

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.35298 OF 2006

The Tamil Nadu State Transport Corporation
(Villupuram)Ltd, Vellore
rep.by its General Manager, Vellore

...Petitioner

vs.

1. The Joint Commissioner of Labour
(Conciliation)DMS Compound,
Teynampet,
Chennai-6.

2. G.Neelakandan

... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in Approval Petition No.197 of 2003 dated 12.02.2005, and quash the same.

For Petitioner : M/s.Rajani Ramadoss

For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1.
Mr.K.Goviganesan for R2.

O R D E R

The order dated 12.02.2005 passed in Approval Petition No.197 of 2003 is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited. The second respondent was appointed as Conductor in the writ petitioner Corporation. The second respondent is absent for duty from 04.09.2001 to 25.09.2001, which is in violation of the standing orders of the Corporation. Thus, for misconduct committed by the writ petitioner, a charge memo was issued in proceedings dated 12.10.2001, seeking for explanation. As the explanation of the second respondent was not satisfactory, a domestic enquiry was conducted. The Enquiry Officer submitted his report holding that the charges against the second respondent were proved. Based on the proved charges, a second show cause notice was issued on 08.07.2002 and thereafter, the punishment of dismissal from service was imposed on the second respondent by order dated 31.05.2005.

3. The learned counsel for the writ petitioner states that the writ petitioner/Management filed an application seeking approval under Section 33(2)(b) of the Industrial Disputes Act. The Approval Authority considered the requirements for grant of approval with reference to the documents filed by the Management and it is found that the enquiry was conducted in a fair and proper manner. Further, the Approval Authority held that there is no victimization or unfair labour practice, one month salary has been paid to the employee. When all these points are decided in favour of the writ petitioner/Management, the Approval Authority held that the Management has not considered the previous history of the second respondent/employee. Ultimately, the Approval Authority came to a conclusion that the punishment, without considering the previous history of the employee is disproportionate.

4. The learned counsel for the writ petitioner/Management states that even on earlier occasions, the second respondent was imposed with severe punishments. As far as the approval petition is concerned, the authority cannot go into the proportionality regarding the punishment imposed by the Management. The confirmation of the enquiry is to be considered by the competent authority. Once the enquiry was conducted in a fair and proper manner and in compliance with the principles of natural justice, then the approval authority cannot go into the proportionality or otherwise, in an approval petition. With reference to the previous history also, the learned counsel for the petitioner submitted the following particulars:

PREVIOUS HISTORY

	Offence Date	Nature of Offence	Punishment
1	13.11.1992	FNC 1x1.00	Fined Rs.10/-
2	30.11.1996	Shortage Rs.100/-	Fined Rs.25/-
3.	18.01.1997	Shortage Rs.50/-	Fined Rs.15/-
4.	01.01.1997	Shortage Rs.110/-	Fined Rs.30/-
5.	24.10.1997	Shortage Rs.75/-	Fined Rs.25/-
6	06.05.1997	FNC 1*2.00	Suspension +specific punishment
7	24.11.1997	Unauthorized absent from 11.11.1997 to 24.11.1997	Severly Warned. Absent treated as eligible leave
8	31.01.1999	Shortage of Rs.101.25	Increment post pone WOCE for 2 months
9	07.01.2000	Absent from 29.12.1999 to 07.01.2000	Absent treated as LLP. Increment Post Pone WOCE 6 months
10	31.10.1999	Shortage 117.50	Increment Post pone WOCE 3 months
11	21.03.2001	Absent from 21.03.2001 to 20.08.2001	Absent days treated as LLP.Pay Reduced
12	10.02.2003	Failed to stop bus while checking	Increment post pone WOCE 3 months

5. However, the previous history may not have any relevance for the purpose of deciding the approval petitions, as the same can be considered, if any dispute is raised challenging the order of dismissal. As far as the requirements of Section 33(2) (b) of the Industrial Disputes Act is concerned, the enquiry was conducted in a just and proper manner, one month salary was paid and there was no victimization and unfair labour practice and the principles of natural justice has been complied with. Therefore, there is no infirmity in respect of the approval petition filed by the writ petitioner/Management.

6. This Court has also considered the issues with reference to Section 33(2)(b) of the Industrial Disputes Act in W.P.No.7403 of 2017 dated 26.09.2019 and the relevant paragraph is extracted hereunder:

13. In this regard, the learned counsel for the writ petitioner cited the judgment of the Hon'ble

Supreme Court of India in the case of Lalla Ram vs. D.C.M.Chemical Works Ltd and Another [(1978) 3 SCC 1]. The guidelines formulated by the Supreme Court with reference to the issues to be considered by the competent authority under the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947. In paragraph-12 of the Supreme Court judgment (cited supra), the following guidelines are issued and the said guidelines are extracted hereunder:-

"12. 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 Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15] , Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (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 same 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."

14. The five points to be considered by the Authorities Competent, while considering the application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, are narrated by the Supreme Court in the paragraph cited supra.

15. The learned counsel for the writ petitioner contends that all these issues were considered by the first respondent and the findings were made in favour of the writ petitioner. While-so, the first respondent has made a finding erroneously that the punishment of dismissal is a harsh punishment. That is why the first respondent has entered into the arena of punishing the proportionality of the punishment imposed by the management for which he has no jurisdiction or powers.

16. Relying on the judgment (cited supra), it is contended that the first respondent has no jurisdiction to interfere with the quantum of punishment imposed by the management by the employer and the disproportionality cannot be decided while dealing with the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947.

17. The Hon'ble Supreme Court in paragraph-13 of the judgment (cited supra) made an observation that "thus the jurisdiction of the Industrial Tribunal being a limited one, as stated above and all the essential requisites of the proviso to Section 33(2)(b) of the Act being present in the instant case, the Industrial Tribunal was not, in our opinion, justified in withholding its approval and the High Court was perfectly right in passing the impugned judgment and order". Thus, the scope of the approval petition and the points to be considered in the approval petition are

limited. It is not an adjudication on the order of dismissal and it is an approval petition, which is to be decided and requirements as contemplated under the provisions are to be considered by the first respondent.

18. With reference to Section 33(2)(b) of the Industrial Disputes Act, 1947, the Supreme Court formulated the guidelines and the five points to be considered are well enumerated in the judgment (cited supra) itself. Beyond the points contemplated, the authority competent cannot exceed its jurisdiction by adjudicating the proportionality or otherwise regarding the punishment imposed by the employer. Such an adjudication can be done only under the Industrial Disputes if any raised by the workman.

19. The learned counsel for the second respondent-workman disputed the contentions raised on behalf of the learned counsel for the writ petitioner by stating that the first respondent considered the harshness of the punishments taking note of the fact that the allegation of unauthorised absence was on certain genuine reasons and therefore had taken a lenient view and consequently, rejected the approval petition. As such there is no infirmity in respect of the findings in the order impugned and the health condition, nature of punishment and the act of victimisation were considered by the first respondent for the purpose of rejecting the approval petition.

20. The learned counsel for the second respondent relied on the judgment of Hon'ble Single Judge of this Court in the case of Tamil Nadu State Transport Corporation, Villupuram Represented by Managing Director vs. Joint Commissioner of Labour (Conciliation), Chennai and Another [(2011) 1 LLJ 646 (Mad.)], wherein the High Court held that the decision authority rejecting the approval petition on the ground that the punishment imposed was too harsh was validated. Therefore, over the said principle, the present writ petition is liable to be dismissed.

7. In view of the fact that the Approval Authority had gone into the proportionality of the punishment, the order is perverse and not inconsonance with the principles settled by the Hon'ble High Court of India as cited above. As far as the approval petition is concerned, the scope of the Approval Authority is limited and they cannot decide the quantum of punishment with reference to the proportionality theory.

8. Accordingly, the order dated 12.02.2005 in A.P.No.197 of 2003 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb

To

The Joint Commissioner of Labour
(Conciliation) DMS Compound,
Teynampet, Chennai-6.

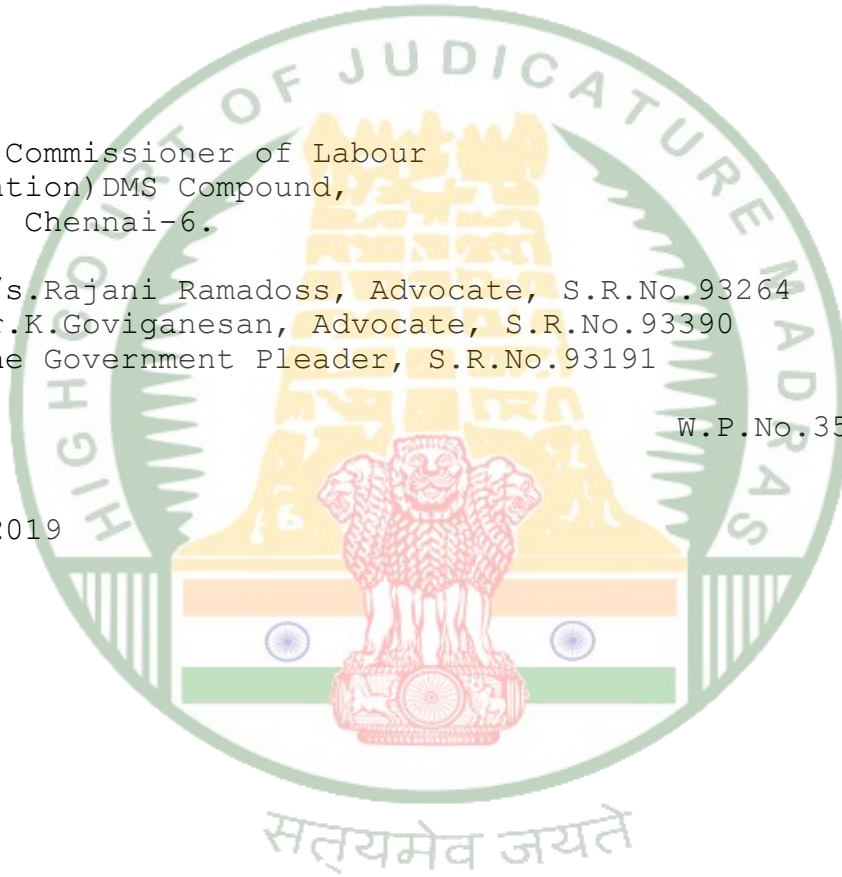
+1cc to M/s.Rajani Ramadoss, Advocate, S.R.No.93264

+1cc to Mr.K.Goviganesan, Advocate, S.R.No.93390

+1cc to the Government Pleader, S.R.No.93191

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VD(CO)
CS/19/12/2019



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