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W.P.Nos.16073, 16074, 16076, 16078
& 16080 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.16073, 16074, 16076, 16078
& 16080 of 2019
and
WMP.Nos.15835, 15838, 15841, 15844
& 15847 of 2019

W.P.Nos.16073 of 2019

The Management of
Chowel India Pvt.Ltd.,
129, Mannur Village
Vallarpuram Post
Sriperumbudur Taluk
Kancheepuram District 602 105
Rep.by its Managing Director
Mr.Choi Yongsuk

... Petitioner

Vs.

R.Raghu

...Respondent

Prayer in W.P.No.16073 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records



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pertaining to the impugned award dated 30.11.2017 passed in ID.No.70 of 2011 by II Additional Labour Court, Chennai and quash the same.

For Petitioner in
all W.P.Nos. : Ms.T.S.Kanmani

For Respondents
in all W.P.Nos. : Mr.S.Kumaraswamy

COMMON ORDER

All these Writ Petitions are connected to each other and as such are taken up and disposed of by the common order.

2. When the matter came up for hearing, the learned counsel appearing on behalf of the petitioner Management had filed a memo dated 15.11.2024 that she has got no instructions from the Management. The name of the Management of Chowel India Pvt Ltd., is also printed in the cause- list. No other counsel or Management's representative is appearing before this Court.

3. Heard Mr.Kumarasamy, the learned counsel appearing on



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behalf of the respondents Workmen.

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4. The brief facts leading to the filing of the present Writ Petitions are that on 13.11.2009 charges were levelled against 5 workmen. The charges are identical. By the charge Memorandum dated 13.11.2009, the first charge No.1 which is alleged against the workmen is that when the Assistant Manager called them inside his cabin, they had uttered some words in vernacular and without giving any explanation for the matter for which they called for they opened the door of the cabin and went away. Though it is stated in the charge, “the following words in vernacular”, there is no such words mentioned in the entire charge memorandum or by way of any annexure. Similarly, in respect of the other charges, several blanks are left and the charge memo was served on the Workmen without even filling up the blanks in the charges.

5. On the said charges, a domestic enquiry was conducted and a common enquiry report dated 02.01.2010 was submitted by the Domestic



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Enquiry Authority, holding that some of the charges are proved and charge Nos.4, 5, 7, 10 and 11 have not been proved. Based on the same, by separate orders, on 02.01.2010 itself, these employees were dismissed from service. Aggrieved thereby the Workmen raised a dispute and upon failure of the conciliation, claim petitions were filed. It is the case of the Workmen that the domestic enquiry is *per se* illegal since the enquiry report was not furnished to them and no show cause notice was issued to them. No proper opportunity otherwise was also granted in the domestic enquiry. Therefore, they prayed for reinstatement in service with back wages. The Management resisted the claim of the Workmen and *inter alia* stated as follows in paragraph 13 of their counter affidavit, which is extracted hereunder:

“13.The petitioner has pointed out deficiencies in the domestic enquiry alleging non compliance with the principles of natural justice. It is respectfully submitted that as per the judicial dictum both in the case of a defective enquiry as well as in the case of non enquiry, the management can establish the charges before the Labour Court by leading evidence. *The respondent hereby*



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submits that they do not rely on the domestic enquiry conducted but all the same they would be able to vindicate their stand on the dismissal of the petitioner by adducing evidence before this Court.”

6. Thus, it can be seen that the management submitted that they do not rely on the domestic enquiry conducted but all the same would be able to vindicate their stand on the dismissal of the workmen by adducing evidence before the Labour Court. Thus, upon their stand, the Labour Court, did not undertake the exercise of passing the preliminary award first and went into the issue in total. On behalf of the Workmen, one Raghu was examined as *W.W.1* and exhibits *Ex.M.1 to Ex.M.7* were marked. On behalf of the respondents two witnesses were examined one A.S.Raghuraman and S.Thangamani and marked *Ex.M.1* alone. The Labour Court specifically considered the submissions made by the Management in paragraph No.13 of the counter affidavit and therefore, even after making the obvious finding that the domestic enquiry was not fair and proper, went into the merits of the charges and upon appraisal of the evidence found that except for the authorization



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letter no documents whatsoever has been marked on behalf of the Management and the Management has not done enough to prove the charges and upon such finding, ordered the Workmen to be reinstated with all continuity of service and back wages. Aggrieved by the same, these Writ Petitions are filed by the Management. Since none appeared on behalf the Management and considering the fact that the Writ Petitions are pending from the year 2019 and the fact that the industrial disputes started in the year 2011, this Court proceeded to consider the case of the parties.

7. Firstly, it can be seen that the charges are inchoate in as much as, the Management charges that “the workmen uttered following words in vernacular”, but the words are not at all given in the charges. Similarly the particulars in several other charges were also left blanked and the blanks were not at all filled up. Therefore, when the misconduct itself is not specifically put to the workmen, the findings rendered as if the misconduct is proved by the Management and passing the order of punishment is unsustainable. Even otherwise, when the management has taken a stand that it is not relying upon the domestic enquiry, it would have lead evidence before the Labour Court.



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8. It can be seen again that the evidence was primarily with reference to the serving of the charge memorandum etc., and absolutely there is no evidence which was let in before the Labour Court on the merits of the charges. No documentary evidence whatsoever was marked except the authorization letter. Therefore, the Labour Court considered the same and came to the conclusion that in spite of the opportunity, the Management did not come forward for continuation of evidence. As a matter of fact, the Labour Court allowed the application filed by the Management to reopen its evidence on payment of costs and in spite of the same, the Management did not continue their evidence and let in any kind of evidence relating to the merits of the charges and ultimately the petition to reopen was also dismissed for non payment of costs and the evidence of the Management's side remained closed.

9. In that view of the matter, when it was the specific case of the Management that they are not relying upon the domestic enquiry and when they have not even put forth before the Labour Court, what the charge was



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and did not even let in any evidence, I am of the view that no exception whatsoever can be taken to the award of the Labour Court.

10. Accordingly, these Writ Petitions are dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

28.11.2024

Neutral Citation : No
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