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W.A.No.1087 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.1087 of 2024
and C.M.P.No.7848 of 2024**

Pradeep Stainless India Private Limited,
Rep. by its Chairman B.Ramesh Chand
C-3, Phase II MEPZ SEZ Tambaram,
Chennai – 600 045

... Appellant/Petitioner

Vs.

1.The Deputy Commissioner of Labour
No.II,
DMS Complex,
Teynampet,
Chennai – 600 006.

2. M.N.Sankar

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent to set aside
the order dated 07.08.2023 made in W.P.No.10304 of 2017.

For Appellant : Mr.S.Ravichandran
Senior Counsel
for Mr.V.Shanmuganathan

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For Respondents : Mr.T.Chezhiyan for R1
Additional Government Pleader
Mr.V.Ajoy Khose for R2

J U D G M E N T

(Judgment of the Court was made by P.Dhanabal,J.)

This writ appeal has been preferred as against the dismissal order made in W.P.No. 10304 of 2017 challenging the order passed in A.P.No.9 of 2010 preferred by the petitioner seeking for termination order dated 21.10.2008 passed against the second respondent herein and quash the common order dated 11.08.2016 passed by the first respondent.

2.The case of the appellant is that the second respondent is a workman under the appellant-Management and for his misconduct, charge memo was issued, domestic enquiry was conducted and after receiving enquiry report, the appellant-Management issued second show cause notice to the second respondent herein. He was found guilty and explanation was called for by serving the domestic enquiry report and thereafter, the second respondent was terminated from service. Thereafter, the



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appellant Management filed a petition before the first respondent for approval of the dismissal order passed by the Management and the same was transferred to the file of Deputy Commissioner of Labour II. The appellant-Management neither pleaded nor framed preliminary issue as to whether domestic enquiry has been conducted by the appellant-Management in a fair and proper manner in order to satisfy the mandatory provision under Section 33 (2)(b) of the Industrial Disputes Act. However, the Deputy Commissioner of Labour II failed to frame preliminary issue and passed final order rejecting the approval petition. As against the said order, the petitioner-Management has preferred the writ petition before the Writ Court and the Writ Court also dismissed the writ petition holding that the appellant-Management issued charge memo for the misconduct of the second respondent, pursuant to which, order of dismissal was passed and approval petitions were filed and the Deputy Commissioner of Labour -II rejected the approval petition. It is equally un-disputed fact that initially, the petitioner-Management filed 10 approval petitions and thereafter, withdrawn two approval petitions. This attempt of the petitioner-Management shows the unfair labour practice of the petitioner and the dismissal order was not passed, based on the *prima*



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facie case and this itself shows the victimisation of the workmen/second respondent. On this sole ground, the Writ Court had dismissed the writ petition. Challenging above said order, the present Writ Appeal has been filed by the appellant-Management.

3. Learned counsel for the appellant-Management would contend that the second respondent is working under the employment of the appellant-Management and the conditions of services of the employees working in the appellant's factory are governed by "Model Standing Orders". There was a works committee to look after the grievances of the workers. While so, during the year 2007, a handful of disgruntled workmen started to indulge in various subversive activities are created myriad problems leading to slump in the production.

(ii). He further submitted that, on 17.11.2007, the second respondent was not only found loitering inside the factory, but also inciting other workers to disregard the "incentive scheme" declared by the Management. In this regard, a complaint was received from one Mr.P.Dinesh, Director (Production) on the same day and on 03.12.2007, a charge memo



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was issued to the 2nd respondent and he had submitted a reply on 29.01.2008. Since it was not satisfactory, domestic enquiry was ordered and charges were framed. Thereafter, enquiry was conducted and as per the enquiry report, he was found guilty. Pursuant to which, show cause notice was issued to the second respondent seeking explanation from him by furnishing the copy of enquiry report. The second respondent also submitted his reply dated 09.09.2008.

(iii). In the meantime, a handful of workers had indulged in violence inside the factory on 23.01.2008 and assaulted the Managing Director and caused bleeding injury on his head. Thereafter, the complaint was lodged by the appellant-Management and FIR was registered against the second respondent and others in Crime No. 93 of 2008 by the Inspector of Police, Tambaram Police Station. In this regard, the Management had issued a show cause notice dated 30.04.2008 to the 2nd respondent seeking his explanation. The 2nd respondent had admitted all the allegations made against him and the appellant-Management had terminated him from service on 21.10.2008 along with one month salary to the tune of Rs.4,050/- and sent the copy of approval application to the first respondent/Joint Commissioner



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of Labour, Teynampet seeking approval for termination of the 2nd respondent.

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(iv).The first respondent had not framed the preliminary issue with regard to the validity of the domestic enquiry. Since the 2nd respondent had questioned the validity of the domestic enquiry, the 1st respondent ought to have framed preliminary issue. However, instead of deciding the preliminary issue, the first respondent insisted the appellant-Management to bring the Management witnesses for further cross examination.

(v). In the meantime, two of the workers viz., M.Ganesh (A.P.No.5/2010) and Mr.K.Velu (A.P.No.6/2010) had settled their dues with the Management and the Management filed withdrawal applications seeking to withdraw those applications. Thereafter, the 1st respondent had dismissed the approval application filed by the petitioner-Management seeking for approval of termination of the 2nd respondent along with other seven approval applications, on the ground that the appellant-Management had failed to offer the witness on his behalf for further cross examination. In fact, the 2nd respondent only failed to cross examination of witnesses and already ample chances given for cross examination of witnesses. Therefore, the order



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passed by the first respondent is not in accordance with law and the same is perverse. By challenging the said order, the petitioner-Management had filed a writ petition.

(vi). The Writ Court also without considering the merits of the case, had dismissed the writ petition on the ground that the appellant had permitted to withdraw the petitions as against the two employees. Thereby, it shows the unfair labour practice of the appellant-Management. The said order of the writ court is against law and Writ Court failed to consider that the first respondent had failed to consider the preliminary issue as raised by the appellant and the first respondent ought to have decided the fairness of the domestic enquiry, but the Writ Court failed to consider the same and therefore, the order passed by the Writ Court is liable to be set aside.

4. Learned counsel appearing for the second respondent/workmen would contend that the second respondent was not given any opportunity to cross examine the witness examined in the domestic enquiry and the first respondent in the approval petition has categorically discussed about the non-opportunity given to the second respondent and



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thereby, refused to grant permission. Therefore, the order passed by the first

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respondent is a well reasoned order. The writ court also categorically stated that the petitioner- Management is allowed to withdraw the proceedings as against the two employees and the same is unfair labour practice and on the sole ground, the Writ Court dismissed the writ petition. Therefore, the order passed by the writ court is in order and the appellant-Management's appeal is liable to be dismissed.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and this Court had perused the materials available on record carefully.

6. It is an admitted fact that in the domestic enquiry, the Management side witnesses were not fully cross examined by the second respondent. On a careful perusal of records, it is seen that when the case was posted for cross examination on the Management side witness, they were not appeared, and thereafter, frequently, matters were adjourned and after so



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many hearings, the matter was adjourned for cross examination, but the Management side witnesses had not appeared. In the meantime, A.P.No.5/2010 and A.P.No.6/2010 were withdrawn by the Management and thereby, the case was adjourned for passing orders on 11.08.2016. Thereafter, without completing the cross examination, the Authorities have passed the termination order as against the second respondent. The above said act shows that principle of natural justice was violated and the first respondent also in his order had categorically discussed that no cross examination of witnesses by the second respondent and thereby, declined to grant permission to terminate the second respondent under Section 33 (2)(b) of the Industrial Disputes Act for his misconduct. It is pertinent to note that the domestic enquiry was conducted for 10 workmen during the pendency of the enquiry. From which, the petitions of two workmen were withdrawn by the Management and thereby, the act of the Management shows the unfair labour practice. The Writ Court also taking into account about the withdrawal of two petitions, had fairly come to the conclusion that the appellant-Management adopted the unfair labour practices and thereby, declined to allow the writ petition filed by the Management and accordingly, dismissed



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the writ petition. Therefore, the order passed by the Writ Court is in order and in accordance with law and no perversity or infirmity found in the order of the Writ Court and the same does not warrants interference by this Court.

7. In the result, this Writ Appeal is dismissed. Consequently connected miscellaneous petition is closed. No costs.

(J.N.B,J.) (P.D.B., J.)
08.04.2024

msv

Index : Yes / No
Internet : Yes/No
Speaking order : Non-speaking order
Neutral Citation : Yes/No

To
The Deputy Commissioner of Labour
No.II,
DMS Complex,
Teynampet,
Chennai – 600 006.

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