

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03-09-2019
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9374 of 2017
And
W.M.P.No.10344 of 2017

M/s.Sea Hydrosystems India Private Ltd.,
Represented by its Director-S.Ravindran,
No.B-76, SIPCOT Industrial Estate,
Irrungattukottai,
Sriperumbudur - 602 117.
.. Petitioner

vs.

1.The Assistant Commissioner of Labour
(Conciliation-I),
Irrungattukottai,
Sriperumbudur - 602 117.

2.C.Munusamy

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus, directing the first respondent to decide the
validity of the domestic enquiry held against the second
respondent as a preliminary issue in the first instance in
Case No.A.P.No.1717/2015.

For Petitioner : Mr.S.Ravindran,

Senior counsel for
Mr.S.Bazeer Ahamed.

For Respondent-1 : No Appearance

For Respondent-2 : Mr.V.Ajoykhose

O R D E R

The writ petition on hand is filed for a direction to

direct the first respondent to decide the validity of the domestic enquiry held against the second respondent as a preliminary issue in the first instance in Case No.A.P.No.1717/2015.

2. The learned Senior Counsel appearing on behalf of the writ petitioner states that the second respondent had caused damage to a costly machinery on account of his negligence in performing his duties. A chargesheet was issued to him in respect of the said misconduct and a domestic enquiry was held in respect of the charges framed against the second respondent. The Enquiry Officer found that the charges against the delinquent workman was proved and accordingly, an order of dismissal was issued by the writ petitioner-Management in proceedings dated 30.10.2015. An approval application was filed by the writ petitioner before the first respondent in A.P.No.1717 of 2015. In the said petition, more specifically, in paragraph 13, it was prayed that the fairness of the enquiry held against the second respondent-workman is to be decided as a preliminary issue. However, the first respondent refused to entertain the request on the ground that the first respondent will decide all the issues as a whole in A.P.No.1717 of 2015.

3. In this regard, the learned Senior Counsel for the writ petitioner relied upon a judgment of three Judges Bench of the Hon'ble Supreme Court in Civil Appeal No.1716 of 1969 dated 20.08.1975 in the case of Cooper Engineering Limited vs. P.P.Mundhe [1975 (2) LLJ 379]. Paragraph 19 of the said judgment cited supra, the Supreme Court observed that "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".

4. This Court is of the considered opinion that the fairness or otherwise of the domestic enquiry is to be decided as a preliminary issue in order to avoid further controversy and prolongation of the litigations. In the event of ascertaining the fairness of domestic enquiry conducted or the principles of natural justice has been

violated, then the workman as well as the management will get the benefit of de nova enquiry to be conducted by the Authority Competent and in such circumstances, a fresh opportunity is to be provided to all the parties concerned.

5. Contrarily, if the issue in relation to the fairness of the enquiry is not decided as a preliminary issue, then the consequences would affect the interest of the workman as well as the management. It may not be possible to reopen the case after completion of the entire proceedings which would amount to hardship both to the workman as well as to the management. In this perception, the Courts have to take a decision whether the domestic enquiry was conducted by following the principles of natural justice and by affording opportunity to the delinquent workman concerned. Under those circumstances, the Supreme Court also held that the fairness of the domestic enquiry is to be decided as a preliminary issue, enabling the parties to know the position and thereafter adjudicate all other issues in relation to the charges as well as the explanations and the findings of the Enquiry Officer in this regard.

6. This being the principles to be followed, this Court is of the opinion that the fairness of the domestic enquiry is to be decided at the first instance in the interest of all the parties and to avoid prolongation and protraction of the issues, more specifically, in such matters of disciplinary proceedings.

7. In the present case on hand, the second respondent-workman was removed from service on account of certain misconduct resulted damage to a costly machinery in the writ petitioner factory. Under these circumstances, the first respondent has to decide the fairness of the domestic enquiry as a preliminary issue and thereafter proceed with the case in respect of all other issues raised by the respective parties.

8. Equally, while adjudicating the preliminary issue regarding the fairness of the domestic enquiry, the workman also must be given an opportunity to submit his explanations, objections, evidences and other documents, if any available. All opportunities are to be provided to the workman while deciding the preliminary issue also.

9. With these, the Court is of the opinion that the writ petition is to be considered. Accordingly, the first respondent is directed to adjudicate the fairness of the domestic enquiry conducted by the writ petitioner-management against the second respondent as a preliminary issue by affording opportunity to all the parties concerned and decide the said issue as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

10. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn
To

The Assistant Commissioner of Labour
(Conciliation-I),
Irrungattukottai,
Sriperumbudur - 602 117.

+1cc to Mr.S.Bazeer Ahamed , Advocate SR.No. 76069
+1cc to Mr.V.Ajoykhose , Advocate SR.No. 76342

W.P.No.9374 of 2017

A.SK(25/09/2019)