



W.P.No.6513 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.6513 of 2024
and
WMP.No.7245 of 2024

The Management of
Caterpillar India Pvt Ltd.,
Melnallathur Village
Tiruvallur District
Rep.by its Authorised Signatory

... Petitioner

Vs.

1.The Assistant Commissioner of Labour
Kuralagam
Chennai 600 108.

2.Udhayakumar

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in IA.No.1 of 2022 in A.P.No.748 of 2019 and quash the order dated 28.12.2022 and consequential order dated 26.09.2023 in memo/2023 I.A.No.1 of 2022 in A.P.No.A748/2019.

For Petitioner : Mr.Anand Gopalan



W.P.No.6513 of 2024

for M/s.Agam Legal Advocates

For Respondents : Mr.R.U.Dinesh Raj Kumar for R1
Additional Government Pleader
Mr.C.D.Sugumar for R2

ORDER

This petition is filed seeking to issue a Writ of Certiorari, calling for the records of the first respondent in IA.No.1 of 2022 in A.P.No.A748 of 2019 and quash the order dated 28.12.2022.

2. The second respondent was working as a machine operator in the plant at Tiruvallur. He was issued with a charge sheet cum suspension order dated 12.02.2019. Having found guilty of the charges, he was terminated from the service on 19.09.2019.

3. As the workers union of the petitioner Management has raised charter of demands before the first respondent, the petitioner has filed approval petition before the first respondent/Assistant Commissioner of Labour, Kuralagam. The second respondent entered appearance in approval application in A.P.No.748 of 2019 and questioned the fairness of enquiry.



W.P.No.6513 of 2024

During the course of enquiry, the petitioner adduced evidence only regarding the fairness of enquiry. After filing of the proof affidavit by the second respondent, the petitioner management has filed an application in IA.No.1 of 2022 wherein the petitioner sought the respondent to file proof affidavit only in so far as fairness or equity is concerned and not to mention anything in respect of the merits. The said application was disposed of after contest, by the order dated 28.12.2022, wherein the operative portion as recorded by the Authority is as under:

“It is hereby ordered that the petitioner/management not conducted the internal enquiry/domestic enquiry in a free, fair and proper manner and it is not fair and correct and against the principles of natural justice.”

4. While passing the order in the interlocutory application, the the authority was expected to confine its order as to whether the request of the petitioner for a direction to the respondent to confine proof affidavit only in respect of fairness of enquiry. However, I.A.1 of 2022 was disposed of observing that enquiry was not fair and proper. Petitioner and respondent have not submitted anything in this petition about fairness of the enquiry.



W.P.No.6513 of 2024

Accordingly, the petitioner management has filed a memo dated 09.01.2023 bringing to the notice of the authority that IA.No.1 of 2022 was filed only for a direction to restrict to the affidavit of the second respondent in respect of fairness.

5. On going through memo the first respondent authority passed orders on 06.02.2023 as hereunder:

“The interim order dated 28.01.2023 in I.A.No.1 of 2022 is kept in abeyance until further orders.

The I.A. Filed by the petitioner management is allowed, the proof affidavit filed by the respondent/workman is restricted to the preliminary issue alone.”

6. On going through the above, it is clear that the authority after considering inadvertent findings in IA.No.1 of 2022 dated 28.12.2022 has not only directed that the order in IA.No.1 of 2022, dated 28.12.2022 is kept abeyance but also made it clear that the said IA.No.1 of 2022, was allowed. As per the orders on 06.02.2023, the first respondent authority should have restricted the subsequent enquiry only in respect of fairness of the domestic



W.P.No.6513 of 2024

WEB COPY

7. However, according to learned counsel for the petitioner, the Presiding Officer who has joined the first respondent authority, subsequent to passing of orders on 06.02.2023 has once again considered the memo filed by the petitioner management dated 09.01.2023, which was already disposed of on 06.02.2023 and passed the impugned orders on 26.09.2023, stating that domestic enquiry was not conducted in a free and fair manner and that enquiry was conducted against the principles of natural justice.

8. Once memo filed by the petitioner has already been disposed of by way of order dated 06.02.2023, impugned orders should not have been passed on 26.09.2023, without re-opening and without hearing. Further, the question whether enquiry was conducted in free and fair manner has to be decided in the main petition and that it cannot be decided on memo.

9. Considering the above, the impugned orders dated 26.09.2023 and also the orders passed in IA.No.1 of 2022 dated 28.12.2022, the second



W.P.No.6513 of 2024

order dated 26.09.2022, are hereby set aside, directing the first respondent authority to consider the enquiry in respect of fairness of enquiry as per the orders passed by the first respondent authority dated 06.02.2023.

10. Accordingly, this Writ Petition is disposed of, directing the first respondent authority to complete the enquiry in respect of fairness of the domestic enquiry as expeditiously as possible not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

29.04.2024

Index : Yes / No
Internet : Yes / No
dna



W.P.No.6513 of 2024

To
WEB COPY

The Assistant Commissioner of Labour
Kuralagam
Chennai 600 108.



WEB COPY



W.P.No.6513 of 2024

Dr.D.NAGARJUN, J.
dna

W.P.No.6513 of 2024
and
WMP.No.7245 of 2024

29.04.2024