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W.P. No.3541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.3541 of 2022
and W.M.P. No.3675 of 2022

The Management,
Katsushiro Matex India (P) Ltd.,
represented by its Authorized Signatory,
Rubalingam.D. .. Petitioner

vs.

N. Sethumadhavan .. Respondent

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records of the Industrial Tribunal, Tamil Nadu, Chennai in Approval Petition No.68 of 2016 dated 24.01.2022 and quash the same.

For Petitioner : Mr.S. Ravindran, Senior Counsel
for Mr. P.Nehru

For Respondents : Mr. V. Prakash, Senior Counsel.
for Mr. S. Abinesh

ORDER

This Writ petition has been filed to quash the order passed in Approval



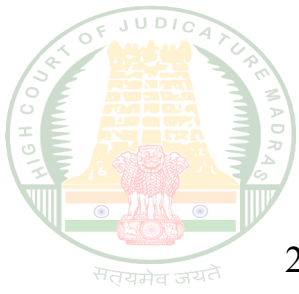
W.P. No.3541 of 2022

Petition No.68 of 2016 dated 24.01.2022 by the Industrial Tribunal, Chennai.

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2. The short facts necessary to dispose the Writ petition are as follows:-

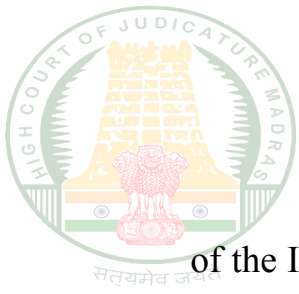
The petitioner is engaging in the manufacturing of Dumper Body and Excavator parts. The respondent joined in the petitioner Management on 01.12.2012 as 'Welder' and he was carrying out welding operations from 01.12.2012 onwards. His welding operation on 22.09.2015 in Unit No.209 was defective and lot of work had to be done for the said job. While so, on 26.09.2015, the Supervisor of the respondent namely B. Packirisamy questioned the respondent about the extensive rework to be done in the job performed by the respondent. The respondent retorted and justified the job done by him, thereby on 26.09.2015, the said Packirisamy submitted a report to that effect to the petitioner Management. The respondent's welding work on 28.09.2015 in Unit 214 was again defective and when the same was questioned by the said Packirisamy, during the inspection, on 29.09.2015, the respondent not only confronted Packirisamy, but also asked the other workmen to stop work.



W.P. No.3541 of 2022

WEB COPY

2.1. Therefore, on 08.10.2016, a Show Cause Notice was issued to the respondent for his defective works in Unit No.209 and 214 and his misbehaviour towards Packirisamy on 26.09.2015 and 29.09.2015. The respondent also gave an explanation dated 16.10.2015 with a plea of victimization for union activities. Thereafter, on 23.10.2015, a detailed charge memo was issued to the respondent for his negligent work and misbehaviour towards his Supervisor Packirisamy. The respondent submitted his reply dated 31.10.2015 by stating that the said Packirisamy threatened to murder him, for which, he gave a police complaint and also alleged that he was being victimized for trade union activities. The said explanation was not accepted by the Management and hence, a domestic enquiry was conducted. The Enquiry Officer rendered findings that the charges against the respondent were proved. Thereafter, a Show Cause Notice was issued to the respondent on 24.06.2016, for which, the respondent has not submitted any reply. Prior to that, a copy of the Enquiry report was also furnished to him and no reply was received from him. Therefore, the Disciplinary Authority passed an order by dismissing the respondent from service. Since I.D. No.33 of 2014 regarding charter of demands was pending before the Industrial Tribunal, Chennai, the Writ petitioner filed an Approval Petition under Section 33(2)(b)



W.P. No.3541 of 2022

WEB COPY

of the Industrial Disputes Act in A.P. No.68 of 2016 and the Tribunal rejected the approval petition, filed by the Writ petitioner, by an order dated 24.01.2022. Now, the petitioner Management challenged the said order through this Writ petition.

3. The learned Senior counsel appearing for the petitioner Management would submit that on 22.09.2015, there was a defect in the work negligently done by the respondent in Unit No.209 and on 26.09.2015, when the Supervisor Packirisamy, while inspecting the above said job, questioned the respondent for the negligent work done by him, the respondent confronted the said Packirisamy in an aggressive manner, thereby, a Show Cause Notice was issued on 08.10.2015 and the respondent submitted his reply dated 16.10.2015 without any specific denial. Hence a Charge Memo was issued on 23.10.2015. The respondent also submitted his reply on 31.10.2015 denying the charges. Thereafter, a Domestic Enquiry was held. In the Domestic Enquiry, an opportunity was offered to the respondent and the Enquiry Officer submitted his report as 'charges proved' and thereafter, a 2nd Show Cause Notice was served to the respondent, but he has not submitted his reply. Therefore, the Disciplinary Authority passed an order by dismissing



W.P. No.3541 of 2022

the respondent from service.

WEB COPY

3.1. In the Domestic Enquiry proceedings, the said Packirisamy and one G. Gopala Krishnan, head of the Human Resource Department were examined and they categorically stated about the delinquency of the respondent. The evidence adduced by the Management side had amply proved the delinquency committed by the respondent. The respondent side witness namely Prabhu had also admitted the inspection made by the said Packirisamy and his enquiry about the defects on the work done by the respondent and they also admitted the defects. Therefore, the charges were amply proved through sufficient evidence. Since, the industrial dispute was pending, an Approval Petition was filed by the petitioner, but the Tribunal without perusing the report of the Enquiry Officer and without giving adequate reasons, rejected the Approval petition. The findings of the Enquiry Officer are based on the evidence, but the Tribunal, without jurisdiction, gave findings on each of the charges, by its own method of application of evidence. The observation of the Tribunal that there was no legal evidence, that the findings are not based on the material evidence, that there is victimization and unfair labour practice is a sweeping observation without Iota of evidence.



W.P. No.3541 of 2022

WEB COPY

With regard to bias alleged against the Head of HR department G. Gopala Krishnan, no such plea was taken during the enquiry proceedings or at the time of issuing 2nd Show Cause Notice. The Head of the Human Resources Department G. Gopalakrishnan is the appointing Authority and hence he was a competent authority to pass the order of dismissal and to accept the Enquiry report. Therefore, the order was passed by the Tribunal, while considering the Approval petition, without going into the merits, as if adjudication is under Section 11A of the Industrial Disputes Act. Therefore, the order passed by the Tribunal is liable to be quashed.

3.2. In support of his contention, the learned Senior Counsel appearing for the petitioner has relied upon the following judgments;-

3.2.1. John D'Souza v. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47.

3.2.2. Divisional Controller, KSRTC v. A.T. Mane reported in (2005) 3 SCC 254.

3.2.3. State of Haryana v. Rattan Singh reported in (1977) 2 SCC 491.

3.2.4. Municipal Committee Tauru v. Harpal Singh and another reported in (1998) 5 SCC 635.

3.2.5. Director General, ESI & Another v. T. Abdul Razak reported in (1996) 4 SCC 708.



WEB COPY



W.P. No.3541 of 2022

3.2.6. Dawn Mills Company v. Sukhdev Prasad Dhaneshwar & Another reported in Appeal No.1456 of 1987.

3.2.7. Lalla Ram v. D.C.M. Chemical Works Ltd., & Another reported (1978) 3 SCC 1.

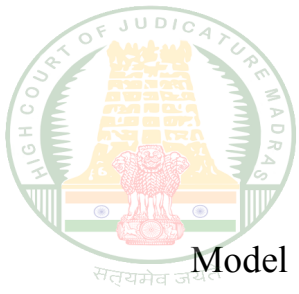
3.2.8. The Management of TNSTC (Coimbatore) Ltd., v. M. Chandrasekaran reported in 2016 (3) LLN 513 (SC).

3.2.9. Engine Valves Ltd., Madras v. Labour Court, Madras and another reported in 1991(1) LLN 268.

3.2.10. Messrs Bharat Iron Works v. Bhagubhai Balubhai Patel and others reported in (1976) 1 Supreme Court Cases 518.

3.2.11. Management of Hindustan Steel Ltd., v. The Workmen and others reported in (1973) 3 Supreme Court Cases 564.

4. The learned Senior Counsel appearing for the respondent would submit that the respondent was working as 'Welder' in the petitioner's Management and the Management issued a Charge Memo stating that there was a defect in the work done by the respondent, about which, one Packirisamy, his superior had advised him on 26.09.2015 and again on 29.09.2015 and the respondent had replied irresponsibly. Therefore, the respondent was charged under Sections 16(1), 16(11) and 16(20) of the



W.P. No.3541 of 2022

Model Standing Orders. Since the industrial dispute was pending, an Approval petition was filed. The said Approval petition was dismissed by citing reasons.

4.1. A Writ of Certiorari is a discretionary Writ and basically, the Court will not interfere with an order unless there is injustice caused by the order. As far as the jurisdiction is concerned, the Labour Court or Tribunal in approval applications, has to examine as to (i) whether the enquiry was held in accordance with Principles of Natural Justice, (ii) whether the findings of the Enquiry officer are perverse, (iii) whether the workman has been victimised and (iv) whether the dismissal is in accordance with the standing orders.

4.2. As per the Preliminary order passed by the Tribunal dated 05.10.2021, the disciplinary enquiry was conducted in a fair manner. Though the preliminary order was not challenged, since the final order is in favour of the workman, still he can plead that the enquiry was not conducted in a fair manner. The preliminary order stands vitiated for the reason that the Tribunal has not examined the issue of bias on the part of Gopalakrishnan, who was

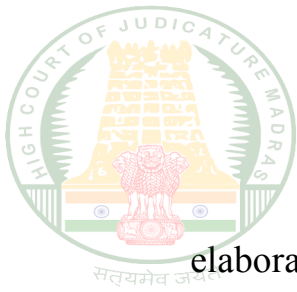


W.P. No.3541 of 2022

WEB COPY

one of the witnesses in this case, who accepted the Enquiry report. The said Gopalakrishnan has only issued the Show Cause Notice, considered the explanation given to the Charge Memo and he only appointed the Enquiry Officer, who himself appeared as one of the Management witnesses. In the Charge Memo, no list of witnesses furnished and no indication that the said Gopalakrishnan was going to appear as a witness. Therefore, there is bias.

4.3. The charges in the Charge Memo are also vague and did not disclose the nature of work done and the work done on which date was defective. The final order was passed by the South Korean Managing Director, who was not in a position to understand the case in Tamil language and who has no knowledge about the local language. Further, in a complaint dated 02.09.2015, the respondent has stated that the said Packirisamy is inimical to him and if anything happens to him, the said Packirisamy alone is responsible. But the said letter was not produced before the Enquiry Officer during the Enquiry proceedings. As per the Model Standing Orders, before imposing the penalty, the past records of the service of workman has to be considered. But, in the case on hand, no consideration of the past records of service of the respondent. Therefore, the Industrial Tribunal, after the



W.P. No.3541 of 2022

WEB COPY

elaborate discussion, fairly came to a conclusion that there is bias and there is no acceptable evidence to prove the prima facie case and there is victimization and dismissed the Approval petition. Therefore, the present Writ petition is liable to be dismissed.

4.4. The learned Senior Counsel appearing for the respondent, in support of his contention, has relied upon the following judgments:

4.4.1. A.M. Allison Vs. B.L. Sen reported in AIR 1957 SC 227.

4.4.2. Management of Sundaram Industries Ltd., vs. Sundaram Industries Employee Union reported in 2014 (2) SCC 600.

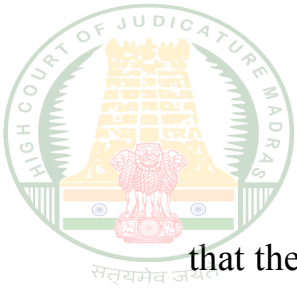
4.4.3. P.D. Dinakaran vs. Judges Enquiry Committee & Ors reported in (2011) 8 SCC 380.

4.4.4. Roop Singh Negi vs. Punjab National Bank reported in (2009) 2 SCC 570.

4.4.5. Management, Pandiyan Roadways Corp. vs. N. Balakrishnan reported in (2009) 7 SCC 755.

5. This Court heard both sides and perused the entire materials available on record.

6. In this case, the main allegation levelled against the respondent is



W.P. No.3541 of 2022

WEB COPY

that there were defects in the work done by the respondent and when the same was questioned by the Inspecting Authority namely Packirisamy, the respondent confronted with the said Packirisamy and also he wrote a letter that the said Packirisamy is inimical to the respondent and if anything happens to the respondent, the said Packirisamy alone is responsible. Further, on 02.09.2015, the respondent sent a letter requesting to place him in the night shift and the same was not accepted by the Management and stated that if any inconvenience, the respondent can avail leave, for which, the respondent issued a reply stating that the Supervisor Packirisamy is inimical to the respondent and if anything happens to the respondent, the said Packirisamy alone is responsible. Therefore, the respondent was charged under Sections 16(1), 16(11) and 16(20) of the Model Standing Orders.

7. On the side of the Management, they examined 3 witnesses viz., MW1 to MW3 and marked Ex.M.1 to Ex.M.18 and on the side of the respondent, 3 witnesses namely WW1 to WW3 were examined and Ex.W.1 to Ex.W.4 were marked.

8. It is an admitted fact that the enquiry was conducted after giving

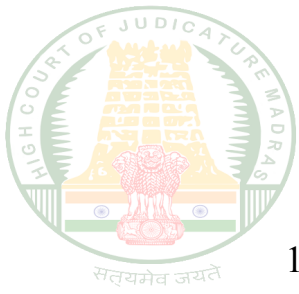


W.P. No.3541 of 2022

WEB COPY

opportunity to the respondent / workman. In the enquiry proceedings, the Head of the Human Resource department namely Mr. G. Gopalakrishnan was examined as MW2 on the side of the Management. A Show Cause Notice was issued by the said Gopala Krishnan and a charge memo was also issued by the said Gopala Krishnan. The explanation submitted by the respondent was also considered by the said Gopala Krishnan and the enquiry report given by the Enquiry Officer, was also accepted by the said Gopala Krishnan. Therefore, there is a bias and victimisation. Moreover, the evidences adduced in the Domestic Enquiry for the charges are also not based on the acceptable evidence and prima facie case has not been made out to prove the charges.

9. As far as the charge in respect of disobedience under Section 16(1) of the Model Standing Orders is concerned, there is no disobedience by the respondent and there was a defect in the work done by the respondent and the same was questioned by the superior officer, for that, the workman answered. The same cannot be treated as insubordination and mere defects found in the work done by the workman alone is not sufficient to prove the insubordination.

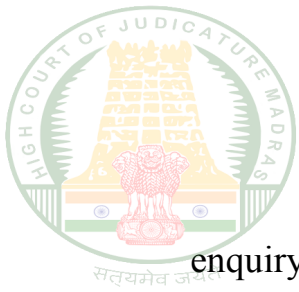


W.P. No.3541 of 2022

WEB COPY

10. As far as the charge under Section 16(11) of the Model Standing Orders is concerned, there is no negligent on the part of the respondent. In order to prove the same, there is no evidence that on which date, he committed negligence and the mere defect in the work will not amount to negligence and there is no reference in the charge memo as to what kind of defects committed by the respondent. The dates mentioned in the charge memo and the evidence adduced by the Management are not tallied. Therefore, the said charge has not been proved.

11. As far as the charge under Section 16(20) of the Model Standing Orders is concerned, there is no acceptable prima facie evidence that the respondent threatened the co-workers or the officials of the Management. There is no specific allegations about the threatening and no mention about the specific words in respect of the alleged threatening. There are no prima facie evidence to prove the charges based on the acceptable evidence adduced on the side of Management. There are no principles of natural justice followed in this case at the time of enquiry proceedings. Though the Tribunal found that one month salary was given to the respondent / workman and the enquiry was conducted by following the principles of natural justice and the

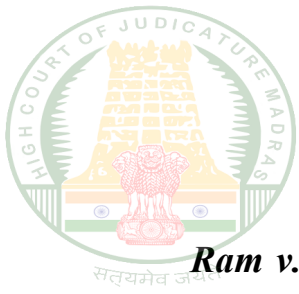


W.P. No.3541 of 2022

WEB COPY

enquiry report was filed along with approval petition without any delay, rendered findings on the ground that there is no acceptable prima facie evidence and there is victimization and the available evidence shows that there is bias of principles of natural justice by initiating the Disciplinary Proceedings through MW2 and the enquiry report was also accepted by MW2 and therefore, there is a bias and victimisation. Therefore, the Tribunal has discussed elaborately and passed an elaborate, reasoned order and no any perversity or illegality found in the order passed by the Tribunal by rejecting the petition filed by the petitioner Management.

12. The arguments of the learned counsel appearing for the petitioner that the evidence adduced before the Enquiry Officer and in substituting his own judgment to that of the Disciplinary Authority is impermissible is concerned, it is true as per the judgment referred by the learned counsel appearing for the petitioner in ***The Management of TNSC (Coimbatore) Ltd., v. M. Chandrasekaran reported in 2016 (3) LLN 513 (SC)***, the Court cannot exceed its jurisdiction in reappreciating the evidence adduced before the Enquiry Officer and in substituting his own judgment to that of the Disciplinary Authority. In the case on hand, as per the judgment of ***Lalla***



W.P. No.3541 of 2022

Ram v. D.C.M. Chemical Works Ltd., & Another reported (1978) 3 SCC 1,

the Tribunal has to see (i) whether a proper domestic enquiry in accordance with the relevant rules / Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position that though generally the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe, yet, an inference of mala fides may, in certain cases, be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee; and (v) whether the employer has, simultaneously or within such reasonably short time as to form part of the same transaction, applied to the authority before which the industrial dispute is pending for approval of the action taken by him. The Tribunal has to consider all the above aspects and also considered all the



W.P. No.3541 of 2022

points and came to a conclusion that there is a victimisation and unfair practice and no prima facie case for dismissal based on legal evidence.

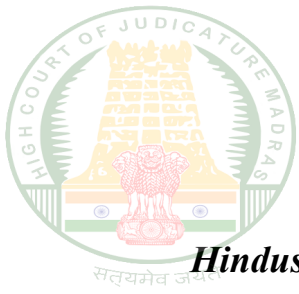
12.1. As per the judgment in ***Engine Valves Ltd., Madras v. Labour Court, Madras and another*** reported in ***1991(1) LLN 268***, reference to past record of service of the workman in the punishment order is sufficient compliance of Clause 17(5) of Model Standing Orders applicable to the petitioner establishment. As per the judgment in ***Messrs Bharat Iron Works vs. Bhagubhai Balubhai Patel and others*** reported in ***1976(1) Supreme Court Cases 518***, the plea of victimization cannot be easily inferred without convincing evidence and the Labour Court can reappraise evidence and draw its conclusions only if Domestic Enquiry is set aside and fresh evidence is placed before it. In the case on hand, the available evidence adduced on the side of Management, shows that MW2, who issued Charge Memo was examined as a witness on the side of the Management and he also accepted the enquiry report and based on the same, the person who does not even know Tamil, has passed the order in Tamil. More over in the charge memo, the list of witnesses and documents were not enclosed, thereby, no to the workman to plead about the bias. If the workman put on notice about the



W.P. No.3541 of 2022

examination of MW2 through the Charge Memo, then the petitioner can take the stand. Therefore, it shows the clear victimisation and unfair labour practice.

12.2. As far as the judgments relied upon by the learned counsel appearing for the petitioner viz., *(1) John D'Souza v. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47, (2) Divisional Controller, KSRTC v. A.T. Mane reported in (2005) 3 SCC 254, (3) State of Haryana v. Rattan Singh reported in (1977) 2 SCC 491, (4) Municipal Committee Tauru v. Harpal Singh and another reported in (1998) 5 SCC 635, (5) Director General, ESI & Another v. T. Abdul Razak reported in (1996) 4 SCC 708, (6) Dawn Mills Company v. Sukhdev Prasad Dhaneshwar & Another reported in Appeal No.1456 of 1987, (7) Lalla Ram v. D.C.M. Chemical Works Ltd., & Another reported (1978) 3 SCC 1, (8) The Management of TNSTC (Coimbatore) Ltd., v. M. Chandrasekaran reported in 2016 (3) LLN 513 (SC, (9) Engine Valves Ltd., Madras v. Labour Court, Madras and another reported in 1991(1) LLN 268, (10) Messrs Bharat Iron Works v. Bhagubhai Balubhai Patel and others reported in (1976) 1 Supreme Court Cases 518 and (11) Management of*



W.P. No.3541 of 2022

Hindustan Steel Ltd., v. The Workmen and others reported in (1973) 3

WEB COPY

Supreme Court Cases 564, are concerned, it is clear that the proceedings under Section 33(2)(b) are Summary in nature and the Tribunal has to be satisfied on the basis of Domestic enquiry that the same was conducted properly in compliance with natural justice and prima facie case of dismissal is made out and the punishment does not amount to unfair labour practice and victimisation. When the Labour Court finds the domestic enquiry from inherent defects or infirmity, it has to come to its conclusion on assessment of evidence adduced by the parties and standard of proof required is 'preponderance of probability' and not a 'proof beyond all reasonable doubts' and while holding enquiry under Section 33(2)(b) of the Industrial Disputes Act, cannot invoke the adjudicatory powers vested under Section 10(1)(c) of the Industrial Disputes Act and decide upon the proportionality of punishment. Further in the domestic enquiry, all the strict and sophisticated rules of the Evidence Act may not apply and to follow by fair and natural justice. In the case on hand, the Tribunal has considered all the aspects as per law laid down in the judgment of ***Lalla Ram v. D.C.M. Chemical Works Ltd., & Another reported (1978) 3 SCC 1*** and held that there is a victimisation and unfair labour practice.



W.P. No.3541 of 2022

WEB COPY

12.3. The learned counsel appearing for the respondent has relied upon the judgments viz.,

1. *A.M. Allison Vs. B.L. Sen reported in AIR 1957 SC 227.*
2. *Management of Sundaram Industries Ltd., vs. Sundaram Industries Employee Union reported in 2014 (2) SCC 600.*
3. *P.D. Dinakaran vs. Judges Enquiry Committee & Ors reported in (2011) 8 SCC 380.*
4. *Roop Singh Negi vs. Punjab National Bank reported in (2009) 2 SCC 570.*
5. *Management, Pandiyan Roadways Corp. vs. N. Balakrishnan reported in (2009) 7 SCC 755.*

On a careful perusal of the said judgments, it is clear that the jurisdiction of the Labour Court / Tribunal is to examine whether the enquiry was held in accordance with Principles of Natural Justice, findings of the enquiry officer are perverse, the workman has been victimised, the dismissal is in accordance with the Standing Orders , Test for bias is whether the facts disclosed would create, in the mind of the person complaining of bias, a real likelihood of bias and the documents have to be marked through witnesses who have to testify the contents of the documents to be considered as an evidence and the enquiry should be held vitiated on this aspect. Further

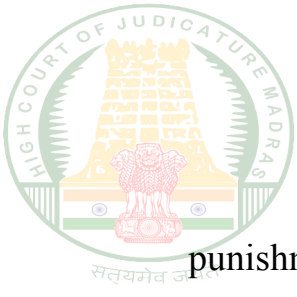


W.P. No.3541 of 2022

unless the misconduct is of such nature of corruption and dishonesty, past record has to be necessarily considered before imposing a punishment and if it is not considered, the Court would be in such competence to interfere with such punishment.

12.4. In the case on hand also, the Tribunal considered the Principles laid down in the case of ***Lalla Ram*** and MW2, Gopalakrishnan, who issued Charge Memo and later accepted the enquiry report was examined as witness before the Enquiry Officer and there is no discussion about the past records and only in the order recorded that the past records were perused.

12.5. This Court in the previous paragraphs discussed about the charges and in respect of domestic enquiry and the findings of the Tribunal. Therefore, the judgments relied on by the learned Senior Counsel appearing for the petitioner are no way helpful to decide the case in favour of the petitioner. At the same time, the judgments relied on by the learned Senior Counsel appearing for the respondent in respect of jurisdiction of Tribunal in deciding the application under Section 33(1)(b) of the Industrial Disputes Act, bias and non-consideration of the past records before awarding



W.P. No.3541 of 2022

punishment are squarely applicable to the present facts of the case.

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13. In view of the above discussions, this Court is of the opinion that Tribunal has passed a reasoned order in accordance with law, thereby, it does not warrant interference and hence the present Writ petition has no merits and deserves to be dismissed.

14. Accordingly, the Writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

16.06.2025

Index : Yes/No
Speaking order/non-speaking order
mjs

P. DHANABAL, J.,

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WEB COPY



W.P. No.3541 of 2022

W.P. No.3541 of 2022

16.06.2025