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W.P.No.10773 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2024

CORAM:

THE HONOURABLE JUSTICE Dr. JUSTICE D. NAGARJUN

W.P.No.10773 of 2024

S.Prabakaran
Petitioner

...

Vs.

The Management.
M/s.Axels India Ltd.,
Cheyyar Division
Vadamavandal Village,
Nenmedi Post, Vembakkam,
Cheyyar Taluk,
Tiruvannamalai District-604410.
...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a writ of certiorarified mandamus, after calling for the records pertaining to the preliminary award dated 05.03.2024 passed by the Additional Labour Court, Vellore in I.D.No.26 of 2019 and quash the same after holding that the domestic enquiry conducted by the respondents as against the petitioner as unfair and not proper.

For Petitioner : M/s.A.Suresh Sakthi Murugan



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ORDER

This writ petition is filed challenging the impugned order dated 05.03.2024 passed by the Additional Labour Court, Vellore.

2. The petitioner joined the respondent management on 01.10.2011 as Machine Operator. The petitioner joined a trade Union, which was questioning the unfair labour practices being followed by the respondent management. While so, on 26.10.2016, the petitioner along with seven others were transferred from Cheyyar to warehouse at Jamshedpur, which was under the control of M/s. Subham Frieght Carrier Ltd. The petitioner and other workers were not allotted any work. Out of six workers, two of them were sent back to Cheyyar by the respondents, as they had shown allegiance to the respondent company. But the petitioner and the remaining workers were not re-transferred to Cheyyar even after a period of six months.

3. The respondent management issued charge memos dated 02.01.2018, 22.01.2018, 02.02.2018 and 16.04.2018 to the petitioner. Though, replies were given, they were not considered. The respondent management sent the charge memos to the petitioner under the model standing orders of State of Jharkand. The respondent has appointed an



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enquiry officer, however, he was replaced with another enquiry officer. The newly appointed enquiry officer conducted the enquiry at the warehouse at Jamshedpur. The petitioner requested the enquiry officer for assistance of an co-employee during the course of enquiry but the same was denied and was asked to seek assistances of the other delinquent employees, even though, the standing orders of the respondent permits for assistance by co-employee. On 04.05.2018 the enquiry officer concluded the proceedings. On 09.05.2018, the petitioner gave a letter to the respondent management to change the enquiry officer but the same was not considered. Within 18 days, the enquiry report was submitted and thus the charges leveled against the petitioner was proved.

4. On 25.05.2018, the respondent management issued a show cause notice seeking his written submissions on the enquiry report. Another show cause notice dated 09.06.2018 was issued to the petitioner showing the proposed punishment of dismissal for which the petitioner has given reply on 25.06.2018. On 27.09.2018, the respondent passed the dismissal order terminating the services of the petitioner.



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5. The petitioner filed industrial dispute under Section 2 A of the I.D.Act 1947 before the Assistant Commissioner of Labour (Conciliation – II) Vellore on 15.10.2018 and as the conciliation failed, the conciliation officer submitted failure report on 22.02.2019. The petitioner has filed I.D.No.26 of 2019 and Additional Labour Court after enquiry has passed impugned preliminary award dated 05.03.2024 holding that the enquiry conducted by the respondent management as against the petitioner is fair and proper and unbiased one. Aggrieved by the same, the petitioner has approached this Court by way of writ petition.

6. The Labour Court has observed in its impugned preliminary award that the principles of natural justice have been followed by the respondent management, during the course of enquiry. The petitioner has however, raised objections stating that the charge memos were sent as per the model standing orders of the State of Jharkand and that he was denied assistance of co employee during the course of enquiry thereby, principles of natural justice have not been followed.

7. The grounds taken by the petitioner in this writ petition can be raised during the course of enquiry in I.D.No.26 of 2019. The petitioner will



get an opportunity during the course of enquiry to put forth before the

Labour Court all the circumstances that lead to termination of the petitioner.

On which the Labour Court will examine all the issues during the course of the enquiry under 11 A of the I.D.Act. After passing of the final orders in I.D., if at all the petitioner is aggrieved by any of the findings of the award, the petitioner will be at liberty to approach this Court challenging the award on all the aspects. Therefore, this Court is of the opinion that the petitioner should have waited until the disposal of the main I.D.

8. The Hon'ble Supreme Court of India has observed in a decision decided between ***Cooper Engineering Limited vs. Shri P.P.Mundhe***, reported in ***1975 AIR 1900***, is as under:

“We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in



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any proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

9. In view of the above, this writ petition is disposed of directing the respondents to proceed with the enquiry in I.D.No.26 of 2019 by following the due process of law and complete the enquiry as quickly as possible at any rate not later than eight months from the date of receipt of a copy of this order. Connected W.M.P. Is closed. No costs.

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Index: Yes/No

Speaking Order: Yes/No

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