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W.A.No.1467 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.1467 of 2023
and C.M.P.No.14181 of 2023

M/s.T.N.K.Govindaraju Chetty & Co P Ltd.,
Proprietors of Devi, Devi paradise, Devi Bala and
Devi Kala,
T.N.K.House, 48 Anna Salai,
Chennai-600 002

...Petitioner/ Appellant

Vs.

1.B.Ganesan

2.S.V.Ramki

3.K.Srinivasan

...Petitioners/ Respondents

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 21.04.2023 made in W.P.No.29602 of 2014 and uphold the order passed by the Labour Court in I.A.No.134 of 2014 and allow this Writ Appeal.

For Appellant : Mr.M.R.Dharani Chander

For Respondents : Mr.S.P.Srinivasan for R1
R2 & R3 - given up



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JUDGEMENT

(Judgement of this Court was delivered by M.S.RAMESH.J)

This Writ Appeal has been filed to set aside the order of a learned Single Judge of this Court made in W.P.No.29602 of 2014 dated 21.04.2023 and uphold the order passed by the Labour Court in I.A.No.134 of 2014 in I.D.Nos.123 to 125 of 2012.

2. Respondents 2 and 3 herein are only formal parties, who have also been given up by the learned counsel for the appellant through an endorsement made herein.

3. Alleging that the first respondent herein had indulged in some misconducts, a show cause notice was issued to him by the Appellant / Management. On consideration of his explanation to the show cause notice, charges came to be leveled against him. Thereafter, an enquiry was conducted, wherein the charges were held to be proved. Thereafter, the Management had issued a dismissal order dated 04.01.2010. Simultaneously, the Management had also preferred a petition under



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Section 33 (2) (B) of the Industrial Disputes Act, 1947 before the Deputy Commissioner Labour 1, Chennai. While the petition was pending, in one of the hearing, the first respondent had made a submission before the Authority stating that he is not challenging the fairness and propriety of the domestic enquiry. The said statement was also recorded by the Authority in the following manner:

"Preliminary issues admitted.

workmen not challenging the

fairness & propriety of the domestic enquiry.

Posted for arguments.

Ad. to 31.5.11 / 11 a.m"

The aforesaid docket order of the Authority was also acknowledged by the representative of the workman.

4. In this background, when the first respondent herein had filed his proof affidavit before the 1st Additonal Labour Court, he had raised grounds, challenging the fairness of the domestic enquiry, which prompted the Management to prefer an application in I.A.No.134 of 2014 in



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I.D.No.123 to 125 of 2012, praying to eschew the proof affidavit filed by the workman, in so far as it relates to the challenge on the fairness of the enquiry. The Labour Court, through its order dated 17.09.2014, held that the first respondent herein is not entitled to challenge the fairness of the enquiry after making an endorsement before another statutory authority and that he is estopped from taking a contrary stand before the Labour Court and accordingly, allowed the application filed by the Management.

5. When the order of the Labour Court was challenged before a learned Single Judge of this Court in W.P.No.29602 of 2014, the Writ Petition came to be allowed by holding that the Labour Court, before addressing the merits of the case touching upon the misconduct, is bound to decide the question on the validity of the enquiry in the first instance, through its order dated 21.04.2023. This order is now put under challenge before us.

6. Heard Mr.M.R.Dharani Chander, learned counsel for the appellant, as well as Mr.S.P.Srinivasan, learned counsel appearing for the



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first respondent and perused the materials available on record.

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7. The fact that the first respondent herein had made a submission before the statutory authority on 24.05.2011 that the workman is not challenging the fairness and propriety of the domestic enquiry, is not under dispute before us. Incidentally, this submission before the Authority touches upon the same enquiry, which records were before the Labour Court. If at all the first respondent was not contended with the manner in which the enquiry was conducted or was of the view that it was unfair and injustice, he ought not to have made a representation before the Labour Court by approving the manner in which the enquiry was conducted. The very statement made by him that he is not challenging the fairness and propriety of the enquiry, would tantamount to submitting that the enquiry was indeed conducted in a fair and proper manner. Having said so before the Authority, the first respondent herein cannot subsequently retract from such a statement before the Labour Court, which is a continuation of the proceedings of the Authority. In this factual background, we are unable to subscribe to the findings of the learned Single Judge of this Court.



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8. The only objection raised by the first respondent herein is that there is no finding by the Authority that the enquiry was made in a fair and proper manner. This is not a case where the Authority had conducted an adjudication in the Approval Petition and rendered a finding. On the other hand, the first respondent herein had volunteered and admitted to the fairness and propriety of the enquiry, which was only recorded by the enquiry officer and counter signed by the representative of the workman. Thus, the objection raised in this regard cannot be sustained.

9. Though we may endorse the views of the learned Single Judge that in normal circumstances, the Labour Court is bound to go into the fairness of the enquiry before the proceeding the merits of the case, the factual position in this case would not require such a procedure. Thus, we are in conformity with the views of the Labour Court. In other words, the first respondent herein having made his submission before the Authority that he is not challenging the fairness and propriety of the enquiry and is now estopped from challenging the fairness of the enquiry before the Labour Court.



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10. Thus, the impugned order of the learned Single Judge is set aside. The Labour Court shall decide the industrial dispute, after giving an opportunity of hearing to either side, by taking into account that the domestic enquiry was conducted in a fair and proper manner and conclude the proceedings as expeditiously as possible, in any event within a period of six (6) months from the date of receipt of a copy of this order.

11. In the result, this Writ Appeal stands allowed. No Costs.
Consequently, the connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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