

BEFORE THE LABOUR COURT, TIRUCHIRAPPALLI

Present : Thiru.N.S.Srivathsan, M.L.,
Presiding Officer (FAC),

Tuesday, the 15th day of October' 2024

Industrial Dispute No.9/2022
CNR.No.TNTP020000022022

M. Muthamilselvan,
S/o. Maruthamuthu,
Maniyakurichi, Sanamangalam,
Mannachanallur Taluk,
Tiruchirappalli District.

... Petitioner

//Versus//

The Management,
M/s. MRF Ltd.,
Naranamangalam,
Alathur Taluk,
Perambalur District

... Respondent

This petition came up before me for final hearing in the presence of Thiru. K. Jeyaraman, counsel for the petitioner and of Thiru. I. Anaiyappan, counsel for the respondent and upon hearing arguments on both side and upon considering the material records and having stood over till this day for consideration, this court delivered the following;

PRELIMINARY AWARD

This instant petition under Section 2A(2) of the Industrial Disputes Act, 1947 (in short 'I.D.Act, 1947') has been filed on 04.04.2022 by the petitioner/workman, aggrieved by the conciliation failure report dated 03.09.2021, which was preferred by

him before the Assistant Commissioner of Labour, Trichy against the respondent management with regard to his dismissal order. In the said main petition, the petitioner has challenged the fairness of the proceedings of the Domestic Inquiry and hence, this preliminary award is passed hereunder answering the preliminary issue framed on 03.01.2023 as follows, “Whether the domestic enquiry was conducted by the respondent management in a fair and proper manner, following the principles of natural justice ?”.

The case of the Petitioner :-

2) The petitioner has been working in the respondent company as machine operator since 29.02.2011 and from 01.03.2015, as a permanent employee. The petitioner has filed an industrial dispute seeking to set aside the dismissal order of the petitioner from 25.09.2020 and to direct them to reinstate him with back wages along with continuity of service on the grounds that on 31.01.2020, where the petitioner is working in the respondent company, he has taken his cell phone to the factory. It is against the Labour Act that the respondent management is showing hostility towards the petitioner for engaging in trade union activities. On 31.01.2020, the petitioner union started negotiations with the respondent management for the benefit of the workers, there were working in the said respondent management. The petitioner's family includes an elderly mother and father due to the corona virus infection and the elderly are suffering from lack of immunity and due to the fact that the elderly in the family are afraid of death due to suffocation, the respondent management showed hostility towards the petitioner and said that the mobile phone is

a smart phone and they have issued a charge memo to the petitioner.

3) In the charge memo dated 22.01.2020 no offense as aforesaid has been alleged and an allegation has been made that the petitioner is involved in such activities as are detrimental to the peace, welfare and emotional unity of the factory. It is incorrect to raise a charge that the management is indirectly involved in the activities of the petitioner trade unions out of a total of ten charges. The making of such allegations by the management would show that the respondent management is hostile to the welfare of the workers. In the allegation dated 05.02.2020, during Security Auditing on 30.01.2020 at 2.36 pm, the security officer has found that the mobile phone which is not allowed by the management was being charged in the SCADA machine of the petitioner department in the Electronic Panel Board in a dangerous condition which could cause an accident to the Smart Phone factory, therefore the mobile phone has been seized and kept in the security office. The allegation raised is baseless. Also at around 2.40 pm the petitioner met his Shift Supervisor and some security person may have taken the mobile phone of the petitioner which was kept on the machine and to that the supervisors of the petitioners replied that they do not know about how the mobile phone was handed over to the management and then he asked the Supervisor who took his mobile phone. The allegation of the management that they left the workplace at 2.45 am and left the workplace till 3.00 am is false and absurd. There is no evidence for that. A deliberately fabricated case.

4) The allegations dated 22.01.2020 have not been proved by the management as well as the charge memo filed by the management dated 05.02.2020 has not been proved and these allegations are not true. It is not correct that the allegations were proved by the management with an intention to retaliate against the petitioner when the said allegation was not proved. It is evident from the view that the inquiry officer has submitted his report which is against his conscience and against the welfare of the workers and the report of the inquiry officer depends on the management. Also, it is not correct that the respondent management dismissed the petitioner when the allegations made by the management were not proved and this dismissal is false and unfair. It is clear that the management acted with the intention of taking revenge on the petitioner somehow. Dismissal for the above charges is not an exception. Therefore, an order is sought to allow the above industrial dispute petition and set aside the dismissal and reinstatement after accepting the settlement. It is not correct that the management has dismissed the petitioner when the charges alleged by the respondent management have not been proved. Against this, the petitioner filed a petition on 22.12.2020 before the Deputy Commissioner (Conciliation), Labor Department, Tiruchirappalli. The Deputy Commissioner of Labor (Conciliation) on 03.09.2021 issued a report on the failure of the compromise as no amicable solution was found in the negotiations after sending a notice to the respondent/management for the conciliation negotiation petition given by the petitioner. The petitioner has raised this industrial dispute in the Labor Court against the said Assistant Commissioner as the negotiations did not failure before the

conciliation. Therefore, it is requested that this industrial dispute petition to be allowed and the dismissal order of the petitioner to be set aside and the petitioner to be reinstated and to receive the salary and all benefits.

The contentions raised by the Respondent :-

5) The petition averments are denied *in toto* except those that are specifically admitted herein. On this ground alone the present petition filed by the petitioner is not maintainable and liable to be dismissed. In relation to the irregularities committed by the petitioner, the charges dated 22.01.2020 and 05.02.2020 were issued and his explanation was obtained and as the explanation was not satisfactory, two separate enquiry were conducted in relation to the allegations in order to give him one more chance. The petitioner was permanently dismissed vide order dated 25.09.2020 for the allegations proved in the investigation.

6) On 22.01.2020, the petitioner was assigned to work RH calendar in the second shift by the supervisor, that night at around 8 o'clock he went to his shift supervisor and asked in a loud voice "why not give off-change" to a co-worker named Mr. Sathis who is not related to him. The Supervisor said " they have been given to Mr. Sathis enough Shift Change, regardless of that and he threatened " OFF

CHANGE கொடுக்க முடியாதுன்னு சொல்ல நீ யாரு என்று கூறியது மட்டும் அல்லாமல்

ஒன்னு இந்த இடத்தில் நீ இருக்கனும் இல்ல நான் இருக்கனும் பார்க்கலாமா? என்னை

கேள்வி கேட்பதற்கு நீ எல்லாம் ஒரு ஆளா? நான் Chair-ல உட்கார்ந்தா நீ என்னை

கேள்வி கேட்பியா, நீ ஏன் Chair-ல உட்கார்ந்திட்டு இருக்க? நீ முதல்ல எழுந்திரு?

என்றும் என் மீது எதாவது நடவடிக்கை எடுக்குற மாதிரி இருந்தா, நீ மெயின் கேட்ட

தாண்ட மாட்ட பாக்குறியா? ". In this regard, the charge memo dated 22.01.2020 was issued regarding the fact that even though the supervisor reported the above incidents to the Shift Foreman, the petitioner interrupted unnecessarily and again shouted loudly, shouted and acted in a threatening tone and acted in a way that interfered with the factory work. The petitioner had submitted an undated explanation to that effect in order to give another chance to him as the explanation submitted by the petitioner was not satisfactory to the management. Thereafter, Mr. M.S.Krishnan, B.Com, LL.B. Advocate was appointed as the investigating officer. The enquiry was conducted in accordance with natural law and the petitioner was given adequate opportunities. The petitioner participated wholeheartedly in the said investigation without any objection and stated that he did not need any colleagues in the investigation. At the end of each day's hearing, the petitioner was provided with a copy of the enquiry proceedings note from time to time and the enquiry was duly conducted and concluded on 12.03.2020. The Inquiry Officer submitted his inquiry findings on 23.03.2020. It concluded that all the charges leveled against the petitioner have been proved. The petitioner was also sent a letter dated 07.09.2020 enclosing the findings of the Inquiry Officer and sought his explanation. To that the petitioner has submitted an explanation dated 10.09.2020. It did not say anything about the

manner in which the investigation was conducted or the opportunities provided in the investigation, but only said, "I have given whatever respect I want to give to the Supervisor."

7) When the petitioner was worked in first shift on 30.01.2020, posted by the supervisor to work on RH Calendar. During the Security Audit on that day at around 02.36 PM, the Security Officer found that the Electric Board-Panel management in the SCADA machine of the department where he was working had brought an unauthorized smartphone (SMART PHONE) into the factory and was charging it in a dangerous manner which could cause an accident. At about 02.40 that afternoon, the petitioner asked his shift supervisor, "Did the security man take his cell phone from the machine?" asked, to which the petitioner irresponsibly replied that he did not know about it when his supervisor asked him "how did you bring your cell phone into the management". After that, the petitioner told the supervisor that he was coming after asking who took his mobile phone and left the work place between 02.45 to 03.00 without permission. On that day at around 03.06 in the afternoon while going out of the factory (turnstile gate), the security officer aggressively stopped the petitioner without subjecting him to the usual examination and went out. Mr. Joni, another security officer who was on duty there, went to them and threatened him by saying, "Have you come into the factory? Who told you to take my mobile phone?" Then the petitioner went to the security office and angrily asked Mr. Varghese (Chief Security Officer) who was working there, "Give me my mobile phone". To that he said that if it is brought into the factory without permission and it is seized, then they

can return their mobile phone only after taking the permission and approval of the higher authorities following the prevailing factory procedure to return the mobile phone. But the petitioner angrily said, "Give me my mobile phone within 10 minutes, otherwise he will face unnecessary consequences" and stopped the other workers who were about to finish work near him. Then he stood near the Turnstile and shouted unnecessarily and deliberately spoke about the management in a way that defamed the management and threatened the management. On that day, when the CSO tried to give the Sim Card present in the petitioner's mobile phone, he again threatened CSO by saying, "Give me my mobile phone, otherwise I will do whatever I want". He has behaved very rudely in making a call and disturbing the peace of the factory. After that he went back to the security department office and said to the CSO that "my work is not important to me, I will do anything to get my mobile phone back". When the petitioner took off his shirt and tried to attack the CSO in a threatening manner, the people near him stopped him and then the CSO, knowing the situation and considering the situation, gave him the mobile phone of the petitioner. Thereafter even while leaving the office the petitioner aggressively scolded the CSO in very harsh and abusive terms like "Vada Boda".

8) In this regard, the charge memo dated 05.02.2020 was issued against the petitioner regarding the said irregularity and as the explanation dated 10.02.2020 submitted by the petitioner was not satisfactory and decided to conduct a direct inquiry to give him one more chance and appointed Mr. V.Mohan, M.A., B.L, Advocate as the Investigating Officer. The inquiry has been fully conducted and

concluded in accordance with the law of nature, given adequate opportunities. The petitioner has participated wholeheartedly in the hearing without any objection. The copies of proceedings have also been furnished to the petitioner from time to time. The Inquiry Officer has submitted the inquiry findings dated 01.09.2020 to the management. The Inquiry Officer has concluded that the allegations leveled against the petitioner have been proved. The copy of the inquiry findings has been sent along with the letter dated 07.09.2020 seeking his explanation regarding the findings of the two enquiry conducted against the petitioner. To that he has submitted his explanation dated 10.06.2020 in which he has stated that the incident on 30.01.2020 was unintentional and he will not commit such mistakes in the future. The petitioner did not object to the manner in which the investigation was conducted or the outcome of the investigation. However, the management has personally considered the proceedings of the inquiry officer and the finding and the petitioner's explanation and the management has come to the conclusion that all the allegations leveled against the petitioner have been proved and the findings of the inquiry officer has been accepted accordingly by the management.

9) Further, the charge memo dated 22.01.2020 & 05.02.2020 against the petitioner, two separate inquiries were conducted regarding the allegation, the management accepted the findings of the two inquiries and taking into consideration the irregularities he had experienced while working in the past and the punishments given for the same and the seriousness of the allegations leveled and proved against the petitioner, the management came to a temporary decision to dismiss him and a

second show cause notice dated on 17.09.2020 was issued to him. To that the petitioner has submitted his explanation dated 22.09.2020 in which he has stated that he will abide by the legal plans of the management in the future and will not engage in anything against the rules. After carefully considering the explanation of the petitioner, the reasons given in it are not acceptable and the petitioner has already brought the smart phone to the factory. In this regard, action should be taken against him and punishment should be given. As per the order dated 25.09.2020, the petitioner was dismissed permanently as the charges proved to be serious disorderly conduct and he continued to engage in similar disorderly activities without correcting him and acted in a manner that affected the peace of the factory and threatened the higher officials.

10) The enquiry of the petitioner has been duly conducted and concluded in accordance with the natural principles of law. If the court comes to the conclusion that the investigation conducted against the petitioner was not conducted properly or that the allegation was not proved in the investigation, it is requested that the opposing petitioner should be given an opportunity to prove the allegation by submitting evidence and certificates to the management. As stated by the petitioner, it is not correct to say that the allegation leveled against him has not been proved and that the allegation is not true, as the present irregularity of the petitioner is very serious and he has already been punished many times for the irregularities he has committed and the petitioner has been given a warning sentence for bringing a mobile phone into the factory on 29.01.2018. The petitioner has again indulged in the same

irregularities without correcting himself and the punishment of dismissal awarded to him is correct. It is stated that the domestic investigation was conducted in accordance with the natural law and the petitioner was given adequate opportunity to prove the charge with appropriate evidence and documents. It is denied by the respondent that the inquiry officer has given untruthful and unconscionable inquiry findings. The second show cause notice given to him is that he has made a false claim without mentioning anything about the domestic inquiry and now as an afterthought. The petitioner has been punished for the charges which have been proved by the management after conducting a proper investigation, in which it is stated that the management has no vindictive intention, however the claim of the petitioner is not acceptable on the basis of Plea of victimization is ante thesis of proof of misconduct. It is untrue that the petitioner was working as Machine Operator from 29.02.2011. The petitioner joined the service as a trainee from 29.08.2011. No incident took place on 31.01.2020 as claimed by the petitioner in paragraph 2 of his petition. The petitioner has been suspended on 31.01.2020 and therefore it is untrue that the management has adopted anti-labour attitude against the petitioner only because the petitioner is involved in trade union activities. It is denied by the management that the allegation as mentioned by the petitioner is not proved and that the petitioner is not guilty of any crime. The allegations leveled against the petitioner have been proved by proper evidence in the domestic enquiry. At no time did the administration take any retaliatory action against the petitioner. The petitioner has been convicted of the charges which have been proved. Also, the present punishment

of dismissal to the petitioner is proper and therefore, it is prayed to dismiss the petitioner's petition.

Now, the **point for consideration** is that whether the domestic enquiry was conducted in a fair and proper manner, following the principles of natural justice ?

11) Heard both sides and on perusal of the material records, it is seen that during the inquiry with regard to the preliminary issue, exhibits Ex-W1 to W9 were marked by consent on the side of petitioner and exhibits M1 to M42 were marked by consent on the side of the respondent management. In this case, there are two occurrences that led to the dismissal of the petitioner herein and consequent this industrial dispute. The petitioner has filed this I.D.No.9 of 2022 to set aside the order of dismissal by the respondent and to reinstate him with back wages. The 1st occurrence took place on 22.01.2020. The petitioner had allegedly quarreled with Shift Supervisor in connection with Off-Change duty of another worker namely Mr.Sathish and also abused and threatened him with dire consequences. Another occurrence took place on 31.01.2020. A charge memo was given to the petitioner for taking his mobile phone and putting it on electric panel board, which is hazardous. During that occasion also, there was scuffle between the petitioner and Chief Security Officer and subsequently, the petitioner had allegedly threatened the Chief Security Officer.

12) The respondent's contention is that two separate charge memos were issued and the petitioner was given sufficient opportunity to put forth his case of defence and following principles of natural justice. The impugned order dated 25.09.2020 was passed and the petitioner was dismissed from his service only on

proof of the charge against him.

13) The petitioner himself has filed the charge sheets against him under Ex.W1(M3) and Ex.W3(M20). The enquiry notice was also issued to the petitioner under Ex.W4(M22) and Ex.W6 (M23). After finding given by the enquiry officer, a notice was also issued by the respondent to the petitioner under Ex.W7 (Ex.M28). A enquiry report was marked as Ex.W9 (Ex.M27). On perusal of the Ex.W9 (M27), it is seen that Thiru. S.Vinoth, Thiru.C.Arockiasamy, Thiru. Joby John and Thiru. Varghese were examined on behalf of the management and the petitioner himself has cross examined the above said witnesses. Besides, the petitioner has also given written representation and the same was marked as W1. After taking into consideration, the entire evidence of the management along with the written representation of the petitioner the enquiry officer has found that the charge against the delinquent has been proved. As mentioned above, after finding a show cause notice was also issued to the petitioner to offer his explanation. There are two findings against the petitioner dated 23.03.2020 and 01.09.2020. The petitioner has also submitted his written explanation against the above said findings on 10.09.2020. The petitioner was again issued second show cause notice under Ex.W5 (Ex.M30) and only after giving the petitioner sufficient opportunity of being heard and following the principles of natural justice. The above impugned order dated 25.09.2020 was passed. The questions whether the reasons assigned by the enquiry officers for his finding are correct and legally sustainable and whether the punishment given to the petitioner is proportionate to the charge against him and whether the

charge has been proved all have to be decided in the main enquiry. Therefore, this court comes to the conclusion that the enquiry conducted by the enquiry officer for both the charges against the petitioner is fair and in consonance of the principles of natural justice. Accordingly, the preliminary issue is answered.

In the result, the preliminary award is passed that the domestic inquiry conducted by the respondent management is fair and proper. For further proceedings under Section 11A, call on 14.11.2024.

Dictated by me to the steno-typist, directly computerized by her and corrected and pronounced by me in the open Court on this, the 15th day of October' 2024.

Presiding Officer (FAC),
Labour Court, Tiruchirappalli.

List of Witnesses examined

Petitioner's side : Nil

Respondent's side : Nil

List of exhibits marked

Petitioner's side :-

Ex-W1	22.01.2020	-	Copy of charge memo
Ex-W2	31.01.2020	-	Copy of suspension order
Ex-W3	05.02.2020	-	Copy of charge memo
Ex-W4	18.02.2020	-	Copy of enquiry notice
Ex-W5	17.09.2020	-	Copy of second show cause notice
Ex-W6	18.07.2020	-	Copy of enquiry notice
Ex-W7	07.09.2020	-	Copy of show cause notice
Ex-W8	23.03.2020	-	Copy of enquiry findings
Ex-W9	01.09.2020	-	Copy of enquiry findings

Respondent's side :-

Ex-M1	21.01.2020	- Copy of report submitted by A.Pusharaj, Shift Supervisor
Ex-M2	21.01.2020	- Copy of report submitted by A.Manikandan, Shift Formen
Ex-M3	22.01.2020	- Copy of charge memo
Ex-M4	--	- Copy of explanation for the charge memo
Ex-M5	25.01.2020	- Copy of enquiry notice
Ex-M6	12.03.2020	- Copy of enquiry proceedings
Ex-M7	01.02.2020	- Copy of enquiry notice
Ex-M8	04.02.2020	- Copy of statement given by A.Pushparaj, shift supervisor before the enquiry officer
Ex-M9	--	- Copy of acknowledgement card with postal receipt
Ex-M10	--	- Copy of letter by the petitioner to the enquiry officer
Ex-M11	23.03.2020	- Copy of enquiry findings
Ex-M12	07.09.2020	- Copy of show cause notice with ack
Ex-M13	10.09.2020	- Copy of explanation for the enquiry findings
Ex-M14	30.01.2020	- Copy of report submitted by Varughese TC-CSO
Ex-M15	30.01.2020	- Copy of report submitted by Joby John Security Supervisor
Ex-M16	30.01.2020	- Copy of report submitted by C.Arokiyasamy Security Supervisor
Ex-M17	30.01.2020	- Copy of report submitted by D.Joni Security Supervisor
Ex-M18	30.01.2020	- Copy of report submitted by S.Vinoth Shift Supervisor
Ex-M19	31.01.2020	- Copy of suspension order with ack
Ex-M20	05.02.2020	- Copy of charge memo with ack
Ex-M21	10.02.2020	- Copy of explanation for the charge memo
Ex-M22	18.02.2020	- Copy of enquiry notice with ack

Ex-M23	18.07.2020	- Copy of enquiry notice
Ex-M24	--	- Compact Disc
Ex-M25	10.08.2020	- Copy of letter by the petitioner to the enquiry officer
Ex-M26	10.08.2020	- Copy of enquiry proceedings
Ex-M27	01.09.2020	- Copy of enquiry findings
Ex-M28	07.09.2020	- Copy of show cause notice with ack
Ex-M29	10.09.2020	- Copy of explanation submitted by the petitioner
Ex-M30	17.09.2020	- Copy of second show cause notice with postal receipt
Ex-M31	22.09.2020	- Copy of letter by the petitioner to the HR
Ex-M32	25.09.2020	- Copy of dismissal order
Ex-M33	17.11.2015	- Copy of warning order
Ex-M34	27.04.2017	- Copy of warning order
Ex-M35	06.07.2017	- Copy of advise letter
Ex-M36	06.07.2017	- Copy of warning order
Ex-M37	27.07.2017	- Copy of severe warning notice
Ex-M38	22.08.2017	- Copy of suspension order
Ex-M39	07.02.2018	- Copy of warning notice
Ex-M40	--	- Copy of returned postal cover
Ex-M41	19.12.2019	- Copy of warning notice
Ex-M42	02.02.2018	- Copy of notice

Presiding Officer (FAC),
Labour Court, Tiruchirappalli.

Draft / Fair Order

in

I.D. No. 9/2022

Dated : 15.10.2024

Presiding Officer (FAC),
Labour Court, Tiruchirappalli