

For petitioner : Mr.K. Rangesh

For Respondents : Ms. J. Jyothi

ORDER

This Writ petition has been filed as against the order passed by the II Additional Labour Court, Chennai in I.A. No.3 of 2023 in C.P. No.31 of 2021



dated 11.08.2023, wherein the respondent herein has filed a petition before the Labour Court to eschew the evidence recorded as RW1 in C.P. No.31 of 2021 and the same was allowed. Challenging the said order, the present Writ petition has been filed.

2. The learned counsel appearing for the petitioner would submit that the petitioner joined services of the respondent in the month of October 1990 as 'Draftsman' and thereafter, the respondent Management had not paid full wages to the petitioner for the month of September 2019 and only a part of the amount had been remitted into the bank account of the petitioner and thereafter, the petitioner was suspended. Therefore, the petitioner filed a Claim Petition before the II Additional Labour Court, Chennai under Section 33(c)(2) of the Industrial Disputes Act in C.P. No.31 of 2021. The respondent also filed counter in the claim petition. Thereafter, the petitioner's side evidence was closed after examining the witnesses and the respondent let evidence through its Legal and Administrative Officer A. Jeyachandran and marked 24 documents through him. Due to discrepancies in the evidence of RW1, after cross examining the above said witness, when the matter was adjourned to 16.06.2023 for continuation of cross examination, the



respondent filed an interlocutory application in I.A. No.3 of 2023 to eschew the evidence and the same was allowed by the Labour Court. The same cannot be eschewed and form part of the records and it is to be decided at the time of pronouncing judgment by the concerned Court. After elaborate cross examination, the Labour Court simply eschewed the evidence of RW1 and the same is against law and will affect the fair trial and therefore, the order passed by the Labour Court is liable to be quashed.

3. The learned counsel appearing for the respondent would submit that before the Labour Court, the petitioner filed a Claim Petition in C.P. No.31 of 2021 and the same was hotly contested by the respondent. After completion of petitioner's side evidence, the respondent's side evidence was adduced by examining RW1. RW1 was partly cross examined. While so, he was unable to attend the Court due to administrative reasons. Therefore, the respondent filed a petition to eschew the evidence and adduce fresh evidence. The Labour Court after elaborate discussions, held that since RW1 was relieved from the service of the respondent, the evidence of RW1 was eschewed. Therefore, the order passed by the Labour Court is in order and due to eschew the evidence of RW1, it will noway affect the right of the petitioner and if any



fresh evidence is examined, the petitioner can have elaborate cross examination and therefore, the present petition is liable to be dismissed.

4. Heard both sides and perused the materials available on record.

5. In this case, the petitioner herein filed a Claim Petition in C.P. No.31 of 2021, wherein the petitioner's side evidence was examined and closed. But on the respondent's side, they examined RW1, who was the Staff of the respondent company. The evidence of RW1 was also cross examined to some extent and thereafter, since RW1 was relieved from the service of the respondent, they filed an application before the Labour Court to eschew the evidence of RW1. The Labour Court allowed the petition. As far as the evidence is concerned, unless it is subjected for cross examination, it cannot be a complete evidence. In order to complete the evidence, after chief examination, cross examination and re-examination have to be completed, otherwise the evidence cannot be termed as 'complete evidence'. However, if the substantial part of the evidence is recorded, then even though it is not a complete evidence, the same cannot be eschewed as there is no provision either in 'Evidence Act' or in any other laws to eschew the evidence. Once the



evidence is recorded, that has to be decided at the time of passing final judgment.

6. As far as the incomplete evidence is concerned, the Court cannot rely upon the evidence and the Court has to see the other evidence. Based on the other evidence, if the Court is unable to come to a conclusion and if there is any substantial part of evidence is available in the incomplete evidence, then the Court can rely upon that evidence, that too the concerned Court has to decide as to whether the evidence is to be relied upon or not at the stage of passing final order. After recording the evidence, if the same is eschewed, then the valuable rights of the other side will be affected through the evidence permitted. If this kind of petition is allowed, then after cross examination, if any adverse evidence is available, the concerned party can approach the Court to eschew the evidence. Therefore, it is not appropriate to eschew the evidence before pronouncing judgment and the same has to be decided by the particular Court based on the reliability of the evidence.

7. In this context, the learned counsel appearing for the petitioner also relied upon judgment of this Court in ***Ashwin Sabanayagam and another vs. The Catholic Syrian Bank Ltd., in C.R.P. (PD) No.906 of 2019***, wherein this



Court after referring the judgment of this Court in ***D.F. Philips vs. Damayanthi Kailasam and others*** reported in ***CDJ 2010 MHC 1572***, held in para Nos.9 and 10 as follows:-

"9. This Court has held that there is no provision for eschewing the evidence of the witness who has not completed his deposition. Ultimately, it is the Court which has to decide the probative value of the evidence and merely because the evidence is not available the evidence so far deposed cannot be eschewed from the records.

*10. The instant case is also of a similar nature, therefore this Court relying upon the Judgment in ***D.F. Philips vs. Damayanthi Kailasam and others*** reported in ***CDJ 2010 MHC 1572*** allows the Civil Revision Petition. Consequently, the order passed by the learned XV Additional Judge in I.A. No.222 of 2018 in O.S. No.4768 of 2014 is set aside and evidence already recorded shall remain on file. Considering the fact that the Suit is of the year 2014, the learned Judge is directed to dispose of the same within a period of three months from the date of receipt of a copy of the order".*

8. In this case also, RW1 was chief examined and partly cross examined and at that time, the respondent filed a petition to eschew the evidence. That evidence cannot be eschewed and it has to be kept along with records. The Presiding Officer has to decide at the time of final judgment depending upon the reliability of the evidence. Therefore the order passed by the Labour Court by eschewing the evidence of RW1 is against law and the same is unsustainable. Therefore, the order passed by the Labour Court is liable to be set aside.



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9. Accordingly, the Writ petition is *allowed*. *The order dated 11.08.2023 passed by the II Additional Labour Court, Chennai is set aside and the application in I.A. No.3 of 2023 in C.P. No.31 of 2021 is dismissed.*

There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

25.07.2025
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Index : Yes/No.
Speaking order/non-speaking order
mjs

To

The II Additional Labour Court,
Chennai.

P. DHANABAL, J.,

mjs



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