

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos. 815 and 816 of 2017
and
W.M.P.Nos.842 and 15571 of 2017

The Management
ELGI Equipments Limited,
Rep. by its Head - Legal & Secretarial
Mr.Shyam Vasudevan
Coimbatore.

... Petitioner
(in both WPs)

vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.N.Saravanakumar

... Respondents
(in both WPs)

Prayer in W.P.No.815 of 2017: Writ petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.51 of 2010 and quash its award dated 09.09.2016.

Prayer in W.P.No.816 of 2017: Writ petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.51 of 2010 and quash its Preliminary Order dated 01.06.2016.

For Petitioner : Mr.S.Ravindran, Senior Counsel
(in both WPs)

For Respondent : Mr. A.S.Balaji (For R2)
(in both WPs)

COMMON ORDER

These present writ petitions are directed against the preliminary awards in I.D.No.51 of 2010, dated 01.06.2016 and 09.09.2016 passed by the Labour Court, Coimbatore, holding that the enquiry conducted by the petitioner/management was not fair and proper.

2. The admitted fact remains that the enquiry proceedings were conducted on 07.03.2009, 20.03.2009 and 27.03.2009. On 27.03.2009, the second respondent was set ex-parte and an enquiry report was submitted by the Enquiry Officer. The employee has submitted his objections. After considering the enquiry report as well as explanation submitted by the second respondent, he was dismissed from service. Against which, he raised an industrial dispute in I.D.No.51 of 2010 before the Labour Court, Coimbatore. The Labour Court has framed the following three issues,

- (i) whether the second respondent is a workman or not?,
- (ii) whether the enquiry conducted is fair and proper? and
- (iii) whether the report submitted by the Enquiry Officer can be accepted or not?.

3. Insofar as the finding on issue No.1 is concerned, there is no dispute as to the finding that the second respondent is a workman.

4. Insofar as the 2nd and 3rd issues are concerned, the Labour Court proceeded to hold the enquiry is improper and the enquiry report cannot be accepted on five grounds,

- (i) The officer, who issued show cause notice himself acted as a Presenting Officer which is violative of principles of natural justice.
- (ii) Even though, names of certain companies who made complaints were mentioned in the enquiry notice, the complaints made by those companies were not enclosed along with show cause notice.
- (iii) The copy of the Standing Orders was not furnished to the employee till the completion of enquiry proceedings.
- (iv) The enquiry proceedings were not furnished to the employee then and there.
- (v) The request made by the employee vide Exhibit M46 was not at all considered by the Enquiry Officer and an enquiry report was submitted without discussing any of those issues raised by the second respondent. On these grounds, the enquiry was held to be improper.

4. I have heard submissions of both sides.

5. Insofar as the issue No.1 is concerned, the officer, who issued a show cause notice acted as a Presenting Officer and deposited evidence and marked documents on the side of the management. The documents marked as exhibits on the side of the management, were all signed by very same person. Hence, the Labour Court has found that procedure followed in enquiry is in violation of Principles of natural justice.

6. In the considered opinion of this Court, the well settled principle of law is that the prosecutor shall not be a

judge. A person who is initiating the disciplinary action or issuing a notice for initiation of disciplinary proceedings cannot be prevented from presenting the document. There is no embargo in law in respect of a person who issued show cause notice to act as a Presenting Officer. As long as, after opportunity is given to the workman and principles of natural justice is followed in providing all the required information, it cannot be said there was any irregularity, as alleged by the Court below. In view of the same, I am of the opinion, the finding that the person issued show cause notice should not have acted as a Presenting Officer and it violates Principles of natural justice is mis-founded and unsustainable.

7. Insofar as non-furnishing of the complaints given by certain companies mentioned in the show cause notice is concerned, a reading of show cause notice itself clearly says that certain complaints were received by the company and based on the same, charges were framed.

8. Further, the materials placed before this Court go to show that the documents was sought for by the second respondent were furnished to him and he was allowed to peruse the documents, which includes Standing Orders. This fact was not disputed by the second respondent. In the circumstances, it cannot be held that the documents were not furnished to the workman. On the very same footing, the finding of the Labour Court that the Standing Orders were not furnished to the workman till the completion of enquiry, cannot be sustained. Once it is admitted, that the workman was permitted to peruse Standing Orders and he has taken notes from the Standing Orders and copies of the relevant "Clauses" from the Standing Orders were furnished to him. Hence, the finding of the Labour Court that the enquiry is improper on the above ground, is not correct and not sustainable. The finding with regard to non-furnishing the enquiry proceedings then and there is concerned, Learned Senior Counsel appearing on behalf of the petitioner would rely on the judgement of the Hon'ble Supreme Court in *Board of Directors, H.P.T.C. and others -vs- K.C.Rahi* reported in (2008) 2 LLJ 1086 SC, has held as under:-

"6. The principles of natural justice cannot be put in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non-compliance of the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance of principle of natural justice.

7. In the instant case we have been taken through various documents and also from representation dated 19.10.1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry

was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance of principle of natural justice. In the representation submitted by him on 19.10.1993 the subject itself reads "DEPARTMENTAL ENQUIRES". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is of no excuse much less by a person who is a law graduate himself."

9. A reading of the enquiry proceedings dated 20.03.2009 and 27.03.2009 goes to show that the second respondent has appeared for the enquiry and contended that he was not there to attend the enquiry and that he will not sign in the proceedings. This aspect of the matter was not discussed anywhere in the preliminary award. Even assuming that the enquiry proceedings were not given the fact that the enquiry was conducted on 27.03.2009, is not disputed. It is categorically admitted by both sides that enquiry was conducted on 27.03.2009 and the acknowledgement made by the second respondent on 27.03.2009 for receiving the reply dated 26.03.2009 given by the Enquiry Officer with regard to the procedure of conducting enquiry, clearly proves the factum of presence on the date of enquiry. The Hon'ble Supreme Court in the above judgement has held that the principles of natural justice cannot be put in a straight jacket formula. By employee who is not willing to participate in the enquiry would be doing so at his own risk and estopped from raising any grievance of non-compliance of principles of natural justice.

10. The learned Senior Counsel would also rely on the judgement of the Hon'ble Supreme Court in *S.B.I. -vs- Hemant Kumar* reported in (2011) II LLJ 517 SC, wherein the Hon'ble Supreme Court has held as under:-

"9. The Tribunal has assigned two reasons for holding that the departmental enquiry held in the case was in violation of the principles of natural justice. First, it held that the respondent had sent an application through post for adjournment of the enquiry on December 14, 1994 on the ground that he had sustained injuries and even though this application had not reached the Enquiry Officer it was his duty to find out from the bank whether or not such a letter was received and secondly, even after examining PW.1 ex parte the Enquiry Officer should have given another opportunity to the respondent to lead evidence in

rebuttal. In this connection, the Tribunal made the following observations:-

"In the instant case I find that after 14.12.94 the witness of the management were (sic was) examined but no opportunity was given for adducing evidence in defence. Apart from this I find that the concerned workman had applied through post and (sic for) adjournment on 14.12.94 on the ground that he had sustained injuries. Before this tribunal concerned workman has adduced evidence to prove that fact that he had applied for adjournment through post. O.P. Chaudhary PW1 enquiry officer has stated that he had not received any such application. However, he had admitted in cross-examination that the mail is received in the office of the bank premises. It appears that from the bank this letter was not handed over to the enquiry officer. In any case it is held that application was sent by post and in this way there is a presumption that such application would have been reached the addresses. Hence, the concerned workman had applied for adjournment. There was no inordinate delay in holding of enquiry as it was only third date of hearing hence it cannot be said that the concerned workman had adopted dilatory tactics."

10. We are of the view that both the reasons assigned by the Tribunal for condemning the departmental enquiry as defective are completely untenable. The principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. Admittedly, the respondent had not appeared for the enquiry on two earlier dates. On the third date too he was absent and there was no intimation from him before the Enquiry Officer, yet the Tribunal insists that it was the duty of the Enquiry Officer to find out from the concerned department of the bank whether any intimation or application was received from the respondent. Let us take a case where the enquiry is not being held in the bank premises or even in the same town, where the concerned branch of the bank is located. In such a situation, it may take hours or even a day or two to find out whether any letter or intimation from the person facing the enquiry was received in the bank and for all that time the Enquiry Committee would remain in suspended animation. The Tribunal's observation that it was only the third date of hearing and hence, it could not be said that the respondent had adopted dilatory tactics can only be described as unfortunate. We completely reject the notion that three barren

dates in an in-house proceeding do not amount to delay. Let the in-house proceedings at least be conducted expeditiously and without in any undue loss of time."

11. In the aforesaid judgement, the Hon'ble Supreme Court has observed that the principles of natural justice cannot be stretched to a point where they would render the in-house proceedings is unworkable. In the instant case as observed above, the second respondent has stated that he cannot be trapped in their net by signing the same. In view of the above judgements cited, finding of the Labour Court that the enquiry proceedings were not given then and there and he was denied opportunity cannot be accepted.

12. The fifth point remains to be analysed is that the request made by the second respondent vide Exhibit M46 was not considered by the enquiry officer.

13. Contrary into the finding, the reply given by the Enquiry Officer dated 26.03.2009, which was admittedly acknowledged by the second respondent on 27.03.2009 by itself is self-explanatory. The second respondent was given clear picture about procedure to be followed by the Enquiry Officer. His request to bring another person to enquiry was accepted. Enquiry proceedings will be held in Tamil. Opportunity would be given to him to peruse the documents of the management before marking; and he would be given opportunity to cross examine the witnesses; he would be given opportunity to produce his witnesses and to produce documents and mark on his side. When such is the situation, the finding of the Labour Court the request of the second respondent vide Exhibit M46 was not considered is without basis. Therefore the totality of the circumstances leads this Court to infer that the finding of the Labour Court is not sustainable and is liable to be set aside. Further more, when the Labour Court has failed to hold that the recording of the enquiry proceedings as well as report of the Enquiry Officer is not *biased* and *mala fide*, the preliminary award cannot be sustained.

14. W.P.No.815 of 2017, this writ petition has been filed against the final award holding that the management has not proved the charges, pursuant to the finding that the enquiry conducted by the management was not fair and proper. This Court in the other writ petition challenging the preliminary award, has set aside the same. In view of the findings of this Court in W.P.No.816 of 2017, the consequential award passed by the Labour Court, dated 09.09.2016 stands also set aside.

15. In view of the above, this Court is inclined to set aside the impugned awards dated 01.06.2016 and 09.09.2016 in

I.D.No.51 of 2010 and remand the matter back to Labour Court, Coimbatore for deciding the issue afresh, in accordance with law.

16. These writ petitions are ordered accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS.III)

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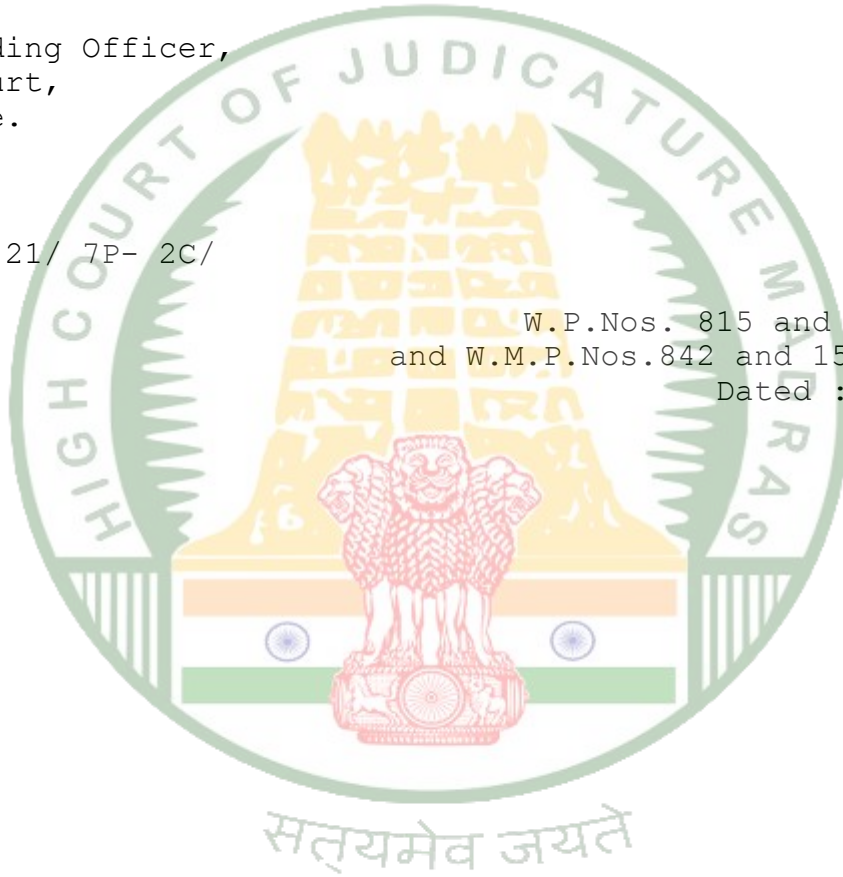
Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Coimbatore.

AKM/23.02.21/ 7P- 2C/

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