

THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 26.09.2019  
CORAM  
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM  
W.P.No.32643 of 2017  
and  
W.M.P.No.35976 of 2017  
and  
W.M.P.No.6804 of 2019

The Management of  
C.P.Aquaculture (India) Private Limited,  
No.104, GNT Road  
Nallur & Vijayanallur Village,  
Sholavaram Post, Red Hills,  
Chennai - 600 067  
Rep.Mr.K.Gopinath,  
Assistant Vice President (HR)

..Petitioner

vs

1.The Presiding Officer,  
II Additional Labour Court,  
Chennai.

2.K.Santhanam

..Respondents

Prayer : Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorari,  
calling for the records of the 1<sup>st</sup> Respondent in I.D.No.178 of  
2011 and quash its Award dated 31.08.2017.

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

For Respondents : R2 - Mr.J.James

O R D E R

The Award dated 31.08.2017 passed by the 1<sup>st</sup> respondent in  
I.D.No.178 of 2011 is under challenge in the present writ  
petition.

2. The Management of C.P.Aquaculture (India) Private Limited  
is the writ petitioner. The 2<sup>nd</sup> respondent workman joined in the  
writ petitioner company in March 2000. On 10.06.2004, copper  
cable wire length of 19 metres and weighing 54 kgs, values

approximately at Rs.48,000 went missing from the factory premises. The copper wire was imported from Indonesia. A complaint was made before the Sholavaram Police Station on 12.06.2004. It would appear that on 12.06.2004, the Inspector of Police informed the petitioner that they had arrested 3 persons found in possession of copper wire and the 2<sup>nd</sup> respondent was one among them. Therefore, the officials of the petitioner company went to the Police Station and identified the materials seized by the Police that it belonged to the Company. Subsequently, the 2<sup>nd</sup> respondent was remanded to judicial custody. The 2<sup>nd</sup> respondent was involved in connection of theft and dishonesty in connection with company's property. Consequently, a charge sheet was issued on 19.06.2004. The 2<sup>nd</sup> respondent workman submitted his reply, denying the charges. Not satisfied with the reply, one Mr.S.Soundararajan, a retired District Judge was appointed as Enquiry Officer to go into the charges levelled against the petitioner. In the enquiry, on behalf of the petitioner, its Assistant Section Manager and Administrative Officer were examined in proof of the charges and 6 exhibits were marked. The 2<sup>nd</sup> respondent did not examine any witness. The Enquiry Officer submitted his report on 01.10.2004, holding that the charges against the 2<sup>nd</sup> respondent are proved. Based on the proved charges, the 2<sup>nd</sup> respondent was dismissed from service in order dated 11.12.2004. The criminal case registered against the 2<sup>nd</sup> respondent was ended with an order of acquittal on 12.08.2005. Meanwhile, the 2<sup>nd</sup> respondent raised an Industrial Dispute in I.D.No.178 of 2011 before the 1<sup>st</sup> respondent.

3. The preliminary issue regarding the validity of the domestic enquiry was taken for consideration and the Labour Court found that the domestic enquiry was conducted in compliance with the Principles of Natural Justice and in a just and proper manner. Thereafter, the adjudication was proceeded with. However, the finding of the Labour Court states that the enquiry was conducted without following the Principles of Natural Justice in the Award.

4. The learned counsel appearing on behalf of the writ petitioner states that such a finding is contrary to the findings taken in the preliminary issue and therefore, the said finding is perverse and untenable. When the Labour Court elaborately considered the fairness of the domestic enquiry as a preliminary issue and concluded that the enquiry was conducted in a just and proper manner. There is no occasion for the Labour Court to reverse the findings in the final Award, stating that the domestic enquiry was not conducted in consonance with the Principles of Natural Justice. Such a finding is not only perverse and shown the non-application of mind on the part of

the Labour Court in verifying the earlier decision taken regarding the fairness of the domestic enquiry.

5. The learned counsel for the writ petitioner solicited the attention of this Court that the Labour Court proceeded only on the footing that the 2<sup>nd</sup> respondent was acquitted in the criminal case. Thus, such a reason made in support of the Award is untenable.

6. The learned counsel appearing on behalf of the 2<sup>nd</sup> respondent disputed the contentions of the writ petitioner by stating that the criminal case was registered at the instance of the writ petitioner company and the evidences were examined and based on the evidences produced before the competent Criminal Court of Law, the 2<sup>nd</sup> respondent was acquitted from the criminal charges. In view of the fact that the evidences, facts and other documents are one and the same, both in the criminal case as well as in the domestic enquiry, the benefit of acquittal should be extended to the 2<sup>nd</sup> respondent for the purpose of granting the benefit of reinstatement with back wages.

7. Considering the arguments, this Court is of an opinion that mere acquittal in the criminal case would not be a ground to claim exoneration from the disciplinary proceedings. In other words, acquittal in a criminal case cannot prevent the employer to proceed from the disciplinary proceedings. Nature of the criminal proceedings as well as the disciplinary proceedings are different and distinct. Procedures to be followed in the criminal case is unconnected with the procedures to be adopted in the disciplinary proceedings. High standard of proof is required to convict a person in the criminal law, even the benefit of doubt goes in favour of the accused. However, no such strict proof is required for the purpose of punishing an employee under the Disciplinary Rules. Even the moral turpitude is enough to punish an employee. Preponderance of Probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. Thus, the acquittal in a criminal case would not be a bar for the employer to continue the disciplinary proceedings and impose punishments.

8. In respect of the lis on hand, an independent domestic enquiry was conducted. The Enquiry Officer was appointed in the rank of a Retired District Judge. The enquiry was conducted in a fair manner and the fairness of the enquiry was tested by the Labour Court and it was decided in favour of the Management. Thus, there is no infirmity in the enquiry proceedings and the charges were also held proved. In the domestic enquiry, when the charges of theft was proved before the enquiry proceedings, this

Court is of an opinion that the imposition of the penalty of dismissal from service, cannot be held as impropportionate with the gravity of the allegations. Undoubtedly, the proved charges of theft is grave in nature and therefore, there is no infirmity or otherwise in respect of the punishment imposed.

9. The findings of the Labour Court that the acquittal in a criminal case would exonerate the employee from the disciplinary proceedings is perverse and not in consonance with the judgment of the Hon'ble Supreme Court of India. The Apex Court held that mere acquittal would not be a bar for the continuance of the disciplinary proceedings and in this regard, the Labour Court has committed an error in arriving a conclusion.

10. This being the factum, this Court has no hesitation in coming to the conclusion that the Award of the Labour Court is perverse and infirm. Consequently, the Award dated 31.08.2017 passed in I.D.No.178 of 2010 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,  
II Additional Labour Court,  
Chennai.

+1cc to M/s.T.S.Gopalan and Co, Advocate sr.82968

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W.P.No.32643 of 2017

gp(co)  
nr 11/11/2019

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