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W.P.Nos.34791, 34824, 34855 of 2013 & 145 to 147 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2023

Pronounced on : 06.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.34791, 34824, 34855 of 2013 & 145 to 147 of 2014 and
MP.Nos.2 of 2013, 1 & 2 of 2014

WP.No.34791 of 2013

M/s.MRF Ltd.,
Represented by its General Manager,
Arkonam Tiruttani Main Road,
Ichiputhur, Arkonam Taluk

... Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribunal,
Chennai
2.K.Kumar

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India
praying to issue a Writ of Certiorari calling for the records connected
with AP.No.69 of 1995 on the file of the first respondent, Industrial



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Tribunal, Chennai and to quash the order dated 18.09.2013(along with AP.Nos.58 and 124 of 1995) made therein.

For Petitioner
in all WP's

: Mr.S.Shivathanu Mohan
for M/s.Ramasubramaniam &
Associates

R1 in all WP's

: Tribunal

For R3 to 5
in WP.No.34824 of 2013,

For R2
in WP.No.34791 of 2013,

For R2
in WP.No.34855 of 2013 &

For R2
in WP.Nos.145 to 147 of 2014 : Mrs.C.S.Monika

COMMON ORDER

These writ petitions have been filed challenging the common awards dated 18.09.2023 passed in AP.Nos.57, 58, 69, 70, 118 & 124 of 1995, thereby dismissed the approval petitions filed by the petitioner to approve the orders of dismissal of the second respondent in all the writ petitions.



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2. The petitioner is hereinafter called as 'management' and the second respondent in all the writ petitions are hereinafter called as 'workmen'. The management is engaged in the manufacture of tyres, tubes, flaps and beltings using sophisticated machinery at its factory premises situated at Arakonam. The workmen joined in the service of the management as probationer and on completion of their probation period, they were confirmed in their respective services. While being so, on 27.09.1992, the workmen armed with deadly weapons and had gone to their co-employee's house i.e. Ramamurthi Naidu and dragged him out and assaulted him. They also warned him against reporting to work and threatened his family members with dire consequences. The said Ramamoorthy Naidu suffered injuries and he was admitted into Government Hospital. Similarly, on 15.12.1992 another incident had taken place by the workmen against another person. Therefore, the workmen were issued charge sheet on 11.01.1993 alleging misconduct under clause 22 sub-clause (20), clause 22 sub-clause (21) and clause 22 sub-clause (30) of the Certified Standing Orders of the management.



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2.1 On receipt of the charge sheet, the workmen submitted their explanation and the explanation was not satisfactory. Therefore, the management decided to conduct domestic enquiry. Separate domestic enquiry was held against each one of the delinquent workmen. The victim was examined on the side of the management and several documents were exhibited before the enquiry officer. However, the workmen did not participate in the enquiry and as such, they were set exparte before the enquiry officer. Enquiry Officer concluded his findings and submitted enquiry report. Accordingly, charges levelled against the workmen were proved. On perusal of enquiry officer's report, the workmen were served with second show cause notice. On receipt of the same, they submitted their explanation. The management dismissed the workmen from their service of the management. It was duly communicated to the workmen on 02.09.1995. Thereafter, the management filed applications for approval of the orders of the dismissal as contemplated under Section 33 (2) (b) of the Industrial Disputes Act before the Industrial Tribunal, Chennai. However, the approval petitions were dismissed.



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3. Mr.S.Shivathanu Mohan, the learned counsel for the management submitted that based on the complaint lodged by the injured persons, the workmen were served with charge sheet. The injured persons were duly deposed before the enquiry officer that the workmen were assaulted them. Even sufficient opportunity was given to the workmen, they failed to appear before the enquiry officer and also did not cross examine the management witnesses. Therefore, there is no question of violation of principles of natural justice. In fact, before the enquiry, all the documents which were annexed along with the charge sheet duly served on the workmen. They were also paid subsistence allowance during the interregnum period. Even then, the Tribunal held that they were not paid subsistence allowance and as such they were not able to defend the charge in proper manner. Therefore, the reasons given by the Tribunal suffer from errors apparent on the face of the record and it is liable to be interfered with under Article 226 of the Constitution of India.



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3.1 He further submitted that there is absolutely no prejudice caused to the workmen for non supply of the complaint. The workmen was duly served charge sheet. Therefore, merely because the complaint copy was not served on the delinquent, would not render the domestic enquiry itself opposed to the principles of natural justice. The Industrial Tribunal also held that the discrepancy in the particulars given on the charge sheet when compared with the wound certificate of the victim. The difference was not material enough to throw out the entire charges particularly when the workmen in the presence of the injured, had accepted and agreed that the incident had taken place. Once the guilt was admitted by the workmen, no need to prove the same. Therefore, the findings of the Industrial Tribunal is perverse. Though the domestic enquiry was not held in a fair and proper manner, it would be open to the management to let in evidence before the Industrial Tribunal to establish the act of misconduct indulged by the workmen. The jurisdiction vested in an Industrial Tribunal remained always to see whether a *prima facie* case was made out by the evidence on record. The provision did not change depending on whether or not enquiry was held. Further, unlike in



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proceedings under Section 10 or under Section 2 (A) of the Industrial Disputes Act, the jurisdiction of the Industrial Tribunal in proceedings under Section 33 (2) (b) is totally different from the proceedings arising under reference or Section 2(A). Therefore, there is absolutely no necessity for Tribunal to assess evidence therein to see whether more than a *prima facie* case had been made out or not. Therefore, the limited jurisdiction of the Tribunal is available throughout to all the proceedings pending before the Industrial Tribunal and the limitation is that the domestic enquiry is proper and fair. It is not the *lis* in that case and can be only 'obiter' if at all as can be seen by the verdict that starts with the words 'in other words' in the order of the Tribunal. Therefore, the Tribunal has no jurisdiction to assess the evidence and no jurisdiction to conclude whether on the basis of 'preponderance of probabilities' the charges had been made out.

3.2 He further submitted that where there was no domestic enquiry which has been held by the employer or where the domestic enquiry has been difficult and the employer lets in evidence, the



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Industrial Tribunal would get jurisdiction to see whether there is evidence to support possibly the view taken by the employer that the charges have been proved. Therefore, analysing the evidence is not at all possible when the Industrial Tribunal dealt with jurisdiction under Section 33 (2) (b) of Industrial Disputes Act. It could not go into 'probabilities of the case' which would be exclusively within the jurisdiction and purview of a Court sitting in reference jurisdiction under Section 10 of the Industrial Disputes Act.

3.3 He further submitted that the duty of the Tribunal was to consider whether the charges relating to riotous and disorderly behaviour had been made out based on the oral and documentary evidence letting in before it and the refusal to examine this crucial contradiction goes to the root of the matter. Even assuming enquiry proceedings where the enquiry has been held to be vitiated, cannot be looked at, deposition by the workmen in the domestic enquiry. The deposition of the workmen can be relied upon for limited purpose of noticing that what he now says is opposed to his own stand in the domestic enquiry. Therefore, before the



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Industrial Tribunal what was required was an examination whether the evidence available before the Industrial Tribunal would on the basis of preponderance of probabilities establish whether the misconduct had been made out or not. Therefore, the findings of the Industrial Tribunal is perverse and liable to be interfered with. In support of his contention, he relied upon the following judgments:

- (i) ***Martin Burn Ltd Vs. R.N. Bangerjee*** reported in ***(1958) 1 LLJ 247***
- (ii) ***Punjab National Bank Ltd Vs. Worken*** reported in ***AIR 1960 SC 160***
- (iii) ***Mysore Steel Works Private Ltd Vs. Jitendra Chandra Kar and others*** reported in ***1968 SCC Online SC 4***
- (iv) ***Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*** reported in ***(1976) 1 SCC 518***
- (v) ***Lalla Ram Vs. DCM Chemical Works Ltd*** reported in ***(1978) 3 SCC 1***
- (vi) ***Cholan Roadways Ltd Vs. Thirugnanasambandam*** reported in ***(2005) 3 SCC 241***
- (vii) ***John D-Souza Vs. Karnataka State Road Transport Corporation*** reported in ***(2019) 18 SCC 47***
- (viii) ***The Management, Tamilnadu State Transport Corporation(Villupuram) Ltd. Vs. The Special Deputy***



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Commissioner of Labour rendered in WP.No.26964
of 2014 by this Court

(ix) ***The Management of Brakes India Limited Vs.***

The Presiding Officer, I Additional Labour Court

rendered in WP.No.7909 of 2014 by this Court

4. The workmen filed counter and Mrs.C.S.Monika, the learned counsel appearing for the workmen submitted that though the workmen worked for years together they were not made permanent. They were paid lesser wages though the factory is a profit making unit. A puppet Union created by the management i.e. MRF Cycle Tyres Unit Employees Association signed settlement with the management in the dotted lines as decided by the management against the wishes and welfare of the workmen. When the workmen objected the said puppet Union, since it acted against the provisions of Payment of Wages Act, under these circumstances, the workmen started another Union called MRF United Workers Union. While being so, in the month of August 1991, about 70 workmen were placed under suspension as a measure of victimisation for genuine trade union activities. On the complaint lodged



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by the workmen, though the management agreed before the Police personnel that disciplinary action would be dropped against the workmen, the management dismissed the Office Bearers of the Union. Under these circumstances, the management closed the gate of the factory on 21.09.1992 and refused employment to all the workmen. All the workmen were terminated on the ground that their services were not satisfactory and also alleged that the period of apprenticeship or probation came to an end. These terminations were only against their trade union activities and their affiliation in the Union.

4.1 She further submitted that after denying employment, the management had sent individual notices to all the workmen declaring lockout. Thereafter, the workmen were denied employment and as such, they raised Industrial dispute before the Joint Commissioner of Labour. During the pendency of the dispute, some of the workmen were terminated from their service. Therefore, the Government referred the dispute of the individual for adjudication. While pending industrial dispute, the management has taken large number of workmen into service



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and few were given compensation by entering into individual settlement leaving the second respondents. Under these circumstances, they were served charge sheet alleging that on 27.09.1992, they entered into the house of one, Ramamurthi Naidu with deadly weapons and assaulted him. As such, it constituted misconduct under clause 22 sub-clause (20), clause 22 sub-clause (21) & clause 22 sub-clause (30) of the Standing Orders. Immediately, the workmen sent a letter to furnish the reports based on the charge sheet to submit their explanation. However, they were not furnished any basic reports and ordered for a domestic enquiry. Further, the management without giving sufficient opportunity to submit their explanation, ordered for domestic enquiry by its notice dated 16.04.1983. Therefore, Industrial Tribunal rightly dismissed the approval petitions and they are not liable to be interfered with since there is no perverse on the findings of the Industrial Tribunal.

4.2 She further submitted that the Tribunal rightly rejected the contention of the management that the second respondents should have entered into the witness box and ought to have claimed that he had no



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knowledge about the enquiry. As per the certified standing order 24 of the management is clear that it is deemed service if it is sent to last known address by RPAD under certificate of posting. If acknowledgment was not required, the Standing order would not include the words “acknowledgment due” along with registered post. Therefore, the requirement of service being acknowledged by the workmen and the deeming provision only reflects the presumption which has to yield when the actual facts show otherwise. Therefore, the non service of notice in accordance with the standing order does not deserve interference by this Court. The workmen were entitled for subsistence allowance. When the individual lockout issued against the 71 workmen, they raised industrial dispute in ID.No.11 of 1994. In the claim statement, they categorically averred that what the management has done is placing the workmen under suspension for an interregnum period without any wages or subsistence allowances which is obviously contrary to the Standing orders Act, Payment of Subsistence Allowances Act and in violation of the Article 21 of the Constitution of India. Therefore, it does not require any written order of suspension to be issued. When the workmen



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debarred temporarily from attending their work on the ground that enquiry is contemplated or is pending, the workmen is under suspension as defined under Section 2 (g) of the Tamilnadu Payment of Subsistence Allowances Act, 1981. Therefore, it causes serious prejudice to the workmen and the Tribunal rightly rejected the approval petitions.

5 Heard, Mr.S.Shivathanu Mohan, the learned counsel appearing for the petitioner and Mrs.C.S.Monika, the learned counsel appearing for the workmen.

6. The workmen were served with charge memo dated 11.01.1993 alleging that on 15.12.1992 at about 3.15 p.m., the workmen along with 30 others attacked their co-employee Mr.Subramani when he was about to board the company bus with intention to do away his life. Further alleged that when one Mr.Palani, the bus driver went there to rescue the said Subramani, he was also attacked brutally and both of them were taken into Government Hospital for treatment. However, the said Palani was not admitted into hospital and he was treated as



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out-patient. The charge memos for the above said charges were served on the workmen with regards to WP.Nos.145, 146 & 147 of 2014. In respect of the workmen in another three writ petitions in WP.Nos.34824, 34791 & 34855 of 2013 were served with charge memo alleging that on 27.09.1992 at about 9.00 p.m., the workmen along with 30 others entered into house of one, Ramamurthi Naidu and dragged him out from his house and assaulted him. They also threatened him with dire consequences. All the workmen after receipt of the charge memo, asked for the complaint based on which the charge memo was issued to them. They asked for the complaint to enable them to give a detailed explanation. However, without considering the same, the management appointed enquiry officer and the enquiry officer issued notice for enquiry to the workmen. While pending enquiry, the workmen were also sought for subsistence allowance. However, they were not paid any subsistence allowance by the management. Separate enquiry was held as against all the workmen. They were set exparte before the enquiry officer and without their presence, the enquiry officer conducted and concluded that the charges were held proved against them.



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7. On the basis of the enquiry report, the management dismissed them from service. Admittedly, the workmen were not paid any subsistence allowance and as such, they were not able to attend the enquiry to defend the charges. They were set exparte before enquiry officer. Already they were facing individual lockout notice and as such they were not paid any salary. Hence, the workmen already raised industrial dispute in ID.No.11 of 1994 related to whether individual lockout imposed on the workmen who are the subject of the lockout is justified.

8. On perusal of claim petition filed in ID.No.11 of 1994, they averred that what the management has done is placing the workmen under suspension for an indefinite period without any wages or subsistence allowances which is obviously contrary to the standing orders Act, Payment of Subsistence Allowances Act and in violation of Article 21 of the Constitution of India. The definition of suspension under Section 2 g of Tamilnadu Payment of Subsistence Allowance Act



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does not require a written order of suspension to be issued. When an employee debarred temporarily from attending to his office and performing his functions in the establishment on the ground that an enquiry is contemplated or is pending, he is under suspension as defined under Section 2(g) of the Tamilnadu Payment of Subsistence Allowances Act. The workmen were served with lockout notice from 21.09.1992. Therefore, they were debarred from attending office and performing their functions. Subsequently, they were served with charge memo on 11.01.1993 for the occurrence taken place on 27.09.1992 and 15.12.1992. Therefore, the workmen were under suspension within the meaning of Section 2(g) of the Tamilnadu Payment of Subsistences Allowance Act. Further, the workmen were not served with copy of complaint along with charge memo. Therefore, they sought for copy of the complaint to be furnished by the management so that they can properly submit their explanation. In the case of ***S.Rengarajan Vs. Srirangan Janopakara Bank Ltd*** reported in ***1962 II LLJ 482***, this Court held as follows:

...Reasonable opportunity means not only framing of charges and asking for explanation but much more. He must



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be apprised of the material on which the charges were framed so that he could have a proper opportunity of testing or challenging that material so far as would be possible for him.

9. One of the aspect of principles of natural justice is fair enquiry. If the charge memo really was on the basis of the complaint, nothing prevented the management to serve the copy of the complaint when the workmen asked for the same. Therefore, it causes prejudice to the workmen. Further, the learned counsel for the management vehemently contended that the Tribunal is not an appellate authority and is not competent to re-appreciate the evidence. In this regard, the Hon'ble Supreme Court of India held in the case of ***Delhi Cloth and General Mills Vs. Ludh Budh Singh*** reported in ***1972 (1) SCC 595*** as follows:

Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings, are not based on legal evidence or are, such as no reasonable person could have arrived 'at on the basis of the material before the Tribunal. In each of these cases, the findings are treated as perverse



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10. In the case on hand, as per FIR, charge memo was served with the workmen and there is contradiction. After analysing the contradiction through the evidence, the Tribunal found that the enquiry was not conducted properly. Therefore, the Tribunal held that in the absence of examination of the doctor in the departmental enquiry insofar as the injury sustained by the complainant, looked into the deposition given by the doctor in the criminal case and found that the doctor gave a different opinion on injury caused by five persons and found that the allegations in the complaint are not borne out by evidence. Further, in the case of ***G.M.Tank Vs. State of Gujarat*** reported in ***2006 (5) SCC 446***, the Hon'ble Supreme Court of India held as follows:

In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one



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and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

11. On perusal of the verdict of the criminal court also found that the charges against the workmen were not proved beyond reasonable



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doubt and acquitted the workmen from criminal charges. The learned counsel for the petitioner management further contended that the Tribunal has no jurisdiction to go into analysing the evidence. The jurisdiction of the Tribunal under Section 32(2)(b) is different from the jurisdiction of the Tribunal under Section 10 of the Industrial Disputes Act. The analysing of the evidence can be done in a reference under Section 10 and it cannot be done by the Tribunal sitting under the jurisdiction of Section 32(2)(b). In this regard, he relied upon the judgment in the case of ***John D'Souza Vs. Karnataka State Road Transport Corporation*** reported in ***(2019) 18 SCC 47***, wherein the Hon'ble Supreme Court of India held as follows:

21. *The Legislature has, thus, provided a self-contained mechanism through Section 10 read with Sections 11(3) and 11A of the Act, for adjudication of an 'industrial dispute' stemming out of an order of discharge or dismissal of a workman. Having done so, it can be safely inferred that neither the Legislature intended nor was there any legal necessity to set-up a parallel remedy under the same Statute for adjudication of the same 'industrial dispute' by the same Forum of Labour Court or Tribunal via Section 33(2)(b) of the Act. To say it*



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differently, Section 33(2)(b) has been inserted for a purpose other than that for which Section 10(1)(c) and (d) have been enacted. Section 33(2)(b), thus, is neither meant for nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability or otherwise sustainability of a punitive action taken against a workman.

22. Having held so, it should not take long to trace out the legislative object behind incorporation of Section 33, including sub-section (2) thereof. The caption of Section 33 itself sufficiently hints out that the primary object behind this provision is to prevent adverse alteration in the conditions of service of a workman when 'conciliation' or any other proceedings in respect of an 'industrial dispute' to which such workman is also concerned, are pending before a Conciliation Officer, Board, Arbitrator, Labour Court or Tribunal. The Legislature, through Section 33(1)(a) and (b) has purposefully prevented the discharge, dismissal or any other punitive action against the workman concerned during pendency of proceedings before the Arbitrator, Labour Court or a Tribunal, even on the basis of proven misconduct, save with the express permission or approval of the Authority before which the proceedings is pending.



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Sub-section (2) of Section 33 draws its colour from sub-Section(1) and has to be read in conjunction thereto. Sub-section (2), in fact, dilutes the rigours of sub-section (1) to the extent that it enables an employer to discharge, dismiss or otherwise punish a workman for a proved misconduct not connected with the pending dispute; in accordance with Standing Orders applicable to the workman or in absence thereof, as per the terms of contract; provided that such workman has been paid one month wages while passing such order and before moving application before the Authority concerned 'for approval of the action'. In other words, the Authority concerned (Board, Labour Court or Tribunal, etc.) has to satisfy itself while considering the employer's application that the 'misconduct' on the basis of which punitive action has been taken is not the matter sub-judice before it and that the action has been taken in accordance with the standing orders in force or as per terms of the contract. The laudable object behind such preventive measures is to ensure that when some proceedings emanating from the subjects enlisted in Second or Third Schedule of the Act are pending adjudication, the employer should not act with vengeance in a manner which may trigger the situation and lead to further industrial unrest.



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12. Thus, it is clear that the provision under Section 33(2)(b) of the fact, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. In the case on hand also, the Tribunal found that the workmen were not given enough opportunity to put forth their defence before the enquiry officer. Therefore, it is clear violation of principles of natural justice. They were not served copy of the complaint and they were not paid subsistence allowance. Therefore, the Tribunal rightly interfered with the enquiry and held that it was not fair and proper. The Tribunal further held that there is no evidence to prove the charges. Hence, the judgments cited by the learned counsel for the petitioner management are not helpful to the case on hand.



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13. On perusal of the award also revealed that the Tribunal rightly dismissed the approval petitions on the ground that another victim one, Palani who allegedly came for rescue, was not examined in the departmental enquiry. To substantiate the allegation, no passengers in the bus who travelled along with the victim Subramani were examined either by prosecution or by the management in order to prove the alleged assault. Further, the wound certificate of the injured produced by the management revealed that it was issued after period of six months from the date of the occurrence. But, the said Subramani was admitted as in-patient between 15.12.1993 to 18.12.1993. Though the management specifically contended that the person who had gone for rescuing the said Subramani was also admitted, however there is no evidence to show that the said Palani was also assaulted by the workmen and no evidence to show that he was admitted as in-patient. Therefore, in the absence of these evidences, the findings of the enquiry officer is perverse and against the evidence. As such, non-examining of these materials by the enquiry officer and non production of any independent witness by the management gave rise to the findings of the Tribunal that the enquiry



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officer's findings of guilt is perverse. Therefore, the finding is a reasonable finding and cannot be interfered with under Article 226 of the Constitution of India. In this regard, it is relevant to rely upon the judgment of this Court in the case of **Management of Bata India Limited, Hosur and Another Vs. Presiding Officer, Industrial Tribunal, Tamilnadu and Others** reported in **2010-II-LLJ-175 (MAD)**, wherein it is held as follows:

*18.From the above said categorical legal position, it is clear that the scope of jurisdiction of this Court under [Article 226](#) of the Constitution of **India** in issuing writ of certiorari is restricted to cases where there are manifest error in the impugned order or the order is contrary to the provisions of law or the order has been passed without jurisdiction or in cases where the authority, while passing orders has taken into consideration certain extraneous matters which are not relevant or in cases where the authority has failed to take into consideration certain relevant factors, particularly the basic principle that on the materials available, no ordinary reasonable person would come to such a conclusion."*



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14. Therefore, the findings of the Tribunal that the enquiry was not fair and proper do not suffer from any manifest error and they are not liable to be interfered with in exercise of power under Article 226 of Constitution of India. Accordingly, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

06.10.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Presiding Officer,
Industrial Tribunal,
Chennai
- 2.The Government Advocate
High Court, Madras.

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