

For Petitioner :: Mr.Anand Gopalan for
M/s.T.S. Gopalan & Co.

For Respondents :: Mr.T.M. Pappiah,
Special Govt. Pleader for R1
Mr.K.M. Ramesh
for R2 to R6

O R D E R

The Management is before this Court as against the order passed by the 1st respondent Labour Court refusing to adjudicate the issue of fairness of the domestic enquiry conducted by the petitioner Management, in the disciplinary proceedings initiated against the respondent workmen, as a preliminary issue.

2. Heard Mr.Anand Gopalan, learned counsel for the petitioner and Mr.K.M. Ramesh, learned counsel for respondents 2 to 6.

3. The opposite parties/respondents 2 to 6 were employed in the petitioner establishment and they were dismissed from service on certain charges, while on duty, on 08.09.2012. Since an industrial dispute regarding promotion was pending before the 1st respondent, in terms of Section 33(2)(b) of the Industrial Disputes Act, 1947, an approval petition was filed by the Management before the 1st respondent and it was numbered as A.P. Nos. 1 to 5 of 2012. During the cross-examination of the Management Witness M.W.1, questions were put with regard to the fairness of the enquiry conducted against the respondent workmen. Therefore, the petitioner took out an application to

decide about the fairness of the enquiry. The Tribunal negated the claim of the petitioner stating that the question of fairness can be decided at the time of final disposal of the case, aggrieved over which the present writ petition has been filed by the petitioner.

4. Though it is stated that at the time of final hearing, the issue can be decided, if the issue of fairness of enquiry is decided against the petitioner, again, the petitioner's rights would be prejudiced. But, if it is found that the enquiry conducted by the petitioner was not fair and proper, at the preliminary stage itself, then the petitioner Management would have an opportunity to adduce evidence, to prove the contrary. Therefore, the order passed by the Labour Court is set aside and the writ petition is allowed. The 1st respondent Labour Court is directed to decide the issue with regard to fairness of enquiry conducted by the petitioner management as a preliminary issue, within two weeks from the date of receipt of a copy of this order. In case, the preliminary issue is decided against the petitioner, then opportunity should be given to the petitioner to adduce evidence and finally, the approval petition shall be disposed of, after affording an opportunity to both parties, as expeditiously as possible. No costs.

22.11.2016

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N. KIRUBAKARAN,J.

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W.P.No. 11254 of 2014

22.11.2016