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W.P.No.33428 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22/6/2026

Pronounced on: 3/7/2026

C O R A M

THE HONOURABLE Mr.JUSTICE K. SURENDER

Writ Petition No.33428 of 2024

a n d

W.M.P.No.36213 of 2024

The Management

Kothari Petrochemicals Limited

No.1/2B, 35/5 Sathangadu Village

Manali

Chennai 600 068.

...

Petitioner

Vs

M.Sivakumar

...

Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records connected with O.P.No.145 of 2023 on the file of the Presiding Officer, Second Additional Labour Court, Chennai.



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For petitioner

... Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam & Associates

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For respondent

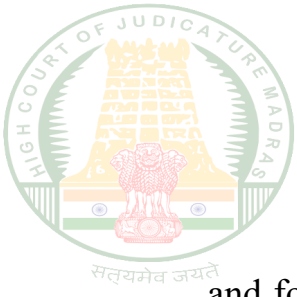
... Mr.C.D.Sugumar

- - - - -

ORDER

The petitioner Management is aggrieved by the interim order passed in O.P.No.145 of 2023 by the Second Additional Labour Court, Chennai, directing the petitioner Management to let in evidence to establish their stand that the domestic enquiry was conducted properly.

2. The background of the case is that a complaint was filed against the respondent M.Sivakumar for using abusing language and attacking another employee, viz., M.Jaison David. The said Jaison David underwent treatment in a hospital and also lodged a Police complaint which was registered as First Information Report. Considering the grave nature of the allegations, respondent was suspended from service, pending domestic enquiry.



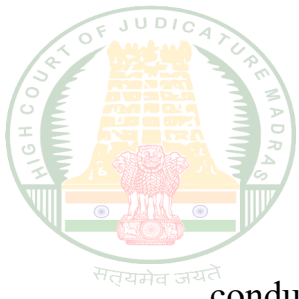
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3. The respondent was served with a charge memo dated 9/4/2021

and four charges were framed for physically assaulting and intimidating the said Jaison David using abusive language, amounting to criminal misconduct.

4. The explanation sought for initially was found unsatisfactory, as such an external person was appointed as Enquiry Officer to conduct domestic enquiry. Witnesses were examined during the domestic enquiry and findings of the Enquiry Officer dated 30/8/2021 were sent to the respondent to show cause why disciplinary action should not be taken. Thereafter, the Management decided to terminate the services of the respondent and issued an order of termination dated 16/10/2021.

5. The Management filed a petition under Section 33 (2) (b) of the Industrial Disputes Act (hereinafter referred to as “the Act”) before the Deputy Commissioner of Labour (Conciliation - II) seeking approval of the termination order. Cheque for a sum of Rs.52,255/- was given towards final settlement and also a month’s salary.



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6. The Deputy Commissioner of Labour (Conciliation II) after conducting enquiry, approved the termination, by his order dated 1/3/2023.

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All through the proceedings, stand of the respondent was one of denial and that the domestic enquiry was not conducted in a fair and proper manner, violating the principles of natural justice.

7. Challenging the order of termination, the respondent filed a petition under Section 2 A of the Act, before the Deputy Commissioner of Labour and since no orders were passed even after a lapse of 45 days, the petition was then filed before the Additional Labour Court, and the same was numbered as O.P.No.145 of 2023. A memo was filed by the respondent on 3/7/2024, requesting the labour Court to decide a preliminary issue in respect of fairness in domestic enquiry. The labour Court, decided the memo and passed orders on 9/10/2024. The Management is aggrieved by the orders passed in the memo and the operative portion of the order reads as under:-

“11. This Court is in view that the Deputy Commissioner of Labour is only quasi judicial authority and not superior to the Labour Court. From the order of the quasi judicial authority, this Court understands that



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both the parties had let in evidence and had subjected themselves to the jurisdiction of the quasi judicial authority. They have volunteered to let in evidence before the quasi judicial authority and they were also cross examined. Both the parties have filed their written arguments and everything were considered by the quasi judicial authority and it has passed an order by giving a finding that the domestic enquiry was properly conducted. The petitioner should have raised his objection before the Deputy Commissioner of Labour. The petitioner should have insisted the Deputy Commissioner of Labour only to consider the prima facie materials available to decide the question of approval and should have restrained himself from letting in evidence. Law is well settled that the authority shall only consider the existence of prima facie material to decide the approval petition and not beyond that. The authority has no jurisdiction to give a finding regarding the correctness of the domestic inquiry. Anything done by any authority beyond its jurisdiction is only a nullity. Therefore, the finding given by the Deputy Commissioner of Labour regarding the correctness of the domestic inquiry has to be treated as nullity and that will not bind this Court and the parties. Therefore, this Court is of the view that the respondent shall be permitted to let in evidence to establish their stand that the domestic inquiry was conducted properly.”

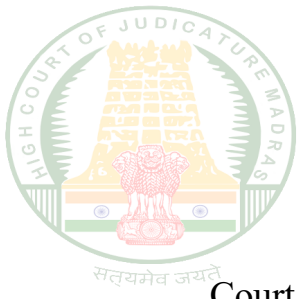


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8. The learned counsel for the petitioner would submit that the direction given to the petitioner Management to once again let in evidence before the labour Court to prove the fairness of the domestic enquiry is incorrect, since the Deputy Commissioner of Labour (Conciliation II) has already examined about the fairness of the enquiry in the proceedings and passed orders approving the dismissal by the Management.

9. Counsel further argued that once the Deputy Commissioner of Labour has gone into the factum of the fairness of the domestic enquiry, the principle of *res judicata* applies, and as such the labour Court is barred from deciding the correctness of the domestic enquiry and erred in asking the petitioner Management to let in evidence to establish their stand that the domestic enquiry was conducted properly. The fairness of domestic enquiry was adjudicated by the Conciliation Officer as such it has attained finality and the labour Court cannot once again decide and adjudicate upon a fact that was already decided.



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10. The learned counsel relied on a judgment of the Hon'ble Supreme

Court in ***BENGAL BHATDEE COAL CO. LTD Vs. RAM PROBESH***

SINGH AND OTHERS (1963 SCC ONLINE SC 28). In the said decision,

the Full Bench of the Hon'ble Supreme Court was dealing with regard to a dispute that was referred under Section 10 of the Act with reference to dismissal of 13 workmen. Initially, an enquiry was held by the Management and all 13 workmen were found guilty of the charges framed. 13 applications were filed before the Tribunal under Section 33 (2) (b) of the Act for approval of the action. The Tribunal approved the dismissal. Thereafter, a reference was made under Section 10 of the Act by the Government. In the said reference made under Section 10 of the Act, Tribunal found that it was a case of victimisation of workman. The Hon'ble Supreme Court held that once the Tribunal had already approved the dismissal of 13 workmen in the allegations made under Section 33 (2) (b) of the Industrial Disputes Act, the Tribunal cannot in the reference made under Section 10 of the Act come to a different conclusion, since the issue of correctness of the enquiry was already decided.

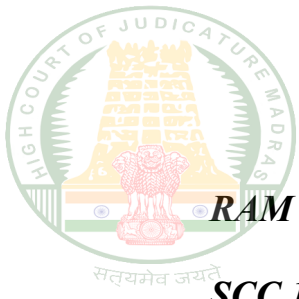


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11. On the other hand, the learned counsel appearing for the respondent would submit that the labour Court was right in asking the Management to let in evidence and establish that the domestic enquiry was properly conducted. The learned counsel relied on the judgment of the Hon'ble Supreme Court in ***JOHN D'SOUZA Vs. KARNATAKA STATE ROAD TRANSPORT CORPORATION (2019) 18 SCC – 47***, wherein the Hon'ble Supreme Court held that an enquiry under Section 33 (2) (b) of the Act is summary in nature and not equivalent to its jurisdiction to adjudicate an Industrial Dispute under Section 10 (1) (c) and (d) of the Act. The order of approval granted under Section 33 (2) (b) has no binding effect in the proceedings under Section 10 (1) (c) and (d) of the Act and therefore, correctness of the enquiry can be decided independently.

12. It is held umpteen times that proceedings under Section 33 (2) (b) of the Act are only summary in nature and the Conciliation Officer does not decide the legality of the dismissal. The scope of the Conciliation Officer during an 'approval' consideration is confined to the following, in accordance with the judgment of the Hon'ble Supreme Court in ***LALLA***



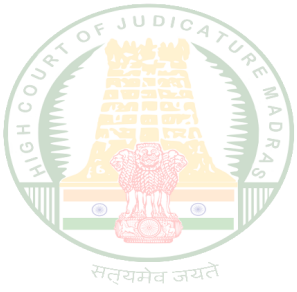
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SCC 1. The Hon'ble Supreme Court at para 12 held as under:-

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*“The position that emerges from the above quoted decisions of this Court may be stated thus : 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 Probesh Singh*(1), *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar*(2), *Hind Construction & Engineering Co. Ltd. v. Their Workmen*(3), *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors*(4), and *Eastern Electric and Trading Co. v. Baldev Lal*(5) 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*



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disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

13. The findings of the Deputy Commissioner has to be limited to grant or refusal of the Approval Application on the basis of the above directions of the Hon’ble Supreme Court in Lalla Ram’s case.

14. In the present case, the impugned order came to be passed on the

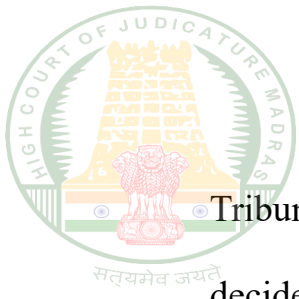


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memo filed by the respondent workman Sivakumar in the main petition filed for reinstatement with backwages, continuity of service and all other consequential benefits.

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15. The labour Court has found that the Deputy Commissioner of Labour is a quasi judicial authority and not superior to the labour Court. Further, the Deputy Commissioner has permitted to let in evidence and to file written arguments. The labour Court further went on to find that the workman ought to have raised an objection before the Deputy Commissioner of Labour and ought not to have let in evidence and consequently, directed the Management to let in evidence to establish the stand whether the domestic enquiry was properly conducted or not as a preliminary issue. The labour Court further found that the judgment of the Hon'ble Supreme Court in ***RAJASTHAN STATE ROAD TRANSPORT CORPORATION Vs. BHARAT SINGH JHALA (DEAD), S/O. SHRI NATHU SINGH, THROUGH LEGAL HEIRS AND ANOTHER (2022 SCC ONLINE SC 1335)*** regarding 'res judicata' was not applicable, since the Hon'ble Supreme Court was dealing with a situation where the labour Court found the findings of the Industrial Tribunal to be incorrect when the Industrial



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Tribunal was superior to the labour Court and Industrial Tribunal had decided the application under Section 33 (2) (b) of the Act, whereas the Deputy Commissioner of Labour is only a quasi judicial authority and not superior to the labour Court.

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16. The Deputy Commissioner of Labour in a petition filed seeking approval under Section 33 (2) (b) of the Act has discussed in detail the allegations made, nature of evidence adduced and also concluded regarding the facts of the case having discussed the evidence elaborately. However, contrary to the finding of the labour Court in the impugned order, evidence was not adduced. The understanding of the labour Court that both parties have let in evidence before the Deputy Commissioner of Labour is incorrect. There is no provision under the Act which enables the workman or the Management to file an appeal before the Industrial Tribunal questioning the refusal or acceptance of an approval application. However, an Industrial Dispute can be filed by the workman in case of any punishment imposed by employer, including an order of dismissal. The approval granted under 33 (2) (b) of the Act by the Deputy Commissioner would only ensure mandatory compliance of seeking an 'approval', however, such



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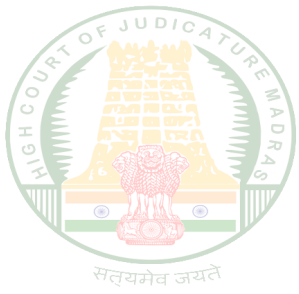
determination will not finally conclude about the validity of the dismissal of the workman. If 'approval' is refused, dismissal would stand ineffective from its inception. As already stated, once the dismissal is approved, workman can approach the labour Court by filing an Industrial Dispute.

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17. A common preliminary issue before the labour Court in any Industrial Dispute would be to look into whether domestic enquiry was fair and proper. If the labour Court finds that enquiry was held to be defective, the management/employer should be given an opportunity to adduce evidence before the labour Court to justify the correctness of the domestic enquiry and also the dismissal.

18. In the State of Tamil Nadu, Amendment Act 5 of 1988, the following amendments have been made:-

*Amendment of Section 11, Central Act XIV of 1947
– for sub-Section (4) of Section 11 of the Principal Act,
the following sub-Section shall be substituted, namely:-*



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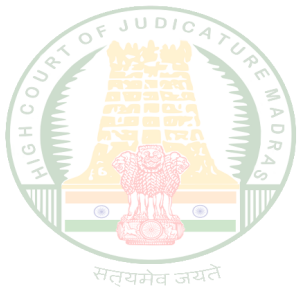


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“(4) A conciliation Officer may, if he considers that any document or the testimony of any person is relevant or necessary for the settlement of an industrial dispute or for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under this Act, call for an inspect such document or summon and examine such person. For the aforesaid purposes, the conciliation Officer shall have the same powers as are vested in a civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-

- (i) summoning and enforcing the attendance of any person and examining him on oath;*
- (ii) compelling the production of documents;*
- (iii) issuing commissions for examination of witnesses.”*

19. It is relevant to extract Section 4 of the Industrial Disputes Act and Rule 64 of the Industrial Disputes Act and the same reads as under:-



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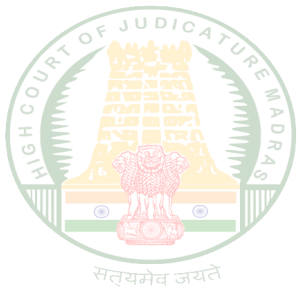
“4. Conciliation Officers:- (1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of industrial disputes...”

Rule 64 of the Tamil Nadu Industrial Disputes Rules, 1958:-

64. Application to the Conciliation Officer, Board, Labour Court or Industrial Tribunal under Section 33 -

(1) An application under sub-section (1) or sub-section (3) of section 33 shall be in duplicate in Form “S” and filed before the Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or the workmen concerned and the fact indicated on copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under



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clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form “T” in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or workmen concerned and the fact indicated on the copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be. (3) Every application under sub-rule (1) or sub-rule (2) shall be verified by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, to be acquainted with the facts of the case.”

20. A reading of the above state Amendment, Section 4 of the Act and also Rule 64 of the Tamil Nadu Industrial Disputes Rules, 1958, it can be said that a Conciliation Officer while considering the Approval Petition filed under Section 33 (2) (b) of the Act may summon any witness and examine and also compel production of documents. However, in so far as the duty imposed on the Conciliation Officer regarding the Approval Petition made under Section 33 (2) (b) of the Act, powers to examine the witness or cause



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production of a document can only be confined to the parameters laid down by the Supreme Court in Lalaram's case, as extracted supra. The Conciliation Officer in the present case erred in discussing the evidence and drawing his own conclusion regarding charges on the basis of the evidence. The said procedure adopted is wholly unwarranted and not approved under any Statute.

21. The Conciliation Officer – II, who is an 'authority' to determine "Approval Application" made under Section 33 (2) (b) can only confine his enquiry to examine whether there is legal evidence, whether a prima facie case was made out and whether the employer acted bona fide and there was no victimisation. The Conciliation Officer – II has not recorded any evidence but has re-appreciated the evidence of allegations adduced during the course of domestic enquiry, which approach is incorrect. The labour Court should recognise that the proceedings before the Conciliation Officer – II, though not a judicial proceedings but the Conciliation Officer was exercising a valid statutory jurisdiction to grant or refuse approval. The labour Court is at liberty to disagree with the conclusions drawn in the Approval proceedings however cannot treat such Approval proceedings as



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being without jurisdiction or as nullity.

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22. In view of the discussion made and peculiar circumstances of the present case, the labour Court cannot decide the issue regarding the correctness of domestic enquiry as though sitting in an appeal against the approval by the Conciliation Officer. If the labour Court prima facie finds that prejudice was caused to the employee for the reason of domestic enquiry not being carried out in accordance with law, grant permission to the Management to let in evidence to establish that the domestic enquiry was conducted properly.

23. For the said reason, the impugned order dated 9/10/2024 passed by the Presiding Officer, Second Additional Labour Court, Chennai, is set aside and the **writ petition is allowed**. The labour Court shall proceed as directed above. No costs. Consequently, connected Miscellaneous Petition is closed.

(K.SURENDER,J)

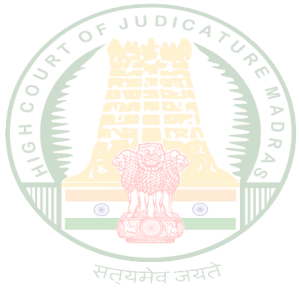
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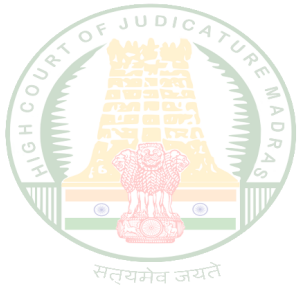
To

The Presiding Officer, Second Additional Labour Court, Chennai.

Pre-delivery order made in
Writ Petition No.33428 of 2024

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