



W.P.No.8003 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.8003 of 2021

N.Shankar

... Petitioner

Vs.

The Managing Director,
M/s.Hindustan Unilever Limited,
Detergent Factory,
Pondicherry 605 102

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertains to the impugned order dated 27.02.2020 made in I.A.No.162 of 2019 in ID (L) No.14 of 2015 on the file of Industrial Tribunal, Puducherry.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.S.Shivathanu Mohan



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ORDER

This writ petition has been filed against the order passed by the Industrial Tribunal, Puducherry, in I.A.No.162 of 2019 in ID (L) No.14 of 2015, dated 27.02.2020, permitting the respondent to lead oral evidence with respect to fairness in conducting the domestic enquiry alone.

2. The case of the petitioner is that he was employed in the respondent factory and he was illegally removed from service. Aggrieved by the same, the petitioner raised a dispute and the matter was taken up by the Labour Court, Puducherry, in ID (L) No.14 of 2015. Counter statement was also filed by the respondent. A memo was also filed by the respondent seeking for deciding the fairness of and the enquiry conducted, as a preliminary issue. When this memo was pending and it was posted for arguments, an application came to be filed by the respondent in I.A.No.162 of 2019 to let in oral evidence for the purpose of proving the factum of the fairness of the domestic enquiry conducted against the petitioner. This application came to be allowed by the Tribunal by an order dated 27.02.2020. Aggrieved by the same, the present writ petition has been filed by the Workman.



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3. Heard Mr.P.R.Thiruneelakandan, learned counsel for the petitioner and Mr.S.Shivathanu Mohan, learned counsel for respondent.

4. The main ground that was raised by the learned counsel for the petitioner is that the management will have to establish the fairness in the enquiry conducted only based on the enquiry report filed by the enquiry officer and no oral evidence can be allowed in this regard. It was further submitted that the Tribunal went wrong in relying upon the judgement of the Bombay High Court wherein it was held that it is the workman who alone is entitled to lead oral evidence in order to establish the improper manner in which the enquiry was conducted without affording any opportunity.

5. Per contra, the learned counsel for respondent submitted that the oral evidence was sought to be let in by the respondent on the limited issue with respect to the fairness of the domestic enquiry that was conducted and even the tribunal made it clear that the evidence cannot be extended to the merits of the case or with respect to the



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perversity of the domestic enquiry. The learned counsel submitted that the petitioner will always have the right to cross examine the witness and no prejudice will be caused to the petitioner if the oral evidence is let in by the respondent on the limited issue. To substantiate his submission, the learned counsel relied upon the Division Bench judgment of this Court in ***[The management of Kutty Flush Doors and Furniture Company Pvt Ltd., Vs. The Presiding Officer, II Additional Labour Court and others]*** reported in ***Manu/TN/0451/2003*** and judgment of this Court in ***[Madurai Devakottai Transport Private Ltd., Vs. Labour Court and another]*** reported in **1979 SCC Online Mad 386**.

6. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

7. The petitioner had filed a memo and sought for a decision from the Labour Court as a preliminary issue with regard to the fairness of the domestic enquiry conducted by the respondent. The respondent filed I.A.No.162 of 2019 to permit oral evidence to prove the factum of the fairness of the domestic enquiry conducted against the petitioner.



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The Industrial Tribunal while passing the order dated 27.02.2020 made it clear that the examination of the witness will confine itself only with respect to the fairness in conducting the domestic enquiry and that it will not extend with respect to the merits of the case or with respect to the perversity of the domestic enquiry.

8. To decide this short issue, the judgments relied upon by the learned counsel for respondent will have significance. In those judgments, it has been made very clear that an opportunity must be given to the management to let in evidence in order to establish that there has been a fair and just domestic enquiry. It was also made clear that the evidence must confine only to this issue and it cannot be extended with respect to the merits of the charge or the misconduct for which the proceedings came to be initiated and punishment was imposed on the delinquent employee.

9. In the instant case, the petitioner having raised a preliminary objection on the fairness of the enquiry that was conducted



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by the respondent, the respondent management must be given an opportunity to lead oral evidence with respect to the fairness in conducting the domestic enquiry. The management cannot be shunted even without giving this opportunity. It is not as if the petitioner will not have an opportunity and it will always be open to the petitioner to cross-examine the witness, who is examined on the side of the respondent management. The Tribunal itself has made it very clear that the evidence will not extend with respect to the merits of the case or with respect to the perversity of the domestic enquiry. Such direction given by the Tribunal will sufficiently safeguard the interest of the petitioner.

10. In the light of the above discussion, this Court does not find any illegality in the order passed by the Industrial Tribunal and accordingly, the same is sustained. In the result, this writ petition is dismissed and there shall be a direction to the Industrial Tribunal, Puducherry, to complete the proceedings within a period of three months from the date of receipt of the copy of this order. No costs.

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Internet : Yes
Index : Yes/No
Speaking Order / Non Speaking Order
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To
The Industrial Tribunal
Puducherry



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N. ANAND VENKATESH, J.

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