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**W.P.(MD)Nos.10224 to 10228, 12366, 12399 to 12404 of 2014,
18989 of 2015 and 4796 to 4801 of 2016**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.11.2022

PRONOUNCED ON : 13.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)Nos.10224 to 10228, 12366, 12399 to 12404 of 2014,
18989 of 2015 and 4796 to 4801 of 2016,**

**M.P.(MD)Nos.1, 1, 1, 1, 1, 2, 2, 2, 2, 3, 3, 3, 3, 3, 3, and 3 of 2014,
1, 1, 1, 1, 1 and 1 of 2015**

and

W.M.P.(MD)Nos.4303 to 4308 of 2016

W.P.(MD)No.10224 of 2014:

The Management,
Alagendra Textiles,
Sukuvadanpatti,
Theni.

Represented by its Accountant (authorized person)

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
District Court Complex,
Mellur Road,
Madurai 625 020.



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2.N.Sivalingam
3.K.S.K.Kannan
4.S.K.Srithar
5.M.S.V.S.Ravichandran
6.M.S.V.S.Selvapandiyan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.55 of 1997 and to quash the award, dated 16.08.2012, passed therein.

In W.P.(MD)Nos.10224 to 10228 of 2014:

For Petitioner	: Mr.T.Ravichandran
For R1	: Court
For R2	: Mr.S.Karthik
For R3 and R5	: Mr.M.R.Sreenivasan
For R4 and R6	: Mr.C.Karthikeyan

In W.P.(MD)Nos.12366, 12399 to 12404 of 2014:

For P1 and P3	:Mr.M.R.Sreenivasan
For P2 and P4	: Mr.C.Karthikeyan
For R1	: Court
For R2	: Mr.S.Karthik
For R3	: Mr.T.Ravichandran



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In W.P.(MD)Nos.18989 of 2015 and 4796 to 4801 of 2016:

For Petitioner : Mr.S.Karthik
For R1 : Labour Court
For R2 : Mr.S.Mohandass

COMMON ORDER

The writ petition in W.P.(MD)No.10224 of 2014 is filed by the subsequent purchaser namely M/s. Alagendra Textiles to quash the impugned award, dated 16.08.2012 and the details of the other writ petitions filed by M/s. Alagendra Textiles are tabulated hereunder:

S.No	I.D. No.	Employee name	Writ petition number
1	55 / 1997	N. Sivalingam	W.P.(MD)No.10224 of 2014
2	56 / 1997	M. Marudhyan	W.P.(MD)No.10225 of 2014
3	57 / 1997	P.Govindaperumal	W.P.(MD)No.10226 of 2014
4	58 / 1997	R.Rammanoharan	W.P.(MD)No.10227 of 2014
5	59 / 1997	K. Mani	W.P.(MD)No.10228 of 2014



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2. The brief facts as stated by the subsequent purchaser M/s. Alagendra Textiles are that the erstwhile mill owner had smooth relationship with the Union, but subsequently there was a problem with the management. The Union leaders had marked their attendance but were roaming around without doing any work with deliberate intention not to work. On 06.03.1996 at about 11 am the 2nd respondents / employees in all the writ petitions sought half a day to conduct gate meeting and leave was permitted. But without conducting meeting the said employees were in the rest shed and at about 1.45pm shouted at the supervisor namely Nagendramani and scolded in filthy language and bad words. On 07.03.1996 at about 9 am the same employees informed the security to meet the owner, when it was informed the owner has not come, again the said same employees shouted, scolded and also punched the Supervisor and threatened to kill him. Thereafter charge memo was issued on 26.03.1996, delinquents submitted explanation, enquiry date was fixed. But the delinquents filed suit in O.S.No.245 of 1998 on the file of Periyakulam Munsif Court and obtained



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interim stay in I.A.No.365 of 1998. After hearing the management both the I.A. and main suit were dismissed on 30.04.1996. Then again enquiry was fixed on various dates but the delinquents failed to appear, then an exparte order was passed holding the charges are proved. Based on the enquiry report the delinquents were dismissed from service. Thereafter due to financial constraints the mill was sold to the subsequent purchaser. The existing employees of Penthanakshi Mills submitted their resignation and got their accounts settled and only the land and buildings alone were purchased and the subsequent purchaser never promised or undertook to take over the pending labour cases. Even though the delinquents were not taken into the service of the subsequent purchaser, counter was filed by the petitioner based on the file obtained from the erstwhile owner. Since the “Karthi” of the family died, the legal heirs of the HUF were impleaded as parties. The Labour Court had held the enquiry conducted in fair, just and proper and the Labour Court has also held the charges are proved. However, has interfered with the punishment under section 11A and has held that



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collective bargaining is not punishable, the employees had raised their voice for their rights and the same cannot be find fault with. The contention of the petitioner that raising voice for their rights cannot be denied, but that cannot be raised by abusing the supervisor with filthy words, by damaging the mill properties. And further contended that the Labour Court cannot be interfere with the punishment if it is not shockingly proportionate. Moreover the said employees were never been an employee under the subsequent purchaser. The Labour Court had rightly held the subsequent purchaser in not successor in interest, but there after erroneously held that the writ petitioner is jointly liable and held prayed dismiss the claim of the employees / delinquents and allow the writ petitions filed by the subsequent purchaser.

3. The Writ Petition in W.P.(MD)No.12366 of 2014 is filed by the erstwhile owner and Hindu Undivided Family of Pethanakshi Mills for issuance of a Writ of Certiorari, to quash the impugned award, dated 16.08.2012 and the



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details of the other writ petitions filed by erstwhile owner and Hindu Undivided Family of Pethanakshi Mills are tabulated hereunder:

S.No	I.D. No.	Employee name	Writ petition number
.			
1	93 / 1998	P. Natarajan	W.P.(MD)No.12366 of 2014
2	55 / 1997	N. Sivalingam	W.P.(MD)No.12399 of 2014
3	56 / 1997	M. Marudhyan	W.P.(MD)No.12400 of 2014
4	57 / 1997	P.Govindaperuma l	W.P.(MD)No.12401 of 2014
5	58 / 1997	R.Rammanoharan	W.P.(MD)No.12402 of 2014
6	59 / 1997	K. Mani	W.P.(MD)No.12403 of 2014
7	60 / 1997	A. Ethiraj	W.P.(MD)No.12404 of 2014

4. The brief facts as stated in the affidavit of W.P.(MD)No.12366 of 2014 and the affidavits filed by the erstwhile owner / HUF are that the 3rd respondent mill was run by late Mr.M.S.V.S.Samikalai Nadar, which was Hindu Undivided Family (HUF) under the name and style of M/s.Pethanachi Mill. The 2nd respondent namely Natarajan and the 2nd respondents in all the writ petitions



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were the employee of the Pethanakshi Mill. The said Natarajan who worked as a maistry in the first shift, the clerk of the mill Mr.Krishnan, wanted to get signature from the said Natarajan after the shift was over. When an employee Mr.Suruli asked him about the letter given by the clerk Krishnan, the 2nd respondent Natarajan abused the petitioner mill management (Partners) with filthy language and also forcefully assembled the workers who complete their first shift while leaving the mill and made speech to them against the mill management and instigated the workers not to do any overtime work. Thereafter, while the 2nd respondent was leaving the mill at the gate, the Security asked him to show the card and the 2nd respondent refused to show the card and also misbehaved with the Security officer and also used abusing language against the petitioner mill management. The next day, the 2nd respondent was placed under suspension, pending enquiry, a charge memo-cum-suspension order, dated 08.07.1996, was issued to him calling for his explanation. Thereafter, an enquiry was conducted by appointing an independent Advocate Mr. G. Arunachalam,



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Madurai. The Enquiry Officer came to the conclusion that the charges were proved, then second show cause notice was issued, the 2nd respondent submitted his explanation. The management after perusing the explanation and other connected papers, dismissed the 2nd respondent from service in the month of September 1997 with effect from 08.07.1996, i.e., the date of suspension. Likewise the other delinquents like the N.Sivalingam, M.Mardhyan, V.Govindhaperumal, R.Rammanoharan, K.Mani A.Ethiraj, Selvam, and P.Singaraj were initiated action for their act of shouting, scolding, hitting the supervisor and breaking the mill properties and were dismissed from service.

5. The contention of the petitioner is that the mill had accumulated loss due to recession in the textile sector from 1993 onwards, subsequently, the capital also eroded and the mill was facing crisis. Hence, the management entered into a Memorandum of Understanding, dated 29.11.1997 with the 3rd respondent company to sell the mill and also handed over the mill properties in the month of



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November 1997 itself. Thereafter, a Sale Deed, dated 10.12.1997, was effected with the 3rd respondent by Mr. S.V.S.Kumbeswaran, as a Kartha, of Hindu Undivided Family. Hence, the entire business of the mill including its assets and liabilities are sold to the 3rd respondent and the 3rd respondent produced the said concern on its assets and liabilities as a going concern which has been recorded in the Sale Deed.

6. After failure of conciliation proceedings, the 2nd respondent had raised Industrial Dispute before the 1st respondent, Labour Court. The 3rd respondent subsequent purchaser had filed counter along with documents for the proved misconducts and prayed the Labour Court to decide the preliminary issue whether the disciplinary enquiry was conducted after giving sufficient opportunity to the 2nd respondent. Nearly after 15 years, the petitioners were impleaded as parties. The petitioners 3 and 4 are coparceners of the Pethanakshi mill and the petitioners 1 and 2 are the legal heirs of Late. Mr.M.S.V.S. Kumbeswaran, the Kartha of the



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said Hindu undivided family. The Labour Court passed the impugned award against the petitioners along with the 3rd respondent. The contention of the petitioners are that the Pethanakshi mill was not a party to the dispute at that time of passing the award against the coparceners which is not maintainable under law. Apart from that, after the execution of Sale Deed, the entire liabilities would shift on 3rd respondent. The contention of the petitioners are that the Labour Court after perusing the entire enquiry proceedings and findings of the enquiry officer decided that the enquiry was conducted properly and the charges were proved. Thereafter, the Labour Court without giving any opportunity to the petitioners as well as to the 3rd respondent before invoking Section 11A of the I.D. Act, regarding the consideration of the punishment awarded for the proved charges passed the impugned award which is violation of the settled principles as evolved by the Honourable Supreme Court. If the Labour Court had given an opportunity, the petitioners would have filed the Sale Deed and Memorandum of Understanding executed with the 3rd respondent and would have explained that



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the petitioners are not liable to pay any compensation or any award to be passed against the petitioners. The further contention is that even in the Sale Deed at Para.No.11, it has been clearly referred in relating to the transfer of Pethanakshi mill as "to transfer business of the Pethanakshi Mills with all its Assets and Liabilities, as a going concern, to any willing purchasers, who has sufficient financial resources, without disturbing the functioning of the Mill, in the overall interest of the financial institutions who have advanced substantial money as well as in the interest of workers, staff and other personnel working in the Mill, who are dependent for their livelihood". The purchaser expressed his willingness, to purchase the assets and liabilities. It is further submitted that at that time of selling the mill to the 3rd respondent, the 2nd respondent and other dismissed employees have not raised any industrial dispute before the 1st respondent Labour Court, Madurai. No legal proceedings was pending against the erstwhile M/s.Pethanakshi Mill. All workers who have worked in the Mill, resigned and settled their accounts before effecting the Memorandum of Understanding and



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Sale Deed. Hence, the question of taking over the workers by the 3rd respondent will not arise at that time of effecting the Sale Deed. The petitioner contended that the 2nd respondent had filed Subsistence Allowance petition in PSA No. 22 of 97 against the 3rd respondent mill. It is pertinent to state that other dismissed employees had filed PSA no. 35 of 97 against the 3rd respondent and the Authority has passed an order granting a sum of Rs.21,795/- towards subsistence allowance which would indicate that the 3rd respondent alone is responsible for the demand of the 2nd respondent. Under these circumstances, the successor in interest, i.e., the 3rd respondent alone is answerable for the claim made by the 2nd respondent and other dismissed employees. The contention of the petitioner is that the Labour Court without giving opportunities to the petitioners as well as 3rd respondent, the 1st respondent has straightaway passed the award thereby interfered in the punishment awarded to the 2nd respondent and directed to pay a sum of Rs.2,00,000/- to the 2nd respondent without any basis and without giving any valid reasons.



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7. Even if the compensation amount is awarded, it is against the 3rd respondent who is the successor in interest and not to the petitioners, since the petitioners are not at all connected with the running of the mill at present. More than 15 years have been passed and thereafter, the petitioners were impleaded as parties and the delay of 15 years was not answered by the 2nd respondent and the Labour Court. The 2nd respondent has not filed any condone delay petition and not adduced any reason for impleading the petitioner as party, after a delay of 15 years. Hence, the petitioners prayed to allow the writ petition.

8. The Writ Petition in W.P.(MD)No.18989 of 2015 is filed by the employee namely P. Natarajan for issuance of a Writ of Certiorarified Mandamus, to quash the impugned award passed in I.D.No.93 / 1998 dated 16.08.2012 in so far as it denies reinstatement and backwages and consequently directing the respondents 2 to 7 to reinstate and grant backwages and other writ petitions are filed by the employees and the same is tabulated hereunder:



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S.No	I.D. No.	Employee name	Writ petition number
1	93 / 1998	P. Natarajan	W.P.(MD)No.18989 of 2015
2	55 / 1997	N. Sivalingam	W.P.(MD)No.4796 of 2016
3	56 / 1997	M. Marudhyan	W.P.(MD)No.4797 of 2016
4	57 / 1997	P.Govindaperumal	W.P.(MD)No.4798 of 2016
5	58 / 1997	R.Rammanoharan	W.P.(MD)No.4799 of 2016
6	59 / 1997	K. Mani	W.P.(MD)No.4800 of 2016
7	60 / 1997	A. Ethiraj	W.P.(MD)No.4801 of 2016

9. The contention of the delinquents are that the enquiry was conducted exparte and hence the dismissal order cannot be construed was passed after granting opportunity. The Labour Court without granting sufficient opportunity while deciding the preliminary issue had passed an order which is violative of principles of natural justice. If an opportunity was granted the judgment of criminal court would have been produced and proved the delinquents' innocence. Moreover, the delinquents had filed a petition to defer the enquiry since an



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industrial dispute is being raised, but the same was not considered. Hence the delinquents prayed to reinstatement alone backwages.

10. Heard Mr.P.Chandra Bose and Mr.M.R.Sreenivasan, the Learned Counsel appearing for the erstwhile owners, Mr.T.Ravichandran, the Learned Counsel appearing for the subsequent purchasers and Mr.S.Karthik, the Learned Counsels appearing for the delinquents and perused the records.

11. The contention of the erstwhile owners is that under the sale deed, the coparcener of the Hindu Undivided Family (HUF) has transferred the business of the Mills along with its assets and liabilities as a running concern without disturbing the functioning of the mill in the overall interest of the financial institutions as well as in the interest of workers, staffs and other persons working in the mill who are depending for their livelihood. The assets and liabilities were sold to the subsequent purchaser, the M/s. Alagendra Textiles. Therefore, the



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award passed by the 1st respondent ought to be paid by the subsequent purchaser and it cannot be claimed from the erstwhile owners. However, the contention of the subsequent purchaser is that the sale deed was executed only for the purchase of land and building and the sale was not executed for any liability of the mills including the liability of the subsistence allowance and settlement of compensation.

12. After hearing the rival contentions this Court had given its anxious consideration to the issues raised in the writ petitions. The Memorandum of Understanding which was executed between the erstwhile owner and subsequent purchaser would state that assets and liabilities as on 31.10.1997 as per Annexure 2 was agreed between the parties. Under Clause 6, the subsequent purchaser Alagenda Textiles is at his discretion and liberty may either retain the existing work force and staff or make proper settlement with them at his cost as deems fit and the 1st party (HUF) will settle those persons identified by the 2nd party



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(subsequent purchaser) for smooth functioning of the mill. Under Clause 7, the 2nd party (subsequent purchaser) has specifically agreed to pay all the future statutory liabilities that may be levied by the concerned authorities from 31.10.1997 while carrying on the business of the mills. Under Clause 14, the 1st party (HUF) further declare that the list of liabilities as shown in the Balance Sheet as on 31.10.1997 are the only liabilities of the Pethanakshi Mills and there is no other liability other than those shown. The 2nd party (subsequent purchaser) has under taken to clear those liabilities only. In case, if there is any other claim from any person against the Pethnakshi Mills, the parties of the 1st party (HUF) undertook to clear such claims or liability by themselves and the 2nd party shall not be liable to discharge such liabilities.

13. The suspension order was issued on 26.03.1996, the final order of dismissal was passed in the month of September 1997 with effect from 08.07.1996, the Memorandum of Understanding (MOU) was executed on



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29.11.1997 and the sale deed was executed on 09.12.1997. The dismissal order was challenged in industrial disputes in the year 1997 / 1998 and the same was disposed of on 16.08.2012. Now, the question arises whether the award passed ought to be paid by the 1st party (HUF) or the 2nd party (subsequent purchaser). As per clause 6 of the MOU, the HUF has settled the erstwhile employees and has dismissed some of the employees. As per clause 7 the subsequent purchaser has agreed to pay the “future statutory liabilities arises from 31.10.1997”. As per clause 14 the liabilities stated in Annexure alone the subsequent purchaser is liable. Further under clause 14 it is agreed that the erstwhile owner would settle if any person/s claims or liabilities arises and the subsequent purchaser is not liable to pay the same. The present award of payment by the Labour Court was not stated in the Annexure as liabilities. But the present award is a statutory liability accrued based on the award passed in the year 2012. Since the subsequent purchaser had agreed to settle the future statutory liability as per clause 7, since the statutory liability accrued in the year 2012, the subsequent purchaser is liable.



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Since the erstwhile owner had agreed to pay any claims or liability if any person or person claims or liabilities against the Mill then the erstwhile owner is liable to pay as per clause 14. On combined reading of the clause 7 and clause 14, this Court is of the considered opinion that both the petitioners and the 3rd respondent are liable. Hence this Court fixes the liability on the erstwhile owner as 50% and the subsequent purchaser as 50%.

14. The erstwhile owners submitted that the property was sold because of the recession in the textile and the mill was incurring loss and hence they decided to sell the property to the subsequent purchaser. The subsequent purchaser also submitted that even after purchase, the mill was incurring loss and the subsequent purchaser is not in a position to pay the delinquents. It is seen that the Labour Court has fixed the monthly salary as Rs.3,000/- but, the Labour Court has awarded Rs.1,80,000/- and the same is on the higher side.



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15. The Labour Court has rendered a finding that the enquiry was conducted after giving sufficient opportunity and there is no violation of principles of natural justice. But the delinquents have stated that in the enquiry sufficient opportunity was not granted, moreover exparte order was passed. It is seen from the records that several notices were issued but the delinquents failed to appear and endlessly the employer cannot wait for the delinquents to appear. The reason stated by the delinquents for not appearing is that they had raised industrial dispute and requested to defer the enquiry proceedings. But the plea cannot be accepted since the employers cannot wait for the delinquents to appear for the disciplinary proceedings. In the industrial dispute the delinquents ought to have obtained any interim order to defer the proceedings or ought to have approached High Court for interim order or to defer the proceedings. Since the delinquents failed to get any interim order or any direction to defer the proceedings, cannot allowed to state that there is violation of principles of natural justice. Further a specific finding was rendered by the Labour Court that there is



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delay in granting the award and the delay is due to the employees themselves. Hence the Labour Court has granted only compensation only. Therefore this Court is of the considered opinion that the plea raised by the delinquents of violation of principles of natural justice is erroneous.

16. The delinquents submitted that if the opportunity was granted by the Labour Court they would have produced the judgment passed in the criminal court which acquitted the delinquents. Such a plea cannot be entertained since it is settled principles of law that strict evidence is necessary for deciding the criminal case and for disciplinary proceedings the principles applicable is preponderance of probability. The allegation against the delinquents are that they shouted, scolded the supervisor with bad words and used abusive language, some of them had break the mill properties. Moreover there was change in management, where the subsequent purchaser had declined to take the dismissed employee. Before handing of the mill the erstwhile owner had completed the



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enquiry proceedings and imposed punishment. Hence, this Court is not inclined to grant reinstatement. For the non-employment period the delinquents is not eligible for backwages based on the principles of “No Work No Pay”. Therefore this Court is of the considered opinion that the Labour Court has come to the correct conclusion and has granted compensation. The delinquents salary was Rs. 3000/- and for two years it comes to Rs.72,000/-. Hence this Court is of the considered opinion that the delinquents are entitled to Rs.1,50,000/-.

17. Based on the rival submissions and for the reasoning stated above, in order to meet the ends of just this Court is fixing the compensation of Rs. 1,50,000/- only for each of the delinquent and the erstwhile owners shall pay Rs. 75,000/- and the subsequent purchaser shall pay Rs.75,000/- to the each delinquents.



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18. With the above observation, the writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

13.12.2022

Tmg

To

The Presiding Officer,
Labour Court,
District Court Complex,
Mellur Road,
Madurai 625 020.



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S.SRIMATHY, J

Tmg

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13.12.2022