



W.P.Nos.10298 to 10305 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.10298 to 10305 of 2017

And

**W.M.P.Nos.11198, 11200, 11202, 11204, 11206,
11208, 11210 and 11212 of 2017**

Pradeep Stainless India Private Limited

Rep. by its Chairman

B.Ramesh Chand

... Petitioner in W.P.10298/2017

Vs.

1.The Deputy Commissioner of Labour No.II,
DMS Complex,
Teynampet,
Chennai – 600 006.

2.M.Logambal

... Respondent in W.P.10298/2017

Prayer in W.P.No.10298 of 2017:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to AP No.1 of 2010 preferred by the petitioner seeking for approval of the termination order dated 12.09.2008 passed against the second respondent herein and quash the common order dated 11.08.2016 passed by the first respondent dismissing the same along with



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approval applications viz. AP No.2/2010 to AP No.4/2010 and AP No.7/2010 to AP No.10/2010.

For Petitioner : Mr.K.V.Shanmuganathan
For Respondents : Mr.M.S.Prem Kumar for R1
Government Advocate
Mr.V.Ajoy Khose for R2

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

2.The case of the petitioner is that the private respondents are workmen in the petitioner Management and for their misconduct, charge memo was issued, domestic enquiry was conducted and after receiving enquiry report, the petitioner Management issued second show cause notice to the private respondents and thereafter they were terminated from service. Thereafter, the petitioner Management filed approval petitions for approval of the dismissal order before the Joint Commissioner of Labour and the same were transferred to the file of the Deputy Commissioner of Labour II. The petitioner Management pleaded for framing preliminary issue as to whether



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domestic enquiry has been conducted by the petitioner in a fair and proper manner in order to satisfy the mandatory provision under Section 33 (2) (b) of the Industrial Disputes Act, however, the Deputy Commissioner of Labour II failed to frame preliminary issue and passed final order rejecting the approval petitions. Hence, these petitions.

3.The learned counsel appearing for the petitioner submitted that as per Section 33 (2) (b) of the Industrial Disputes Act and as per the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. Dcm chemical Works) the Deputy Commissioner of Labour has to see whether the enquiry has been conducted in a proper manner or not, whether one month salary has been given or not and principles of natural justice have been satisfied or not, however, the Deputy Commissioner of Labour II instead of framing preliminary issue and deciding the approval petitions, mechanically rejected the approval petitions which is not sustainable.

4.The learned counsel appearing for the private respondents submitted that though charge memo was issued to the private respondents, fair opportunity was not given before the Enquiry Officer



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and the Enquiry Officer mechanically drawn proven minute as against the private respondents and based on the enquiry report, second show cause notice was issued and thereafter the private respondents/workmen were terminated from service. He further submitted that salary slip was not attached along with the approval petitions except cheque prepared by the petitioner Management and salary forwarded by the petitioner to the private respondents was less than the amount of pay in the pay slip and the Deputy Commissioner of Labour II decided the preliminary issue and thereafter rejected the approval petitions.

5.The learned counsel appearing for the private respondents further submitted that initially the petitioner filed 10 approval petitions and thereafter withdrawn two approval petitions which itself shows the unfair labour practice of the petitioner. The learned counsel further submitted that before the Deputy Commissioner of Labour II, the petitioner Management did not produce any record to substantiate the fairness of the enquiry and as to whether the procedure contemplated under Section 33 (2) (b) of the Industrial Disputes Act has been satisfied. In the absence of relevant records, the Deputy Commissioner of Labour II rightly passed the impugned



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order which warrants no interference.

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6.Heard the arguments advanced on either side and perused the materials available on record.

7.Admittedly, the petitioner issued charge memo for the misconduct of the private respondents/workmen, pursuant to which order of dismissal was passed and approval petitions were filed and the Deputy Commissioner of Labour II rejected the approval petitions. It is equally un-disputed fact that initially, the petitioner Management filed 10 approval petitions and thereafter withdrawn two approval petitions. This attempt of the petitioner shows the unfair labour practice of the petitioner and that the dismissal order was not passed based on the prima facie case and this itself shows the victimisation of the workmen/ private respondents. On this sole ground, these writ petitions are liable to be dismissed.

8.These writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

07.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No

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M.DHANDAPANI,J.
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To

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