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W.P.No.13370 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 15.06.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE S.S. SUNDAR**

**W.P.No.13370 of 2010**

**and**

**M.P.No.2 of 2010**

The Managing Director,  
A & F Overseas Trade Ltd.,  
Uruvaiyur Village, Mangalam Road,  
Mangalam Post,  
Pondicherry.

... Petitioner

Vs.

1.The Presiding Officer,  
Labour Court,  
Pondicherry.

2.N.Govindasamy

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the award dated 03.03.2010 made in I.D.No.53 of 2005 and quash the same.

For Petitioner : Mr.R.Parthiban

R1 : Court

For R2 : M/s.Ramapriya Gopalakrishnan





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requested the Management not only to pay salary for three months which was due but also to reinstate him, as he was suspended in contemplation of enquiry. In all the representations, it is seen that the 2<sup>nd</sup> respondent came with an explanation that the Management has initiated domestic enquiry only because the 2<sup>nd</sup> respondent was an active member of AICCTU and he questioned the illegal activities of petitioner Management. The 2<sup>nd</sup> respondent employee has also made several other allegations against the Management.

2.4.By a communication dated 04.09.2003, the petitioner Management called upon the 2<sup>nd</sup> respondent to participate in the enquiry at Chennai, even though the industrial premises of the petitioner is in Pondicherry and the 2<sup>nd</sup> respondent was engaged only in Pondicherry. When the enquiry notice was received by the 2<sup>nd</sup> respondent, he immediately objected to the place of enquiry by referring to the fact that he was not only denied employment, but also Subsistence Allowance from the date of non-employment. Therefore, the 2<sup>nd</sup> respondent sincerely requested the Management to conduct the enquiry at Pondicherry, as he may not be able to attend the enquiry at Chennai. When a further communication was issued by the Management to the 2<sup>nd</sup> respondent to attend the enquiry at Chennai with a promise that the 2<sup>nd</sup> respondent will be paid transport as well as food



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expenses incurred by him, the 2<sup>nd</sup> respondent replied by referring to the fact that he is unable to bear the expenses, as he was denied Subsistence Allowance, despite several representations.

2.5.However, the Enquiry Officer proceeded with the enquiry and appears to have submitted a report to the Management, finding the 2<sup>nd</sup> respondent guilty of all the charges. Thereafter, the 2<sup>nd</sup> respondent was terminated from service.

2.6.The 2<sup>nd</sup> respondent, therefore, challenged the order of termination before the Labour Court at Pondicherry in I.D.No.53 of 2005 mainly on the ground of violation of principles of natural justice for denying fair opportunity to participate in the enquiry.

3.Before the Labour Court, the 2<sup>nd</sup> respondent filed series of correspondences to show that enquiry was completed without giving sufficient and fair opportunity to the 2<sup>nd</sup> respondent to participate ignoring his representation. The petitioner Management, though filed Exs.R1 to R44, did not examine anyone.

4.The Labour Court found that the enquiry conducted by the Management at Chennai despite the genuine request and objections of 2<sup>nd</sup>



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respondent, is improper. The Labour Court further held that the *ex parte* enquiry report and the termination are in violation of principles of natural justice and therefore, the 2<sup>nd</sup> respondent should be reinstated with backwages. However, the Labour Court gave liberty to the petitioner Management to conduct enquiry at Pondicherry and to give opportunity to the employee to let in evidence on his side.

5.Challenging the award of Labour Court reinstating the 2<sup>nd</sup> respondent in service with backwages and continuity of service, the Management has preferred the above writ petition.

6.Learned counsel appearing for the petitioner Management submitted that no prejudice or inconvenience would have been caused to the 2<sup>nd</sup> respondent, when the Management had informed the 2<sup>nd</sup> respondent that he would be given travelling allowance and food allowance while attending enquiry at Adyar, Chennai. Learned counsel then submitted that the 2<sup>nd</sup> respondent, who refused to cooperate and participate in the enquiry, cannot now blame the Enquiry Officer or the Management on the ground that there is violation of principles of natural justice. The learned counsel submitted that the Labour Court has remitted the matter now to the Management once



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again to conduct domestic enquiry after giving proper opportunity to the 2<sup>nd</sup> respondent. Since the ultimate liability of payment of backwages would depend upon the final outcome of the enquiry that was permitted to be continued by the Management as per the directions of the Labour Court, the learned counsel submitted that the direction to pay backwages, is illegal. Learned counsel referred to the findings of the Labour Court and submitted that the findings are perverse. Stating that the Labour Court has erroneously come to the conclusion that the disciplinary proceedings is nothing but victimisation of 2<sup>nd</sup> respondent, learned counsel submitted that the findings of the Labour Court are not only perverse, but inappropriate, having regard to the final decision of the Labour Court to remit the matter for fresh enquiry.

7.Learned counsel appearing for the petitioner Management then relied upon a few precedents to support his arguments. Learned counsel referred to the judgment of Hon'ble Supreme Court in the case of ***State Bank of India v. Tarun Kumar Banerjee [Appeal (Civil) No.3151 of 1997 dated 19.09.2000]*** for the proposition that the 2<sup>nd</sup> respondent cannot take advantage of his non-participation in the enquiry, especially having regard to the peculiar facts and circumstances of the case where the charges framed



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against the 2<sup>nd</sup> respondent are serious attracting major punishment. Learned counsel relied upon a judgment of Hon'ble Supreme Court in the case of ***Chairman-cum-M.D., Coal India Ltd. & others v. Ananta Saha & others*** reported in ***2011 (5) SCC 142***, wherein, the Hon'ble Supreme Court has held as follows :

*“47.The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: U.P.SRTC v. Mitthu Singh, AIR 2006 SCC 3018; Secy., Akola Taluka Education Society & Anr. v. Shivaji & Ors., (2007) 9 SCC 564; and Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale, (2009) 2 SCC 288).*



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*48. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”*

Referring to the above judgment, learned counsel submitted that the Labour Court has erroneously directed the Management to pay the backwages from the date of order of termination till date, especially when the Labour Court has remitted the matter giving opportunity to the petitioner Management to go with the domestic enquiry and to pass final order after holding enquiry afresh at Pondicherry, giving sufficient opportunity to the 2<sup>nd</sup> respondent. Learned counsel, by relying upon a judgment of Hon'ble Supreme Court in ***State Bank of India and others v. Narendra Kumar Pandey*** reported in ***2013 (2) SCC 740***, submitted that the Hon'ble Supreme Court has held that the charged officer, who did not avail the opportunity and remained absent before the Enquiry Officer, cannot complain later that principles of natural



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justice was not adhered to. In other words, learned counsel submitted that a workman who refused to participate in the enquiry, cannot complain that the dismissal is against the principles of natural justice, particularly when he allowed the enquiry to proceed *ex parte*. In the case of **Lakshmi Devi Sugar Mills Ltd. v. PT Ram Sarup** reported in **AIR 1957 SC 82**, the Hon'ble Supreme Court has observed that the conduct of charged officer in the case therein, who did not appear before the enquiry authority and offer any explanation to the charges levelled against him, cannot be permitted to raise his objections before the High Court, complaining that principles of natural justice had been violated.

8. On the other hand, learned counsel appearing for the 2<sup>nd</sup> respondent submitted that the 2<sup>nd</sup> respondent was just drawing a meagre salary of Rs.1,914/- per month as Cutting Supervisor and that he was denied not only salary for three months but also Subsistence Allowance. Referring to the fact that the 2<sup>nd</sup> respondent, pursuant to the charge memo, was suspended from service even in 2003, learned counsel submitted that the 2<sup>nd</sup> respondent was not only kept out of employment, but was really craving for his day-to-day needs. It is in the context, the learned counsel submitted that he was unable to participate in the enquiry at Chennai. It is contended that



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the decision of Management to conduct enquiry at Chennai, is an act of victimisation and that therefore, the Labour Court has not committed any error or patent illegality while passing the impugned award. Stating that there is no perversity or failure to consider the relevant facts and materials produced before Labour Court, learned counsel submitted that the Labour Court has rightly passed the award. Learned counsel also submitted that the domestic enquiry was conducted in utter disregard to the principles of natural justice and as a result, the Labour Court has rightly issued a direction to reinstate the 2<sup>nd</sup> respondent with backwages.

9.This Court has considered the submissions of both learned counsels.

10.The following facts are not in issue before this Court. The petitioner Management issued a charge memo to the 2<sup>nd</sup> respondent, alleging serious charges of neglecting work, for not doing any work allotted to him, and for insubordination and interfering with the work of other co-workers during duty hours. Since the charges are specifically denied by the 2<sup>nd</sup> respondent, the petitioner Management decided to conduct domestic enquiry.

While conducting enquiry, the Management wanted the 2<sup>nd</sup> respondent



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employee to attend the enquiry at the Administrative Office at Chennai, even though the industrial premises is located in Pondicherry where the 2<sup>nd</sup> respondent was employed. It is true that the 2<sup>nd</sup> respondent was informed that the Management will bear the food and travelling expenses of 2<sup>nd</sup> respondent. However, the Management has no valid reason why the enquiry should not be conducted at Pondicherry.

11.It is admitted that the 2<sup>nd</sup> respondent was engaged in Pondicherry as a Cutting Supervisor. Since the charges against the 2<sup>nd</sup> respondent are in relation to his conduct inside the premises at Pondicherry, it is rather strange for the Management to take a decision to conduct domestic enquiry at Chennai. From the correspondences, it is seen that the 2<sup>nd</sup> respondent is asking for salary for three months and Subsistence Allowance from the date of suspension. Though the 2<sup>nd</sup> respondent was asked to produce the certificate of non-employment, such a document can only be in the form of self-statement. It is in these circumstances, the case of 2<sup>nd</sup> respondent that he was not gainfully employed and that the Management should disburse Subsistence Allowance, cannot be found fault with. In response to the notice issued by the Enquiry Officer, the 2<sup>nd</sup> respondent, atleast on two occasions, had expressed his difficulty to attend the enquiry,



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as he has no sufficient money for his travel and food in Chennai. However, the Enquiry Officer proceeded with the enquiry after setting the 2<sup>nd</sup> respondent *ex parte*. The Labour Court has considered the evidence in a proper perspective and came to the conclusion that the whole enquiry and the order of termination is in violation of principles of natural justice. Therefore, it is inevitable that the order of termination should be set aside by the Labour Court.

12.As pointed out by the learned counsel for the 2<sup>nd</sup> respondent, the 2<sup>nd</sup> respondent was drawing a meagre salary of Rs.1,914/- per month. With this meagre salary, the petitioner cannot expect the 2<sup>nd</sup> respondent to travel a distance and take care of his food, without paying Subsistence Allowance or anything at the first instance. Even to the specific request made by the 2<sup>nd</sup> respondent, the petitioner Management has informed the 2<sup>nd</sup> respondent that he will be paid the Subsistence Allowance only by the Enquiry Officer, but not by the petitioner Management. As pointed out earlier, examination of co-workers may be necessary, if the 2<sup>nd</sup> respondent wants to face the enquiry and prove his case. Therefore, the request of the 2<sup>nd</sup> respondent to have the enquiry within Pondicherry, is not unreasonable. This Court finds no justification for the petitioner Management to conduct



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enquiry, at the first place, in Chennai, without even paying the Subsistence Allowance, as admitted in the course of proceedings.

13.The question before the Labour Court was whether the order of termination is vitiated for violation of principles of natural justice. A specific finding is rendered by the Labour Court that the whole enquiry proceedings and termination is in violation of principles of natural justice. However, it is to be seen whether the direction to pay backwages is justified. This Court has no quarrel with the proposition by Hon'ble Supreme Court from the judgments relied upon by the learned counsel for the petitioner Management. However, the fact remains that the petitioner initiated disciplinary proceedings in 2003 and terminated the 2<sup>nd</sup> respondent from service without providing him a fair opportunity and without even paying Subsistence Allowance as admitted before this Court now. The award of Labour Court directing reinstatement and backwages was passed on 03.03.2010. Even after the order of Labour Court, the petitioner Management did not reinstate the 2<sup>nd</sup> respondent nor conducted fresh enquiry, as directed by the Labour Court. Without providing employment for more than 20 years, the petitioner made the 2<sup>nd</sup> respondent a jobless person. After doing this injustice to the 2<sup>nd</sup> respondent, the petitioner refused



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to go for fresh enquiry after reinstatement as directed by the Labour Court.

It is admitted that the petitioner has obtained interim stay immediately after the filing of the writ petition. Therefore, the order of Labour Court directing reinstatement with backwages is justified. It may be true that the petitioner may prove the charges by conducting fresh enquiry. However, if the enquiry is conducted nearly 20 years after delinquency or misconduct, it will be great injustice and therefore, this Court is unable to accept the arguments of learned counsel appearing for the petitioner Management.

14.Having regard to the sequence of events, peculiar circumstances and the documents, this Court is convinced that the Labour Court is perfectly right in holding that the enquiry and the termination of 2<sup>nd</sup> respondent is in violation of principles of natural justice. This Court, for the reasons stated above, is not inclined to interfere with the award of Labour Court.

15.As a result, **this writ petition is dismissed for want of merits.**

No costs. Consequently, connected miscellaneous petition is closed.

**15.06.2023**

mkn



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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

The Presiding Officer,  
Labour Court,  
Pondicherry.



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**S.S. SUNDAR, J.**

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