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W.P.No.35138 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Orders reserved on : 16.12.2025

Orders pronounced on : **20.01.2026**

CORAM :

**THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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A.Kannan

.. Petitioner

**Versus**

The Managing Director,  
M/s.Pondicherry Institute of Medical Sciences,  
Ganapathichettikulam village,  
Kalapet, Puducherry.

.. Respondent

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records pertains to the impugned award, dated 28.09.2017 made in ID(L) No.43/2014, on the file of Industrial Tribunal-cum-Labour Court, Puducherry and set aside the same, consequently direct the respondent to reinstate the petitioner in his services with full back wages, continue of the services with all other attended benefits.

For Petitioner : Mr.P.R.Thiruneelankandan

For Respondent : Mr.L.Sathish





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the Theater itself and administered it to the patient, and therefore demanded a sum of Rs.300/- towards the same. On the same day evening, he came to the ward and collected the said sum of Rs.300/- from the complainant. The complainant became suspicious and, after enquiring with the physician, she made the complaint.

3. It is alleged that during a preliminary enquiry, the petitioner/workman admitted the same and made an endorsement on the reverse of the said complaint. The endorsement states that the workman, *Kannan*, admits that he received a sum of Rs.300/- from the complainant, the daughter of the patient. It further states that the amount was for E.C.T. medicines. He himself took the medicines from the Operation Theater stock, used the same, and admits the mistake. The complainant was also present at the enquiry, identified the workman, and reiterated the said fact. An endorsement was also obtained from her on the reverse of the complaint on 05.12.2014. The preliminary enquiry report also contains the signatures of the Head of the Anesthesia Department and three other officials.

4. Thereafter, on 15.02.2014, a charge memorandum was issued



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to the petitioner containing the following charge:-

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“That you have illegally collected Rs.300/- from Ms. A. Guna, D/o.Patient Pitchaiyammal, P.I.M.S No.941906 for undergoing ECT procedure in the O.T on 03/02/2014 alleging that the amount was towards the cost of the medicines used for the procedure.

That the patient has given a complaint, dated 05/01/2014 and that during the preliminary investigation held on 05/02/2014 at 3.00 P.M you had accepted the fact that you had illegally received Rs.300/- from the complainant and you are also identified by Ms. A. Guna in the presence of the Addl. Medical Superintendent, Nursing Superintendent, Personal Manager & HOD-Department of Anaesthesia.

That the act committed by you amounts to serious misconduct involving fraud and dishonesty in connection with treatment of patient (Clause 17.2) of the Service Rules and you have not only cheated the patient but also adversely affected the reputation of the Institution.”

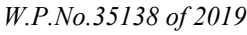
5. The petitioner submitted an explanation on 17.02.2014 stating that he obtained the money on account of his family circumstances and that he will not repeat the mistake. The relevant portion reads as under:

“ஐயா வணக்கம்.

நான் A.கண்ணன் (4318) Anaesthesia Technician-யாக PIMS மருத்துவமனையில் வேலை செய்கிறேன். நான் எனது குடும்ப சூழ்நிலைக் காரணமாக Mrs.பிச்சையம்மாளின் உறவினரிடம் பணம் ரூபாய்.300.பெற்றுக்கொண்டேன்.

இனிமேல் இதுபோன்ற தவறான செயல்களில் ஈடுபட மாட்டேன் என்று உறுதியளிக்கிறேன்.”

6. Thereafter, a domestic enquiry was conducted. Even in the domestic enquiry, it was recorded that the petitioner admitted receiving



“Mr.A. Kannan was specifically was questioned by the Enquiry Officer during the enquiry whether he accepted the charges.

Mr.A. Kannan stated that after the patient Pitchaiyammal was admitted, two earlier ECT procedures were done in the O.T for her for which the medicines were purchased by the patient. During the third procedure of ECT, the patient expressed shortage of money to buy the medicines for the procedure which was around Rs.700/-. She offered him Rs.300/-. In order to help the patient and as well as since A. Kannan was in need of money because he traveled each day to Kadapakkam which is about 45 kilometers, he received the money and thought that he would adjust the same in the next ECT procedure. However he admitted that he used the medicines in the O.T for the ECT without the knowledge of his superiors. Therefore he sought forgiveness. Before he told the patient to adjust the amount in the next ECT procedure by paying the extra amount, this incident took place.”

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submitted on 01.08.2014, and thereafter, vide

G.O.Rt.No.123/AIL/LAB/J/2014 dated 25.08.2014, the following dispute was referred by the appropriate Government for adjudication by the Labour Court:

“i. Whether the dispute raised by the petitioner Thiru.A. Kannan, Anesthesia Technician against the management of M/s. Pondicherry Institute of Medical Sciences, Puducherry over his non-employment is justified? If justified, what relief he is entitled to?

ii. To compute the relief, if any awarded in terms of money, if it can be so computed?”

8. A claim statement was filed by the workman alleging that the entire exercise was victimisation and he was forced to give such statements as if he admitted his guilt. He contends that he never admitted guilt.

9. The management resisted the claim statement by duly filing a counter. The Labour Court framed the preliminary issue as to whether the disciplinary enquiry was fair and proper. No oral evidence was led by the parties, and the documents relating to the disciplinary enquiry were marked as **Ex.R-1** to **Ex.R-8**. After hearing the arguments of the parties, the Labour Court passed a preliminary award on 01.08.2017, holding that the enquiry was fair and proper, and rejecting the plea on behalf of the



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workman that the non-issue of a second show-cause notice and the non-furnishing of the enquiry report vitiated the enquiry. It held that domestic enquiries are different from enquiries under Article 311 of the Constitution of India. Therefore, it was not mandatory to furnish a copy of the enquiry report or to issue a second show-cause notice. Thereafter, the issue was taken up for the exercise of power under Section 11A of the Industrial Disputes Act, 1947. During this enquiry, no further evidence was led by the parties. The Labour Court held that there was ample evidence on record to show that the petitioner committed misconduct by accepting illegal gratification and that the charge was proven. It further held that the punishment was proportionate to the gravity of the offence, and the Claim Petition was dismissed. Aggrieved thereby, the present Writ Petition is filed.

10. Though the prayer does not expressly mention the preliminary award, in the affidavit filed in support of the petition, the grounds relating to the preliminary award are also raised in paragraph No.7 and in the grounds Nos. (iv), (v), etc. The Writ Petition is resisted by the management by duly filing a counter-affidavit, contending that the allegations made in the affidavit are totally unfounded. The documents



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were also filed on behalf of the respondent management.

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11. *Mr.P.R.Thiruneelakandan*, learned Counsel for the petitioner/workman and *Mr.L.Sathish*, the respondent management, reiterated the submissions made before the Labour Court.

12. After considering the submissions made and perusing the materials on record, the following questions arise for consideration in the instant case:-

(i) Whether the workman can be permitted to impugn the preliminary award while challenging the final award with an express prayer?

(ii) If so, whether the preliminary award passed by the Labour Court is in accordance with the law?

(iii) Whether the final award passed by the Labour Court is sustainable in law?

(iv) To what relief, the petitioner is entitled?

#### **Question No.i:-**

13. It is settled law that the preliminary award need not be



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challenged separately and the aggrieved party can challenge it along with the final award. Useful reference can be made in this regard to the judgment of the Hon'ble Supreme Court of India in ***Cooper Engineering Limited Vs. Shri P.P.Mundhe***<sup>1</sup> and it is essential to extract paragraph No.22 which reads as follows:-

“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

(Emphasis supplied)

14. It can be seen that throughout the affidavit filed in support of the Writ Petition, the petitioner has specifically raised the grounds relating to the preliminary award which is also responded by the management in

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<sup>1</sup> (1975) 2 SCC 661



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the counter-affidavit. Therefore, the workman need not be non-suited on the ground that the preliminary award is not specifically mentioned in the prayer portion. Accordingly, this question is answered that the workman had substantially challenged the preliminary award in the manner known to law and as such, the merits of his claim has to be gone into.

**Question No.ii:-**

15. As far as the preliminary award is concerned, the primary ground that is raised is that a copy of the enquiry report is not furnished. No second show-cause notice was given. The said argument was rejected by the Labour Court in the preliminary award by relying upon the judgment of the Hon'ble Supreme Court of India in ***Firestone Tyre & Rubber Co (P) Ltd., Vs. Workmen***<sup>2</sup> by taking into consideration the following observations:-

“The domestic Inquires in industrial concerns are different from enquiries under art 311 of the constitution and the industrial tribunal therefore, cannot decide the case of domestic enquiries by applying the provisions of art 311.”

16. However, it must be seen that the subsequent merge of law has not been taken into account by the Labour Court. Subsequently, the

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<sup>2</sup> (1967) 2 LLJ 715



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matter of furnishing of the second show-cause notice was considered by the Hon'ble Supreme Court of India in ***Union of India Vs. Mohd. Ramzan Khan***<sup>3</sup>. Thereafter, in the judgment of the Hon'ble Supreme Court of India in ***ECIL Vs. B.Karunakar***<sup>4</sup>, in paragraph No.61, it was held that the non-furnishing of enquiry report and non-issue of show-cause notice was not only violative of Article 311 of the Constitution of India, but also would be violative of principles of natural justice. Useful reference can be made to paragraph No.61 of the said judgment which reads as follows:-

“61. ...It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable. What was meant by ‘evidence’ in the proviso to Article 311(2) is the totality of the material collected during the inquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.”

17. This is based on the principle that if the employer relies upon a particular material to come to a conclusion for imposing of punishment, the delinquent employee should be furnished with that material and he

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<sup>3</sup> AIR 1991 SC 471

<sup>4</sup> (1993) 4 SCC 727



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must also be heard and the purpose is that he can persuade the employer to accept the findings of the enquiry report if it is in his favour or dissuade the employer from accepting the findings if the findings are against him. Therefore, the preliminary award, dated 01.08.2017 is erroneous in law and it has to be held that the enquiry was not fair and proper.

**Question No.iii:-**

18. In view of the fact that the preliminary award is liable to be set aside, the final award that is passed on the basis that the enquiry was held as fair and proper, cannot be sustained. As such, it is liable to be set aside.

**Question No.iv:-**

19. Under the normal circumstances, by holding the preliminary award as unsustainable, the matter can be remanded back to the Labour Court as the management has taken a stand in the counter-affidavit that in the event, the Court comes to the conclusion that the enquiry is not fair and proper, due opportunity should be given to the management to prove the charge before the Labour Court. However, in this case, the enquiry and the dismissal was in the year 2015 and now, we are in the year 2025.



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Therefore, it would be too late in the day to remand the matter after 10 years so as to leave the parties again to the task of letting in evidence of proof of charges and the workman to undergo the ordeal which would also result in further round of litigation. Therefore, relief can be granted by taking into consideration the overall facts and circumstances of this case. In this case, now, the award is being set aside only on the procedural issue of fairness in the enquiry. Further, it can be seen that the charge relates to getting money from the patient. Even though the charge is unequivocally accepted by the workman, by his pleading and explanation, the fact that a sum of Rs.300/- was obtained by mentioning that it is towards the medicines, which has already been used for the services of the patient, is clear.

20. Further, the said sum was also not paid by the workman to the management and has been used for his personal benefit. With this kind of a *prima facie* factual background, it can be seen that there will be complete lost of faith for the management to reinstate the workman even if the workman is successful in establishing that the charge against him is not proved. Therefore, in lieu of reinstatement, this is a fit case where compensation can be ordered by this Court and thereby, all the further



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litigation can also be avoided. The fact that the petitioner joined in service in the year 2010 as a contract employee and he was confirmed as a regular employee after completion of the probation in the year 2013 and that it is alleged that he indulged in the misconduct in the year 2014 and thus, he had also put in about four years of service, is also taken into account. As per the judgment of the Hon'ble Supreme Court of India in ***O.P.Bhandari Vs. Indian Tourism Development Corporation Ltd.***<sup>5</sup> in order to ensure that the workman must be in a position to receive at least half of the last drawn salary with interest with reasonable additions, the compensation is to be granted as equal to the last drawn salary (Rs.8,270/-) x 39 months which equals to Rs.3,22,530/-.

21. In view thereof, this Writ Petition is partly allowed on the following terms:-

(i) The impugned preliminary award, dated 01.08.2017 passed in I.D.(L).No.43 of 2014 and the final award, dated 28.09.2017 shall stand set aside;

(ii) In lieu of all claims of reinstatement and back-wages or any other claim whatsoever, a sum of Rs.3,22,530/- is ordered to be paid a

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<sup>5</sup> (1986) 4 SCC 337



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compensation to the workman within a period of 12 weeks from the date of receipt of a web-copy of this order without waiting for a certified copy of this order;

(iii) There shall be no order as to costs.

20.01.2026

Neutral Citation : yes  
grs

To

The Managing Director,  
M/s.Pondicherry Institute of Medical Sciences,  
Ganapathichettikulam village,  
Kalapet, Puducherry.



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**D.BHARATHA CHAKRAVARTHY, J.**

grs

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