

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.29479 of 2014

K.Ramachandran

.. Petitioner

vs.

1.The Management,
M/s.Ambattur Clothing Limited,
No.86, E-2, Ambattur,
Chennai-58.

2.The Presiding Officer,
The Hon'ble III Additional
Labour Court at Chennai,
Chennai-600 104.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent and quash the dismissal order in I.A.No.136 of 2013 in I.D.No.289 of 2006 order passed by the second respondent Labour Court dated 03.12.2013 and further direction to the second respondent to issue summon to the witnesses in the domestic enquiry to depose the witness as Court evidence to find the merits of the case.

For Petitioner : Mr.M.Natarajan

For Respondent-1 : Mr.Sai Prasad for M/s.Sai Raaj Associates.

For Respondent-2 : Labour Court

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O R D E R

The order dated 03.12.2013 passed by the first respondent in I.A.No.136 of 2013, is under challenge in the present writ petition.

2. The writ petitioner states that he was appointed as a Helper in the first respondent-Company on 04.01.1994. The writ

petitioner was promoted upto the level of Tailor Mechanic and served in the respondent-Company for more than 11 years without any adverse remarks.

3. The writ petitioner raised an industrial dispute in I.D.No.289 of 2006 against non-employment and the said industrial dispute is pending. An Interlocutory Application in I.A.No.91 of 2010 was filed to decide the fairness of the enquiry as a preliminary issue. The Labour Court passed an order on 03.01.2011, accepting the petition filed by the first respondent-Management and agreed to decide the fairness of the enquiry as preliminary issue.

4. When the Labour Court is in the process of adjudicating the preliminary issue regarding the fairness of the domestic enquiry, the writ petitioner-workman filed another Interlocutory Application in I.A.No.136 of 2013 to summon the witness Mr.Selvakumar, Supervisor Ambattur Clothing Limited and also Mr.Babu, Helper, Ambattur Clothing Limited, for a direction to depose evidence before the Labour Court as witnesses and to permit the writ petitioner to cross-examine them under Section 11 of the Industrial Disputes Act, 1947. The said Interlocutory Application was dismissed by the Labour Court, against which the present writ petition has been filed.

5. The learned counsel for the writ petitioner made a submission that no prejudice would be caused in the event of examining the witnesses. It is further contended that only if these witnesses are examined, the Labour Court would be in a position to decide the preliminary issue regarding the fairness of the domestic enquiry. Thus, the examination of these two witnesses are certainly required for the purpose of establishing the case of the writ petitioner-workman.

6. The learned counsel for the writ petitioner cited a judgment of the Supreme Court in the case of Neeta Kaplish vs. Presiding Officer, Labour Court and Another [(1999) 1 SCC 517], wherein in paragraph-28, the Supreme Court held as follows:-

"28. Having regard to the findings recorded by the Labour Court that the domestic enquiry was not properly and fairly held and an effective opportunity of hearing was not given to the appellant, the Labour Court was right in calling upon the Management to lead fresh evidence. Since the Management did not lead any fresh evidence on merits, the appellant was well within her right to say that she too would not lead any fresh evidence. But for that reason, her claim could not be rejected. Rather, she was

entitled to be granted relief then and there. However, having regard to the entire circumstances of the case particularly when the Labour Court had itself found that the enquiry was not fairly and properly held, we allow the appeal, set aside the judgment of the High Court and that of the Labour Court and remand the case back to the Labour Court to decide the case afresh after requiring the parties to lead fresh evidence on merits in pursuance of its order dated 21-11-1995. Having regard to the fact that the appellant was removed from service on 4-4-1987, we direct that the Labour Court shall dispose of the whole matter within three months from the date on which the certified copy of this judgment is produced before it. There will be no order as to costs."

7. Relying on the abovesaid judgment of the Supreme Court, the learned counsel for the writ petitioner is of an opinion that the Labour Court has committed an error in rejecting the interlocutory application for examination of these two witnesses at the time of adjudication of the preliminary issue regarding the fairness of the domestic enquiry.

8. The learned counsel, appearing on behalf of the first respondent-Management, disputed the contentions raised by the learned counsel for the writ petitioner-workman on the ground that the Labour Court has rightly decided to take up the fairness of the domestic enquiry as a preliminary issue. The process of adjudication regarding the preliminary is in progress. Only at the time of adjudication, if the Labour Court found that there is any lacuna or otherwise in the domestic enquiry, then alone the witnesses are to be called and examined.

9. The Labour Court has to conduct a separate enquiry to ascertain the fairness or otherwise as well as the charges and the documents etc. In other words, if the enquiry was improper or defective, then the Labour Court is bound to examine all the witnesses and the documents with reference to the charges or otherwise. Contrarily, if the Labour Court arrived a conclusion that the domestic enquiry was conducted in consonance with the legal principles and if there is no defect or otherwise, then the Labour Court need not examine the other witnesses.

10. It is not, as if, all the witnesses examined in the domestic enquiry to be re-examined by the Labour Court. The Scheme of the Act as well as the procedures followed are to

ensure that the workman gets fair opportunity to defend his case before the employer concerned. Thus, the repetition of enquiry or repetition of examination of witnesses will defeat the very purpose and the object.

11. Contrarily, if the domestic enquiry was improper or otherwise defective or in violation of the principles of natural justice, then the Labour Court is empowered to conduct a trial by examining the witnesses as well as to scrutinise the documents filed in respect of the charges as well as the defence statement filed by the delinquent employee.

12. The judgment of the Hon'ble Supreme Court (cited supra) by the learned counsel for the writ petitioner have no application with reference to the facts and circumstances of the case. In Paragraph-28 of the abovesaid judgment, the Supreme Court held that having regard to the findings recorded by the Labour Court that the domestic enquiry was not properly and fairly held and an effective opportunity of hearing was not given to the appellant, the Labour Court was right in calling upon the Management to lead fresh evidence. Thus, in the case before the Supreme Court, the fairness of the enquiry was decided by the Labour Court and the Labour Court found that the domestic enquiry was not conducted fairly. Thus, the Supreme Court held that the examination of witnesses are required. Hence, the facts and circumstances of that case would not be applicable in respect of the facts presented in this case and therefore, the Supreme Court judgment (cited supra) is of no avail to the writ petitioner-workman.

13. In the present case, the Labour Court has accepted to decide the fairness of the domestic enquiry as a preliminary issue. The said adjudication is in progress. Therefore, the writ petitioner has to wait till a decision is taken regarding the fairness of the enquiry as a preliminary issue and only if the Labour Court arrives a conclusion that the domestic enquiry was not conducted in accordance with the procedures contemplated and it is improper, then the examination of the witnesses and scrutinisation of the witnesses would arise or otherwise, the Labour Court is empowered to proceed with the industrial dispute by conducting an enquiry.

14. This being the principles to be followed, the Labour Court also made a finding that the question of summoning the two witnesses would not arise and only when the Court comes to the conclusion that the domestic enquiry is not fair and proper, then alone the witnesses are to be examined and not otherwise. The findings of the Labour Court is in consonance with the legal principles and there is no perversity or infirmity, as such. Accordingly, the order dated 03.12.2013

passed by the Labour Court in I.A.No.136 of 2013 in I.D.No.289 of 2006 is confirmed and consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

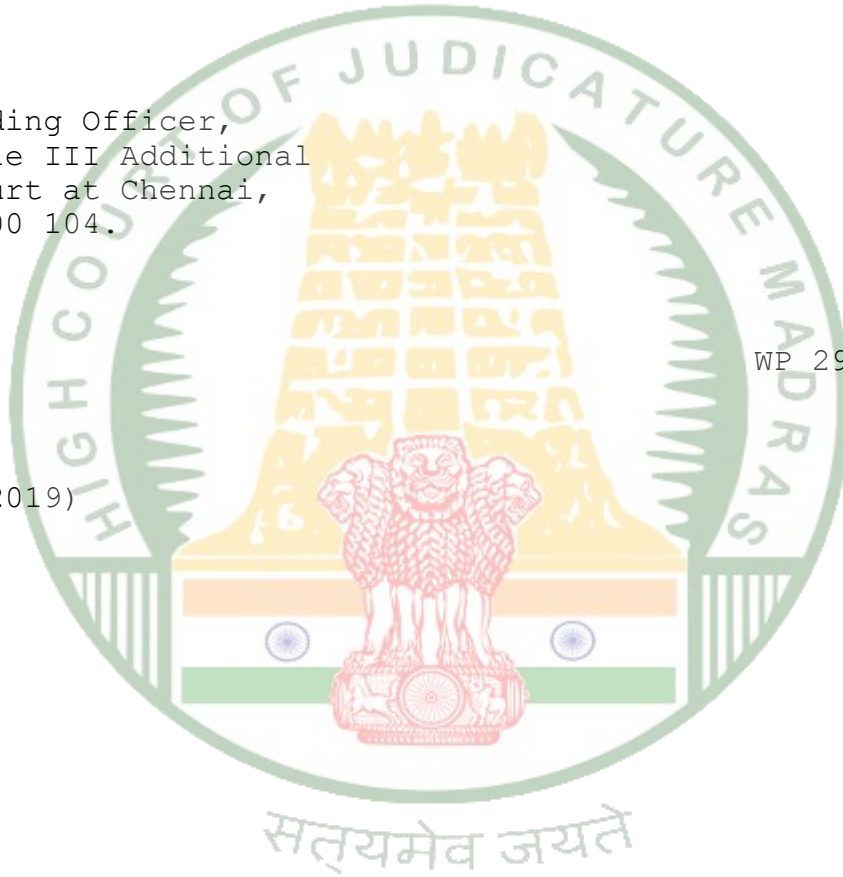
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To

The Presiding Officer,
The Hon'ble III Additional
Labour Court at Chennai,
Chennai-600 104.

WP 29479 of 2014

AD(CO)
GN(28/11/2019)



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