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W.P. No. 14791 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 16.08.2023**

**CORAM**

**THE HON'BLE MR. JUSTICE M.DHANDAPANI**

**W.P. No. 14791 of 2017  
and W.M.P. Nos. 16043 of 2017 and 18754 of 2018**

The Management of Ashok Leyland,  
No.175, SIPCOT Industrial Estate,  
Hosru – 635 126, Krishnagiri District

... Petitioner

-VS-

1.The Presiding Officer,  
Labour Court, Salem.

2.S.Prabhakaran

... 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 connected with I.D.No.214 of 2010 dated 21.12.2016 on the file of the first respondent, the learned Presiding Officer Labour Court, Salem and quash the impugned award made therein.

For Petitioner

: Mr.S.Shiva Thanu Mohan  
for Mr.S.Ramasubramaniam

For R1

: Labour Court

For R2

: Mr.K.M.Ramesh, Senior Counsel  
for Mr.S.Apunu



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## ORDER

**WEB COPY** The Writ Petition has been filed against the award dated 21.12.2016 passed by the first respondent in I.D.No.214 of 2010.

2. It is the case of the petitioner Management that the petitioner is a company registered under the provisions of the Companies Act, engaged in the business of manufacture of automobile trucks. The second respondent joined the company of the petitioner on 10.05.1194 as a casual labour and was assigned EMP. No.62088. The second respondent was working as skilled II Workman in Engine Machining Shop I. On 25.04.2008, while the second respondent was in night shift working as an operator in I Bay of Hino Cylinder Block line of Eng M/Cing, Shop-I, was fresquently going to toilet in a suspiciou manner. At about 10.30 pm. One Raja Boro, Security Guard of the company observed the second respondents movements and informed the Security Supervisor. While the Security supervisor on his rounds in shop I, along with Raja Boro, searched the toilet room thoroughly and found and recovered some drill bits in the flush tank. At about 11.15 pm the Security found the drill bits in his waist and the same was informed to the other security supervisors who arrived at the spot and suddenly, the second respondent ran



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away from the spot. In view of the above incident, the second respondent was kept under suspension pending enquiry and was issued a detailed charge sheet vide order dated 26.04.2008. The second respondent submitted his reply on 27.05.2008. As the reply was not satisfied, a domestic enquiry was ordered. The second respondent found guilty of all the charges levelled against him. After issuing second show cause notice dated 13.10.2009, he was dismissed from service vide order dated 23.10.2009. Aggrieved by the same, the second respondent raised an industrial dispute against the petitioner Management before the labour Court. The Labour Court, vide its order dated 21.01.2015, held that the enquiry conducted by the Management is not fair and proper. Aggrieved by the said award, the petitioner Management has filed the present writ petition before this court.

3. The learned counsel for the petitioner submitted that even on the bear perusal of the deposition of the MW2 viz., Baskaran, cleared deposited that immediately after the incident, he went to the spot and enquiry the secnd respondent as well as the other staff members in which he clearly deposed that the second respondent himself admitted that 10 drill bits were recovered from his waist and shocks of the both legs and also he enquired with the Security officer and Security Supervisor. His deposition was in clear terms. In the cross



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examination of MW2, the second respondent did not ask anything from the MW2. That itself clearly shows that the second respondent involved theft of drill bits belong to the petitioner Management. However, the Labour Court arrived at a contra conclusion and set aside the order of dismissal, which is not sustainable one and the award passed by the Labour Court is liable to be set aside and allow this petition.

4. The learned counsel for the second respondent submitted that though MW2 was examined as eyewitness before the Labour Court and he is not an eyewitness, at the time of incident, he went to scene of occurrence and enquired about the theft from the other workmen. Mere conducting enquiry will not prove the charges against the second respondent and the MW2 is hearsay witness and therefore, no cross examination is required from the MW2. Further, the security staff, who seized the drill bits from the second respondent, was not examined before the Labour Court. Further, the enquiry was not conducted in a fair and proper manner. The charge memo was issued against the second respondent, since the second respondent has actively participated in the union activities. In order to victimize the second respondent, the false charge was created by the petitioner and the same was demonstrated before the Labour Court and the Labour Court has also rightly allowed the petition, which cannot



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be interfered with. The learned counsel prays that this Court may dismissed the writ petition.

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. The petitioner Management was issued charge memo against the second respondent for theft of drill bits. Admittedly, the Security Officer, who seized the drill bit from the second respondent, during the duty hours, was not examined before the Labour Court. On perusal of deposition of MW2 viz Baskaran, it is seen that he immediately after the incident, he went to the scene of occurrence and enquired with the second respondent as well as the other workmen, in which, the second respondent admitted that 10 drill bits were recovered from him. However, the second respondent has not cross examined the MW2. Though the MW2 is not an eyewitness, however, immediately after the incident, he was very much available in the scene of occurrence and conducted enquiry, in which, he has been deposed, which was not properly cross examined by the second respondent.



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7. Admittedly, the petitioner management has not examined the security officer, who seized the material from the second respondent, at the relevant point of time. The petitioner Management has produced the complaint copy of the security guards before the Labour Court and the same was not objected by the second respondent.

8. The allegation against the second respondent is theft, allowing him to reinstate into service, it will cause great prejudice to the petitioner Management and the second respondent. Further, the petitioner has already been paid a sum of Rs.12,31,920/- Apart from that, in order to strike out the balance between the petitioner and the second respondent, this Court directs the petitioner to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation in full quit to the second respondent within a period of four weeks from the date of receipt of a copy of this order.

9. With the above observation and direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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*Rli*

Index: Yes/No

NCS: Yes/No

To

The Presiding Officer,  
Labour Court, Salem.



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**M.DHANDAPANI, J.**

*Rli*

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