

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 36694 of 2016
and
W.M.P. Nos. 31539 OF 2016
and 11170 of 2017

The Management,
World Vision India,
Represented by S.G. Priya Livingston,
No. 16, V.O.C. Main Road,
Kodambakkam,
Chennai - 600 024. Petitioner

-vs-

1.M. Palanisamy (Staff No. 1054)
C/o.A. Thullukkanam,
Mullipakkam Main Road,
Mullipakkam Post,
Manampathy Via,
Chengalpet Taluk,
Kanchipuram District.

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

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to I.D.No.276 of 2012 on the file of the Second Respondent, I Additional Labour Court, Chennai - 600 104 and quash the award dated 28.06.2016 made in I.D.No.276 of 2012.

For Petitioner : Mr. M. Vijayan
For M/s. King and Patridge

For Respondents: Ms. Gopika (For R1)
For Mr. S. Sathia Chandran
Labour Court (For R2)

O R D E R
(through video conference)

Heard Mr. M. Vijayan, Learned Counsel for the Petitioner and Ms. Gopika, Learned Counsel for the First Respondent through video conference and perused the materials placed on record, apart from the pleadings of the parties.

2. The chronological sequence of events leading to the filing of the Writ Petition has been aptly capsuled by this Court in the self-explanatory order dated 24.10.2016, at the time of admission of the Writ Petition, as follows:-

"The Management is before this Court challenging the award of the 2nd respondent/I Additional Labour Court, Chennai dated 28.06.2016 passed in I.D.No.276 of 2012, whereby, the 1st respondent was directed to be reinstated with continuity of service and to pay 25% of the backwages from the date of termination viz., 19.03.2012 till the date of reinstatement.

2. The 1st respondent was working as Community Development Coordinator for the petitioner from May 2004. While he was working as such, a show cause notice dated 23.02.2011 was issued to the 1st respondent with certain charges and after obtaining his explanation on 28.02.2011, since the same was not satisfactory, the petitioner Management issued a charge sheet on 12.05.2011, informing him that a domestic enquiry will be conducted on 06.06.2011. The main charge against the 1st respondent is that he collected Rs.5,000/- from 39 beneficiaries without permission from the petitioner and he absented himself without obtaining permission from 08.02.2011 to 11.02.2011. The petitioner Management appointed an Enquiry officer, who conducted the enquiry. The 1st respondent participated in the enquiry. Totally 7 witnesses were examined and 38 documents were marked. After conducting the enquiry, the Enquiry Officer gave a positive enquiry report on 14.12.2011. Thereafter, after issuing the 2nd show cause notice dated 15.02.2012 enclosing a copy of the enquiry officer's report, and after getting the explanation and after providing sufficient opportunity to the 1st respondent, he was terminated from service.

3. Thereafter, the 1st respondent, initiated conciliation proceedings, which ended in failure. On reference, the matter came up before the Labour Court. After enquiry, the labour Court reinstated the

workman with backwages. The said award is being challenged before this Court. After hearing the learned counsel for the petitioner, this court called for the entire records and perused the same.

4. Before the Labour Court, the counsel for the 1st respondent/Workman, has made the endorsement on 25.11.2013 itself as follows:-

"We are accepting the fairness enquiry. Further, this matter to be continued under Section 11-A of the Industrial Disputes Act, 1947".

Therefore, it is evident that the workman has already accepted the enquiry conducted by the petitioner was fair and proper.

5. On 06.01.2014, both the parties have filed their documents before the Labour Court, which has also recorded the said fact in the notes paper.

6. On 09.12.2015, the Labour Court has recorded the following:-

"In this case, the petitioner has challenged the fairness of domestic enquiry. In such an event, this Court ought to have framed the preliminary issue regarding it. But, it did not frame the preliminary issue.

Hence the following preliminary issue is framed:-

"1. Whether the domestic enquiry was not conducted in a fair and proper manner.

Both parties to state whether the evidence produced by them is sufficient to determine the preliminary issue. Call on 15.12.2015.

Further arguments, if any, by them".

7. It is not understandable as to how the learned Judge, contrary to the endorsement of the respondent/workman made on 25.11.2013, recorded on 09.12.2015 that the workman challenged the fairness of domestic enquiry and proceeded to frame preliminary issue as to whether domestic enquiry was conducted in a fair and proper manner.

8. Again, on 18.12.2015, the Labour Court, in the notes paper, has recorded the following:-

"Counsel for the petitioner submits that he made an endorsement on 25.11.2013 accepting the fairness of the enquiry. Call on 06.01.2016 for Orders".

9. Again, on 08.02.2016, when the matter was called for orders, the following notes were recorded by the Labour Court:-

"Though the petitioner has given up challenge to the fairness of the domestic enquiry, 4 the issue whether the evidence produced in the enquiry proved the alleged misconduct is yet to be decided. In order to examine this issue production of all the documents concerning the domestic enquiry is very much necessary. Registry is directed to produce all documents deposition and minutes of domestic enquiry proceedings. Call on 16.02.2016".

10. At this juncture, it is relevant to extract hereunder Paragraph No.8 of the proof affidavit filed by the petitioner herein before the I Additional Labour Court:-

"Copy of Service rules is marked as Ex.M-1; Charge Sheet dated 12.05.2011 is marked as Ex.M2; Report of the Enquiry Officer is marked as Ex.M3, Second Show Cause Notice dated 15.02.2012 is marked as Ex.M-4; Replies of the petitioner dated 27.02.2012 and 29.02.2012 to the second show cause notice are marked as Ex.M-5 and Ex.M-6; Termination Order dated 15.03.2012 is marked as Ex.M-7 and the order of the appellate authority is marked as Ex.M-8".

11. From the above, it is clear that the report of the Enquiry Officer is marked as Ex.M.3. Further, the enquiry proceedings conducted by the Enquiry Officer with all notices and evidences of all the witnesses have been 5 marked as Ex.XW39, containing about 105 pages (in the lower Court Bundle Page Nos.434 to 539)

12. When such is the position with regard to the fairness of the enquiry conducted by the petitioner and when the enquiry proceedings were marked as Ex.XW39 before the Labour Court, the Labour Court in paragraph No.6 has held as follows:-

".....Therefore, the respondent ought to have preserved all the documents relating to the domestic enquiry. But the respondent has conveniently stated that it does not have the domestic enquiry proceedings. The evidence produced before the enquiry officer has not been produced before me in order to reappraise it. I

can only draw adverse inference against the respondent.....”.

3. As noticed by this Court in the aforesaid order passed on 24.10.2016, it is really incomprehensible as to how the Second Respondent could have overlooked 105 pages of the enquiry report which has been filed by the First Respondent as an exhibit in the impugned proceedings. The ruling of the Hon'ble Supreme Court of India in Mukand Ltd., -vs- Mukand Staff & Officers' Association [(2004) 10 SCC 460], may in this context be referred, where it has been held as follows:-

“49. In our view, the material that was placed before the Tribunal was not considered or discussed and that there was, as such, no adjudication by the Tribunal. The whole award of the Tribunal, in our view, is liable to be set aside on the ground of non-application of mind by the Tribunal to the material on record....”

Viewed from this perspective, inasmuch as the I Additional Labour Court, Chennai (hereinafter referred to as the 'Labour Court' for short) has set aside the termination of the First Respondent for the only reason that the proceedings of the domestic enquiry had not been produced, overlooking the fact that the same has been marked in evidence, the impugned award, which cannot be sustained, is set aside and the matter remitted for fresh adjudication by the Labour Court.

4. The proceedings in I.D. No. 276 of 2012 is re-opened and that case shall be listed for hearing before the Labour Court on 03.12.2020. The parties shall attend the hearing on the said date as well as on the subsequent dates to which it is adjourned and extend their co-operation for the expeditious disposal of the matter. It shall be incumbent upon the Labour Court to specifically examine the aforesaid germane aspects of the matter, afford full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice and pass reasoned orders dealing with each of the contentions raised by the parties on merits and in accordance with law. Though obvious, it is made clear that Labour Court shall not be inhibited or influenced by the impugned order, which has been set aside.

5. It has been brought to notice by the Learned Counsel for both sides that during the pendency of this Writ Petition, the Petitioner has reinstated the First Respondent in service without prejudice to its contentions by order dated 07.08.2017 and that he continues to be in employment as on date. The same arrangement shall continue till the disposal of I.D. No. 276 of 2012 and shall be subject to its ultimate outcome.

6. The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv/msm/vjt

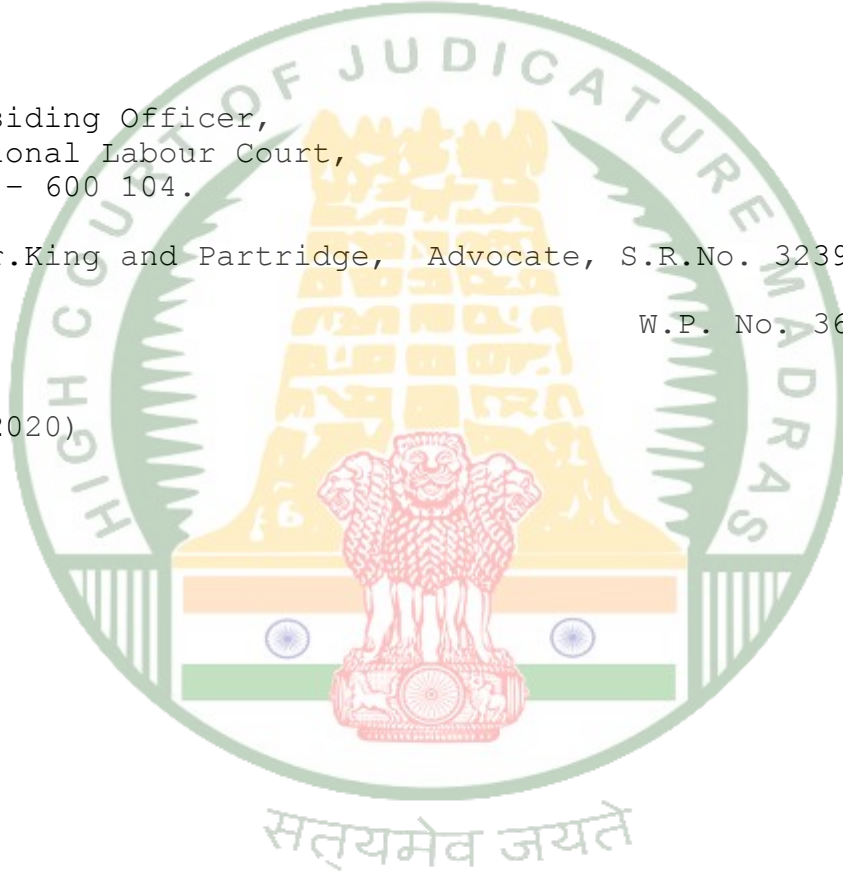
To

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

+1cc to Mr.King and Partridge, Advocate, S.R.No. 32392

W.P. No. 36694 of 2016

JP (CO)
GN(02/11/2020)



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