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W.P.Nos.29395 and 29396 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.29395 and 29396 of 2010

In W.P.No.29395 of 2010:-

S.Krishnamoorthy

.. Petitioner
(in both W.Ps)

Versus

1. The II Additional Labour Court,
Chennai, rep. by its Presiding Officer,
Chennai - 600 104.

2. M/s.I.T.C Limited,
Packaging and Printing Division,
Rep. by its Works Manager,
Thiruvottiyur, Chennai - 600 019.

.. Respondents
(in both W.Ps)

Prayer in W.P.No.29395 of 2010 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari after calling for the records relating to the preliminary order, dated 25.07.2008 in



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I.D.No.644 of 2002 passed by the 1st respondent and quash the same as being illegal, unjust and perverse.

Prayer in W.P.No.29396 of 2010 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari after calling for the records relating to the award, dated 30.10.2010 in I.D.No.644 of 2002 passed by the 1st respondent and quash the same as being illegal, unjust and perverse and direct the 2nd respondent to provide the monetary reliefs due to the petitioner till the age of his superannuation, with all attendant benefits.

For Petitioner : Mr.C.K.Chandrasekkar
(in both W.Ps)

For Respondents : R1 - Labour Court
(in both W.Ps)

: Mr.Sai Prasath, for R2

COMMON ORDER

These two Writ Petitions are filed by the workman challenging the preliminary as well as the final awards made in I.D.No.644 of 2002 on the file of the II Additional Labour Court, Chennai.



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2. The brief factual background, in which the Writ Petitions arise, is that the workman, *S.Krishnamoorthy* joined the services of the management on 01.06.1971. While so, on 12.07.1999, a charge memorandum was served on him alleging that while he was allotted work on Como Guillotine machine at 11.15 A.M, the workman was found absent from the work spot for about 10 minutes and was seen coming from canteen well before the lunch break. The workman submitted his explanation on 15.07.1999. However, the explanation was not accepted and an Enquiry Officer was appointed who commenced the enquiry on 26.07.1999. When the said enquiry was in progress, a second charge memorandum was issued to the workman on 24.03.2000. The charge is that on six occasions, on various dates, in the month of February, 2000 and March, 2000, when the person in charge namely, one *T.Venugopal* required the workman to work in a particular machine namely, Iijima machine, on five occasions and Baby-20 machine in one occasion, on all the six occasions, he refused to work which



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amounted to willful insubordination and striking work etc.

3. After issue of the said charge memorandum, it was straightaway informed in the charge memorandum itself that the enquiry will commence on 29.03.2000. Accordingly, the enquiry commenced and the enquiry was under progress. While so, on 11.08.2000, third charge memorandum was issued against the workman, containing similar charge as the second charge memorandum, that when the person incharge namely, *R.Muralikrishnan*, directed the workman to work on particular machines on four dates in the month of July, 2000 and August, 2000, the workman refused to work in those machines which act amounted to striking work, willful insubordination etc. In the said charge also, it was mentioned that straightaway, an enquiry will commence on 17.08.2000. Thereafter, the same Enquiry Officer completed the enquiry proceedings with reference to the three charge memoranda and found that the charge against the workman were proved by his report, dated 28.08.2000.



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4. A second show-cause notice was issued on 29.08.2000. The petitioner sent a fax message on 04.09.2000 requesting time for submitting his reply. However, on the same day i.e., on 04.09.2000, by an order, he was dismissed from service. Aggrieved thereby, the workman raised dispute. The conciliation failed.

5. A detailed claim statement, filed by the workman, was taken on file as I.D.No.644 of 2002. With reference to the first charge memorandum, it is the case of the workman that even as per the Standing Orders, warning has to be given. Without giving any warning, straightaway, the charge memorandum was issued. As far as the second and third charge memoranda are concerned, it is the case of the workman that when modernisation of the industry took place and new machines were installed, as per the settlement between the management and the workmen, the workmen had to be given training before being asked to work on those machines. The workman was



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not given any training to work on the particular machines. However, he has been performing other work. His refusal for work did not hamper the production. Therefore, he stated that his non-employment is not justified and prayed that he should be reinstated with full back wages.

6. The claim statement was resisted by the management by filing a detailed counter. The details of the enquiry proceedings are given in the counter statement. It is stated that the workman indulged in repeatedly getting adjournments and protracting the proceedings. The workman did not receive the communications willfully in time. The enquiry was fair and proper and it is only the workman who had been indulging in taking adjournments and not even answering the preliminary question of the Enquiry Officer i.e., whether he admitted or denied the charges. On merits, it is specifically denied that any further training is required to be given. When all the other workmen are working on the same machines, for the present workman alone is raising a frivolous defense. According to the



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management, no such training need be given and as such, the charge is serious that on several occasions, when the petitioner is not performing the work and when he is the workman to perform the work on the machines, when the factory involves a production line, the seriousness of the charge should be gauged by the Court and accordingly, the non-employment is fully justified.

7. On the said pleadings, the Labour Court took up the matter for enquiry. On behalf of the workman, he examined himself as *W.W.1* and *Exs.W-1* to *W-39* were marked. At that stage, no evidence was let in on behalf of the management. After considering the case of the parties, a preliminary award was passed on 25.07.2008 holding that the Domestic Enquiry was fair and proper. Thereafter, the Labour Court again took up the exercise of considering the case in exercise of its power under Section 11A of the Industrial Disputes Act, 1947. The Labour Court found that there is evidence to prove the charges. Considering the nature of the charges, the



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Labour Court found that the non-employment was justified and dismissed the claim of the workman. Aggrieved by which, the workman filed these two Writ Petitions challenging the preliminary as well as the final awards.

8. Heard *Mr.C.K.Chandrasekhar*, learned Counsel for the workman and *Mr.Sai Prasath*, learned Counsel for the second respondent management.

9. *Mr.C.K.Chandrasekhar*, learned Counsel for the workman, by filing a list of dates and short notes, would submit that in this case, it can be seen that once the third charge memorandum was issued, the Enquiry Officer conducted the enquiry post haste and the notices of enquiry was not at all served on the petitioner. The Enquiry Officer did not even find that the Delinquent Officer received notice and remained *ex parte*. Without application of mind, the enquiry was adjourned in short durations and repeated notices were ordered to be issued. Before the Registered Posts



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were received, the enquiry dates were over and without application of mind, the Officer proceeded with the enquiry and finally, held that the workman did not participate, all the charges stood proved.

10. When the Enquiry Officer submitted his enquiry report on 28.08.2000, on the next date i.e., on 29.08.2000, the second show-cause notice was issued. The said second show-cause notice was received by the petitioner within three days i.e., on 02.09.2000. 02.09.2000 was Saturday. 48 hours time in the normal course will expire on 04.09.2000 i.e., within 48 hours after receipt of the show-cause notice. It is to be seen that the notice was received on 02.09.2000 and the next day i.e., 03.09.2000 was Sunday. On 04.09.2000, in the morning itself, the petitioner went in person with a request to grant some time to submit his reply to the second show-cause notice. The petitioner was not allowed inside and therefore, the petitioner faxed the letter on 04.09.2000. However, without even considering the same, on 04.09.2000 itself, the order of dismissal was passed and the same



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was received by post by the petitioner on 06.09.2000. Therefore, the findings of the Labour Court that the Domestic Enquiry was fair and proper, is perverse.

11. Once the Domestic Enquiry is not fair and proper, in this case, even at the preliminary stage, the management did not choose to let in any evidence. Therefore, there is nothing with reference to the merits of the charge. When the workman's case is that as far as the charges, relating to not refusing to work on a particular machine that he was not trained, there is no contra evidence on behalf of the management. The workman did not give a specific explanation incorporating the said stand because when the charge memorandum was issued, his explanation was not called for and in the charge memorandum, straightaway, the date of enquiry was fixed. Even on the first date of enquiry, the Enquiry Officer insisted about the workman admitting or denying the charge and did not call for any explanation at that stage. Therefore, he would submit that on a perusal of the settlement under



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Section 12(3) of the Industrial Disputes Act, 1947, dated 12.04.1995, it would be clear that the management indulged in modernisation and rationalisation. It promised that all the workmen will be upgraded by giving new training to them. When, admittedly, no such training was given to the workman, then, the finding of the Labour Court that the charges stood proved, is also to be interfered as perverse. In any event, even in the counter statement, the management admitted that the action of the workman did not result in loss of production.

12. The other charges relate to being absent at workplace for 10 minutes. The present charge is that on 10 specific occasions, the workman refused to work on the said machines. It can be seen that on the other dates, the workman was performing his duty. Therefore, when the workman put in service from the year 1971 and put in 29 years of service as on the date of punishment, this should not be a case warranting the punishment of dismissal from service. Therefore, the punishment is grossly



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disproportionate and the Labour Court ought to have interfered with the punishment on that ground also.

13. *Mr.C.K.Chandrasekhar* would further submit in this case, the workman already attained the age of superannuation and now, he is aged 74 years and therefore, should accordingly mould the relief and grant benefit to the workman which may be in the form of a compensation also.

14. Per *contra*, *Mr.Sai Prasath*, learned Counsel for the second respondent management, by taking this Court through the enquiry proceedings, would submit that when the enquiry was conducted, on several occasions, the workman indulged in protracting the proceedings. Every time when the Enquiry Officer asked the workman whether he is admitting or denying the charge, he was not even willing to answer the said question and the enquiry could not move further. On several occasions, adjournments were sought on the defence assistant is not available. Therefore, the



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workman indulged in protracting the proceedings. At no stage of the proceedings, the workman ever came up with his version explaining his conduct. When he supposed to be absent at the machine, even for 10 minutes, cannot be treated as a lighter misconduct as if anything goes wrong, that would result in a grave hardship to the management.

15. He would further submit that not performing the work on machines on various dates, is a serious misconduct. When the activity of the management is a production line and if one particular workman refuses to sit in a particular machine and refuses to perform, the gravity of the same should be gauged from the view of the management and it cannot be held to be a lighter charge. In the Domestic Enquiry, appropriate evidence has been let in and only after considering the evidence, the Domestic Enquiry Officer rendered the finding that the charges are proved. For the proven charges, the punishment was imposed. It can be seen that when the workman's address was also having the pincode of Chennai - 19 and the management factory



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was also in the address having the pincode of Chennai - 19, the proximity of the places can very well be gauged by this Court.

16. Every time, when a registered letter was sent for the enquiry, the same was not received by the workman deliberately, was kept pending and was ultimately received only on the seventh day. When the workman received the letter for the previous enquiry date even though after second enquiry date, nothing prevented him from enquiring about the next date of enquiry and attending the enquiry. In this case, it can be seen that from the beginning, it is the choice of the workman to evade the enquiry on merits and he was running away from the truth. Therefore, there was no error whatsoever which was committed by the Enquiry Officer. Due opportunities were granted to the workman and in this case, it cannot be said that no opportunity was given.

17. The Labour Court appraised the evidence in detail and then come



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to the conclusion and rendered the preliminary as well as the final awards.

When, after appreciation of the evidence in exercise of its power under Section 11A, the Labour Court rendered its finding, this is not a case for interference by this Court under Article 226 of the Constitution of India.

18. The learned Counsel would submit that the plea of victimisation raised by the workman is absolutely unfounded. The charge memorandum issued on specific misconduct is antithetic to the allegation of victimisation. This apart, there is nothing else on record to even suggest any allegation as against the management. Therefore, the plea of victimisation made by the workman, should be rejected in total.

19. The learned Counsel on either side also relied upon certain judgments which will be discussed, if necessary, while deciding the appropriate questions.



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20. I have considered the rival submissions made on either side and perused the material records of the case.

21. The first question that arises in this case is whether or not the preliminary award made by the Labour Court, is in order. The question to be determined by this Court is to find out whether reasonable opportunity has to be given to the workman in the course of the Domestic Enquiry.

22. On a perusal of the records, when the first charge memorandum was issued and the enquiry was proceeded and when the second charge memorandum was issued and when the enquiry proceeded, the workman was initially given all the due opportunities and as a matter of fact, it is only the workman who has been taking adjournments and giving a tough time to the Enquiry Officer by not co-operating with the enquiry which can be gauged from the various proceedings of the enquiry filed before the Court.

However, no final orders were passed and the enquiry ultimately was taken



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up for conclusion only after the third charge memorandum was issued.

23. It is to be noted that the third charge memorandum was issued on 18.07.2000 and the enquiry was fixed on 17.08.2000. On a perusal of the records, it can be seen that no notice was served on the workman before 17.08.2000. It is not recorded in the said proceedings, dated 17.08.2000 that the workman received the communication for enquiry and remained absent. It is the specific case of the workman that the notice regarding the enquiry was received by him only on 22.08.2000. From 17.08.2000, the enquiry was again adjourned on 21.08.2000. While, in the enquiry proceedings, in the first paragraph, the Enquiry Officer recorded that the presenting officer was directed to send the enquiry notice through Registered Post, he does not record whether the Registered Post was served or not.

24. It is the specific case of the workman that even the notice sent by Registered Post for the enquiry on 21.08.2000, he received the Registered



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Letter only on 29.08.2000. Similar is the case on the next date of hearing on

25.08.2000 also. On 25.08.2000, the enquiry itself was concluded.

Therefore, even though, initially, it can be seen that the workman was not co-operative, when the third charge memorandum was issued and when the Enquiry Officer conducted the enquiry and concluded the same, not even for one hearing, it was recorded by the Enquiry Officer that the enquiry was intimated to the workman and after knowing the date of enquiry, the workman did not attend. On the contrary, the registered notices were sent which were all received by the workman only after the respective dates of enquiry. It is further to be seen that at this relevant period of time, the workman was in suspension and out of the company also. Therefore, I find that the enquiry was ultimately concluded without giving an opportunity to the workman to participate. The enquiry can proceed *ex parte* if only summons and notices are served on the workman and the workman, on his own volition, has remained *ex parte*. That factor is absent in the present enquiry. Therefore, that vitiates enquiry proceedings.



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25. Even giving the management's argument a long rope that living nearby, technically, knowing the date of enquiry, the workman was evading receiving of the registered posts and was receiving registered posts later, it can be seen that when the enquiry report was submitted on 28.08.2000 and the second show-cause notice was issued on 29.08.2000, strangely, only 48 hours time was granted to the workman to submit his reply. When three charge memoranda were issued and when the enquiry proceedings were going on from 15.07.1999, giving only 48 hours cannot be said to be appropriate in the facts and circumstances of the case.

26. Even assuming 48 hours is an appropriate time, then, 48 hours time from the receipt of the notice should only be taken into account. In this case, the workman received the notice on 02.09.2000 which was on a Saturday. Therefore, he has the 48 hours time till Monday evening. It is the case of the workman that on Monday morning, when he attempted to go



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inside the factory, he was refused. However, the fax message, dated 04.09.2000 was produced before the Court. It can be seen that by the fax message, he was again asking for time. Be that as it may, even without waiting for 48 hours to expire, on 04.09.2000 itself, the dismissal order was passed. Therefore, even at the second show-cause notice stage, no reasonable opportunity of hearing was granted to the workman.

27. When summons for the enquiry were not served, when, ultimately, the enquiry is concluded and no proper opportunity was granted to the workman to put-forth his further explanation to the enquiry report, I hold that the Domestic Enquiry, in the instant case, is not fair and proper and accordingly, the preliminary award of the Labour Court is perverse and is liable to be set aside. As a matter of fact, these crucial facts were not considered by the Labour Court while passing the preliminary award. The Labour Court considered in paragraph No.15 of its award, that it is only on his own admission, the notice of enquiry was received belatedly by the



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petitioner from the Postman and the Labour Court further held from the cross-examination of *W.W.I* that full opportunity was given to defend his case. Firstly, it can be seen that the Enquiry Officer did not even apply his mind to see whether the registered letter has come back with an endorsement or not. When the enquiry was proceeded further, absolutely, there is no application of mind as if the workman has been postponing the receipt of the registered letter etc. Those records were never before the Enquiry Officer.

28. If only one particular registered letter was returned or the acknowledgment came, then, one can come to the conclusion that after intimation, making Postman wait for seven days, the workman did not attend. There was no such exercise done by the Enquiry Officer. Even otherwise, I have held that the time granted for submitting the explanation on the facts and circumstances in the instant case, was not enough and even in the second show-cause notice, no reasonable opportunity was given. Accordingly, I hold that the findings of the Labour Court with reference to



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the preliminary award are perverse and is liable to be interfered with.

29. Once the preliminary award goes in favour of the workman, when, in this case, in the counter itself, the management pleaded that they should be given an opportunity to let in evidence on the merits of the case. It is true that no such opportunity was specifically granted by the Labour Court and the management has to be given an opportunity to let in evidence on merits. However, it can be seen that the workman was dismissed from service in the year 2000 and now, we are in the year 2025. The entire Domestic Enquiry proceedings are marked during the preliminary enquiry and the entire gamut of evidence is on record. Therefore, in the special circumstances, it would be unfair to both the parties especially to the workman, who is now said to be aged about 74 years, to remand the matter back. Therefore, even in the said circumstances, holding that the Domestic Enquiry is not fair and proper, this Court itself, in an extraordinary circumstance, can consider the second and third questions which is with reference to the exercise of power under



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Section 11A of the Industrial Disputes Act, 1947 i.e., whether or not there is evidence to prove the charge on merits and whether the punishment, in the facts and circumstances, was justified or not.

30. On a careful consideration of the available evidence on records on merits, it can be seen that as far as the first charge is concerned, the workman was absent from the work spot for 10 minutes. There is no contra evidence which is on record to disprove the said charge. Therefore, when, during the enquiry, *W.W.I* was also examined in the Domestic Enquiry, who deposed about the said fact, I hold that there is evidence that the said charge, as proved. As far as the charges levelled in the second and third charge memoranda are concerned, it can be seen that it is the specific case of the workman that while the unit was modernised, a settlement under Section 12(3) was also entered into by specifically stating that the workman would be given training in respect of the new machines. The relevant clauses in the settlement under Section 12(3) are extracted hereunder:-



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"உ) தொழிற் வேலைநிறுத்தம்/முழு அடைப்பு ஆகியவற்றில் ஏற்படும் உற்பத்தி இழப்பை இருதரப்படும் ஒருமுகமாக ஒப்புக் கொண்ட காலவரையறைக்குள் தொழிலாளர்கள் ஈடுசெய்வார்கள்.

ஊ) தொழிற்சாலையின் உள்ளே நடைமுறையில் இருக்கும் தொழிற் செயல்முறைகள் மாற்றம், முழுமையாக திருத்தி அமைத்தல் ஆகியவற்றை மேம்படுத்துதலில், தொழிலாளர்களுக்கு அதற்குத் தக்கவாறு பயிற்சி அளித்து மேம்படுத்தப்படுவார்கள்."

31. At the same time, the stand taken by the management in the counter statement is that no such training was necessary. It must be stated that the workman's stand was not there on record during the Domestic Enquiry. Therefore, there was no opportunity for the management to bring in such evidence with reference to the said fact whether the training was necessary for the workman or not or whether all the workman, who are similarly situated, were working in the machines or not. Therefore, with the available evidence, it is extremely difficult to conclude as to the facts or otherwise of the charge one way or the other. Be that as it may, in the counter itself, in paragraph No.31, it is not specifically denied by the management that there was no production loss. Therefore, when overall the



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charges are considered, especially, considering the long number of years put in by the workman, I am of the view that atleast, a finding can be rendered by this Court with the available evidence that the punishment is unduly harsh on the workman and disproportionate to the charges levelled against the workman. At least, on this score, I am of the view that the non-employment of the workman is unjustified.

32. Now, coming to the relief that can be granted to the workman, it can be seen that the following facts are taken into consideration:-

(i) The termination happened in the year 2000 and now, we are in the year 2025 and the workman also crossed the age of superannuation long back.

(ii) The workman had put in long years of service i.e., from the year 1971 onwards till the year 2000 i.e., till the workman was dismissed from the service.

(iii) The finding, with reference to the merits of the charges, remains



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inconclusive in view of the peculiar facts and circumstances of the case.

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(iv) As far as the Domestic Enquiry's proceedings are concerned, the fault lies on both the workman and the management. In the initial phase, it is the workman who was literally calling the shots, making the Enquiry Officer unable to proceed further. However, that will not justify the final proceedings being conducted without even notice to the workman, is also kept in mind.

By keeping in mind all the above factors, I am of the view that in lieu of the reinstatement with back wages and all other claims towards full quit, one lumpsum compensation can be granted.

33. While considering the compensation, the last drawn salary was Rs.5,945/-. The same is taken into account. Considering the dictum of the judgment of Hon'ble Supreme Court of India in ***O.P.Bhandari Vs. Indian Tourism Development Corporation Ltd., and Ors.***¹ and the later judgment

¹ (1986) 4 SCC 337



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of the Hon'ble Supreme Court of India in **Workmen Vs. Bharat Fritz**
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Werner Private Limited and Anr.² to add something for non-employment and considering the argument of the learned Counsel for the workman that he would have been in the employment for another 10 years and considering the peculiar facts and circumstances of the case and this amount is given which is inclusive of all claims of gratuity also, I am inclined to fix a sum of Rs.4,00,000/- as compensation. The said amount has to be paid by the management within a period of eight weeks from the date of receipt/production of a web-copy of this order without waiting for a certified copy of this order. If the amount is not paid within the time as aforesaid, then the amount shall be paid with further interest at the rate of 9% per annum from today.

34. With the above directions, these Writ Petitions are disposed of.

There shall be no order as to costs.

² (1990) 3 SCC 565



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