



W.P. No.23346 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No.23346 of 2017
and W.M.P. No. 24442 of 2017**

The Management,
Sunbeam Generator (P) Ltd.,
Puducherry.

... Petitioner

-VS-

1. The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.

2.Saravanan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent connected with the award dated 30.05.2017 passed in ID.No.(L) 17 of 2014 and quash the same.

For Petitioner

: Mr. Karthik, Senior Counsel
For M/s.Fox Mandal and Asso.

For R2

: R1 Court
Mr.P.R.Thiruneelakandan R2

ORDER

The Writ Petition has been filed against award passed by the first respondent dated 30.05.2017 in ID.No.(L) 17 of 2014.



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2. It is the case of the petitioner that the second respondent was appointed as a Trainee on 01.02.2007 in the petitioner's factory and subsequently, was placed on probation. After his successful completion of the period of probation, the second respondent was also confirmed in employment. The second respondent had in fact driven the forklift very rashly inside the work premises on 20.04.2012. When he was asked about his rash and wilful act, he gave a casual reply. Subsequently, on 04.05.2012, the second respondent left the work spot without any prior permission for about 30 minutes and was speaking on the mobile phone in the bathroom. When the production manager asked about this act, the second respondent used abusive language against him. On 11.06.2012, a charge sheet cum suspension order was issued to the respondent and thereafter, enquiry officer was appointed and he was given sufficient opportunity. After conducting enquiry, the enquiry officer submitted her report on 01.03.2013 holding the second respondent guilty of the charges and that the charges had been proved. On 17.10.2013, a termination order has been issued to the second respondent, for which, the second respondent raised an Industrial Dispute as against the petitioner Management. The Labour Court, without considering the entire facts, allowed the petition in favour of the second respondent. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner Management submitted that



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admittedly the second respondent raised industrial dispute on 12.06.2012 challenging the termination order. Prior to the termination of service of the second respondent, four co-workers have made a complaint against him and the same was marked as Ex.R1 to R4. Thereafter, a suspension order was passed on 11.06.2012 and after proving charges, the second respondent has been terminated from service. However, without following the Section 33(1)(b) of the ID Act, the Labour Officer has passed an award in favour of the second respondent and the same is perverse. The Labour Court ought to have called upon the petitioner company to let in evidence to prove the charges. Therefore, this Court may remand the matter back to the Labour court to let in evidence with regard to the fairness of enquiry by fixing the outer limit time to conclude the disciplinary proceedings.

4. Per contra, the learned counsel for the second respondent Workman submitted that the act of the termination of the second respondent from service while industrial dispute is pending before the conciliation officer is against the provisions of Section 33 of the ID Act. Admittedly, the second respondent has raised the industrial dispute on 12.06.2012 and thereafter, the domestic enquiry was initiated by the respondent Management appointing the enquiry officer and after completion of the domestic enquiry. A enquiry report was filed by the



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enquiry officer on 01.03.2013 and therefore, it is clear from the records that when the industrial dispute is pending before the labour officer which was raised by the second respondent on 12.06.2012 without the express or previous permission of the conciliation officer, the petitioner management has terminated the second respondent from service against the provision under Section 33(1)(b) of the Act, which is unsustainable one. The learned counsel further submitted that once the Labour Court found that the enquiry was not conducted in a fair and proper manner, there is no necessity for discussing the documents placed by the petitioner. Hence, the order passed by the first respondent has no perversity, which does not warrant any interference.

5. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the second respondent workman raised an industrial dispute with regard to the non-employment and obtained the award in his favour, in which, the Labour Court has clearly stated that the enquiry has not been conducted in a fair and proper manner. On perusal of the impugned order, it is seen that the co-workers, who made complaint against the second respondent, have not been examined before



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the Labour Court and the enquiry has also not furnished the list of witnesses, which are going to be examined on the side of the management and the workman has not served the list of witnesses proposed to be examined in the enquiry. The said fact has not discussed by the Labour Officer and without discussed all the materials, has arrived at a conclusion that the domestic enquiry was conducted in a biased manner and directing the respondent to reinstate the petitioner in service with continuity of service and further directed to pay 50% of backwages to the second respondent from the date of termination till the reinstatement with other attendant benefits.

7. In this regard, the learned counsel for petitioner Management also sought a direction to remand back to the Labour Court to mark the relevant evidences with regard to the fairness of enquiry. Considering the facts and circumstances of the case, this Court is inclined to set aside the impugned order and remands the matter back to the Labour Court within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of the same, the Labour Officer shall allow the petitioner and the second respondent to mark the fresh evidences and thereafter, pass appropriate orders within a period of three months thereafter.

M.DHANDAPANI, J.



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8. With the above directions, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is also closed.

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Rli

Index: Yes/No

NCS : Yes/No

To

The Presiding Officer,
Principal Labour Court,
Salem.

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