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W.P.No.18908 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2024

CORAM:

THE HON'BLE DR JUSTICE D.NAGARJUN

W.P.No.18908 of 2019

and

WMP.No.18269 of 2019

The Managing Director,
M/s.Shree Mother Plast India Pvt. Ltd.
Thirubuvanai
Puducherry

...Petitioner

Versus

Thiru E.K.Sankar
No.89, Vetri Vinayagar Street,
Kalitherthankuppam Village,
Madhagadipattu Post,
Puducherry.

...Respondent

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of certiorari to call for the records on the file of the Industrial Tribunal cum Labour Court, Puducherry connected with ID(L).No.19 of 2016 and to quash the Award dated 10.04.2019.

For Petitioner : Mr.John Zachariah

For Respondent : Ms.V.Porkodi
for Mr.R.Krishnaswamy



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ORDER

This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of certiorari to call for the records on the file of the Industrial Tribunal cum Labour Court, Puducherry connected with ID(L).No.19 of 2016 and to quash the Award dated 10.04.2019.

2. The petitioner is involved in the manufacturing units in PIPDIC Electronic Park Pondicherry and Sriperumpudur, Kancheepuram. The respondent was working as an operator in the Petitioner Unit from 1999. On 13.01.2012, Supervisor, Mr.Kamaraj, asked the first shift operators to submit their hourly report but it was not submitted. A memo was issued to all the operators including the petitioner for non-production of hourly report. Subsequently, some altercation took place between the workers and others and it was brought into the report.

3. The respondent and Mr.Palaniyappan were issued show cause notice cum suspension orders on 20.01.2012 for their disorderly behavior for which an explanation was submitted on 21.01.2012. A charge sheet was issued to the respondent on 23.12.2012. The Enquiry Officer



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appointed and, respondent did not come forward to participate in the enquiry proceedings. Finally Enquiry Officer submitted her report on 25.04.2014 confirming the charges levelled against the respondent. A second show cause notice dated 12.05.2014 was issued to the respondent communicating the proposed punishment to which an explanation was submitted 03.06.2014 , thereafter the respondent was terminated from service on 11.10.2014.

4. The petitioner has raised ID.(L).No.19 of 2016 before the Labour Court, Pondicherry and after a full fledged enquiry, the Labour Court passed the Award, allowing the industrial dispute raised by the respondent with a direction to the petitioner to reinstate the respondent in petitioner company within a month and to pay back wages from the date of suspension within a period of one month. Challenging the said Award in this writ petition. The learned counsel for the petitioner has submitted that the impugned order passed by the Labour Court is erroneous as the Labour Court has not given clear finding as to whether the domestic enquiry conducted was fair and proper and therefore requested to remand the case back to the Labour Court after setting aside the impugned order to give a finding as to whether enquiry was conducted in free and fair



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manner.

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5. Learned counsel appearing for the respondent-workman did not file counter affidavit but submitted that the order of the Labour Court is not clear on any aspect and findings are contrary and therefore requests the Court to remand the matter to the Labour Court.

6. Heard both sides and perused all the available materials on record. I have gone through the orders of the Labour Court closely, the order consists 31 pages. The Labour Court has extracted averments of the petitioner and the respondent and it has recorded the points to be decided was whether the Management was justified in non-employment of the workman. While discussing the issue, the Labour Court was expected to give a finding as to whether the domestic enquiry conducted by the Management was fair and proper. At para No.6, the Labour Court has observed as under:-

“As far as the respondent concerned the service of the petitioner was terminated for grievous misconduct committed by him and the termination was made based on the enquiry report of the enquiry officer after giving opportunities under principles of natural justice. But there is no sufficient evidence to show that the Domestic



Enquiry was conducted fair and free and it is found that the petitioner was not giving sufficient opportunities to prove the charges alleged by the respondent by producing evidence and relevant documents.”

7. Further at para No.14, he has observed as follows:

“14. Further it is contended on the respondent side that the enquiry was being conducted by giving full opportunities to take the assistance of the co-worker of the petitioner and the full opportunities was also given to the petitioner for cross-examination of the respondent's witnesses and produce evidence and the enquiry was conducted free and fair reasonably and it is established under Ex.R12 and Ex.R13. On perusal of the case records it is clear that the petitioner is not been examined in the domestic enquiry proceedings when the enquiry was conducted by the management. The other workers are examined as namely Mr.C.Kumar, R.Sakthivel, P.Prabhu and Mr.S.Panchatcharam as DW1 to DW4 during the domestic enquiry and the enquiry report is as Ex.R13 dated 25.04.2014. But it is alleged by the respondent management that the petitioner and his co-worker, Mr.Palaniappan has approached voluntarily the respondent management on 08.12.2012 and he has made an apology in writing for his misconduct along with co-worker petitioner and he requested to close the enquiry proceedings and the Apology letter of the said Mr.Palaniappan is as Ex.R9. But from the perusal of the Apology letter of the Mr.Palaniappan, it seems that he has sought for continue the enquiry proceedings and he agreed for the continuous enquiry proceedings.”



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8. On perusal of the award as referred above, it is clear that the Labour Court did not give clear finding as to whether the principles of natural justice have been followed or not and that whether the termination of the workman basing on the enquiry was correct.

9. In view of the above, as rightly submitted by learned counsel for the petitioner as well as counsel for the respondent the impugned order passed by the Labour Court is not clear, on any aspects which are required to be proved before the Labour Court. Thereby it is a fit case to set aside the impugned order and remand the case back to the same Court with a direction to make fresh enquiry in all aspects, and bive clear findings.

10. The learned counsel for the respondent-workman submitted that though this Court has directed to pay the 17 B back wages, the wages were not paid from March 2020 to May 2021. The learned counsel for the petitioner management on the other hand submitted that the 17 B wages during disputed period is also paid. Considering the submissions, the petitioner management is directed to consider the objection raised by the counsel for the respondent-workman, to pay the 17 B wages for the period of March 2020 to May 2021, and directed to pay the same, as quickly as possible, in case if already not paid.



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11. In the result, this writ petition stands disposed off. The impugned order passed in ID(L).No.19 of 2016 dated 10.04.2019, is set aside, the matter is remanded back to the Labour Court, Pondicherry and is directed to give fresh finding on the basis of evidence already recorded, and give a clear finding on all aspects of termination of the workman by the management. The concerned Labour court is directed to complete the exercise as quickly as possible not later than six (6) months from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected writ miscellaneous petition also stands closed.

01.04.2024

Index :Yes/No
Speaking :Yes/No
Neutral Citation Case:Yes/No
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DR D.NAGARJUN,J.



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