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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

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THE HON'BLE MR. JUSTICE M.GOVINDARAJ

W.P.No.16228 of 2020
and W.M.P.No.20272 of 2020

The Management of
Carolyn Estate,
Unit of Parry Agro Industries Limited,
Mangorango - Post,
Pandalur TK,
The Nilgiris.
Rep. by its Senior Manager (P & IR)

...Petitioner

Vs.

M. Rajendran

...Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Additional Labour Court, Coimbatore, in I.D.No.275 of 2012 and quash its preliminary award dated 27.08.2020.

For Petitioner: Mr.T.S.Gopalan & Asso.

For Respondent: M/s.V.Sivakumar

O R D E R

Challenge to the Writ Petition is a Preliminary Award passed in I.D.No.275 of 2012 dated 27.08.2020 on the file of the Additional Labour Court, Coimbatore.

2. The petitioner is the Management. The respondent was appointed as a probationary muster boy. On 11.02.2011, the Field Officer of the petitioner Estate gave a complaint against the respondent. Based on which, he was placed under suspension and a show cause notice was issued. Thereafter, a domestic enquiry was conducted, in which, the respondent was found guilty and was terminated from service. Against which, the respondent raised an Industrial Dispute before the Labour Court.



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3. The Labour Court framed two issues as under:-

(1) whether the domestic enquiry conducted by the Enquiry Officer is fair and proper, and

(2) whether the finding of the Enquiry Officer is arbitrary.

4. The Labour Court on Issue No.1, has held that the enquiry conducted by the petitioner Management is not fair and proper. Thereafter, proceeded to examine the charges on the basis of the evidence adduced before the Enquiry Officer and held that the finding of the Enquiry Officer is perverse. Having found that the Enquiry Officer's finding is perverse, posted the matter for adducing fresh evidence on the side of the petitioner Management. Aggrieved over the said Preliminary Award, the Management is before this Court.

5. The learned counsel for the petitioner would vehemently contend that the finding of the Labour Court is without appreciation of materials in proper perspective. The Labour Court failed to see that the enquiry proceedings were conducted in conformity with principles of natural justice and ample opportunity was afforded to the respondent. The respondent himself has not complained of any deficiency of improper procedure during the conduct of enquiry. Only when the second show cause notice was issued, he raised a plea that he was not given ample opportunity. Therefore, the finding that the enquiry conducted was not fair and proper, is not correct as well as the finding of the Labour Court in respect of the charges is absolutely illegal and the Labour Court without affording an opportunity to let in fresh evidence, has erroneously arrived at a finding. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of M L Singla Vs. Punjab National Bank [(2018) 18 SCC 21], he contended that the Preliminary Award shall be set aside.

6. Per contra, the learned counsel for the respondent would contend that the finding of the Labour Court is absolutely in order. The basis of the punishment rest on Ex.M-1, the Complaint, given by the Field Officer, whereas, the Field Officer was not examined as a witness to prove the charge before the Enquiry Officer. Secondly, the admission letter allegedly given by the respondent marked as Ex.W-A1 and Ex.M17 is a fabricated document and the signature was also disputed in the enquiry proceedings held on 07.03.2011. However, the Enquiry Officer has held that the respondent did not participate in the hearing dated 07.03.2011 and has held that the charges were



proved. Therefore, the Labour Court has rightly adverted to the evidence available before the Court and arrived at a right conclusion that the enquiry conducted was not fair and proper and the consequential finding is also legal and valid.

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7. I have considered the rival submissions and perused the materials placed before this Court.

8. The facts are admitted. The dispute revolves around as to whether the Preliminary Award passed by the Labour Court as to the conduct of enquiry proceedings as not fair and proper is correct or not? and as to whether the finding of the Labour Court over the findings of the Enquiry Officer with regard to the charges is correct or not?

9. Insofar as the first issue is concerned, the Labour Court has examined the exhibits marked before it and has found that there are discrepancies in the charge memo and there is no indication as to permitting him to have the assistance of an observer on the side of the workman. The document which is called as a letter admitting the guilt marked as Ex.W-A1 on the side of the Worker and as Ex.M-17 marked on the side of the Management are contradictory to Ex.M-14 and Ex.M-15, and appears to be improbable in the circumstances where the respondent worker has categorically denied the charges and was contesting the same by participating in the enquiry and cross-examining the witnesses of the Management. He has also submitted his objections with regard to Ex.M-17, where as the Enquiry Officer omitted to consider the explanation submitted by him, on the other hand observed that no explanation was submitted to the second show cause notice, which amounts to non-consideration of relevant materials in proper perspective and recording incorrect facts and it amounts to violation of principles of natural justice and derailment fair and transparent procedure laid down by law.

10. In his explanation to charges, the worker denied the allegations. In reply to second show cause notice, he denied the findings of the Enquiry Officer and alleged bias. While the matter stood thus, the alleged admission letter despite active participation in enquiry and objections to enquiry report spell out some discord in the scheme of things. More over, the letter was written in the hand writing of the Enquiry Officer himself and the signature is disputed and a comparison of signature in all these documents reveal that there was difference.



11. From the materials, it is seen that the enquiry proceedings were completed within two days without supplying the documents and without affording ample opportunity to examine the witnesses. The Enquiry Officer has also omitted to consider the explanation letter sent by the respondent vide Ex.M-14 and Ex.M-15 and held the charges proved. Therefore, the finding on these aspects that the enquiry proceedings were conducted hurriedly without following principles of natural justice and without considering the materials placed before them in proper perspective and thereby, it is not fair and proper. Thus, the finding of the Labour Court is upheld.

12. It is well settled procedure that when the Labour Court arrives at a finding that the enquiry proceedings were not fair and proper, it is incumbent upon it to provide opportunity to the Management to adduce additional evidence and particularly when a request is made either orally or by an application or through pleadings.

13. In the present case, the Petitioner / Management has reserved its right in the counter statement dated 06.04.2013 to adduce additional evidence, in the event, the Labour Court comes to the conclusion that the enquiry conducted was not fair and proper. In such circumstances, when the Labour Court arrived at a preliminary finding that the enquiry was not conducted in fair and proper manner, it should have given an opportunity to all the parties, more particularly the employer to adduce additional evidence and thereafter, should have proceeded to consider the validity of the charges and consequential order of either exonerating the workman from the charges or imposing appropriate punishment. But, in the instant case, the Labour Court has delved into the findings of the Enquiry Officer like an appellate authority and has found that the findings are perverse. Thereafter, afforded the opportunity to the Management to adduce the additional evidence. In fact, the Labour Court should have afforded the opportunity before dealing into the second issue as to whether the charges were proved and the findings of the Enquiry Officer are perverse.

14. Such a course adopted by the Labour Court is not acceptable and alien to labour jurisprudence. The Labour Court has elaborately examined the evidence of the witnesses before the Enquiry Officer and the documents marked before it as an appellate Court and arrived at a finding that the charge memo and the findings of the Enquiry Officer are perverse. Having determined that the charges are not proved, there is no purpose in calling the Petitioner/ Management to adduce additional evidence, which is nothing but an empty formality.



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15. The Hon'ble Supreme Court, in M L Singla's case (cited supra) has categorically held that the Labour Court shall examine the charges on merits only after affording an opportunity to the Management to adduce evidence on merits to prove charges and after completion of the same, it can decide the matter on merits. The relevant portions of the judgment reads as under:-

"16. Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.

20. If the Labour Court had come to a conclusion that the domestic enquiry is illegal because it was conducted in violation of the principles of natural justice thereby causing prejudice to the rights of the employee, respondent No.1-Bank was under legal obligation to prove the misconduct (charges) alleged against the appellant (employee) before the Labour Court provided he had sought such opportunity to prove the charges on merits.

21. The Labour Court was then under legal obligation to give such opportunity and then decide the question as to whether respondent No.1-Bank was able to prove the charges against the appellant on merits or not.

22. If the charges against the appellant were held proved, the next question to be examined was in relation to the proportionality of the punishment given to the appellant. If the charges against the appellant were held not proved, the appellant was entitled to claim reinstatement with back wages either full or partial depending upon the case made out by the parties on the issue of back wages.

23. The second error was that the Labour Court called upon the parties to lead evidence on all the issues including the charge of misconduct in the first instance itself.

24. The third error committed by the Labour Court was that it proceeded to examine the findings of the Enquiry Officer on the charges like an Appellate Court, appreciated the evidence adduced



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before the Enquiry Officer and the one adduced before it and then came to a conclusion that the findings of the Enquiry Officer are perverse. This the Labour Court could not do.

25. Assuming that the Labour Court had the jurisdiction to direct the parties in the first instance itself to adduce evidence on merits in support of the charges yet, in our opinion, it was obligatory upon the Labour Court to first frame the preliminary issue on the question of legality and validity of the domestic enquiry and confined its discussion only for examining the legality and propriety of the enquiry proceedings.

26. Depending upon the finding on the preliminary issue on the legality of the enquiry proceedings, the Labour Court should have proceeded to decide the next questions. The Labour Court while deciding the preliminary issue could only rely upon the evidence, which was relevant for deciding the issue of legality of enquiry proceedings but not beyond it.

27. In other words, the Labour Court failed to see that it would have assumed the jurisdiction to examine the charges on the merits only after the domestic enquiry had been held illegal and secondly, the employer had sought permission to adduce evidence on merits to prove the charges and on permission being granted he had led the evidence."

16. In view of the categorical pronouncement of the Hon'ble Supreme Court that the Labour Court is under legal obligation to give an opportunity to the employer to prove the charges alleged against the employee, when it is asked for and thereafter to decide on the matter as to whether the employer has proved the charges or not? In that view of the matter, the finding in respect of second issue in the Preliminary Award passed in I.D.No.275 of 2012 dated 27.08.2020 cannot be sustained and accordingly, the finding in respect of Issue No.2 stands set aside.

17. Since the finding of the Labour Court with regard to fairness of the enquiry is upheld, the Labour Court shall proceed from the stage of providing opportunity to the Petitioner / Management to adduce additional evidence and thereafter, decide the issue on merits in accordance with law.



In the result, the Writ Petition is partly allowed and the matter is remitted back to the Labour Court for the purpose indicated above. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Additional Labour Court,
Coimbatore.

+1 CC to Mr.V.Sivakumar, Advocate sr 26723.

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