

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.28541 & 28556 of 2016
and
W.M.P.Nos.24649 & 24650 of 2016

S.Komalavalli

... Petitioner in
both W.Ps.

-Vs-

1.The Management
M/s.Tata Communications Ltd.
No.226, Kallikuppam
Redhills Road
Ambattur, Chennai - 600 053.

2.The Presiding Officer
Central Government Industrial
Tribunal cum Labour Court
Shastri Bhavan
Nungambakkam
Chennai - 600 034.

... Respondents in both W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the production of the records relating to the order dated 30.06.2016 made in I.A.Nos.172 & 173 of 2016 in I.D.No.35 of 2015 passed by the 2nd respondent herein, quash the same and direct the 2nd respondent to reopen the petitioner's side evidence in I.D.No.35 of 2015 and proceed in accordance with law.

For petitioner : Mr.S.Senthilnathan
(In both W.Ps)

For Respondent : Mr.C.Mohan
(In both W.Ps) for M/s.King & Partridge

COMMON ORDER

The orders dated 30.06.2016 passed in I.A.Nos.172 & 173 of 2016 in I.D.No.35/2015 passed by the second respondent are sought to be quashed in the present writ petition.

2. The facts in nutshell to be considered for deciding the present writ petitions are that the writ petitioner workmen was dismissed from service on 16.10.2012 and an Industrial Dispute was raised in I.D.No.35/2015.

3. The learned counsel for the writ petitioner states that the petitioner wanted to examine the witness more specifically, the Vice President of the respondent company and accordingly, filed an application to issue summons to the witness. Another petition was filed to reopen the case for the purpose of examining the witness concerned. The Labour Court, on 30.06.2016 dismissed both the applications without ordering notice to the Management. Thus, the petitioner is constrained to move the present writ petitions.

4. The learned counsel for the writ petitioner states that it is necessary for the workmen to examine the witness in order to establish her case. However, the learned counsel for the writ petitioner admitted the fact that I.D.No.35 of 2015 was posted for arguments and the Management side had already completed their arguments.

5. Learned counsel appearing on behalf of the first respondent Management disputed the contentions by stating that the petitioner has not challenged the fairness of the domestic enquiry. The learned counsel appearing for the petitioner workmen has made an endorsement before the Central Government Industrial Tribunal-cum-Labour Court that the issue of fairness of domestic enquiry is not pressed. When the fairness of enquiry has not been questioned by the employee, then they have no option, but to proceed with the matter further.

6. This apart, the learned counsel for the first respondent Management contended that the arguments on the side of the Management was completed and the matter was listed for arguments of the petitioner/workmen side. Under these circumstances, these petitions were filed in order to protract and prolong the issues and therefore, these writ petitions are liable to be rejected.

7. The learned counsel for the first respondent Management in support of his contention cited the judgment of the Hon'ble Supreme Court of India in the case of Neeta Kaplish Vs. Presiding Officer, Labour Court and Another [(1999) 1 SCC 517]. The relevant paragraph is paragraph 24 and the same is extracted hereunder:

'24. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action

taken against the workmen and to show by fresh evidence that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.'

8. The very purpose and object of the deciding the fairness of the preliminary issue, regarding the fairness of the domestic enquiry is to provide an opportunity to the workmen concerned to re-examine or examine the witness so also to disprove the charges. The very purpose of trial or examination of witnesses before the Labour Court is to enure that the employee is provided with the fair opportunity for the purpose of defending their case before the labour Court. Once, the employee made an endorsement that he is not questioning the fairness of the domestic enquiry, then the labour Court has no option, but to proceed with the matter. After the arguments, the Labour Court cannot entertain any petition for examination of the witnesses unless there is any injustice or on certain exceptional and extraordinary circumstances. In normal course, once the fairness of the enquiry is not disputed, then the workmen is not entitled to file any petition to examine any witness as report of the enquiry alone can be adjudicated before the Labour Court by filing the same as a document.

9. This being the principle to be followed, the Labour Court has rightly rejected the interlocutory applications filed by the petitioner for examination of witness. The Labour Court in its order made a finding that these petitions are belated one and these petitions were filed after several posting of the matters for arguments in the main case. Apart from that, the petitioner has not challenged the fairness of the domestic enquiry and the learned counsel appearing for the petitioner workmen has endorsed that the issue of fairness of the domestic enquiry is not pressed.

10. This being the findings of the Labour Court, no interference is called for, as there is no infirmity or perversity in the said findings. Accordingly, the orders dated 30.06.2016 passed in I.A.Nos.172 & 173 of 2016 in I.D.No.35 of 2015 are confirmed and these writ petitions stand dismissed. There shall be no order as to costs. Consequently, connected

miscellaneous petitions are also dismissed.

11. The Labour Court is directed to proceed with case in I.D.No.35 of 2015 and dispose of the same as expeditiously as possible.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vsm

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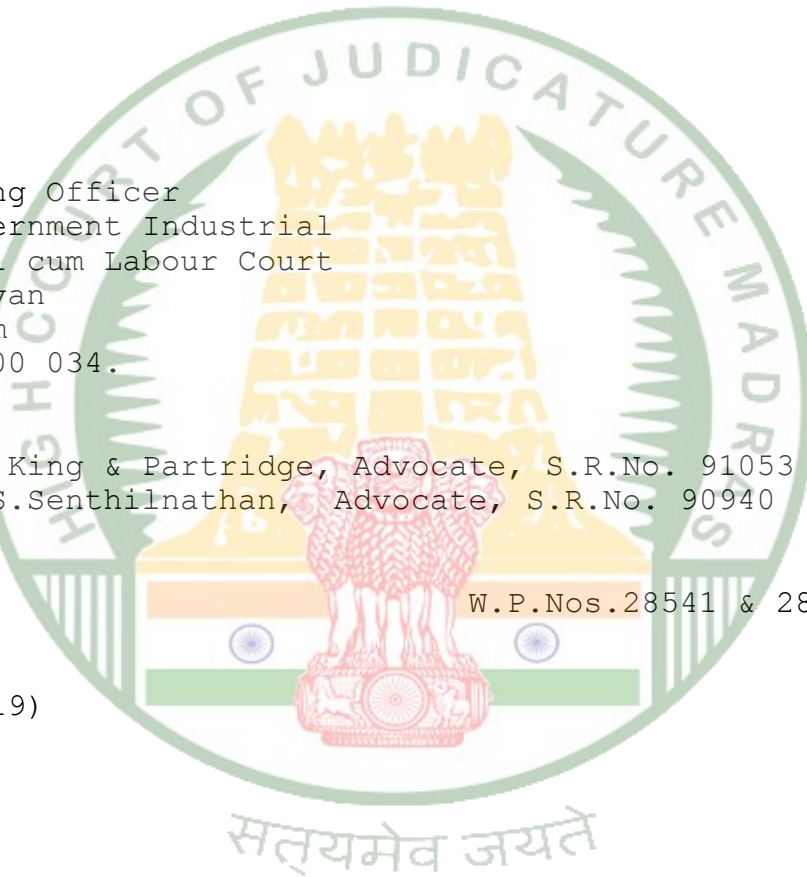
The Presiding Officer
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Chennai - 600 034.

+1cc to Mr. King & Partridge, Advocate, S.R.No. 91053

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No. 90940

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SJ(CO)
GN(04/12/2019)



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