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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8362 of 2016

and

W.M.P(MD)No.6765 of 2016

The Management,
Represented by its Managing Director,
Maria Rajendran

... Petitioner

- Vs. -

1. T.Sasi Kumar
2. The Presiding Officer,
Labour Court,
Tirunelveli

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari to call for the records on the file of the second respondent pertaining to the Final Award, dated 15.02.2016 passed in I.D.No.70 of 2015, quash the same.

For Petitioner : Mr.S.C.Herold Singh

For R-1 : Mr.C.Kishore

For R-2 : Labour Court



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ORDER

This writ petition is filed to quash the impugned order, dated 15.02.2016 passed in I.D.No.70 of 2015.

2. The petitioner is the Managing Director in Management of Nanjil Milk Plant. The Milk Plant has employed 220 workmen and is having a vast network serving the need of people having. The 1st respondent was an employee since 2007, but he started misbehaving quite often on various occasions and had exceeded the limit through his bad mouth. On 08.09.2011 and 09.09.2011 the 1st respondent's behaviour became unpardonable. Hence, a charge memo, dated 14.09.2011 was issued for charges that he attended Milk Unit after consuming liquor and misbehaved with his workmen. Also misbehaved with superiors in the presence of work force. He being a trade union activist, forced his co-workman to fetch him milk cova free of cost from the Units shop. Based on the charge memo, an enquiry was conducted, but the 1st respondent boycotted the enquiry, inspite of repeated opportunities. The Management had appointed an Advocate as enquiry officer. The 1st respondent has nominated one Advocate to represent his



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case, who appeared but only sought time. The enquiry proceedings held on five occasions, commenced on 30.04.2012 continued on 21.05.2012, 11.06.2012, 19.07.2012 and finally on 19.07.2012. The 1st respondent without perusing any records repeatedly sought adjournments and therefore, the Enquiry officer has left with no other option than to conclude the proceedings and pass an exparte order that the charges are proved. Thereafter the management accepted the enquiry report and passed an order of punishment dismissing the 1st respondent from service. The 1st respondent approached the Labour Court and on 03.02.2016, preliminary award was passed holding that the domestic enquiry conducted by the management was vitiated. The contention of the management is that the management had passed detailed order based on the evidence after giving opportunity but the Labour Court without granting any opportunity to submit evidence had proceeded further. The Labour Court, the 2nd respondent herein without going into the evidence submitted by the Management allowed the ID and directed the petitioner to reinstate the 1st respondent back into service with 50% backwages. Aggrieved over the same, the present writ petition is filed.



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3. Heard M/s.S.C.Herold Singh, the Learned counsel appearing for the Petitioner and Mr.C.Kishore, the Learned counsel appearing for the 1st respondent and perused the material documents available on record.

4. The case of the 1st respondent is that when the notice was issued for enquiry, he participated on the first hearing and submitted petition seeking permission to engage Advocate in the disciplinary proceedings and sought for an adjournment. However, the Management did not pass any orders in the petition to engage the Advocate as observer. In the next hearing, he appeared along with his Advocate, but the management did not conduct enquiry. In the next hearing the 1st respondent has submitted a petition seeking to change the place of enquiry and change of place was granted and enquiry was conducted in Nagercoil. In Nagercoil, again the 1st respondent has sought permission to engage Advocate as observer and also stated that the management had engaged their Advocate as an observer and sought adjournment. On next hearing, the 1st respondent's Advocate sought an adjournment since he has some personal inconvenience. Since the petitioner management has engaged their Standing counsel for conducting enquiry, the 1st respondent under an apprehension that the Enquiry Officer will



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not conduct enquiry properly and it will be in biased manner. Therefore, the 1st respondent was having apprehension to participate in the enquiry proceedings. From the above narration of events, it is evident that the petitioner management granted five occasions but the 1st respondent had sought time on some pretext and the management left with no option had decided to conclude the enquiry proceedings. Since the 1st respondent has not cooperated with the enquiry, based on the available records and come to the conclusion that the charges were proved.

5. Further the case of the 1st respondent is that the enquiry proceeding was conducted by an Advocate who is a Standing Counsel for the petitioner Management. Hence, the enquiry was conducted in a biased manner and the enquiry proceeding was concluded without following principles of natural justice. The further case of the 1st respondent is that the petitioner Management has granted permission for other co-delinquents for appointment of Advocate, but in the present case, the management has denied such opportunity to the 1st respondent. The findings of the Labour Court which is extracted here under:

“15. Admittedly in this case the petitioner was denied the assistance of an Advocate when a similarly placed workmen was



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given that opportunities. Moreover, as per the Enquiry Officer's report the petitioner was asked an adjournment, but was not granted by the Officer though an earlier three occasions adjournment was given which resulted in ex parte proceedings. So, the petitioner's case was not placed before the Domestic Enquiry Officer effectively. On the score also the report is to be set aside to give adequate opportunity to the workmen. As discussed earlier principles of natural justice is violated by not providing Advocate's help to the petitioner and the enquiry is proceeded ex parte the court feels the above domestic enquiry is vitiated and liable to be rejected.”

Therefore, the Labour Court has come to the conclusion that the enquiry was conducted by violating the principles of natural justice and quashed the impugned punishment and directed the management to reinstate back the 1st respondent with continuity of service with other attendant benefits with 50% backwages. This Court is of the considered opinion that the Tribunal has come to the correct conclusion that there is violation of principles of Natural Justice. However as far as backwages are concerned this Court is of the considered opinion that under the principles of “No work No pay” the 1st respondent may not be entitled to backwages.



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6. At this juncture the learned counsel appearing for the 1st respondent submitted that the Labour Court had directed the management to reinstate the petitioner, but inspite of the same the management has not reinstated the petitioner. Hence, in order to eke out his livelihood the 2nd respondent was doing some menial jobs. While he was doing one such jobs as construction worker, accidentally the cement mixer fell into his eyes and he lost his eyes.

7. By taking all facts into consideration, this Court is of the considered opinion that the petitioner Management ought to have granted permission to engage an Advocate as an observer, when the same benefit was granted to other co-workmen. Moreover, the 1st respondent during the non-employment period has lost his eyes. Inspite of order by the Tribunal for reinstatement, the Management did not reinstate the 1st respondent. Therefore, this Court is of the considered opinion that the Management shall pay consolidated compensation to the 1st respondent.



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8. Accordingly, this Court directing the petitioner Management to pay a sum of Rs.75,000/-, as compensation to the 1st respondent, within a period of Two weeks from the date of receipt of a copy of the order. The said amount is paid without interest.

9. With these directions and observations, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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30.06.2023
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To

The Presiding Officer,
Labour Court,
Tirunelveli



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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.8362 of 2016
[1/2]**

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