



W.P.(MD) No.9704 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On 01.04.2025	Orders Pronounced On 30.04.2025
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CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.9704 of 2019
and
W.M.P.(MD) Nos.7622 of 2019
and 6280 to 6284 of 2025

The Management,
Sri Gomathy Mills (P) Ltd.,
Ambai Road,
Veeravanallur-627 426,
Tirunelveli District.

... Petitioner

Vs.

1.The Assistant Commissioner of
Labour (Conciliation),
Tirunelveli.

2.R.Sundarapandi

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records relating to the impugned order of the 1st respondent in Na.Ka.No.609/2018, dated 22.03.2019 and quash the same as illegal.



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For Petitioner : Mr.M.E.Ilango
For Respondents : Mr.A.Baskaran
Addl. Govt. Pleader – for R1
: Mr.S.Arunachalam
for Mr.R.Krishnan – for R2

ORDER

This writ petition has been filed by the petitioner-Management aggrieved by an order passed by the Respondent No.1 in proceedings bearing Na.Ka.No.609/2018, dated 22.03.2019 whereby the Respondent No. 1 refused to grant approval for the order of dismissal, dated 14.09.2018 passed against the Respondent No.2.

2.1. The brief facts that are relevant for the disposal of this writ petition are as under:

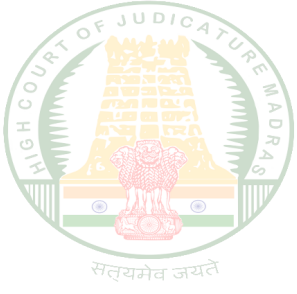
2.2. The petitioner herein, which is a textile mill initiated disciplinary proceedings against the Respondent No.2 on the ground that the Respondent No.2-workman on 07.01.2018 while working in the first shift quarelled with a co-workman and further abused him in filthy language and



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physically attacked him thereby causing injuries to the said workman. In the light of the above misconduct of the Respondent No.2, a show cause notice was issued on 11.01.2018 on conducting an enquiry into the matter, report of the Enquiry Officer was submitted on 09.07.2018 holding the charges levelled against the workman as proved. The petitioner-Management having accepted the report of the Enquiry Officer, issued second show cause notice dated 09.07.2018 to the Respondent No.2-workman furnishing a copy of the report of the Enquiry Officer and proposing a punishment of dismissal from service. It was thereafter, Respondent No.2 submitted explanation dated 06.08.2018 and having not accepted the said explanation, the Respondent No.2 was dismissed from service by an order dated 14.09.2018. Simultaneously, by passing the said order, the petitioner herein submitted an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the I.D.Act”) seeking approval of the dismissal order dated 14.09.2018. The said application was rejected by the Respondent No.1 by passing the impugned order dated 22.03.2019. Aggrieved by the said order, the petitioner-Management approached this Court by filing the present writ petition.



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3. The Respondent No.1 while considering the application submitted by the petitioner under Section 33(2)(b) of the I.D.Act, in all framed four issues for consideration, which read as under:

“1. தொழிற்சாலை சட்டத்தில் குறிப்பிட்டபடி வேலைநீக்கம் செய்யப்பட்ட தொழிலாளிக்கு ஒரு மாதத்திற்கான சம்பளம் வேலையளிப்பவரால் வழங்கப்பட்டதா?

2. தொழிலாளியின் வேலை நீக்கம் ஒரு மாதச்சம்பளம் வழங்குதல் மற்றும் ஒப்புதல் கோரும் விண்ணப்பத்தினை இவ்வலுவலகம் மற்றும் அதன் நகலை எதிர்மனுதாரர் தொழிலாளி ஆகியோருக்கு அனுப்புதல் ஆகிய மூன்று நடவடிக்கைகளும் ஒருசேர (simultaneous) செய்யப்பட்டதா?

3. எதிர்மனுதாரர் மீது சுமத்தப்பட்ட குற்றச்சாட்டுக்கு அடிப்படை முகாந்திரம் (Prima facie) உள்ளதா மற்றும் தொழிலாளியை வேலை நீக்கம் செய்தது மேற்படி நிறுவனத்தின் அங்கீகரிக்கப்பட்ட நிலையாணைகளின்படி சரியானதா?

4. மேற்படி தொழிலாளி மீதான குற்றச்சாட்டு தொடர்பாக நடத்தப்பட்ட உள்விசாரணை முறையாக நியாயமான முறையில் இயற்கை நியதி கோட்பாடுகளின் அடிப்படையில் நடைபெற்றதா?□



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4. Insofar as Issues No.1 to 3 are concerned, they were decided in favour of the petitioner herein. It is only the Issue No.4 that was held against the petitioner herein holding that the Respondent No.2 herein was not afforded reasonable opportunity during the course of enquiry on various grounds. One such ground is that the Respondent No.2 herein sought for an assistance of a co-worker, but the same was denied and the co-worker was admittedly permitted only to act as an observer. Secondly, the Respondent No.1 found that the petitioner even before affording an opportunity to the Respondent No.2 herein on the findings recorded by the Enquiry Officer, has acted upon the same and arrived at a conclusion provisionally to impose the punishment of dismissal from service, thereby violating the principles of natural justice. Respondent No.1 also concluded that the past conduct of the Respondent No.2 was taken into consideration while imposing the punishment of dismissal from service without affording any opportunity to the Respondent No.2 on his past conduct. The Respondent No.1 also dealt with the charges that were framed against the Respondent No.2 and came to the conclusion that, the person who is said to be assaulted by the Respondent No.2 by name Mr.Sekar was not examined, nor his statement



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was recorded by the petitioner-Management during the course of enquiry.

5. Mr.M.E.Ilango, learned counsel for the petitioner contended that the scope of enquiry under Section 33(2)(b) of the I.D. Act is very limited and in case, if the authority comes to the conclusion that there is a *prima facie* case, the authority has no option except to grant formal approval. But, according to him, in the instant case, the Respondent No.1 exceeded his jurisdiction in going into the other aspects of the matter. In support of his contention, the learned counsel for the petitioner placed reliance on a decision of this Court in the case of ***Management of Tamil Nadu State Transport Corporation (Kumbakonam Division-I) Limited vs. Joint Commissioner of Labour and another*** reported in (2013) 3 LLJ 641. He also placed reliance on a decision of the Hon'ble Apex Court in the case of ***Cholan Roadways Limited vs. G.Thirugnanasambandam*** reported in AIR 2005 SC 570.

6. On the other hand, Mr.S.Arunachalam, learned counsel



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appearing for Mr.R.Krishnan, learned counsel for the Respondent No.2 contended that the violation of principles of natural justice during the course of domestic enquiry is an unfair labour practice and therefore, the same would come within the purview of Section 33(2)(b) of the I.D. Act and the same can also be gone into by the Respondent No.1 while examining the application submitted by the petitioner herein. In support of his contention, he placed reliance on a decision of the Hon'ble Apex Court in the case of ***Lalla Ram vs. Management of D.C.M. Chemical Works Ltd., & Anr.*** reported in (1978) 3 SCC 1 and ***Ramesh Chandra vs. Delhi University and others*** reported in (2015) 5 SCC 549.

7. This Court carefully considered the submissions made by Mr.M.E.Ilango, learned counsel for the petitioner, Mr.A.Baskaran, learned Additional Government Pleader for the Respondent No.1 and Mr.S.Arunachalam, learned counsel for the Respondent No.2 and perused the entire material available on record.

8. It is an undisputed fact that, the Respondent No.2 herein during



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the course of enquiry sought for assistant of a co-employee, but he was not allowed to take the assistant of the co-employee. But a co-employee was only allowed to be present only as an observer during the course of enquiry. The law with regard to the entitlement of a workman to take assistance of a co-employee is no more *res integra*.

9. In the case of ***Chidambaram Shipcare Pvt. Ltd. vs. The Presiding Officer, Principal Labour Court, Chennai and others*** reported in ***2011 Writ L.R. 734***, it was held as under:

“48. Under such circumstances, I am of the view that non permitting the office bearer of a trade union to which the workman is a Member in the domestic enquiry, amounts to violation of principles of natural justice and amounts to unfair labour practices as per clause 5(f) of the Fifth Schedule of the Industrial Disputes Act, in view of the judgment of the Honourable Apex Court in Colour-Chem Ltd., vs. A.L.Alaspurkar and others [1998 (3) SCC 192] (cited supra).

49. ...

50. Unfair labour practice is codified by the



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Parliament by Act 46 of 1982. The term unfair labour practice was defined by the Industrial Disputes Act, by inserting Section 2(ra), with effect from 21.08.1984, by the Act 46 of 1982. As per the definition, unfair labour practices means “any of the practices specified in the Fifth Schedule” of the Industrial Disputes Act. As stated above, Clause 5(f) of the Fifth Schedule of the Industrial Disputes Act states that to discharge or dismiss the workman in utter disregard of principles of natural justice in the conduct of domestic enquiry or undue est is a unfair labour practice. After codification of the unfair labour practices in the Industrial Disputes Act, following the Maharashtra Act, as stated above, it is incumbent on the employer to permit the assistance of an office bearer of a Trade Union in the domestic enquiry, to which the workman is a member; if the workman so desires, otherwise, the conduct of the employer amounts to unfair labour practice and the said action amounts to disregarding principles of natural justice as per the codification of unfair labour practices, more particularly, in the light of the Fifth Schedule of the Industrial Disputes Act and in the light of the judgment of the Bombay High Court in Ram Naresh Tripathi vs.



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S.D.Rane and others [1992 (II) LLJ 519](cited supra) and the judgment of the Honourable Apex Court in Colour-Chem's case (cited supra).”

10. One of the major grounds on which the Respondent No.1 refused to grant approval is denial of assistance of a co-worker. Further, the petitioner herein also acted upon the report of the Enquiry Officer even before the same was furnished and opportunity was afforded to the Respondent No.2 and recorded its *prima facie* conclusion to dismiss the Respondent No.2 from service. Such an action of the petitioner is also directly in contravention of the decision of the Hon'ble Apex Court in the case of ***Managing Director, ECIL, Hyderabad and others vs. B.Karunakar and others*** reported in (1993) 4 SCC 727, wherein it was held as under:

“62. It should, thus be concluded that the supply of the copy of the enquiry report is an integral part of the penultimate stage of the inquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable opportunity, violating Article 311(2) and



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unfair, unjust and illegal procedure offending Articles 14 and 21 of the Constitution and the principles of natural justice.”

11. Thus, it is also now settled that the furnishing of the report of the Enquiry Officer before acting upon the same is one of the mandatory requirement in the matter of domestic enquiry. On these two grounds, the Respondent No.1 came to the conclusion that the findings arrived at by the petitioner in holding that the charges against the Respondent No.2 is a perverse finding. Respondent No.1 having recorded the finding as above, refused to grant approval for the dismissal of the Respondent No.2 from service. The violation of principles of natural justice is an unfair labour practice and in the light of the law laid down by the Hon'ble Apex Court in ***Lalla Ram*** (*supra*), an unfair labour practice is also an issue that can be considered while considering the application for approval under Section 33(2)(b) of the I.D. Act. The Hon'ble Apex Court in the said decision held as under:

12. The position that emerges from the abovequoted decisions of this Court may be stated thus:



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In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (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 settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15], Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975



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SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking 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;”

12. Having confronted with the above situation, the learned counsel for the petitioner fairly submitted that the petitioner has no objection for remanding the matter back to the Respondent No.1 to enable the petitioner to adduce evidence in support of the charge.

13. This Court has carefully considered the said submission and is unable to agree with the same in the light of the settled legal position in that regard.



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14. The stage at which a request can be made for adducing evidence in the matter of a proceeding under Section 33(2)(b) of the I.D. Act has fallen for consideration before the Hon'ble Apex Court and the Hon'ble Apex Court in the case of ***Shambhu Nath Goyal vs. Bank of Baroda and others*** reported in ***AIR 1984 SC 289***, wherein it was held that the right which the employer has in law to adduce additional evidence in a proceeding before the learned Labour Court or the Industrial Tribunal either under Section 10 or Section 33 of the I.D. Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. The correctness of the said decision in the case of ***Shambhu Nath Goyal (supra)*** was also put to examination before the Hon'ble Apex Court in the case of ***Karnataka State Road Transport Corpn. vs. Smt.Lakshmiddevamma and another*** reported in ***AIR 2001 SC 2090*** and the correctness of the same was accepted by a Constitution Bench of the Hon'ble Apex Court in the said decision.



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15. In the instant case, admittedly the petitioner herein has not made any such request at the time of making an application under Section 33(2)(b) of the I.D. Act, nor made any such application during the pendency of the application before the Respondent No.1. But it is only after the Respondent No.1 rejected its application for approval, the petitioner is making such a request before this Court. As the petitioner missed the opportunity and in the light of the law laid down by the Hon'ble Apex Court as above, the same cannot be extended to the petitioner at this point of time.

16. In the light of the above, this Court does not find any reason to interfere with the impugned order and accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.04.2025

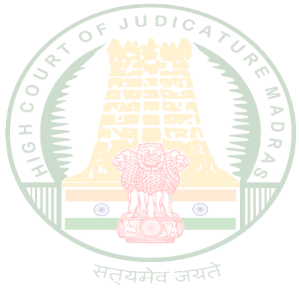
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MUMMINENI SUDHEER KUMAR, J.

ABR

To

The Assistant Commissioner of
Labour (Conciliation), Tirunelveli.

Pre-delivery Order made in
W.P.(MD) No.9704 of 2019

30.04.2025