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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P.No.4547 of 2022
and WMP.No.4687 of 2022

WEG Industries (India) Pvt. Ltd,
Plot No. E-20(North), SIPCOT Industrial Complex,
Phase II, Expansion II, Mornapalli (Vill),
Hosur – 635 109,
Krishnagiri District.
Rep by its Managing Director
Mr.Jean Carlo Butske

... Petitioner

Vs

1.Asst. Commissioner of Labour,
Krishnagiri – 635 001.

2.Velmurugan V

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records connected with AP.No.a/611/2020 and quash the impugned order dated 26.11.2021 made by the 1st respondent/Assistant Commissioner of Labour, Krishnagiri.

For Petitioner : Mr.P.Sanjay Mohan for
M/s.S.Ramasubramaniam and Associates

For Respondents : Mr.E.P.Senniyangiri,
Government Advocate for R1
: Mr.A.Suresh Sakthi Murugan for R2



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ORDER

This writ petition has been filed by the petitioner/management to quash the order passed by the first respondent in A.P.No.a/611/2020 dated 26.11.2021.

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

The petitioner is a factory engaged in the manufacturing of large sized electric motors and generators. The second respondent was employed as an operator with the petitioner on 01.07.2010 and his last drawn wages were Rs.15,048/- per month. On 28.07.2014 at 2.15 p.m., the second respondent, during the course of his employment as an Operator, along with 4 other leaders had instigated other workmen and gheraoed Mr.Sriram Iyengar, Senior Manager, HR and Mr.Victor D, Assistant Manager - HR. The employees of the petitioner even manhandled and physically pushed Mr.Sriram Iyengar, Senior Manager – HR and also used filthy language and derogatory language and threatened by a group of workmen. Further the Assistant Manager Mr.Victor D, was also gheraoed and humiliated by the group of the people with the second respondent. For



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the above said misconduct, the second respondent was issued with a suspension order dated 28.07.2014. Thereafter, a detailed charge sheet dated 09.10.2014 was issued to the second respondent listing out 12 misconducts. The second respondent failed to submit his explanation to the charge sheet and thereafter, an enquiry officer was appointed to conduct the disciplinary proceedings and the second respondent also participated in the enquiry proceedings. The enquiry officer rendered findings that the charges against the second respondent have been proved. Thereafter, the disciplinary authority, after issuing the show cause notice for the second respondent, imposed the punishment of dismissal from service through an order 10.12.2020. Since there was an industrial dispute in ID.Na.Ka.No.A/363/2020 was pending before the first respondent, the petitioner filed an approval petition under Section 33(2)(b) of the Industrial Dispute Act in A.P. No.a/611/2020 and the same was dismissed through order dated 26.11.2021. Against which, the present writ petition has been filed by the petitioner management.

3. The learned counsel appearing for the petitioner would submit that the second respondent along with four others, gheraoed the Senior Manager and Assistant Manager of the petitioner's factory during his employment.



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He was suspended from 28.07.2014 and thereafter a show cause notice was issued, but no reply was submitted by the second respondent. Thereafter, the charge sheet was issued on 09.10.2014, but no explanation was submitted by the second respondent. Thereafter, an enquiry officer was appointed, and a domestic enquiry was conducted. During the enquiry, the second respondent also appeared and contested the enquiry proceedings. Thereafter, the enquiry officer rendered findings that the charges against the second respondent were proved. Since there was an industrial dispute pending with the first respondent, the petitioner filed approval petition under Section 33(2)(b) in A.P.No.a/611/2020 and the same was erroneously dismissed. The second respondent has not raised any objections during the enquiry proceedings, and after giving an opportunity to the second respondent and following the principles of natural justice, the enquiry proceedings was conducted in English and subsequently translated into Tamil and the same was explained to the second respondent. However, the first respondent, without considering the same, declined to grant permission that the enquiry proceedings were conducted in English, and no opportunity was given to the second respondent. The second respondent also signed in the domestic enquiry papers at each and every page, therefore, the findings rendered by the first respondent in the impugned order is liable to be set



aside. Even if, no opportunity was given to the second respondent in the domestic enquiry proceedings, it is the duty of the first respondent to call for the records and to record evidence before the Tribunal. Thus, the order passed by the first respondent on the grounds that the proceedings were initiated in English is against the law is unsustainable and the same is liable to be set aside.

4. The learned counsel appearing for the second respondent would submit that the petitioner had issued a charge memo with false allegations, and the charges were denied by the second respondent. Thereafter, the enquiry officer was appointed, and the enquiry proceedings were conducted in English. As a result, the petitioner is unable to understand the enquiry proceedings and therefore sufficient opportunity was not given to the second respondent. Therefore, the authority/first respondent has passed a detailed order and declined to grant permission. Therefore, the first respondent has passed an elaborate and detailed order, and therefore, the present writ petition is liable to be dismissed.

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



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6. In this case, it is an admitted fact that the enquiry proceedings were conducted in English and there is no evidence that the proceedings were translated into Tamil and explained to the second respondent. The petitioner has also not denied that the enquiry proceedings were conducted in English. However, in the Approval Petition, the petitioner stated that in the event of the enquiry being found vitiated, and if the findings are held to be perverse, this petitioner may please be permitted to let in the evidence and prove the misconduct before the authority to justify the dismissal. But the same has not been considered by the first respondent.

7. The learned counsel appearing for the petitioner also relied upon the judgment of Hon'ble Supreme Court in **Amrit Vanaspati Co. Ltd, Vs. Khem Chand and Another**, reported in (2006) 6 SCC 325, held as follows:

“8. We are unable to countenance the submission made by the learned counsel for the respondent. This Court in a judgment reported in 1973 (1) SCC 813 (The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & ors. etc.) exhaustively referred to various decisions of this Court and gave a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge.



Paragraph 32 of the said judgment is reproduced here:

“32 From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer, or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.



(5) *The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.*

(6) *The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*

(7) *It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*

(8) *An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*

(9) *Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time,*



punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in [The Management of Panitole Tea Estate v. The Workmen](#) (1971) 1 SCC 742 within the judicial decision of a Labour Court or Tribunal."

8. From the above guidelines, it is clear that even if no enquiry has been held by the employer or if the enquiry held is found to be defective, the Tribunal, in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employee to adduce evidence contra. In the case on hand, the Tribunal found that the enquiry proceedings were conducted in English and that no principles of natural justice were followed. While so, it is for the Tribunal to give the respondent an opportunity to adduce evidence to prove the charge, as it was pleaded by the petitioner in the approval petition to permit them to adduce evidence. If the Tribunal come to the conclusion that there is a defect in the domestic enquiry, it is necessary to give one more chance to adduce evidence before the first respondent/Tribunal, but no opportunity was given to the petitioner to adduce evidence. Therefore, it is appropriate to set aside the order and



remand back the case to the first respondent for adducing evidence to prove the charges.

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9. In view of the above said discussions, this Court is of the opinion that this writ petition is to be allowed and the order passed by the first respondent is liable to be set aside.

10. Accordingly, this writ petition is allowed and the order passed by the 1st respondent in A.P.No.a/611/2020 dated 26.11.2021 is set aside and the case is remanded back to the first respondent for giving opportunity to adduce evidence by the parties. The first respondent is directed to complete the proceedings within a period of six months from the date of receipt of a copy of this order. Further, the petitioner is paying wages to the second respondent under Section 17(B) of the Industrial Dispute Act and the same can be continued till the disposal of the approval petition. No costs. Consequently, connected Miscellaneous Petition is closed.

17.06.2025

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To

1. The Assistant Commissioner of Labour,
Krishnagiri – 635 001.



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P.DHANABAL, J.,

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