

In the Court of Labour Court, Kancheepuram

**Present: Tmt.S.Sujatha, M.A., M.L.,
Presiding Officer,
Kanchipuram.**

Friday, the 4th day of October 2024

I.D.No. 8 /2021

K.Shanmugam,
No.259/8,Rice Mill Street,
Echur Village & Post,
Sriperumbuthur,
Kanchipuram District.

--- Petitioner / Workman

//vs//

The Management of Foxconn
Technology India Private Limited,
Sipcot Hi-Tech SEZ,
Sipcot Industrial Park,Phase-II,
Sunkuvarchathiram,
Kanchipuram District.

--- Respondent / Management

This Industrial Dispute came up on 12.09.2024 for preliminary issue hearing before this court in the presence of M/s. T.Ramkumar, K.Sudalaikannu, A.Rekha and M.Suresh Advocates for Petitioner and M/s.S.Makesh and P.Ashokkumar Advocates for Respondent and upon perusal of records and hearing the both side arguments and having stood over for consideration till this day, this court delivered the following

ORDER

1. This Industrial Dispute is raised requesting the court to set aside the illegal termination of petitioner on 20.11.2017 and to reinstate the petitioner with continuity of service, full back wages and with all other attendant benefits and with costs.

2. The petitioner challenges the fairness of the Domestic enquiry. Hence this court has taken up the same as preliminary issue to decide whether the domestic enquiry was not conducted in a fair and proper manner. The facts necessary for the determination of the preliminary issue are as follows.

3. **Petitioner's Case**

The Respondent/management illegally terminated the petitioner from service on 20.11.2017 as against which Industrial dispute was raised before conciliation officer on 24.04.2018. As conciliation failed failure report in proceedings Na.Ka.No.Aa/196/18 was issued. Hence this Industrial dispute is raised. Respondent/management is an international company supplying spare parts to many reputed companies. Petitioner is qualified 12th standard and he joined the Respondent/management after attending interview and was appointed on 08.10.2007 as operator in Quality Department. Petitioner was engaged in all the three shifts. His initial monthly salary was Rs.3,425/- Petitioner was sincere in his work. Appreciating his performance, petitioner was made permanent on 08.10.2009 and he had received the letter of appreciation and award for his performance. Petitioner was given bonus and prizes during pooja and Deepawali and the same was received by him from the year 2008-2017. Respondent/management was mainly supplier to Nokia India. In Respondent/management there were 13,000 workers. In such a situation, Nokia India limited was illegally closed and therefore the Respondent/management sent out, all the workers under lockout, except 64 workers. The name of

Foxconn India Private limited was changed as Foxconn technology India private Limited. The Respondent/management assured to reinstate the workers who were sent on lockout and there by with continuity of service, petitioner and co-workers were reinstated into the service of the Respondent/management. Respondent/management assured to provide EPF facilities.

The Respondent/management finalized the GPF Account and created new GPF Account for the petitioner as well as co-workers and the earlier GPF amount and experience were not taken into consideration by the Respondent/management and petitioners were treated as if they are a fresh workers. Respondent/management was running profitably due to the workers performance. Respondent/management gave low wages to the workers. As there was no recognized the Trade union in the Respondent/management. The workers decided to join United Labour Federation and on 27.02.2016 petitioner became member of the same. The same was intimated to Respondent/management vide letter dated 14.03.2016 . Petitioner joining Trade Union was disliked by the respondent/management. In order to take a vindictive action against the persons who have joined the trade union, respondent/management gave false charge memo against them and name sake domestic enquiry were conducted by the Respondent/management. Respondent/management illegally terminated the petitioner from service alleging that without permission he has gone out of the workplace for assisting co-worker in domestic enquiry. The act of the Respondent/management is

vindictive in nature. Very meager wages were paid to the workers by Respondent/management. In order to have financial stability to the workers, hike in salary was demanded to the Respondent/management. The same was not considered and hence, the Industrial dispute was raised before Assistant Labour Officer Conciliation-1 Sriperumbudur. As a result of which the Respondent/management indulged in vindictive action against the workman and trying to split the workers and was involving in many unlawful activities.

As vindictive action respondent/management coerced Kamalanathan the Secretary of Trade Union to do simultaneously two nature of works and illegally suspended him from service. In furtherance of the same, petitioner who was in stamping section as pressing operator, he was also forced to do two different works in same machine by fixing two different materials at a time and petitioner was forced to do so and it was further informed to petitioner that only petitioner leaves the Trade Union he will be given the earlier nature of work. Respondent/management was carrying out the work by engaging trainees and contract Laborers in their manufacturing process. Respondent/management has not provided any work to the office bearers of the Trade Union. Regarding the Unfair Labour Practice of the respondent management, Industrial dispute was raised before Assistant Commissioner of labour, Conciliation officer on 02.12.2016 by giving a complaint. Thereafter respondent/management without any notice regarding change of machines, as an act of vindiction on 13.10.2016 kept the workers idle and Industrial Dispute was raised in 24.10.2017.

Respondent/management was advised to give work to the workers. The respondent/management without accepting the act of the Trade Union, on false allegations gave a charge memo to the vice president of the Trade Union namely Jabestin Raja Singh. Petitioner was assisting the said Jabestin Raja Singh as co-worker in the domestic enquiry. But petitioner was not permitted to enter into the room of domestic enquiry and he was made to stand outside. Against the said act, Jabestin Raja Singh has given a letter dated 16.11.2016 to the enquiry officer and as petitioner participated as co-worker to assist the Said Jabestin Raja Singh on false ground petitioner was suspended for the service by the respondent/management on 14.11.2016 and said order was issued in English.

Petitioner requested on 15.11.2016 for Tamil version of the suspension order. The same was not considered by the Respondent/management and a charge sheet dated on 26.11.2016 was issued to the petitioner on false allegations. Explanation was given by petitioner for the said charge memo on 02.12. 2016. The same was not considered and vide letter dated 10.12.2016 Petitioner was informed that domestic enquiry should be conducted against him and domestic officer is one Advocate Singhpal. The enquiry against the petitioner was held on 15.12.2016 and subsequent hearings. The procedure regarding domestic enquiry was not properly explained to the petitioner. Petitioner is not having sufficient experience in the domestic enquiry proceedings. In the enquiry the allegations and charge against the petitioner is not proved.

The oral and documentary evidence produced on the side of the petitioner was not taken into consideration by the enquiry officer and he has issued the findings in favour of the respondent/management. Sufficient opportunity was not given to the petitioner during domestic enquiry. From the initial stage of domestic enquiry, enquiry officer was in favour of the respondent/management and the objection raised by the petitioner during enquiry was not considered and the enquiry officer acted biased against the principles of natural justice in favour of the respondent/management and the show cause notice, dated 19.06.2017 was issued to petitioner as well as Jabestin Raja Singh. For the second show cause notice, to give explanation time was sought for vide letter dated 24.06.2017. Respondent gave only 72 hours of time. The petitioner was not able to submit his explanations. Once again he gave request dated 04.07.2017 seeking extension of time to submit his explanations vide letter dated 12.09.2017. Petitioner submitted his detail explanations to the respondent/management. The same was not considered and on 20.11.2017 petitioner was terminated from service. At the time of termination of service of the petitioner, Industrial dispute was pending before the conciliation officer. Without getting any approval u/s.33(2)(b) of the ID Act, the termination has been done by the respondent/management. The petition was accepted and approval had been given. Petitioner preferred Industrial dispute before conciliation officer on 24.04.2018 u/ sec.2A of the ID Act. As no conciliation arrived, conciliation failure report was issued on 08.08.2018 hence, against the

illegal termination of the petitioner by respondent/management on 20.11.2017 this Industrial dispute is raised.

4. Respondent's case

The respondent company is a very small unit with the working capacity of 150 workers and 100 staff. M/s Foxconn India Private Limited was closed due to loss of business and thereby all the legal dues were settled to the workers and staffs. Some of the workers like petitioner, requested the management to provide employment instead of settlement. Respondent/management considered the same, believing that they will be very loyal towards the development of the company. From the date of joining of the present company, they are not interested to do work and did not respond to the instructions of the officers concerned, where the management started facing problem. On 14.11.2016 while during the working hours of "A" shift, petitioner requested permission to attend domestic enquiry of other employee namely Jabestin Raja Singh for which the quality engineer replied as the manpower is very less and more over hard stamping production was running, permission could not be granted. The quality engineer discussed with the manager and informed that it could not be possible to grant permission today. Despite the same, the petitioner left the work place without permission. Further, he was prevented by the security officer in the main gate as he had no permission slip and ultimately left the company during the work hours without permission. Thereafter, the petitioner came back to the premises around 11.30 on the very same day and again the

security officers of the main gate stopped him to ingress. However, he shouted with unparliamentary words and by threatening the officers forcefully entered the gate. After came to the shop floor, the petitioner did not inform the same to the superior. He created an unwanted situation in the shop floor during the working hours which is grave misconduct as per the standing orders. Act of the petitioner is the root cause for initiating the domestic enquiry by the management. The management initiated the disciplinary proceedings against the petitioner following the suspension order dated 15.11.2016. The charge memo dated 26.11.2016 has been issued to call for explanation and since it was not satisfied, an independent enquiry officer was appointed by the disciplinary Authority. The notice about enquiry has been served properly to the petitioner and accordingly, the enquiry proceedings started. Enquiry was conducted by strictly following the principles of natural justice and all opportunities were given to the petitioner. The enquiry officer submitted his report dated 20.04.2017. The copy of the enquiry report served to the petitioner and second show cause notice dated 19.06.2017 also sent to him. The petitioner by letters dated 24.06.2017 & 04.07.2017 sought for extension of time to offer his explanation to the second show cause notice and the same was considered by the management by letter dated 30.06.2017. The petitioner by letter dated 12.09.2017 offered his explanation to the second show cause notice as it was not satisfied, the petitioner was terminated from service vide order dated 20.11.2017. M/s Foxconn India Private Limited Company and the respondent

are two different legal entities. Foxconn India private limited company was closed for loss of business and financial crisis that too on closure of Nokia company. Consequent to the closure most of the workers and staffs received their legal dues. Employees are supposed to obey the instructions and other rules and regulations of the company and when it was not followed or when violated, it amounts to misconduct, against which the management has every right to take action. It took one year to complete the domestic enquiry from 10.12.2016 to 20.11.2017. The petitioner at each and every stage of the enquiry sought for time and it was periodically granted both by enquiry officer as well as disciplinary authority. The enquiry conducted by the respondent is valid. There was no personal enmity with the petitioner as alleged. The disciplinary action was taken against the petitioner since he left the shop floor without prior permission from the superior as well as security officer. Disciplinary action will be taken only against the worker who commits misconduct and not against all the workers as alleged by the petitioner. Based on the evidence given by both side and documents marked, the enquiry officer submitted his report. Petitioner took a lengthy cross examination of the management witnesses. The respondent served the second show cause notice to the petitioner to offer his explanation within 72 hours, however, the petitioner twice sought for extension of time to offer his explanation and the same was considered by the management and granted time. Therefore, the question of violation of principles of natural justice does not arise. The petitioner was permitted to engage a co-worker for

assistance during enquiry proceedings. All the enquiry proceedings were recorded by the enquiry officer only in the presence of the worker and copies of the day today proceedings were given after having signed by the delinquent, management and enquiry officer. Therefore, the contentions of the petitioner are totally wrong and put the petitioner to strict proof of the same. Whether the petitioner is gainfully employed or not has to be proved by petitioner before the court beyond doubt. In the event of the validity of the domestic enquiry decided as preliminary issue is held against the respondent, it is prayed that this Honble Court may be pleased to give an opportunity to lead evidence in support of the charges levelled against the petitioner. To dismiss the petition.

5. Based on the pleadings the following Preliminary issue is framed

Whether the domestic enquiry was not conducted in a fair and proper manner?

6. To prove the same, on the side of respondent/management by consent Ex.M1 to M29 have been marked and petitioner side no documents marked.

Answer to the preliminary issue

7. The charge against the petitioner is on 14.11.2016 during working hours, petitioner left the workplace without permission, petitioner came back to the premises around 11.30 on the very same day, shouted with unparliamentary words, threatened officers, forcefully entered the gate and after coming to the shop floor, did not inform the same to the superior.

8. For the said charge, the respondent/ management has relied on Ex.M10 the complaint dated 14.11.2016 given by one Arunmani, who is a quality engineer in the respondent/ management and Ex.M11 is the complaint given by one Sabasan JSO the security manager of respondent/ management narrating the incident said to have taken place on 14.11.2016. Based on Ex.M10 and M11 the respondent/ management has vide Ex.M12 issued suspension order to the petitioner herein on 14.11.2016 pending enquiry order. The charge memo dated 26.11.2016 has been issued to the petitioner vide Ex.M14 and vide Ex.M.15 for the charge memo issued to the petitioner has sought for extension of time to give his explanation, dated 29.11.2016 and vide Ex.M17 petitioner has given explanation dated 02.12.2016. Vide Ex.M.19 respondent/ management has given a notice regarding domestic enquiry and it is dated 10.12.2016. In the said letter it has been intimated that domestic enquiry will be conducted on 15.12.2016 and the enquiry officer is one Singhpal.

9. Under Ex.M20 the domestic enquiry officer has commenced his enquiry on 15.12.2016 explaining the procedures to be adopted in conducting the domestic enquiry and the same has been endorsed by the petitioner herein as well as the authorities on behalf of the respondent/ management and subsequently on 19.12.2016 the enquiry has been commenced by examining one Arunmani as MW1 and documents had been marked through him on the same date in the presence of the petitioner herein and one Arjun has been assisting the petitioner herein who is the co-worker. On 06.01.2017, the

further evidence of Mw1 had been recorded in the presence of the petitioner as well as co-worker namely J.Veeramuthu and the same had been endorsed by all concerned.

10. The petitioner has cross examined MW1 on 19.01.2017 with the assistance of co-worker namely A.Arjun and cross examination has been closed on the day and subsequently adjourned to 21.01.2017 for further examination and on 21.01.2017 also petitioner had been assisted by co-worker namely A.Arjun and examination has been done during domestic enquiry and on 21.01.2017 the case has been adjourned to subsequent date and on 02.02.2017., one Sabasan has been examined as MW2 on the side of the respondent/ management in the presence of petitioner along with his co-worker namely A.Arjun and on 07.02.2017 the said MW2 had been examined on behalf of the respondent/ management and on 22.02.2017 cross examined, behalf of the petitioner herein. One Jabastin Raja singh had been examined as WW1 and he had been cross examined on 08.03.2017 by the respondent/management. On examining Jabastin Raja Singh, petitioner has closed his evidence. On completion of the domestic enquiry, the enquiry officer has given his findings dated 20.04.2017 and the copy of the same had been furnished to the petitioner herein and vide Ex.M22 second show cause notice has been issued to the petitioner regarding proposed punishment to be imposed on him and on the receipt of the same petitioner herein has given his explanation dated 24.06.2017 vide Ex.M23 and the respondent/ management vide Ex.M24 has given extension

of time to give his explanation for the second show cause notice and thereafter petitioner herein vide Ex.M25 has given his letter for extension of time to file explanations. Vide Ex.M26, Petitioner has submitted his explanations for the second show cause notice and on the receipt of the same as not satisfied with the reasons assigned by the petitioner. Vide Ex.M27, Petitioner has been issued the termination order and thereafter Industrial dispute has been raised before the Conciliation officer.

11. The perusal of the enquiry proceeding shows that the petitioner has been given notice regarding the suspension on 14.11.2016 pending enquiry and he has been intimated about appointment of enquiry officer and all the relevant documents had been furnished to the petitioner herein during the domestic enquiry. The respondent/ management while conducting the domestic enquiry, the enquiry officer has also given fair opportunity to the petitioner herein to cross examine the witnesses on the side of the respondent/ management and further given opportunity to the petitioner to let in evidence on his side and also to mark documents. In such circumstances, the stand of the petitioner that due opportunity was not given to him while conducting domestic enquiry is not reasonable is not acceptable. The allegation that during domestic enquiry officer, violated the principles of natural justice is also not acceptable for the reason that in all stages of the enquiry petitioner had been provided with the fair opportunity to take part in the domestic enquiry as well as to conduct and to let in evidence on his side, both oral and documentary.

12. It is therefore, hereby concluded that the domestic enquiry has been conducted, the procedure in conducting the domestic enquiry is a fair and proper and it is further decided that whether the findings of the enquiry officer are perverse and the same can be decided under 11 A of ID.Act. Accordingly the order passed.

In the result it is decided procedure adopted in conducting Domestic Enquiry was conducted in a fair and proper manner.

Dictated to the steno typist, directly typed by her, corrected and pronounced by me in the open court, this the 4th day of October 2024.

Sd/- S.Sujatha
Presiding Officer,
Labour Court,
Kancheepuram

List of witnesses NIL

List of exhibits marked

For the Petitioner/ Workman: NIL

For the Respondent/ Management:

Ex.M.1	08.10.2009	Copy of the petitioner employment confirmation order
Ex.M.2	14.03.2016	Copy of the union letter.
Ex.M.3	04.07.2016	Copy of the letter to Jabastin Raja Singh
Ex.M.4	18.07.2016	Copy of letter from Jabastin Raja Singh
Ex.M.5	18.07.2016	Copy of letter from the petitioner
Ex.M.6	02.08.2016	Copy of letter from the petitioner.
Ex.M.7		Copy of letter of the petitioner seeking translation
Ex.M.8	14.11.2016	Copy of letter from Jabastin Raja Singh

Ex.M.9	14.11.2016	Copy of letter from Parasuram Naik
Ex.M.10	14.11.2016	Copy of letter from Arun Mani
Ex.M.11	14.11.2016	Copy of letter from Sabasan
Ex.M.12	14.11.2016	Copy of Suspension pending enquiry
Ex.M.13	18.11.2016	Copy of letter to Jabastin Raja Singh
Ex.M.14	26.11.2016	Copy of Charge memo
Ex.M.15	29.11.2016	Copy of seeking extension of time to give explanation
Ex.M.16	November 2016	Copy of Salary Receipt
Ex.M.17	02.12.2016	Copy of explanation to charge memo
Ex.M.18	02.12.2016	Copy of Union letter to ALC, Irunkattukottai
Ex.M.19	10.12.2016	Copy of letter informing about enquiry.
Ex.M.20	15.12.2016	Copy of enquiry proceedings
Ex.M.21	20.04.2017	Copy of enquiry findings
Ex.M.22	19.06.2017	Copy of second show cause notice
Ex.M.23	24.06.2017	Copy of seeking extension of time to give reply
Ex.M.24	30.06.2017	Copy of management letter granting time Copy of
Ex.M.25	04.07.2017	Copy of seeking further extension of time to give reply
Ex.M.26	12.09.2017	Copy of explanation to second show cause notice
Ex.M.27	20.11.2017	Copy of order of Termination
Ex.M.28	08.08.2018	Copy of Failure report u/sec. 12(4)
Ex.M.29	10.08.2018	Copy of Approval granted U/s 33(2)(b) of I.D.Act,1947.

Sd/- S.Sujatha
Presiding Officer,
Labour Court,
Kancheepuram