

In the Court of Labour Court, Kancheepuram

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

Tuesday, the 24th day of September 2024

I.D.No. 310 /2019

General Secretary,
Perfetti Van Melle Thozhilalar Maiyam,
No.18/51,EWS,NH-1,
Parimelazhgar Street,
Maraimalai Nagar,
Kanchipuram District - 603 209.

--- Petitioner / Workman

//vs//

The Management,
Perfetti Van Mella India Private Limited,
No.7, Karanaipuducherry Village and Post,
Urapakkam
Kanchipuram District- 603 202
Management

--- Respondent /

This Industrial Dispute came up on 03.09.2024 for preliminary issue hearing before this court in the presence of M/s. J.Prathaban, S.Rudranath and N.Ponnurangam Advocates for Petitioner and M/s.M.Kandasamy, P.Ashok kumar and P.Krishnamurthy 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. The State Government of Tamil Nadu by G.O.No.702 Labour and Employment dated 02.12.2019 has referred this dispute with the following

point for adjudication.

Whether the dismissal of workman namely Maria Arokya Franklin is justifiable and to be reinstated into service with all full back wages and other attendant benefits as required by the trade union is justifiable? if not what would be the relief available to him.

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

Respondent company is international Italian company involved in production of confectioneries. They have good reputation globally. Respondent company is earning more profit with the cooperation of its workers. The state government and central Government has given complete facilities and infrastructures to the respondent company. Respondent company is not providing lawful benefits entitled to the workers. Respondent/company indirectly obstructs formation of trade union.

During the year 2010 petitioner and all other workers joined Chengai Anna General workers union. Thereafter on the guidelines given by Chengai Pudhu Thozhilalar Sangam Perfetti Van Melle Thozhilalar Maiyam was established on 18.01.2013. In the respondent company there are 287 permanent workers 400 contract labourer's 150 trainees and in the trade union they are

nearly 220 permanent workers as members.

After formation of the trade union, Charter of demands was placed before respondent /management, the respondent /management has not come forward for bilateral talks and started taking the vindictive action against the workers. Hence, industrial dispute was raised before labour officer. After that five settlements were entered into between the respondent /management and trade union. The respondent /management acted in a biased manner, thereby providing promotion to certain sector of workers and denied promotion to certain sector of workers. Action was taken on behalf of affected employees by the trade union during 2012. The respondent decided to take action against the workers who were active in trade union. One such person is the petitioner herein. Petitioner had joined service of respondent on 20.08.2007 and worked without any complaint. Petitioner has unblemished records. Petitioner was one of the reason for formation of trade union in the year 2010. Petitioner's last drawn monthly salary is Rs.12,800/-. In such circumstances, a charge sheet dated 17.09.2013 was issued to the petitioner herein stating on 01.08.2013 at the third shift, during his working hours at 3 a.m. in the early morning, when senior executive Thiru.Ajith Singh came for check rounds the petitioner was not present in the Mentos coating 2 section area where he was to be present and he was seen sleeping near Mentos coating 2 Timer panel and petitioner was negligent in his work and was sleeping during his working hours without doing any work. The said charge was levelled against the petitioner. In the said charge

memo it was not stated on who's complaint the same was issued to him. Petitioner sought for the complaint given against him on 21.09.2013, thereafter as an after thought, the respondent/management obtained a written complaint from said Ajith Singh and said complaint was not given immediately and had been created by the respondent/management.

If the alleged incident were true complaint might have been given on the next day itself but the same had been given only on 06.08.2013. It reveals that the said complaint is a created one. For the charge sheet issued to the petitioner, Petitioner gave his explanations dated 26.09.2013 denying the charges levelled against him. Further the petitioner had stated that he sought for leave, the same was refused and he had taken his father to hospital who had sustained accident and on 31.07.2013 he was allotted work at night shift and after completing the same on 01.08.2013 he had gone to hospital taking his father and attended the duty for third shift as there was no sufficient rest and he was a feeling tired, he in spite of that was doing his work and in Mentos coating two chocolate manufacturing Pan there are three sections, In each section there will be two operators, totally six operators, the first batch production will end at 3 am and in continuation of the same for the second batch production raw materials should be taken, machines should be cleaned at that time. Petitioner suffered vomiting sensation and intimating the same to co-worker namely Gopu went to restroom, vomitted there, was feeling, nausea, and unconsciousness and stating his condition to the operator he had gone to take rest for 10 minutes but had not

fallen asleep.

On receiving the explanations given by the petitioner herein, the respondent without analyzing the reasons stated by the petitioner, ordered for the domestic enquiry thereby appointing one Manoharan as enquiry officer. Petitioner was under belief that he can disprove the allegations levelled against him by the respondent/management. But the enquiry officer acted in a biased manner in favour of the respondent/management and sufficient opportunity was not given to the petitioner during domestic enquiry. On the side of the respondent management well trained person was there representative. But the said equal opportunity was not given to the petitioner to take part in the domestic enquiry. On the side of the respondent/ management, production department senior executive Mr.Ajith singh, one Suresh line coordinator one Muthu kumar were examined. Petitioner had also examined on his side the co-workers namely Seril, Gopu and himself as witness on his side. The documents on the side of the respondent/ management were not marked through witnesses. It was stated by the respondent/management that Ajith singh alone had given complaint against petitioner. But in order to add value to the complaint of Ajith singh, other two witnesses were examined on the side of the respondent/management during domestic enquiry which is against principles of natural justice and standing orders. The evidence on the side of the petitioner was not recorded properly by the enquiry officer and the evidence during cross examination was not properly recorded. The enquiry officer conducted the

domestic enquiry against the principles of natural justice and standing order and acted in favour of the respondent /management and had come to the conclusion that the charges levelled against the petitioner are proved against him.

Based on the findings of the enquiry officer show cause notice dated 26.04.2014 was issued to the petitioner. Petitioner gave his explanation dated 12.05.2014, without accepting the explanations of the petitioner herein, Petitioner was issued second show cause notice dated 17.05.2014 regarding the proposed punishment. The petitioner has given his explanations dated 24.05.2014, without accepting the same petitioner was terminated from service on 01.10.2014 as an act of vindiction, the respondent filed an application before industrial tribunal for approval of petitioners dismissal, the same was allowed on 20.04.2018. The said findings is against supreme Court's citations. The trade union convened on 05.08.2018 to seek reinstatement of the petitioner's herein and it was decided to raise the industrial dispute by the trade union.

On consultation with the trade union, petitioner gave an application to the respondent on 06.08.2018 and had filed the application before the Assistant Commissioner, conciliation-I Sriperumbudur on 23.08.2018 under section 2K of the Act. Respondent filed their reply dated 17.12.2018 and rejoinder was filed on behalf of the trade union on 21.02.2019. As no conciliation arrived, conciliation failure report was issued on 21.05.2019 and thereby the Government of Tamil Nadu has passed this G.O. referring the matter to this court. Hence, this Industrial dispute is before this court. The

respondent/management has acted as against the petitioner as he has joined the trade union. The domestic enquiry was not conducted in fair and proper manner. The enquiry officer has not considered the evidence in a complete manner. And he has not given reasons why the evidence of the petitioner was not accepted. Petitioner has disproved the allegations against him by examining co-workers as witness. The same had not been taken into consideration by the domestic enquiry officer. There is no proof that there was production loss due to the act of petitioner. The petitioner was taking rest for few minutes only due to his tiredness and due to the health condition of his father. The findings of the enquiry officer is on assumptions and presumptions. After deciding to dismiss the petitioner from service, the second show cause notice had been issued by the respondent /management. Respondent/ management has not taken into consideration the past records of the petitioner. The termination of petitioner is against law and justice. No sufficient opportunity given to the petitioner to give his explanations. As the termination of the petitioner is illegal and he is suffering with family due to non-employment, the court has to interfere under section 11A regarding the punishment imposed on the petitioner. The reference in the government order has to be decided in favour of the petitioner herein.

4. Respondent's case

The respondent company is engaged in manufacture of Confectionaries (food product) and their products have high repute in the market. Petitioner

joined the services as Company Apprentice with effect from 20.08.2007. At the time of issuing charge sheet dated 17.09.2013 was employed as Shop Floor Member Level -I and his last drawn wages were Rs.12,800/-. Petitioner was employed in the third shift on 01.08.2013 from 11.00p.m. to 7.00a.m in the Mentos coating -2section, Mr.Ajith Singh(Senior Executive-production) found Petitioner missing from the work spot at around early morning 3.00 a.m. and inspite of searching him in the entire shop floor and later in the canteen and locker room, he could not be found. Any absence by an employee would result in serious risk on safety for the men and Machine resulting in delivering defective quality products, will have a serious issue to consumer safety, would bring down the brand value of the product in the market which will lead to business loss. As per the Certified standing orders sleeping while on duty and not doing the assigned job is a misconduct. The respondent /management issued a charge sheet dated 17.09.2013 for violation of clauses 21(14),21(19) and 21(20) of the certified standing orders of the company. Petitioner submitted a reply dated 21.09.2013 requesting for a copy of the complaint, in the reply had not denied the misconduct alleged in the charge sheet. Vide letter dated 23.09.2013, the copy of the complaint was furnished. Petitioner submitted his explanation dated 26.09.2013 admitting certain aspects of the charges, not being satisfied with the explanation, issued a letter dated 11.10.2013 informing the appointment of enquiry officer Mr.Manoharan to conduct an enquiry. The enquiry officer after giving due notice commenced the enquiry proceedings on

15.10.2013. Petitioner participated in the enquiry proceedings, on completion of the management side evidence, two witnesses on his behalf were examined, no documents were marked on his side. On completion of the enquiry proceedings on 03.12.2014, the enquiry officer submitted the enquiry report dated 01.04.2014 holding guilty of the charges. Vide letter dated 26.04.2014 with a copy of the report of the enquiry officer sought his views on the findings of the enquiry officer and petitioner submitted his reply dated 12.05.2014. The management issued a second show cause notice dated 17.05.2014 seeking explanation for the proposed punishment of dismissal in view of the seriousness of the proven misconduct. Petitioner submitted his explanation to show leniency on the proposed punishment of dismissal from the services. Having found no extenuating circumstances to show leniency, decided to dismiss from the services, Vide dismissal order dated 01.10.2014. The respondent/management filed an approval petition seeking approval after complying with the provisions of section 33(2) (b) of I.D.Act. Industrial Tribunal, Chennai was pleased to allow the approval petition, dismissing from the services was confirmed, aggrieved by the order of dismissal, the petitioner union raised an Industrial Dispute u/sec.2(k) of the Industrial Disputes Act before the Assistant Commissioner of Labour (Conciliation -I) Sriperumbudur. No settlement was arrived at between the parties, the conciliation officer submitted failure report dated 21.05.2019. The statement made by the petitioner union that institutions like the respondent are exploiting the workers and

curtailing the legal rights of the workers are false, made with malafide intention. The respondent management never curtailed the lawful activities of the members of the union from its inception in the respondent company. The management never compromised or hesitated to initiate disciplinary action to maintain discipline in the factory. The claim statement projecting the management as though it is acting against the union activities is false and misconceived. The long term settlement is signed before the conciliation officer with the consent of both the parties. The allegation made therein that one portion of employees working in the factory were discriminated and given promotion and salary hike are vague. The office bearers worked along with the dismissed employees in the year 2011 are still in the employment of the company and that would prove the relationship nurtured by the respondent/management over the years with the union. On the proven charges all the 4 employees involved in the present dispute were dismissed, that too after conducting an enquiry. It is denied that the charge sheet was issued with predetermined charges. A perusal of the reply would reveal that the said reply was an afterthought, drafted to overcome the charges levelled against him containing frivolous and false averments made without any basis. The allegation made that the enquiry conducted by the enquiry officer was one-sided and conducted for namesake, the delinquent employee participated throughout the proceedings by availing all the opportunities provided to him. The entire enquiry proceedings were recorded by the enquiry officer on each day and

signed by the representatives of the management and also by petitioner. The management after careful consideration decided to terminate from the services and accordingly issued termination order dated 01.10.2014 after careful consideration of the oral and documentary evidence placed before him, the enquiry officer arrived at finding. Since the charges are grave in nature, any interference by this Honble court while exercising power under sec.11A of the Act, the respondent/management would be put in to enormous hardship in maintaining the discipline and the presence of such workmen would seriously affect the morale of other workmen and discipline of the entire factory. The allegation of unfair labour practice, perversity, victimisation are unfounded. The respondent is in the business of manufacturing human consumable food products and therefore discipline of employees is most important and cannot be compromised. Considering the grave nature of proven charges the terminated employees does not deserve any relief as prayed for, petition is liable to be dismissed.

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 the petitioner, by consent Ex.W1 to W7 had been marked and on the side of respondent/management by consent Ex.M1 to M23 have been marked.

Answer to the preliminary issue

7. The charge dated 07.09.2013 against the petitioner is that on 01.08.2013 while he was attending third shift duty from 11 pm to 7am and while he was working in Mentos coating 2 section in the early morning at about 3am when Mr.Ajit Singh's senior executive production came for the checking, He has identified, petitioner was missing in the assigned work area and when searched in the entire shop floor, he was found at 6. 20am in the shop floor sleeping on the tray, which was kept near, the Timer planner, nearer by Mentos coating 2 and he was found sleeping on the candy tray in the sitting posture, which was kept between coated product, dragee trolley. And his act was against the standing orders sections 21(14) 21(19) 21(20) which amounts to negligence of work, sleeping, while on duty, loitering, idling or wasting time during working hours, etc.

- For said charge sheet dated 17.09.2013, petitioner had been given copy of the complaint dated 02.08.2013 which is marked as Ex.M1 and the photograph of petitioner Ex. M2 to show that he was in a sleeping posture and notice has been given to the petitioner for which petitioner has given is reply dated 21.09.2013.
- Based on the complaint, Ex.M1 and photograph of Ex. M2, Ex.M3 charge sheet has been issued to the petitioner herein.
- For which petitioner has given his explanation dated 21.09.2013 under Ex.M4 and on receipt of the same and not satisfied with reply given by the petitioner herein,the respondent/management

vide letter dated 23.09.2013 has given to the petitioner, for which petitioner has given his reply dated 26.03.2019 vide Ex.M6 and thereafter on 11.10.2013 the enquiry notice has been issued to the petitioner herein and the respondent/management has intimated to the petitioner about appointment of the enquiry officer and also show cause notice under Ex.M5 dated 23.09.2013 and petitioner has given his explanation Ex.M6 and Ex.M7 the respondent/management has given notice regarding the domestic enquiry on 11.10.2013 and the domestic enquiry notice dated 15.10.2013 is issued to petitioner vide Ex.M8 and the enquiry has been conducted by the enquiry officer and he had commenced enquiry by giving notice to the petitioner herein and the petitioner herein has also given opportunity to cross examine the respondent management witnesses and further he had let in evidence on his side by examining co-workers also.

- The contention of the petitioner that equally competent person was not appointed on his behalf to contest the case is not acceptable for the reason that domestic enquiry can be conducted only with the assistance of co-worker and not with the help of third parties and hence the stand taken by the petitioner, Petitioner was not given opportunity to have assistance of equally competent person is unsustainable.

The petitioner had been given opportunity to let in evidence on his side and cross examine the management witnesses and the enquiry proceedings reveals the same and perusal of the enquiry proceedings shows that there is no violation of any principles of natural justice and standing orders in conducting domestic enquiry

1 Whether the findings of the enquiry officer was perverse or opposed to the evidence?

2 Whether the management is guilty of victimisation? can be decided U/s.11A of ID.Act.

In the light of the above discussions, it is concluded that the domestic enquiry was conducted in a fair and proper manner.

In the result it is decided 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 24th day of September 2024.

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

List of witnesses NIL

List of exhibits marked

For the Petitioner/ Workman:

Ex.W.1	02.08.2013	Copy of Complaint of Ajith Singh
Ex.W.2	17.09.2013	Copy of Charge sheet
Ex.W.3	21.09.2013	Copy of reply of R.Maria Arokia Franklin
Ex.W.4	26.09.2013	Copy of explanation of R.Maria Arokia Franklin
Ex.W.5	11.10.2013	Copy of enquiry notice
Ex.W.6		Copy of enquiry proceedings
Ex.W.7	01.04.2014	Copy of enquiry findings

For the Respondent/ Management:

Ex.M.1	17.09.2013	Copy of Sheet issued to the petitioner Ex.M3
Ex.M.2	21.09.2013	Copy of reply by the petitioner Ex.M4
Ex.M.3	02.08.2013	Copy of complaint of Ajith Singh Ex.M1
Ex.M.4		Copy of Photograph of petitioner Ex.M2
Ex.M.5	23.09.2013	Copy of letter from the respondent to the petitioner
Ex.M.6	26.09.2013	Copy of explanation of the petitioner Ex.M6
Ex.M.7	11.10.2013	Copy of enquiry notice Ex.M7
Ex.M.8	15.10.2013	Copy of Corrigendum enquiry notice letter Ex.M8
Ex.M.9		Copy of Ex.M10 series filed in the enquiry
Ex.M.10	04.09.2013	email report Ex.M11
Ex.M.11		Copy of coating Log book Ex.M12
Ex.M.12	01.08.2013	Day plan Ex.M13
Ex.M.13	01.08.2013	Copy of shift wise day plan Ex.M13
Ex.M.14		Copy of Photograph Ex.M14 to Ex.M22
Ex.M.15	16.09.2013	Copy of complaint regarding petitioner Ex.M23
Ex.M.16	26.09.2013	Complaint of G.Seril Ex.M24
Ex.M.17		Copy of Photographs Ex.M25 & Ex.M26

Ex.M.18	15.10.2013 to 03.02.2014	Copy of enquiry proceedings
Ex.M.19	01.04.2014	Copy of findings of the enquiry officer
Ex.M.20	17.05.2014	Copy of letter from the respondent to the petitioner enclosing with findings of the enquiry officer.
Ex.M.21	24.05.2014	Copy of reply by the petitioner
Ex.M.22	01.10.2014	Copy of the dismissal order along with one month wages with postal receipt
Ex.M.23		Copy of Standing orders.

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