

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
18.02.2016	22.02.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.15894 of 2011
& M.P.No.1 of 2011

The Management,
Trident Textile Mills Limited,
Mamandur Village,
Tiruttani Taluk,
Tiruvallur District. ... Petitioner

Vs

1 The Presiding Officer,
I Additional Labour Court,
Chennai - 600 104.
2.N.S.Saravannan ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the order of the first respondent, dated 10.12.2010, in I.D.No.70 of 2001, and quash the above award.

For petitioner .. Mr.K.Rangesh

For Respondents ... Mr.P.Chandrasekaran for R2

O R D E R

The petitioner, the Management of Trident Textile Mills Limited, has filed this Writ Petition challenging the award of the II Additional Labour Court, Chennai in I.D.No.70 of 2001, dated 10.12.2010.

2. The second respondent Workman was appointed as a Winder on 01.01.1996 and placed under probation and his

services were confirmed with effect from 01.01.1997. Based on a complaint received from a co-employee named N.Vinayagam, the Management placed the Workman under suspension by order dated 30.08.2007, and issued a charge memo containing six charges. The disciplinary action initiated was based on a letter received by the Management from the said Vinayagam, dated 09.09.1997. Subsequently, another letter was received on 29.08.1997, alleged to have been sent by N.Vinayagam denying the allegations made in the earlier letter and such a letter was written on compulsion of the Management in order to victimise the Workman. Subsequently, another letter was received by the Management, dated 13.09.1997, from Vinayagam, stating that he is the signatory to the first letter dated 09.09.1997. The Workman submitted his explanation to the charge memo by his letter dated 22.09.1997, alleging victimisation for Trade Union activities and requested the Management to drop the disciplinary proceedings. The Management proposed to conduct a domestic enquiry and accordingly, an enquiry officer was appointed and intimated to the Workman by notice dated 29.09.1997. The notice of enquiry stated that the Workman is entitled to seek the Assistance of a co-worker in the domestic enquiry and no outsider shall be permitted to assist the Workman. The enquiry officer appointed by the Management was their Weaving Supervisor and he was not a legally trained person. The Workman demanded that he should be permitted to take the assistance of an outsider, who is a Trade Union leader. This request was rejected by the enquiry officer and the same was informed in writing after which the Workman walked out of the enquiry proceedings and did not participate. Therefore, the enquiry officer proceeded ex-parte examined Mr.Vinayagam, the co-worker and submitted a report holding that the charges were proved. Based on such report, a second show cause notice was issued to the second respondent proposing the punishment of dismissal and after considering the past record, imposed the punishment of dismissal from service. Challenging the same, the petitioner raised a dispute, which was taken on file as I.D.No.70 of 2001. The Labour Court by the impugned award set aside the order of termination and directed the Workman to be reinstated with full backwages, continuity of service and all attendant benefits. Challenging the same, the Management has filed this Writ Petition.

3. Heard the learned counsels appearing for the parties and perused the materials placed on record.

4. The disciplinary action initiated against the Workman was based on a complaint given by one Vinayagam. The said Vinayagam was examined in the domestic enquiry,

but however, the Workman did not participate in the domestic enquiry and virtually walked out of the same on the ground that the enquiry officer did not permit him to engage the services of a Trade Union Leader, an outsider, to assist him in the enquiry. The notice of enquiry sent to the respondent Workman clearly stated that a Workman is entitled to seek the assistance of a co-worker and not an outsider. This according to the learned counsel for the petitioner is as per the Certified Standing Orders of the petitioner Management. Therefore, prima facie it is clear that the Workman could not have insisted upon the Management to permit him to engage the services of an outsider/third party to act as a defence assistant in the domestic enquiry. Therefore, the issue would be whether the Workman was justified in boycotting the domestic enquiry and contending that he has been unreasonably dealt with by the Management and whether the domestic enquiry could have been held to be vitiated. However, the Labour Court committed an error in the sense that he did not frame a question as to whether the domestic enquiry conducted by the Management was fair and proper, which the Labour Court ought to have framed, since before the domestic enquiry, the Management had examined the said Vinayagam based on whose letter, the entire disciplinary proceedings had been initiated. On account of the non-framing of proper question, the Labour Court mis-directed itself in proceeding with the matter and holding that the Management has not proved that the subsequent letter said to have been written by the Vinayagam is not admissible or sustainable. The question of permitting the parties to lead evidence before the Labour Court could have been done, if the Labour Court was satisfied that the domestic enquiry was not fair and proper. On a perusal of the impugned award, it is seen that there is no such specific finding. The Labour Court proceeded on the basis that the Management witness during the cross examination pleaded that he had no knowledge about the enquiry proceedings, since at that relevant point of time, he was not in employment of the Management and was subsequently recruited.

5. Thus, the Labour Court should have first considered whether the domestic enquiry was conducted in a proper manner; whether the conduct of the second respondent in not participating in the enquiry proceedings on the ground that he was not permitted to engage a defence helper, who is not a worker of the management; and whether the Management was justified in proceedings with the enquiry ex-parte. However, no such endeavour has been made by the Labour Court, which resulted in an erroneous award. Therefore, this Court is of the view that the matter requires re-consideration.

6. Accordingly, Writ Petition is allowed and the impugned award is set aside and the matter is remanded to the I Additional Labour Court, Chennai for being heard and decided afresh with the opportunity to the parties to lead oral and documentary evidence. The Labour Court should frame a specific question as to whether the domestic enquiry was fair and proper and consider all other issues arising there from and pass a reasoned award on merits and in accordance with law. Since the order of termination is of the year 1997, the Labour Court is requested to expeditiously dispose of the matter, preferably within a period of three months from the date of receipt of a copy of this order and the parties to cooperate in the speedy disposal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

pbn

To

The Presiding Officer,
I Additional Labour Court,
Chennai - 600 104.

1 cc to Mr.P. Chandrasekaran, Advocate, Sr. 11297
2 ccs to Mr.K. Rangesh, Advocate, Sr. 11008

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KSJ (CO)

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