



W.P.Nos.7465 to 7469 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders Reserved on : 061523

Orders Pronounced on : 071723

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition Nos.7465 to 7469 of 2013

and

M.P.Nos.1 of 2013

W.P.No.7465 of 2013

M/s.Suolificio Linea Italia (India) Private Limited,
Seddarpet, Puducherry 605111,
Rep. by its Authorized Signatory
G.Karthi

..... Petitioner

-Versus-

1.K.Sachudanandam

2.The Presiding Officer,
Labour Court, Pondicherry.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the record relating to the award dated 13.08.2012 made in I.D.No.33 of 2011 on the file of the 2nd respondent – Presiding Officer, Labour Court, Pondicherry, and to quash the award dated 13.08.2012.



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W.P.Nos.7465 to 7469 of 2013



W.P.Nos.7465 to 7469 of 2013

W.P.No.7466 of 2013

M/s.Suolificio Linea Italia (India) Private Limited,
Seddarpet, Puducherry 605111,
Rep. by its Authorized Signatory
G.Karthi

..... Petitioner

-Versus-

1.S.K.Manikandan

2.The Presiding Officer,
Labour Court, Pondicherry.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the record relating to the award dated 13.08.2012 made in I.D.No.34 of 2011 on the file of the 2nd respondent – Presiding Officer, Labour Court, Pondicherry, and to quash the award dated 13.08.2012.

W.P.No.7467 of 2013

M/s.Suolificio Linea Italia (India) Private Limited,
Seddarpet, Puducherry 605111,
Rep. by its Authorized Signatory
G.Karthi

..... Petitioner

-Versus-

1.P.Jayamurthy

2.The Presiding Officer,
Labour Court, Pondicherry.



W.P.Nos.7465 to 7469 of 2013

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the record relating to the award dated 13.08.2012 made in I.D.No.35 of 2011 on the file of the 2nd respondent – Presiding Officer, Labour Court, Pondicherry, and to quash the award dated 13.08.2012.

W.P.No.7468 of 2013

M/s.Suolificio Linea Italia (India) Private Limited,
Seddarpet, Puducherry 605111,
Rep. by its Authorized Signatory
G.Karthi

..... Petitioner

-Versus-

1.S.Radhakrishnan

2.The Presiding Officer,
Labour Court, Pondicherry.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the record relating to the award dated 13.08.2012 made in I.D.No.36 of 2011 on the file of the 2nd respondent – Presiding Officer, Labour Court, Pondicherry, and to quash the award dated 13.08.2012.

W.P.No.7469 of 2013

M/s.Suolificio Linea Italia (India) Private Limited,
Seddarpet, Puducherry 605111,
Rep. by its Authorized Signatory



W.P.Nos.7465 to 7469 of 2013

G.Karthi

..... Petitioner

-Versus-

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1.D.Pachamuthu

2.The Presiding Officer,
Labour Court, Pondicherry.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the record relating to the award dated 13.08.2012 made in I.D.No.37 of 2011 on the file of the 2nd respondent – Presiding Officer, Labour Court, Pondicherry, and to quash the award dated 13.08.2012.

*For Petitioner (s) : Mr.S.Ravi,
Senior Counsel for
M/s.Gupta & Ravi for
petitioners in all Writ Petitions*

*For Respondents : Mr.P.R.Thiruneelakandan for R1
in all Writ Petitions
R2 – Labour Court in all
Writ Petitions*

COMMON ORDER

This batch of writ petitions challenges the individual awards dated 13.08.2012 passed in I.D.Nos.33, 34,35, 36 and 37 of 2011, by the Presiding Officer, Labour Court, Pondicherry, allowing the industrial disputes by directing reinstatement of the respective workmen into service with continuity



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of service and back wages and other attendant benefits.

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2. The common case of the management is that the workmen, who are 1st respondent in the respective writ petitions had gone on a strike, which was illegal and it had affected the production. The workmen were also accused of having abused the Manager - Human Resources as well as company employees in a filthy language and had threatened the employees with dire consequences. Such acts of the workmen were against the company's standing order. Hence, the management had issued a show cause notice to the workmen individually. The management further stated that it had conducted an enquiry and fair opportunity had been given to the workmen. Based on the enquiry report, the workmen were dismissed from service. Challenging the order of dismissal, the workmen went on conciliation proceedings and since the conciliation proceedings did not come to an end within forty-five days, the workmen initiated proceedings before the labour court, Pondicherry.

3. The labour court conducted enquiry in the industrial disputes individually. Before the labour court, the respective workmen examined themselves as W.W.1 and one Nilavazhagan was examined as W.W.2 and



marked various documents. Similarly, one Ms. E.Kala, Manager – Human

Resources of the management examined herself as M.W.1 and marked some documents. After going through the records and the evidence, the labour court came to the following conclusions:-

- i.The enquiry was not conducted in a fair and proper manner;
- ii.The enquiry was proceeded to fulfil the formalities without giving fair opportunities to the workmen;
- iii.The signature of the defence assistant was not taken in the place of enquiry but was obtained at Lawspet a place in Pondicherry;
- iv.Time granted to submit explanation within twenty-four hours to the show cause notice was insufficient;
- v.The management had not sent a copy of the enquiry report along with the show cause notice;
- vi.The acts of the management are in violation of principles of natural justice; and
- vii.The procedure adopted in domestic enquiry by the management was not within the parameters of labour legislation and principles of natural justice.

4. On the above basis, the labour court held that the non-employment of the workmen and their dismissal from service is unjustified and is illegal



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and directed reinstatement of the workmen into service with continuity of service and back wages and other attendant benefits.

5. I have heard Mr. S.Ravi, learned senior counsel appearing on behalf of M/s.Gupta and Ravi, representing the management in the writ petitions and Mr. P.R. Thiruneelakandan, learned counsel appearing for the workmen in the respective writ petitions.

6. Mr.S.Ravi would not go into the merits of the order. He would draw my attention to the counter statement filed at page 51, in particular, the following paragraph :-

14. எவ்வாறாயினும் உள்விசாரணை சரியானமுறையில் நடத்தவில்லை என்ற முடிவுக்கு நீதிமன்றம் வருமேயானால், மனுதாரரின் மீது எடுக்கப்பட்ட நடவடிக்கையை நியாயப்படுத்த தகுந்த வாய்ப்பு அளிக்குமாறு இந்த எதிர்மனுதாரர் பிரார்த்திக்கிறார்,

7. Mr.S.Ravi would, in support of his submission, rely upon the following judgements of the Supreme Court in

***i.Delhi Cloth and General Mills Co. v. Ludh
Budh Singh [(1972) 1 SCC 595];***



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- ii. Workman of M/s. Firestone Tyre & Rubber Company of India (P) Limited v. Management of Firestone Tyre and Rubber Company of India (P) Limited [(1973) 1 SCC 813];***
- iii. Shankar Chakravarti v. Britannia Biscuit Company Limited [(1979) 3 SCC 371] and***
- iv. KSRTC v. Lakshmiddevamma, (2001) 5 SCC 433.***

8. Rebutting the aforesaid submissions, Mr. P.R.Thiruneelakandan, learned counsel appearing for the respective workmen would contend that the management never sought for opportunity to let in evidence. Only a statement in the counter alone was made and there is nothing on record to show that during the course of proceedings before the labour court, such a plea was pressed before the learned Presiding Officer of the Labour Court.

9. I have carefully considered the arguments of either side and gone through the authorities cited by Mr. S.Ravi, learned senior counsel appearing for the petitioner management.

10. In the instant cases, the labour court had come to the conclusion



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11. At the stage of the cross examination, the counsel for the management did not object to the questions that were being asked on the merits of the case. Let us now see the responses of MW.1 to the charges that had been laid against the workmen. One of the allegations against the workmen was that they had abused the co-employees and the Manager – Human Resources in filthy language. In order to substantiate the same, no evidence, apart from the evidence of the Manager – Human Resources, were put forth. The workmen is said to have abused the company supervisors but none of the supervisors were examined by the management. The management did not choose to examine them when it still had the time to do so. The records do not reveal as if any such request was also made. Apart from that, Ms.E.Kala, who went into the witness box had categorically admitted in her cross-examination that no complaint was received from the supervisors concerned.

12. The said Ms.E.Kala had also stated that there was no evidence to prove that on account of the illegal strike, the company suffered monetary loss. She would also admit that she had not lodged any complaint against any workman for the use of abusive language. When such categorical admission



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had been made, nothing prevented the management from letting in evidence before the labour court in order to substantiate the charges.

13. I have to further add that the evidence of Ms.E.Kala (M.W.1) also does not prove the charge that the workmen were responsible for stoppage of machinery. The evidence is that Ms. Kala does not KNOW who were responsible for the stoppage of machinery. The conclusion that one can arrive from the analysis of MW.1's deposition is as follows: -

- i. There was no complaint against the workmen by supervisors,
- ii. There was no evidence against the workmen for having abused the supervisors,
- iii. There is no evidence that the management suffered monetary loss,
- iv. There is no evidence that the workmen were responsible for stoppage of machinery.

14. The consequence of this discussion is that the writ petitioner had not confined itself to the plea that if the court finds the enquiry to be bad, it should be given an opportunity to prove the case before the labour court. On



the contrary, the management witness had deposed on the merits of the case.

The extract of the list of dates of hearing set forth below would show that at no point of time, even a request was made for grant of such permission. The management had also not taken effort to examine supervisors or financial controllers to substantiate the case. If I were to allow the writ petition and remand it, as requested by Mr. S. Ravi, there is a distinct possibility of these clear and categorical admissions made during the course of cross examination of MW.1 being withdrawn. I should add that it is not a case of unsatisfactory evidence. Going through the cross examination shows that there was NO evidence.

15. The workmen themselves have admitted that there was a dispute over wage increase and that they had demanded wage increase on the basis of seniority. When a person is charged with a serious allegation of affecting industrial peace, the burden is on the management to prove that they had conducted proper enquiry and at the end of it, an opportunity was given to each of the charged workmen to give explanation to the said Charge.

16. Here is the case – where no evidence worth its salt had been let in



to prove that the copy of the alleged enquiry reports had been given to each of the workmen and explanation had been asked from them. Vague and unsubstantiated charges cannot be a ground for imposing capital punishment of dismissal from the service.

17. Law requires evidence to bring home the charges against a workman. If there are none, consequences follow. The same cannot be defeated on the ground that the management had sought for evidence but the court did not grant the same. The plea should be supported by some effort on part of the management to put its words into action. Having failed to do so at the appropriate stage of proceeding, I am not willing to accept that a mere statement, without an effort, should still result in the setting aside of the order.

18. Apart from that, labour court also found from the perusal of Ex.P7 that the management had not sent the copy of the enquiry reports along with show cause notices but still called upon the workmen to give their explanations. First, this is a factual finding and sitting under Article 226, I cannot interfere with the same. Nonetheless, I went through the records and did not find any such proof.



WEB COPY 19. Secondly, I concur with the finding of the labour court that this shows the entire idea was to comply with the law as a formality and not to conduct the enquiry in letter and spirit.

20. Thirdly, I have to take notice of the evidence of W.W.2- Nilavazhagan. He had entered into the witness box in support of the workmen. He had clearly stated that his signature as a defence witness was not taken on the completion of enquiry but at a place near Uzhavar Sandhai at Lawspet. In other words, the report was prepared and signature was taken not in the presence of workmen. All these facts are substantiated by evidence and I cannot re-appreciate the same in a proceeding under Article 226 of the Constitution of India.

21. Perhaps, finding that the enquiry as well as non-issuance of show cause notice is against the principles of natural justice and cannot be supported, Mr.S.Ravi, learned senior counsel turns to take support of the verdicts of the Supreme court. He would urge that management should have been given an opportunity to prove their case before the labour court. He



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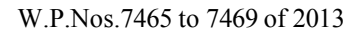
would urge that since the opportunity was not granted, the award should be set aside and the matter be remitted to the labour court for such purposes.

22. Mr.S.Ravi would argue that the management had stated in their counter statement that if the labour court comes to a conclusion that the enquiry was not in compliance with the principles of natural justice or unfair, they should be given an opportunity to substantiate the same. Since the labour court had failed to do so, the writ petitions should be allowed. He would say that the failure to give an opportunity vitiates the awards.

23. I am unable to agree with the contention of the learned senior counsel for the petitioner management. There are certain reasons why I am unable to accept the arguments of Mr.S.Ravi. I shall set them below in seriatum.

LACK OF PLEADING IN THE AFFIDAVIT

24. If the management had been serious about this plea, that would have been one of the first points urged in the affidavit. The plea is a mixed question of law and fact. It is in this sense that the fact is non-grant of permission to the management to let in evidence. The law involved is grant of



NEW POINT NOT RAISED IN WRIT PETITION

JOINING IN ISSUE

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27. I have gone through the evidences of both the parties. It is clear that they had 'joined in issue on the merits of the case'. Having joined in issue on the merits of the case and having been suffered an order, it is too late for the petitioner management to plead that the labour court had committed an error in not passing a preliminary award first and holding the enquiry report to be bad and proceeding further to test under Section 11A of the Industrial Disputes Act, 1947.

DISCUSSION ON JUDGEMENTS

28. The power of the labour court to give a verdict on a preliminary objection with respect to the enquiry and thereafter on the merits of the case is not statutory in nature but, it is only a judge made law. This is clear from the perusal of the Industrial Disputes Act as well as the constitutional bench judgment in **KSRTC v. Lakshmiddevamma (2001) 5 SCC 433**. The court had held as follows : -

*“Before we proceed to examine this question any further, it will be useful to bear in mind that **the right of a management** to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or Court **is not a statutory right**. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The geneses of this procedure can be*



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traced by noticing the following observations of this Court in *Workmen of Motipur Sugar Factory (P)Ltd. Vs. Motipur Sugar Factory (1965 (3) SCR 588)* :

*If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is **given an opportunity** to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself.”*

29. Prior to this, came the judgment in **Cooper Engineering v. P.P. Mundhe, (1976) 1 SCR 361**. Approving the view in that case, the majority in Lakshmiddevamma’s case held as follows:-

*“14.As is seen from the above, this Court in Cooper Engineerings case held that when the Tribunal/Labour Court **was called upon to decide the validity** of the domestic enquiry same has to be tried as a preliminary issue and thereafter, if necessary, the management was to be given an option to adduce fresh evidence.”*

30. In other words, the management should have called upon the labour court to decide the matter as a preliminary issue. Calling upon implies a positive act on the part of the management. It does not mean that the management can stand by and participate and after the verdict goes against it,



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it can turn around and take a plea that it was not tried as a preliminary issue.

The judgement cited by the learned senior counsel for the petitioner amply show that an option has been given to the employer to let in evidence on merits, once preliminary award is passed holding that the enquiry is not in accordance with law.

31.The question I ask myself is that whether a mere statement in the counter is sufficient to establish the same that to after passage of nearly 12 years from the date of commencement of the dispute. I am afraid that such a remand would not be for the benefit of either the workman or the employer. This is for the simple reason that if after a decade the matter is remanded, either party will not be able to produce witnesses before the labour court to substantiate their respective claims. On the contrary, most of the witnesses by this passage of time would not be able to recall the incidents and even if such incidents are recalled, much weightage cannot be given to the same because, nearly 12 years have gone by. All the judgments cited by Mr. S. Ravi have a golden thread. That being, swift adjudication of disputes without permitting the contesting parties to drag on the matter.

32.If I were to accept the case of Mr. Ravi, then I would only be assisting the management to drag on the matter rather than giving a swift



closure to the case before me.

WEB COPY 33. Turning to the next judgment cited by Mr. Ravi, it is ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh [(1972) 1 SCC 595]***. The Supreme Court was pleased to hold in para 61 as follows:-

“61. From the above decisions the following principles broadly emerge :

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. in such a case, no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the- Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. ”
.....



WEB COPY 34. The relevant paragraphs, I would rely upon for the instant cases are para 61(2) and 61(3). In the instant cases, the management had without prejudice to its pleadings had presented M.W.1-Ms.Kala, Manager – Human Resources to grace the witness box. She entered the box but did not substantiate the case as required by the said judgement. I have gone through the chief examination of M.W.1, who merely filed the documents relied upon by the management. No allegations were made against the workmen in the said chief examination. As pointed out above, in the cross-examination, M.W.1 was not able to show that the enquiry had been conducted in accordance with law. She has stated positively that in order to substantiate the charges against the workmen there is no proof or evidence. Therefore, I hold that the management took a stand of adducing the evidence before the tribunal justifying its actions, but miserably failed on account of lack of evidence.

35. A perusal of the award does not show that the management had filed any application till the closure of the award proceedings seeking permission to let in further oral evidence. The award also does not speak of any oral request on behalf of the management in this regard.



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36. The next judgement which Mr.S.Ravi, would rely upon is the case of ***Workman of M/s.Firestone Tyre & Rubber Company of India (P) Limited v. Management of Firestone Tyre and Rubber Company of India (P) Limited [(1973) 1 SCC 813]***. Para 37 of the judgement would be relevant for the instant cases wherein the Supreme Court had held as under:-

*“37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is **open** to the employer even (1) [1958] S.C.R.667 now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect; and there is no indication that the section has impliedly changed the law in that respect. **Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no, enquiry or the enquiry held by him is found to be defective.**”*

37. Therefore, this judgement would also show that an option has been given to the management to let in evidence to substantiate that the charges made against the workmen were true and that the order of dismissal was proportionate and not excessive. In this case, as already pointed out, despite



the fact that M.W.1 was examined, no further evidence had been let in by the management in order to substantiate their case.

38. Mr.S.Ravi, learned senior counsel would rely upon the judgement in *Shankar Chakravarti v. Britannia Biscuit Company Limited [(1979) 3 SCC 371]*. In the said judgement, in para 28, the Supreme Court had held as under:-

*“28. It was contended that this Court has in unambiguous and incontrovertible terms laid down that **there is an obligatory duty in law fastened on the Labour Court or the Industrial Tribunal** dealing with a case of punitive termination of service either under s.10 or 33 of the Act, irrespective of the fact whether there is any such request to that effect or not, to raise a preliminary issue as to whether domestic enquiry alleged to have been held by the employer is proper or defective and then record a formal finding on it and if the finding is in favour of the workman the employer should be called upon which must demonstrate on record, without waiting for any such request or demand or pleading from the employer, to adduce further evidence to sustain the charge of misconduct if it so chooses to do. **We are afraid that much is being read into the observation of this Court which is not either expressly or by necessary implication stated.** ”*

39. Thus, it is clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the labour court or industrial tribunal, either under Section 10 or Section 33 of the Industrial Disputes Act, questioning the legality of the order terminating the service



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must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, application or written statement, the labour court or the industrial tribunal must give such an opportunity. If the request is made before the proceedings are concluded, the labour court or the industrial tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceeding, there is no duty in law cast on the labour court or the industrial tribunal to give such opportunity. If there is no such obligatory duty in law, failure to give any such opportunity cannot and would not vitiate the proceedings.

40. A careful reading of the judgement would make it clear that mere statement in itself is not sufficient for the purpose of granting an opportunity. This is more so in the present case when the evidence of MW.1 has gone against the management.

41. On first principles, when there is no duty, there is no corresponding right which has been infringed. The management should have been vigilant and should have sought an opportunity, but, it did not do so. It suffered the awards



impugned.

WEB COPY 42. In addition to it, there must be a request that should be made by the management to substantiate its case. In the instant cases, unfortunately, apart from the statement in the counter, nothing further has been brought forth before the labour court in order to substantiate the case that the management had, in fact, made a request to the labour court and the labour court had refused to accede to the same. On the contrary, I find that the management had only examined its Manager – Human Resources. The management had not availed the opportunity given by the labour court to substantiate its case. Unfortunately for the management, Manager - Human Resources was not able to substantiate the charges.

43. It is trite that the judgements of the courts must not be read as a statute. If I were to accept the argument of Mr.S.Ravi then a mere statement in the counter without any further action by the management would suffice for setting aside the awards of the labour court. The reason why I am not in a position to accept that position is because the management had participated in the proceedings in full and took a chance hoping that the award would go in its favour. When it did not happen, today, it turns around and states that an opportunity was not given to it to substantiate its case.



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44. As pointed out by the Supreme Court, there was no obligation in the black letter law on the labour court to call upon the management to adduce evidence. In the instant cases, as seen from the facts, the management had in fact produced a witness for examination but she did not go whole-hog with its case. The labour court cannot be held to be responsible or liable for the act of the management in gambling with the legal strategy it adopted.

EVENTS FROM THE LABOUR COURT

45. Apart from this, nothing prevented the management to object before the labour court that the procedure that it was adopting was wrong. I called for the records from the labour court and went through the same. I am setting forth the adjudications in one Industrial Dispute alone. This is because the proceedings were common in all. It reads as follows:-



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*DISTRICT COURTS,
PUDUCHERRY*

I.D. (L) No.33 / 2011

*Presented in Time and Stamped
aright.*

Sd/xxxx

Sarishtada

r

File 08/11/2011

Issue Summons / Notice

09/12/2011

to defendants / respondents

Sd/- xxxxx

II Additional

District Judge

09.12.2011

Respondents served. Judge is on leave.
Respondent present. For engaging counsel
call on 09.01.2012

Sd/- xxx

II ADJ i/c

09.01.2012

*Mr.P.J.X.Vedhanayagam offers
vakalath for respondent. For
vakalath by respondent 02.02.2012.*

Sd/- xxx

II ADJ i/c



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02.02.2012

Mr.P.J.X.Vednayagam filed vakalath for respondent. Counter by 01.03.2012.

Sd/- xxx

II ADJ i/c

01.03.2012

Counter. Time Extended

29.03.2012

Sd/- xxx

II ADJ i/c

29.03.2012

Counter. Finally 19.04.2012

Sd/- xxx

II ADJ i/c

19.04.2012

Counter filed. Enquiry by

14.06.2012.

Sd/- xxx

II ADJ i/c

14.06.2012

P.W.1 present. Proof affidavit filed. P1 to P13 marked. Cross by 21.06.2012.

Sd/- xxx

II ADJ



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21.06.2012

PW1 cross 22.06.2012

Sd/- xxx

II ADJ

22.06.2012

*P.W.1 present for P.W.1 cross
by 05.07.2012.*

Sd/- xxx

II ADJ

05.07.2012

*Judge is on leave. P.W.1
present. For P.W.1
cross 13.07.2012.*

Sd/- xxx

II ADJ

13.07.2012

*P.W.1 present. Respondent and
respondent's counsel absent. P.W.1
cross by 19.07.2012.*

Sd/- xxx

II ADJ

19.07.2012

*PW1 present. P.W.1 cross by
26.07.2012.*

Sd/- xxx

II ADJ



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26.07.2012

Reception of d/c petition filed by respondent and allowed. P.W.1 cross examined in full. Further evidence 27.07.2012.

Sd/- xxx

II ADJ

27.07.2012

P.W.2 present and examined in full. Petitioner's evidence closed. Respondent evidence by 30.07.2012

Sd/- xxx

II ADJ

30.07.2012

P.W.1 present. Respondent called absent till 4 p.m. Respondent's evidence by 31.07.2012.

Sd/- xxx

II ADJ

31.07.2012

*R.W.1 present. Examined in full. R1 to R8 marked. P.14 marked. **Evidence closed.** Arguments. 01.08.2012.*

Sd/- xxx

II ADJ

01.08.2012



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Written arguments filed by the respondent. Common written arguments filed by the respondent's counsel. Orders by 06.08.2012.

Sd/- xxx

II ADJ

06.08.2012

Suo motu reopened. For clarifications 09.08.2012.

Sd/- xxx

II ADJ

09.08.2012

Arguments.

For clarifications 11.08.2012.

Sd/- xxx

II ADJ

11.08.2012

Arguments Heard. Orders by 13.08.2012.

Sd/- xxx

II ADJ

13.08.2012

The Industrial Dispute is allowed and the respondent is hereby directed to reinstate the petitioner into service with continuity of service, full back wages and other attendant benefits.



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However, in the circumstances of the case, there is no order as to costs.

*Sd/- xxxx
Judge, Labour Court,
Puducherry.*

46. A perusal of the above would go to show that at no point of time, the management had reminded of the court that it should first pass a preliminary award and thereafter, enter upon the adjudication on the merits of the case. In fact, on 31.07.2012, the evidence on behalf of the management was closed. Between 31.07.2012 to the date of the award, 13.08.2012, the management had sufficient time. In fact, two days before the award was pronounced, the case was heard again. At least, if at that stage the management had pleaded the case, which Mr. S. Ravi, pleads now, I would have considered that the plea for a preliminary award, is sustainable. There being none, I am constrained to look against the writ petitioner.

47. The management witness, no doubt, only marked documents relating to the enquiry. However, as seen from above, at the time of cross examination, questions were asked on behalf of the workman on merits of the



case and R.W.1 had also answered the same. She had specifically stated that there is no evidence in order to substantiate the charges. Nothing prevented the management to move an application to eschew the evidence and simultaneously file an application stating that they had taken a stand in para 14 of their counter that if the court concludes that the enquiry is unfair, they should be entitled to let in evidence on the merits of the charges. The labour court had, in fact, gone into the merits of the charges and decided it. If I were to set aside the award of the labour court and send the matter back only because there was no preliminary award and subsequently followed by a award on merits then, it would only be a boon to the management for not having reminded the court of which position it had taken in counter.

48. I also call for the written arguments which had been filed by the management before the labour court. The stand that had been taken is on the merits of the dispute. This is clear from para 9 of the written arguments. Further, I extract the same for ready reference.

“9. Arguments of the respondent:

.....
.....
.....
.....

In the above case, all the persons were dismissed after conducting due enquiry and proof of the charges of illegal strike, abetment of illegal



strike, threatening the other employees and causing loss to the Management. The employees themselves admit the above charge in their evidence. Mere non-mentioning of the standing orders cannot take be taken advantage by the workmen. It is not essential condition. However, the management can adduce evidence regarding provision of standing orders in the opportunity given by the court. An instance that could be drawn for this purpose is Para-4 of the Proof Affidavit (இதனால் சீனியர் தொழிலாளர்கள் ஆகிய நாங்கள் அனைவரும் அமைதியான முறையில் நியாயம் கேட்டு, உள்ளேயே உட்கார்ந்துவிட்டோம்).

Therefore, engaging an illegal strike and abetment of illegal strike is a serious charge and therefore the Management's decision should be sustained. The Management examined RW-1 and also from the enquiry report, the Petitioner during the cross-examination stated no one made complaint against the illegal strike and abetment of illegal strike. This is a matter of inference and the enquiry report and the Management's witnesses in the enquiry clearly stated that there was an illegal strike, abetment of illegal strike and threatening of employees."

49. I should add the same mantra in the counter was set forth in the written arguments also. However, as seen from the adjudications, at no point in time had the management reiterated the request during the course of trial. Written arguments are filed at the end of the case as a request to the court to consider the pleas taken. Even at that stage, the management could have attempted to file a petition or at least a memo seeking for passing a preliminary award. Sadly, it was not done. I am not willing to come to the rescue of a person who had participated in the award fully and then seeks to turn around and try to set the clock back.



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50. As already discussed, the management should have been diligent and as soon as the workmen had started cross examining the witnesses on the merits of the case, it ought to have objected and stopped the proceedings then and there and should have called upon the labour court to decide as per the verdict of the Courts. However, instead of doing so, I feel, that the management was standing on the fence, watching the way the proceedings were going by. After the proceedings had gone against it, it now seeks to turn around and try to make use the judgements as a tool to attack the award of the labour court.

51. The judgements of the Courts have only given the management an enabling option and in the instant case, the management did not avail the enabling option. On the contrary, the management took the option of taking a chance and getting an award on merits and therefore, it cannot now turn around and say that liberty was not given to them.

52. Furthermore, when the purpose of the Industrial Disputes Act, 1947, is for quick adjudications on dispute between the employer and the employee, if the matter is remitted after a decade, it will only add to the agony



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of the workmen and the employer. Therefore, in order to shorten the litigation, which has been pending from 2011, I am of the view that the matter need not be remitted.

53.The labour court has analysed the evidence and had come to a conclusion which cannot be faulted with. However, to satisfy myself, I went through the evidence and I am satisfied that it goes in favour of the workmen rather than in favour of the petitioner management. A long period having been elapsed, it is not a case for remitting the matter to labour court.

DOCTRINE OF USELESS FORMALITY

54. The discussions above leads me to another principle evolved by the courts. The evidences recorded in this case persuades me to lead to the conclusion that

1. There was no evidence against the workmen,
2. The enquiry was a formality
3. The management had participated on the merits of the case before the labour court.

In such circumstances, sending the matter back to court will be but a “useless formality”



55. This doctrine was brought into our judicial universe in the classic

judgment of the Supreme Court in **M.C.Mehta v Union of India, (1999) 6**

SCC 237. I am extracting paragraph 22 for understanding the principle.

22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corpn. [(1971) 1 WLR 1578 : (1971) 2 All ER 1278, HL] (per Lord Reid and Lord Wilberforce), Glynn v. Keele University [(1971) 1 WLR 487 : (1971) 2 All ER 89] , Cinnamond v. British Airports Authority[(1980) 1 WLR 582 : (1980) 2 All ER 368, CA] and other cases where such a view has been held. The latest addition to this view is R. v. Ealing Magistrates' court, ex p Fannaran [(1996) 8 Admn LR 351, 358] (Admn LR at p. 358) (see de Smith, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be “demonstrable beyond doubt” that the result would have been different. Lord Woolf in Lloyd v. McMahon [(1987) 2 WLR 821, 862 : (1987) 1 All ER 1118, CA] (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant [1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is “real likelihood — not certainty — of prejudice”. On the other hand, Garner Administrative Law (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66, HL] , Megarry, J. in John v. Rees[(1969) 2 WLR 1294 : (1969) 2 All ER 274] stating that there are always “open and shut cases” and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the “useless formality theory” is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that “convenience and justice are often not on speaking terms”. More recently



Lord Bingham has deprecated the “useless formality” theory in *R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton* [1990 IRLR 344] by giving six reasons. (See also his article “Should Public Law Remedies be Discretionary?” 1991 PL, p. 64.) A detailed and emphatic criticism of the “useless formality theory” has been made much earlier in “Natural Justice, Substance or Shadow” by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278, HL] and *Glynn* [(1971) 1 WLR 487 : (1971) 2 All ER 89] were wrongly decided. *Foulkes* (Administrative Law, 8th Edn., 1996, p. 323), *Craig* (Administrative Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority *de Smith* (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. *Wade* (Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to **admitted** or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a “real likelihood” of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their “discretion”, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma* [(1996) 3 SCC 364 : 1996 SCC (L&S) 717], *Rajendra Singh v. State of M.P.* [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

56. I have already dealt with the scope of evidence in this case. I feel, where the facts have been admitted by MW.1, to send it back to the trial court



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would only be a “useless formality”. Keeping in mind the fundamental principle of labour law that quick and swift adjudication is the need, I am constrained to refuse the request of the learned senior counsel for the petitioner.

57. Further, there is nothing on record to show that, in fact, the management had made a request to the labour court and the labour court had refused to accede to the same. If the management had felt that the evidence of Ms.Kala (M.W.1) was not sufficient to prove their case, nothing prevented them from summoning further witnesses in order to substantiate their case. On the contrary, the matter was argued on the basis of evidence of M.W.1. As pointed out by the labour court, none of the supervisors and co-employees, who were said to have been threatened, were examined. If the management was of the view that labour court had slighted its rights, it could have always filed appropriate petition seeking permission for examining further witnesses. A perusal of records show that no such petition was filed. On the contrary, being satisfied with the evidence already recorded, the management “closed” its side on 31.07.2012.



58. The management ought to have been cautious when M.W.1 was questioned on the merits of the dispute. Despite the same, no steps were taken to put forth its case before the court. It is not the duty of the labour court to invite parties to let in evidence on merits. I recall the Latin maxim “*vigilantibus non dormientibus jura subveniunt*” (Law assists those who are vigilant, and not those who sleep over their rights)

59. Here, I would usefully refer to the principle of law that no one can take advantage of the existence of state of things what he himself had produced. [*See - New Zealand Shipping Co. v. Societe des Ateliers et Chantiers de France (1919) A.C. 1 (H.L.)*]. It does not lie in the mouth of the management which by its acts prevented something from taking place afterwards to take exception to that state of affairs and to use the affairs for its own benefit.

60. I would also usefully refer to *Watrap S. Subramania Aiyar and others v. United India Insurance Company Limited [AIR 1928 Mad 1215]*. The said principle was applied in the following terms. It seems to me that it would be a travesty of law, if a person who has deliberately brought about state



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of affairs should be allowed to take exception to that state of affairs and use that changed statement of affairs for his own advantage.

61. When no statutory obligation is cast on the labour court, the management should have been cautious to bring it to the notice of the labour court, its serious intention to let in evidence and to substantiate the charges made against the workmen. Such a serious intention is absent in the instant cases. Therefore, I am of the considered view that the awards of the labour court do not require any interference at the hands of this court, as I do not find any perversity or illegality in the same. No other point was raised before me.

62. Therefore, finding no merits in the writ petitions, I would confirm the awards of the labour court and the writ petitions are liable to be dismissed.

In the result, the Writ Petitions are dismissed. The Awards dated 13.08.2012 passed the 2nd respondent – Presiding Officer, Labour Court, Pondicherry, individually in I.D.Nos.33, 34, 35, 36 & 37 of 2011 stand confirmed. No costs. Consequently, connected MPs stand closed.



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..2023

Index : yes / no

Neutral Citation : yes / no

Speaking : yes/ no
kmk/nst

To

1.The Presiding Officer,
Labour Court, Pondicherry.



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V.LAKSHMINARAYANAN, J.

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17.07.2023