



W.P. Nos.21541-21858/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.08.2023	28.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.21541 & 21858 OF 2022

AND

W.M.P. NOS.20559, 20877, 33730 & 33733 OF 2022

The Management of Ford Motor
Pvt. Ltd., Registered Office
Campus 1B, RMZ Mellinnium
No.143, Dr. MGR Road, North Veeranam Salai
Perungudi, Chennai 600 091, rep. by its
Authorised Signatory, now office at
Ford Global Technology & Business Center
Plot Nos.13, 15 & 16, Survey No.602/3, ELCOT SEZ
Sholinganallur, Chennai 600 019. .. Petitioner in both petitions

- Vs -

1. The Authority u/s 41 (2) of Tamil
Nadu Shops & Establishments Act/Joint
Commissioner of Labour (Minimum Wages)
O/o Commissioner of Labour
Labour Welfare Department Building
5th Floor, Teynampet, Chennai 600 006. .. R-1 in both petitions

2. R.Venkatesan .. R-2 in WP 21541/2022



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3. T.Gunasekaran
21858/2022

.. R-2 in WP

W.P. No.21541 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in T.N.S.E. II/9/2016 and quash its order dated 1.6.2022.

W.P. No.21858 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent in T.N.S.E./II/5/2016 and quash the order dated 1.6.2022.

For Petitioner : Mr. A.L.Somayaji, SC, for
Mr. Anand Gopalan, for
M/s.T.S.Gopalan & Co.

For Respondents : Mr. R.Saravana Kumar for R-2

COMMON ORDER

The order passed by the 1st respondent in and by which the order of dismissal passed by the petitioner against the respective 2nd respondent were interfered with directing reinstatement is put in issue by filing the present writ petitions.



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2. For the sake of convenience, the 2nd respondent in W.P. Nos.21541 and 21858 of 2022 will be referred to as 2nd/respondent/Venkatesan and 2nd respondent/Gunasekaran.

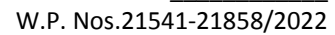
3. It is the case of the petitioner that it is involved in the activity of manufacturing. It is the further case of the petitioner that Ford Global Services Establishment has a Resource Request System in and by which information as to the requirement of manpower of various departments is collected and uploaded on the website so that the competent individual would be in a position to respond to the request. Insofar as Software Development Programmes are concerned, 9 reputed agencies supply the manpower upon an indent for supply made for supply of technical manpower, whereupon the eligible bidder is called for discussion regarding the requirement. It is the further case of the petitioner that the selected supplier/service provider deploys its employees, who are provided with identity cards for the purpose of marking their attendance and gaining access into the facility.



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4. It is the further case of the petitioner that the respective 2nd respondent was Project Manager and Delivery Manager with the petitioner organisation. Following the system of outsourcing of manpower, the Line Manager submits the Resource Request System the details of the manpower required upon which the manpower was outsourced. It is the further case of the petitioner that during December, 2015, in the midst of torrential rains, when the concern was under very thin attendance, which resulted in the personal head-count so as to find out whether all the technical people were available. During the said enquiry, one T.Gunasekaran was found to be absent and when the reason for his absence was asked for, it came to the notice of the petitioner that the said Gunasekaran is the brother of T.Kumaresan, who will be able to give information only at which time, it came to the knowledge of the petitioner about the relationship between the said Gunasekaran, the Delivery Manager with the petitioner and the said Kumaresan. It is the further case of the petitioner that when the attendance records of the said Gunasekaran and Kumaresan were verified, to the shock and horror of the General Manager, it was evidenced that there were many discrepancies in the



5. It is the further case of the petitioner that the 2nd respondent, who is the Project Manager, had not taken note of the absence of Kumaresan during the course of duty hours on several days, during which time the attendance was marked as present. It further came to light that between 23.3.2015 and 14.12.2015, the said Kumaresan had gone out of office and the same was not recorded in the attendance, which has resulted in excess billing to the tune of US \$ 9926.

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e-mails exchanged between the 2nd respondent, viz., Venkatesan and STG in the matter of outsourcing of candidate and in this regard, the statement of the respective 2nd respondent was obtained. It is the further case of the petitioner that it came to light that the said Kumaresan was recording the attendance by swiping his attendance card to show as if he had worked for hours, which were in excess of the actual working hours recorded in the attendance by the computer system. The excess billing value on account of such illegal act was to the tune of about Rs.40 Lakhs. Since the respective 2nd respondents were senior employees, waiving the detailed enquiry, as all the acts and irregularities were based on documentary evidence, explanation was called for from the respective 2nd respondent and the explanation not being found to be satisfactory, enquiry was undertaken in which, the culpability of the respective 2nd respondent stood proved, order of dismissal was passed on the respective 2nd respondent.

7. Challenging the order of dismissal, the respective 2nd respondent moved appeal before the 1st respondent under the Tamil Nadu Shops and Establishments Act in which the petitioner filed their written statement and



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contested the appeal. Before the 1st respondent, the respective 2nd respondent filed 7 documents and the petitioner filed 17 documents as exhibits. On the side of the petitioner, three witnesses were examined, while the respective 2nd respondent examined themselves.

8. Framing the necessary questions for consideration, the 1st respondent, on the basis of the materials placed before it, held the dismissal was not in consonance with the principles of natural justice as no proper documents and evidence was placed, thereby, the order of dismissal passed by the petitioner was interfered with, with a further direction to the petitioner to reinstate the respective 2nd respondent along with backwages, which is challenged in the present petitions.

9. Learned senior counsel appearing for the petitioner submitted that the relationship between the said Kumaresan and Gunasekaran was not disclosed by the said Kumaresan nor by Gunasekaran. In this regard, learned senior counsel for the petitioner drew the attention of this Court to the terms and conditions for appointment of Gunasekaran, which clearly prescribes that



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the details of relationship with regard to any immediate relative being in the employment of the petitioner should be brought to the notice. However, inspite of accepting to the said terms and conditions, neither Gunasekaran nor Kumaresan have divulged their relationship, which had caused grave prejudice to the petitioner.

10. It is the further submission of the learned senior counsel that inspite of the fact the Venkatesan, the 2nd respondent in W.P. NO.21541/22 being aware of the relationship between Gunasekaran and Kumaresan, yet had not taken any action against the said individuals, and had, in fact, aided the individuals to go out scot free by marking their presence in the office, though in actuality, they were not available at the office at the material points of time, thereby causing grave financial loss to the petitioner.

11. It is the further submission of the learned senior counsel that the scope of Section 41 of the Act has not been properly appreciated and understood by the 1st respondent and when the respective 2nd respondents have been dismissed from service after conduct of proper inquiry for proven



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misconduct, the 1st respondent ought not have interfered with the order of dismissal.

12. It is the further submission of the learned senior counsel that even the 2nd respondent/Gunasekaran had admitted the engagement of Kumaresan, his brother without prior approval of the petitioner and without divulging the relationship, the 1st respondent has not properly appreciated the aforesaid fact while coming to a conclusion that there is violation of principles of natural justice.

13. It is the further submission of the learned senior counsel that the witnesses, examined on the side of the petitioner have clearly spoken about the act of the respective 2nd respondents, which have been proved by placing appropriate documentary evidence, however, the 1st respondent, without advertng to the aforesaid documents and appreciating the same, has returned an erroneous conclusion that no documents were filed to show that Kumaresan was engaged between March, 2015 and November, 2015.



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14. It is the further submission of the learned senior counsel that though no domestic enquiry was conducted, upon calling for explanation and the whole inquiry was based on the documents, the petitioner had inflicted the order of dismissal, which the 1st respondent has failed to appreciate. Further, the various e-mail communications emanated between the 2nd respondent/Venkatesan and the service provider clearly establishes the collusion between the respective 2nd respondent and further Ex.R-8 placed by the petitioner conclusively prove that Kumaresan had been paid salary for the dates on which he had attended work.

15. The wholesome act of the respective 2nd respondent in the engagement of Kumaresan and paying the salary for the period during which the said Kumaresan had not attended work, which was within the knowledge of the respective 2nd respondent clearly establish that the collusive act, which has not been properly appreciated by the 1st respondent while passing the impugned order, which require interference at the hands of this Court.



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16. Per contra, learned counsel appearing for the respective 2nd respondent submits that the whole issue is fabricated by persons inimical against the 2nd respondent, which would be evident from the mails, which have emanated between the said individual and the HR Department. It is the further submission of the learned counsel that the hiring process by which persons were outsourced is wholly computer based and no person can manipulate the system, as would be evident from the Resource Request System. It is the further submission of the learned counsel that Ex.P-7, which is a document, which is alleged to have emanated from the 2nd respondent/Venkatesan to the service provider, does not show that it had emanated from the said individual, which would be evident from the other exhibits, viz., Exs.R-9 and 10, which clearly show the name of the sender on the top. Such being the case, the name of the 2nd respondent/Venkatesan not reflecting on the top conclusively establish that the email has not emanated from the 2nd respondent/Venkatesan.

17. It is the further submission of the learned counsel that the 2nd respondent/Gunasekaran had not informed the petitioner about Kumaresan



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being his brother for the simple reason that the said Kumaresan was inducted by their vendor STG and not by the petitioner. Therefore, there was no necessity for communication of the same to the petitioner or atleast, without admitting, it is the submission of the learned counsel that the 2nd respondent/Gunasekaran was not aware that the said fact of his brother being inducted by the vendor should also be informed to the petitioner.

18. It is the further submission of the learned counsel that the inaccurate billing and the excess bill paid to the vendor STG was not sought to be recovered by the petitioner and strangely while there was allegation against the respective 2nd respondent with regard to excessive billing, however, no such allegation or even an enquiry was taken up against the vendor STG.

19. It is the further submission of the learned counsel that the financial loss alleged to have been suffered by the petitioner has not been established properly. In this regard, while R.W.1 stated that the company incurred loss to the tune of Rs.40 Lakhs, however in cross examination, the value was deposited



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as US \$ 9926 only, which is only to the tune of about Rs.6 Lakhs. The discrepancy of Rs.34 lakhs has not been explained by the petitioner. Further the date wise details when the said Kumaresan had not worked and the loss datewise incurred by the petitioner has not been filed by the petitioner before the 1st respondent.

20. Learned counsel appearing for the respective 2nd respondent further submitted that the deposition of R.W.s 1 to 3 coupled with the allegation of inaccurate billing with regard to the salary paid to Kumaresan for 9 months had not been questioned by R.W.2, more particularly when Kumaresan was working in the same floor as R.W.2 was working and, therefore, the stand of R.W.2 that the said Kumaresan was deployed without his knowledge is wholly unacceptable and the non-conduct of enquiry in the above backdrop is a clear violation of principles of natural justice.

21. In fine, it is the submission of the learned counsel that the whole case was based on fabricated documents, which have not been proved before the 1st respondent in accordance with law and the abovesaid fact has been



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22. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

23. There is no quarrel about the fact that Kumaresan, who had been outsourced from the vendor, STG, by the 2nd respondent/Venkatesan, is the brother of the 2nd respondent/Gunasekaran, who is the Delivery Manager with the petitioner. It is also the admitted case of the parties that both the respective 2nd respondent have accepted the terms and conditions prescribed by the petitioner while entering into service, of which one of the relevant conditions related to the employment/admittance of relative with the petitioner and for better appreciation the said clause is quoted hereunder :-

*"You confirm that you have disclosed fully to the Company
all of your business interests whether or not they are similar to*



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or in conflict with the business(es) or activities of the Company, and all circumstances in respect of which there is, or there might be, a conflict of interest between the company and you or any immediate relatives. You agree to disclose fully to the Company any such interests or circumstances which may arise during your employment immediately upon such interest or circumstances arising.

(Emphasis Supplied)

24. A careful perusal of the aforesaid condition reveals that whenever a relative is either in employment or is to be employed, immediately upon such employment, the employee is bound to inform/disclose the same to the petitioner. In the case on hand, the fact remains that the brother of 2nd respondent/Gunasekaran, who was employed as Delivery Manager with the petitioner was outsourced from the vendor STG, by the 2nd respondent/Venkatesan, but his employment was not informed to the petitioner by the 2nd respondent/Gunasekaran. Though the 2nd respondent/Gunasekaran claims that the employment of his brother Kumaresan was not with the petitioner, but it was only with the vendor, STG, who was the employer and, therefore, no necessity arises for the 2nd respondent/Gunasekaran to disclose the same to the petitioner, but the said



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contention cannot be countenanced for the simple reason that it is not for the purpose of finding out the relationship between the parties that the said clause has been included in the terms and conditions, but it is for the purpose of conflict in business interest, that may arise, which necessitated the inclusion of the said clause, as of necessity, the said Kumaresan is employed within the office of the petitioner. That being the case, it is incumbent on the 2nd respondent/Gunasekaran to disclose the admittance of his brother Kumaresan in the employment of the petitioner, more so the fact remains that the said Kumaresan was directly placed below the said 2nd respondent/Gunasekaran in the vertical hierarchy.

25. Be that as it may. The ground on which the 1st respondent had interfered with the order of dismissal passed by the petitioner on the respective 2nd respondent is on account of violation of principles of natural justice.

26. The finding of the 1st respondent, as is evidenced from the impugned order is that grievance expressed by the respective 2nd respondent



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is that they were not provided with the charge memo and that the requisite documents, which were relied upon by the petitioner and that the quantification of the loss by means of payment to the said Kumaresan has not been established. The above findings have been entered upon by the 1st respondent on analysing the oral and documentary evidence placed by either side. It is evident from the materials placed by either side that the communications between the Project Manager, Venkatesan and the vendor STG has been placed. So also the communication between the General Manager, viz., R.W.2 with the respective 2nd respondent and other officials of the petitioner has been placed. The 1st respondent had gone into the analysis of the entire evidence as if an enquiry is initiated before it and had come to the conclusion that the evidence is not suffice to fasten the guilt on the respective 2nd respondent.

27. It is to be pointed out that the standard of proof required in a departmental proceeding is not in the same league as the standard of proof required to establish a charge in a criminal case. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules



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of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by preponderance of probabilities. While the standard of proof in a criminal trial would be on the basis of the provisions of the Evidence Act and other statutes, however, in the departmental proceedings, it is only on the touchstone of preponderance of probabilities, the evidence is evaluated and, therefore, it is impermissible to equate the way in which the evidence ought to be evaluated.

28. Evaluating the materials that were available before it, the petitioner had come to the conclusion that the respective 2nd respondents have acted in detriment to the interest of the petitioner inspite of the specific terms and conditions that have been accepted by them in their order of appointment and on the basis of the overwhelming documentary evidence, after receiving the explanation offered by the respective 2nd respondent and by exercising due diligence, have dismissed the respective 2nd respondent from service.



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29. The 1st respondent had held that the enquiry had not been held in a proper manner and no opportunity was given to the workmen. However, the fact remains that the statement of the respective workmen were recorded, explanation was called for and as the matter wholly was based on documentary evidence, with regard to the alleged employment of the said Kumaresan, which fact stood admitted by the respective 2nd respondent, the petitioner had inflicted the punishment of dismissal from service.

30. However, the fact remains that though enquiry was not conducted by the petitioner, in the appeal u/s 41, a roving enquiry, including deposition of witnesses was taken in which the petitioner as well as the respective/2nd respondent have filed documentary evidence and have also submitted oral evidence. Had the 1st respondent was of the view that there was violation of principles of natural justice as no enquiry was conducted, at the threshold, the 1st respondent should have remanded the matter to the petitioner for conducting enquiry. However, after embarking upon a detailed enquiry, interfering with the order of dismissal on the ground that there is violation of



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principles of natural justice as no enquiry was conducted is wholly impermissible.

31. The Apex Court in ***United Planters Association of Southern India – Vs – K.G. Sangameswaran (1997 (4) SCC 741)***, deliberated upon whether non-conduct of enquiry would vitiate the dismissal and whether the appellate authority u/s 41 (2) could record evidence at the appellate stage and in the said context held as under :-

“24. If the instant case is analysed in the light of the principles laid down above, it will be noticed that the Appellate Authority has interfered with the order of discharge/dismissal of the respondent on the ground only that a domestic enquiry was not held into the imputations made against the respondent. It did not decide the application of the appellant for recording evidence. The Appellate Authority, therefore, committed grave error in the exercise of its jurisdiction by not disposing evidence and proceeding to dispose of the appeal on the ground that the order of dismissal having been passed without holding a domestic enquiry was bad in law.

25. We may now consider the contention of the learned counsel for the respondent relating to the principles of nature justice which were not observed at the initial stage, namely, at



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the time of the domestic enquiry. Whether the defect is curable at the appellate stage or not is the question.

26. Learned counsel, in support of his arguments that the defect is not curable has placed reliance on the decision of this court in Institute of chartered Accountants of India vs. L.K Ratna & ors.,(1935) 4 SCC 537. It was no doubt. laid down in this case that a post-decisional hearing cannot be an effective substitute of pre-decisional hearing and that if an opportunity of hearing is not given before a decision is taken at the initial stage. it would result in serious prejudice, inasmuch as if such an opportunity is provided at the appellate stage, the person is deprived of his right of appeal to another body. There may be cases where opportunity of hearing is excluded by a particular service or statutory rule. In Union of India & Anr. vs. Tulsiram Patel, (1985) 3 SCC 398, pre-decisional hearing stood excluded by the second proviso to Article 311(2) of the constitution and, therefore, the court took the view that though there was no prior opportunity to plead in an appeal filed by him that the charges for which he was removed from service were not true. Principles of nature justice in such a case will have to be held to have been sufficiently complied with. In Mrs. Menka Gandhi vs. Union of India & Anr. (1978)1 SCC 248 and in Liberty oil mills & ors. vs. Union of India & ors. (1934) 3 SCC 465 an opportunity of making a representation after the decision was taken, was held to be sufficient compliance. All depends on acts of each case.



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27. In the instant case the appellant has contended that the respondent did not participate in the domestic enquiry in spite of an opportunity of hearing having been provided to him. He was also offered the inspection of the document but he did not avail of that opportunity. He himself invoked the jurisdiction of the Appellate Authority and the order of dismissal passed against him was set aside on the ground that the appellant did not hold any domestic enquiry. it has already been seen above that the Appellate Authority has to come to its own conclusion on the guilt of the employee concerned. since the Appellate Authority has to come to its own conclusion on the basis of the evidence recorded by it , irrespective of the findings recorded in the domestic enquiry the rule laid down in Ratna's case (supra) will not strictly apply and the opportunity of hearing which is being provided to the respondent at the appellate stage will sufficiently meet his demands for a just and proper enquiry."

32. The ratio laid down in the aforesaid decision clearly articulate the fact that once the appellate authority satisfies the aspect of enquiry by allowing the parties to let in evidence by invoking its powers u/s 41 (2), non-compliance or violation of principles of natural justice cannot be resorted to by either party so also the 1st respondent. In fact, what is more pertinent to point out is that the authority can add to the enquiry by allowing the parties



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to submit additional evidence/documents. However, in the case on hand, the 1st respondent while finding fault with the petitioner for not conducting the enquiry, had taken the role of the petitioner and had conducted a full-fledged domestic enquiry, meaning thereby, the 1st respondent had donned the role of the disciplinary authority.

33. Further, in the case on hand, the 1st respondent had conducted the enquiry by taking up the role of the disciplinary authority and had allowed the appeal in favour of the workmen by directing reinstatement on the mere ground that there is violation of principles of natural justice. However, when the 1st respondent had taken the role of the disciplinary authority, the finding recorded by the 1st respondent is not only erroneous but is against the ratio laid down in the aforesaid decision and in the light of grant of opportunity to either side by conducting a detailed enquiry, there is full satisfaction of principles of natural justice and, therefore, the said finding is perverse and deserves to be set aside.



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34. Insofar as the findings recorded by the 1st respondent relating to the oral evidence of R.W.s 1 to 3 and the excessive amount paid to Kumaresan not tallying with the oral evidence and not established by the petitioner, it is to be pointed out that the whole case of the petitioner hinges upon the documentary evidence. The case pertains to the inductment of Kumaresan, the brother of 2nd respondent/Gunasekaran in the establishment of the petitioner. There is no dispute that Kumaresan had been inducted as Senior Business Analyst with the petitioner. There is clear admittance from the respective 2nd respondent with regard to the appointment of the said Kumaresan. The employment is within the knowledge of the respective 2nd respondent. However, 2nd respondent/Gunasekaran pleads ignorance that he was not aware that the employment of his brother had to be communicated to the petitioner, as his brother was not directly under the employment of the petitioner. However, the fact remains that Kumaresan was provided with all access to the office of the petitioner, which cannot be disputed and that he had been placed below the 2nd respondent/Gunasekaran in the vertical position. When the said Kumaresan had complete access to the office of the petitioner and his employment with the petitioner has been approved by the



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Project Manager, Venkatesan, the 2nd respondent in W.P. No.21541/22, which is evidenced from the materials available on record in the form of email communication with the vendor, STG, the non-communication of the relationship between the Kumaresan and the 2nd respondent/Gunasekaran is directly opposed to the terms and conditions entered into by the 2nd respondent/Gunasekaran with the petitioner.

35. Further, the collusive nature of the transaction stands established by the fact that 2nd respondent/Venkatesan in his deposition in cross examination had admitted that he knew 2nd respondent/Gunasekaran even before joining the petitioner, which shows that both 2nd respondent/Gunasekaran and 2nd respondent/Venkatesan were known to each other. Such being the case, it is incomprehensible that 2nd respondent/Venkatesan was not aware of the relationship between 2nd respondent/Gunasekaran and Kumaresan. Further, it is the 2nd respondent/Gunasekaran, who had selected Kumaresan, which is evident from the communication between the 2nd respondent/Venkatesan and the vendor, STG.



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36. When the whole genesis of the case of the petitioner revolves around the documentary evidence, the finding recorded by the 1st respondent that the evidence of R.W.1 and R.W.3 are hearsay as their evidence is on the basis of the details provided by R.W.2 would not have any bearing on the documents. It should be noted that not all the employees are within the knowledge of all the details relating to office matters and only persons in the higher positions would be having knowledge of what is happening in the office. In the case on hand, R.W.2, the General Manager was not even aware of the relationship of 2nd respondent/Gunasekaran and Kumaresan and in such a scenario, the knowledge of R.W.1 and R.W.3 with regard to the aforesaid incident having been obtained from R.W.2 cannot be said to be detriment to the case of the petitioner, as the whole case, as aforesaid, hinges on the documents and not on oral evidence.

37. Further, the finding of the 1st respondent that Kumaresan had been appointed after following the due procedure does not have any relevance for the simple reason that the petitioner is not disputing the manner of



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appointment, but the collusiveness of the respective 2nd respondent is projected by the petitioner in the appointment of Kumaresan. Though at first blush the above appointment may not appear to be wrong, but the fact that the employee has not disclosed his relationship with the person to be employed coupled with the fact that there were excessive billings, more particularly when the dates on which Kumaresan was absent were actually billed in favour of Kumaresan, exhibits the collusiveness between the respective 2nd respondent and Kumaresan in perpetrating the act.

38. Similarly, the finding rendered by the 1st respondent that the actual loss by way of excessive billing has not been clearly spoken to or quantified by the petitioner by placing relevant materials also cannot be the basis to hold that the dismissal of the respective 2nd respondent is fallacious for the reason that excessive billings were made in the name of Kumaresan for the period when in actuality the said Kumaresan was shown as absent. There is no advertence to Ex.R-8 by the 1st respondent with regard to the bill generated for payment to Kumaresan when there was no entry with regard to his presence at the office.



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39. When the 1st respondent has gone on to enquire in detail by allowing recording of oral evidence and marking of documentary evidence, the said evidence has to be appreciated on the touchstone of preponderance of probability and not in the manner in which a criminal court would examine the evidence. However, even a bare perusal of the order passed by the 1st respondent reveals that the 1st respondent had taken up the robe of a criminal court and sought to dissect the evidence, which is impermissible in a case relating to departmental proceedings. The act of the petitioner in dismissing the respective 2nd respondent is a departmental proceeding as the 1st respondent had taken up the role of the disciplinary authority by conducting an enquiry and necessarily when the 1st respondent steps into the shoes of the disciplinary authority and allowed evidence to be recorded, it is supposed to follow the same footsteps in which a disciplinary authority would proceed. However, without following the said principle, the 1st respondent had taken up the matter as if it is a judicial proceeding in a criminal court, which act is impermissible. True it is that the 1st respondent is fully within its domain to appreciate the evidence, but that appreciation should be on the well accepted



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principle of preponderance of probability and not on appreciation done by a criminal court.

40. The overall evidence adduced before the 1st respondent had to be gone into in conjunction with the terms and conditions of the appointment entered into between the petitioner and the respective 2nd respondents and when there is a clear violation of the terms accepted and in the light of the other materials, if an inference against the respective 2nd respondent is drawn by the petitioner, the 1st respondent cannot interfere with the same by analysing the evidence as that of a criminal court and at the same stretch go on to say that there is violation of principles of natural justice. Both the findings are mutually destructive, as one cannot survive in the face of the other.

41. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to



the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally



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awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

42. When the petitioner, on the materials available before it upon proper analysis of the same had come to the conclusion to dismiss the respective 2nd respondent from service, in the absence of any plausible evidence, contrary to the finding arrived at by the petitioner, the 1st respondent ought not to have interfered with the punishment imposed on the respective 2nd respondents. The respective 2nd respondents, being persons in authority, are bound to exhibit integrity and honesty of utmost degree and any infraction of the same, if resulted in the dismissal from service, the same ought not to have been interfered with by the 1st respondent. The act of the 1st respondent in interfering with the order of dismissal is shocking the conscience of this Court, which requires interference.

43. For the reasons aforesaid, this Court is of the considered view that the interference caused by the 1st respondent by setting aside the punishment



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imposed on the respective 2nd respondent and directing reinstatement is wholly impermissible and perverse and, accordingly, the said order deserves the interference of this Court.

44. In the result, these writ petitions are allowed setting aside the orders impugned herein, dated 1.6.2022, passed by the 1st respondent. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

28.08.2023

Index : Yes / No

GLN

To

The Authority u/s 41 (2) of Tamil
Nadu Shops & Establishments Act/Joint
Commissioner of Labour (Minimum Wages)
O/o Commissioner of Labour
Labour Welfare Department Building
5th Floor, Teynampet, Chennai 600 006.



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W.P. Nos.21541-21858/2022

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.21541 &
21858 OF 2022**

Pronounced on



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W.P. Nos.21541-21858/2022

28.08.2023