



W.P.No.16274 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	13.02.2023
PRONOUNCED ON :	01.06.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.16274 of 2013

and M.P.No.3 of 2013

The Management of MRF Limited
Thiruvotriyur High Road,
Chennai – 600 019

... Petitioner

Vs.

1. K. Muthukumaran,
No. 58/81, T.S. Gopal Nagar,
Wimco Backside, Thiruvotriyur,
Chennai- 600 019.

2 The Assistant Commissioner of Labour,
(Conciliation)- II,
Kuralagam, Chennai- 600 108.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to Approval Petition No. 640 of 2012 on the file of 2nd respondent, Assistant



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Commissioner of Labour (Conciliation)- 2, Chennai- 600 001 and
consequently quash the order dated 20.04.2013 made in Approval Petition
No. 640 of 2012.

For Petitioner : Mr.K.M. Vijayan
For Mr. P. Ranganatha Reddy

For R-1 : Mrs.C.S.Monica

R2- Court

ORDER

Challenging the rejection of the Approval Petition No. 640 of 2012 filed
by the Management, by proceedings dated 20.04.2013, passed by the
Assistant Commissioner of Labour(Conciliation)-II, u/s.33(2)(b) of the
Industrial Disputes Act, the petitioner - Management is before this Court.

2. The 1st respondent joined as workman on 22.04.2006 under the
petitioner Management. On 05.05.2011, on the allegation charges of deserting
the work spot and in subversion of discipline, he found to be indulged in
loitering in other areas and instigated other co-workmen for strike etc., he was
placed under suspension pending enquiry on 06.05.2011. On 06.05.2011,
charges were framed against him calling for explanation vide show cause



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notice dated 07.05.2011.

WEB COPY 3. The charges would read that under clause 13(1)- wilful insubordination or disobedience; 13(2) striking work in contravention of standing orders; 13(8) habitual breach of any standing order 13(11) drunkenness, riotous or disorderly behaviour 13(15) causing damage to work in process or to any property; 13(22) refusal to accept a charge-sheet; 13(27) interference with work of any other workman; 13(35) failure to perform his normal duties; 13 (50) instigation, incitement, abetment of any of the above acts or omissions.

4. The 1st respondent-workman submitted his reply dated 09.05.2011. Since the Management found that the reply was not satisfactory, issued notice dated 12.05.2011 directing the 1st respondent to attend the domestic enquiry on 17.05.2011.

5. Enquiry was conducted during 17.05.2011 to 30.03.2012. The workman was permitted to avail the assistance of a coworker. In the mean time, 1st respondent-workman's suspension was lifted and he was permitted to join duty on 18.05.2011.



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6. In the domestic enquiry held, on the side of petitioner-Management, 7 witnesses were examined and 11 documents were marked. Workman was examined himself and marked 9 documents.

7. The Enquiry Officer, after going through the evidence, given his findings dated 19.03.2012 holding that except charge no.5, other charges have been proved beyond doubt.

8. Since the charges are grave in nature, a second show cause notice dated 14.06.2012 was issued to the workman calling for explanation as to why he should not be dismissed from the service.

9. The 1st respondent submitted his explanation dated 25.06.2012. Since the Management found that the explanation of the workman was not satisfactory, issued dismissal order along with Form "I" and a cheque for a sum of Rs.15,020/- being one month salary.

10. The issue was taken up before the Assistant Commissioner of Labour (Conciliation) -II, Chennai in the Approval Petition under Section



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33(2)(b) of the Industrial disputes Act, 1947.

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11. Before the Authority, in A.P.No.640 of 2012, both sides evidence was taken and after due examination and cross examination of witnesses, it was found by the Authority that there was no proper domestic enquiry held in accordance with Standing Orders and principles of natural justice has not been followed. The Management in order to victimize the workman, indulged in unfair labour practice and issued suspension order first and then issued charge memo and thereafter show cause notice, which was nothing but victimization. The Assistant Commissioner of Labour, as such, dismissed the approval petition.

12. Aggrieved by the said rejection of approval, the petitioner Management filed this writ petition raising grounds that the 2nd respondent-Authority failed to consider the scope of adjudication in a proceeding under section 33(2)(b) of the I.D.Act and it cannot sit as a Court of appeal for reappreciating the evidence. The jurisdiction of the Authority u/s.33(2)(b) cannot be equated to that of Section 10 of the ID Act. The workman was



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given sufficient opportunity to examine the defence witness and in that view of the matter, principles of natural justice had been fully complied with.

13. Per contra, Mrs.C.Monica, learned counsel appearing for 1st respondent-workman, by relying on the decisions reported in **(2005) 3 SCC 241** [*Cholan Roadways Ltd., Vs. G.Thirugnanasambandam*] and the decision of the Honourable Supreme Court reported in **MANU/SC/0268/1978** [Civil Appeal.No.351/1971 dated 16.02.1978, *Lalla Ram Vs. Management of D.C.M.Chemical Works Ltd., and ors*], submitted that the misconduct attributed to the workman, had no rational connection with his employment and that the dismissal was not valid and legal, therefore, the 2nd respondent-Authority was well within its jurisdiction to refuse to accord its approval to the action taken by the management.

14. She further submitted that the second show cause notice issued by the Management was entirely relating to the earlier charges and incidents which has previous charges and had no nexus to the present charge sheet relating to 05.05.2011. Further, the 2nd respondent categorically held that,



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second show cause notice, relating to several incidents which have no nexus to the incident on 05.05.2011, formed part of the charge sheet dated 07.02.2011, is a gross violation of principles of natural justice and *prima facie* case has not been made out against the charges leveled on 07.05.2011 and therefore, the 2nd respondent dismissed the approval petition. Further, for the previous misconduct, the 1st respondent suffered punishment. According to the learned counsel, under law, there cannot be double jeopardy and a person cannot be vexed twice for the same charges. Therefore, there is no error in the order passed by the 2nd respondent.

15. He further submits that the 1st respondent was employed till 22.11.2012 and was not paid salary from 01.11.2012 to 22.11.2012 for the period which he worked. Thereafter, he was paid one month notice pay along with dismissal order dated 22.11.2012, but he refused to receive the same. While so, after approval petition is dismissed and the same is pending for adjudication in the above writ petition vide letter dated 20.06.2013, the petitioner has paid gratuity and put to an end to the 1st respondent



employment, which is illegal.

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16. As per law, when the first respondent was deemed to be in service, bringing cessation of service by sending gratuity, is illegal and exposes the victimized attitude of the Management. Since, the 2nd respondent dismissed the approval petition, the 1st respondent deemed to be in service from 22.11.2012, and he is ready and willing to join duty. Hence, the 1st respondent gave letter dated 06.05.2013 offering to join duty, but the petitioner Management refused to provide employment. Therefore, the petitioner Management is bound to pay the monthly salary with attendant benefits from November 2012 till date. Furthermore, he is entitled to get back wages.

17. Learned counsel for the first respondent would further state that the act of the Management is a clear case of victimisation and therefore, the Authority has rightly refused to accord approval. The prayer of the Management, in this writ petition, challenging the proceedings of the 2nd respondent-authority, is to fail.



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18. Heard both sides and perused the records carefully.

19. The 2nd respondent-authority has gone through the Approval Petition filed by the Management and after analysis of evidence let in before him and also going through the findings of the enquiry officer, came to the conclusion that the entire allegations of charges levelled against him under clause 13(1), 13(2), 13(8), 13(11), 13(15), 13(22), 13(27), 13(35) and 13(5) of the Standing Orders of the Company, cannot be accepted as one related to the dispute raised in the present circumstances. The authority pointed out that the management could not establish the action taken against the workman and the entire charges framed against him. Some allegations relate to past incidents and therefore, for some wrongful past action done by the workman due to various other circumstances, cannot be fixed against the workman alone and that he is responsible for instigation of strike among the workers. The authority held that the evidence adduced on both sides do not justify for granting approval for the dismissal order issued by the Management. The Authority therefore, rejected the approval petition.



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20. In the considered view of this court, the 2nd respondent authority after proper enquiry found that the requirements of the Standing Orders and principles of natural justice, has not been followed properly and that prima facie case for dismissal is not made out. The said conclusion of the authority, is in my opinion, justified and the authority is perfectly right in passing the impugned proceedings.

21. For the foregoing reasons, this court do not find any merit in this writ petition filed by the Management. Accordingly, this writ petition is dismissed. No costs. Connected MP is closed.

01.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To:
To

The Assistant Commissioner of Labour,
(Conciliation)- II,

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J.NISHA BANU, J.,

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Pre-Delivery Order made in
W.P.No.16274 of 2013

Dated:
01.06.2023