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W.P.No.29602 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 14.11.2022**

**PRONOUNCED ON : 21.04.2023**

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P.No.29602 of 2014**

1.B.Ganesan

2.S.V.Ramki

3.K.Srinivasan

..Petitioners

.Vs.

1.The Presiding Officer

1<sup>st</sup> Additional Labour Court

Chennai-600 104

2.M/s.T.N.K.Govindaraju Chetty & Co.Pvt.Ltd.,

Owner of Devi, Devi Paradise, Devi Bala

& Devi Kala Theatre

TNK House, No.48, Anna Salai,

Chennai-600 002

..Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying for a writ of Certiorarified Mandamus calling for the records pertaining to I.A.No.134/2014 in I.D.No.123/2012 to 125/2012 dated



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17.09.2014, on the file of the 1<sup>st</sup> respondent Labour Court and to quash the same, and consequently direct the 1<sup>st</sup> respondent Labour Court to decide on the Preliminary issue of fairness of domestic enquiry conducted by the 2<sup>nd</sup> respondent.

For Petitioners : Mr.SP.Srinivasan

For respondents : Mr.M.R.Dharanichander for R2.  
R1-Court.

### **ORDER**

The petitioner challenges the order passed in I.A.No.134 of 2014. By the impugned order dated 17.09.2014, the learned Judge, I Additional Labour Court, Chennai, held that if a party before one authority takes a particular stand, he is estopped from taking a contrary stand before another authority as he is estopped to take a different stand than what he has taken before the earlier authorities.

2. The said I.A., has been filed by the respondent/Management praying to eschew the proof affidavit filed by the worker in the industrial disputes raised under Section 10 of the Industrial Dispute Act, 1947.



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3. The writ petitioner is the worker under the management and he along with two others filed claim petition Nos.123 to 125 of 2012 before the Labour Court. They filed the claim statement under Section 2(A) of the I.D.Act, 1947, seeking to set aside the order of dismissal and to direct the management to reinstate the employees in service.

4. Earlier, the respondent-Management filed Approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Authority viz., Deputy Commissioner of Labour, Chennai.

5. Before the Deputy Commissioner of Labour, the individuals have endorsed that the enquiry was conducted properly as per the Model Standing Orders and simultaneously the order of dismissal along with one month pay . Therefore, the authority found that there is no victimization on the part of the management and allowed the approval petitions.

6. The petitioner, who is aggrieved with the said order of allowing



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the approval petition, filed claim petition No.123/2012 seeking to set aside the order of dismissal passed by the management by taking a ground that the enquiry officer findings are ignored by the Management holding that the charges are proved. The petitioner further reiterated that the powers under Section 11A is wide and the Industrial Tribunal and Labour court can invoke Section 11A. reappreciate the evidence in the domestic enquiry and come to a different conclusion even if the domestic enquiry is held to be fair.

7. The petitioner submits that the action of the management in dismissing the service of the employees when such an incident never took place is not only contrary to evidence on record but findings of the Enquiry Officer are perverse.

8. The petitioner submits that the order passed by the learned Judge, Labour Court, Chennai, holding that petitioner cannot take different stand before different authority, is not reasonable, because the order of Deputy Commissioner of Labour, with regard to domestic



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enquiry is not binding on the petitioner on a reference under Section 10 of the I.D.Act to the Labour court. The learned counsel for the petitioner would submit that the Labour Court is incumbent to decide the question of validity of the enquiry in the first instance before going into the merits of the misconduct under Section 11 A of the I.D.Act. The proceeding under Section 33(2)(b) of I.D.Act is only a prime facie finding.

9. On the other hand, the learned counsel representing the Management, would submit that workers are not entitled to challenge the fairness of enquiry after making endorsement before the statutory authority that they are not challenging the fairness of domestic enquiry as they are estopped to raise such issue.

10. Heard both sides and perused the records carefully.

11. It is settled proposition of law that in proceedings under Section 33(1)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to whether a proper domestic enquiry in accordance with the relevant rules/Standing orders and principles of



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natural justice has been held. Whether a prima facie case for dismissal based on legal evidence adduced before the domestic enquiry is made out, whether the employer had come to a bona fide conclusion that the employee was guilty and issued the order of dismissal, then that would not amount to unfair labour practice and was not intended to victimize the employee. If however the domestic enquiry suffers from any defect and where there is an order of dismissal, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds, it will grant approval of the order of dismissal.

12. The petitioners herein are aggrieved by the order passed by the learned Judge, Labour court, whereby, the proof affidavit filed by the workers challenging domestic enquiry was held not acceptable.

13. It is settled law that the labour court should first advert to the question about the fairness or otherwise of the enquiry claimed to have been conducted against the delinquent workman by the management and



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after rendering a finding on that question and in the event of the labour court holding that the enquiry was not fair or proper, only thereafter, it would be open to the labour court to deal with the issue on merits.

14. Following the decision of this court reported in **2001(2) LLN 480 [Christian Medical College and Hospital, Vellore Vs. 1.Presiding Officer, Labour Court, Vellore and (2) S.Arumainayagam, (15th December 2000)**, wherein, the learned Judge Justice Shri.F.M.Ibrahim Kalifula [as he then was], held that the labour court has to decide the question about the validity of the enquiry in the first instance before going into the merits of the misconduct. That was the case where the petitioner management challenged the validity of the domestic enquiry. The learned Judge, following the rulings of the Honourable Supreme Court reported in **1973 (1) LLN 278 [Workmen of Firestone Tyre and Rubber Company of India Company of India (Private) Ltd., and others]**, held that the the impugned order of the labour court in declining to follow the procedure of the labour court that is at the first instance, coming to a conclusion as to the validity of the enquiry one way or the



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other, but merely for the reason that the dispute ripened for hearing after a period of 11 years is not justified.

15. Taking into consideration the principles laid down in the decisions stated above, this writ petition is allowed. The order passed in I.A.No.134 of 2014 is set aside. The issue of fairness of enquiry shall be adjudicated and it is open to both the parties to lead evidence. The labour court is directed to decide the question of validity of enquiry at the first instance in I.D.Nos.123 to 125 of 2012 and thereafter, deal with the issues raised therein, on merits. No costs. Consequently, interim stay stands vacated.

**21.04.2023**

Index:Yes/No  
Speaking/Non-speaking order  
nvsri

To

The Presiding Officer  
1<sup>st</sup> Additional Labour Court  
Chennai-600 104.



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**J.NISHA BANU, J.**

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**Order in**  
**W.P.No.29602 of 2014**

**21.04.2023**