

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.35332 of 2006

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

...Petitioner
vs.

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

2. D.Ilango Thilagar

... Respondents

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.311 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.Dalit Tiger C.Ponnu samy
for R2.

O R D E R

The order dated 12.02.2005 passed in A.P.No.311 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
employed as a casual conductor in the SIDCO Depot of the writ
petitioner/Corporation. The second respondent was absent for
duty from 07.07.2001 to 22.07.2001, which is in violation of
the Standing Orders. In respect of such misconduct of
unauthorized absence, a charge memo was issued in proceedings
dated 13.08.2001. In view of the fact that the explanation
submitted by the second respondent was not satisfactory, a
domestic enquiry was conducted. The Enquiry Officer submitted
a report holding that the charges against the second
respondent were proved. Based on the report, a second show
cause notice was issued, proposing the punishment of
dismissal. Thereafter, on receipt of explanation from the

respondent, the writ petitioner/Corporation dismissed the service of the second respondent by order dated 02.08.2003. The writ petitioner filed an approval petition before the first respondent/Authority under Section 33(2)(b) of the Industrial Disputes Act, seeking approval for the action taken against the second respondent.

3. The learned counsel for the writ petitioner states that the requirements of Section 33(2)(b) of the Industrial Disputes Act has been complied with and the Labour Court made a finding to that effect. The fairness of the enquiry conducted by the writ petitioner/Corporation was upheld and the Labour Court found that there is no victimization or unfair labour practice. However, the Labour Court made a finding that the last drawn one month wages had not been paid properly. The Labour Court concluded that the writ petitioner/Corporation have to pay the second respondent a sum of Rs.3,117.40/-, as his one month wages. However, the salary of Rs.2,522/- was paid. Thus, the writ petitioner had followed the provisions of Section 33(2)(b) of the Industrial Disputes Act, regarding the payment of one month wages to the workman.

4. The Labour Court categorically made a finding that as per Ex.A4, which is the enquiry proceedings into the charges framed against the workman, the workman had admitted the charges against him. Accordingly, the Labour Court came to a conclusion that a prima facie case had been made out against the workman. While holding that the charges were admitted by the workman himself, the Labour Court said that the Management should disclose regarding the past record which is to be considered. The Previous history of the workman had not been placed before the Labour Court is perverse.

5. The learned counsel for the writ petitioner states that the second respondent/workman was engaged as a daily wage casual conductor and he was appointed on 28.12.1998 and his services were not regularized. He was dismissed from service on 02.08.2003 within a short span of about 5 years. The unauthorized absence was established even before the enquiry officer and based on the proved charges, which were admitted by the workman himself, he was dismissed from service. Thus, the findings of the Labour Court in this regard are perverse, when the workman himself admitted the charges before the enquiry officer and the said document was marked before the Labour Court as Ex.A4. There is no reason whatsoever to make a finding that the past records of the employee were not produced. The second respondent was a casual laborer appointed on daily wage basis. Therefore, the question of past records in an approval petition may not arise at all. This apart, the Approval Authority cannot decide proportionality or otherwise, in respect of the punishment imposed in the approval petition under Section 33(2)(b) of the Industrial Disputes Act. In the present case, the second respondent was a daily wage employee and per day salary was Rs.97/-. Accordingly, the daily wage

salary was calculated for one month and the said amount of Rs.2,522/- was paid. Therefore, there is no illegality or otherwise.

6. This Court is of the considered opinion that in respect of payment of last drawn wages, if an employee was working in a regular time or if any basic is fixed, then alone, there may be fixed payment. As far as the daily wages are concerned, the payment will be made based on the work as well as number of days in which the employee worked. For instance, if a workman has served for 20 days, in that monthly salary for 20 days alone would be paid. If he had served for 25 days, the salary of 25 days alone will be paid. This being the nature of the appointment of daily wage employee, there is no fixed salary for all monthly basis. Every day salary multiplied by the number of days served, will be paid to an employee on monthly basis. Therefore, the monthly salary to be paid for a daily wage employee, may differ from one month to another month. Under these circumstances, the Labour Court cannot calculate the last drawn wages for the purpose of complying with the principles of Section 33(2) (b) of the Industrial Disputes Act. The second respondent was a casual laborer and worked on a daily wage basis. Even during that time, the second respondent refrained from reporting duty. Thus, the charge memo was issued, the enquiry was conducted to the workman was provided with an opportunity to defend their case. The Management has filed in Ex.A4, which shows that the second respondent admitted the charges. This being the facts and circumstances of the case, this Court is of the opinion that the procedures contemplated under Section 33(2) (b) of the Industrial Disputes Act was followed by the writ petitioner/Management. As far as the principles to be considered for deciding the approval petition under Section 33(2) (b), this Court passed an order in W.P.No.7403 of 2017 dated 26.09.2019, the relevant paragraphs are 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 dis-proportionality 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 facts and circumstances, the fairness of the enquiry and other requirements had been established by the Management before the Approval Authority. There is no reason whatsoever to arrive at a conclusion that the punishment of dismissal from service is not in proportionality, as the previous history regarding the workman was not placed before the Approval Authority. In fact, regarding the payment of one month salary, the Approval Authority has committed an error in arriving at a conclusion that Rs.3,117.04/- is to be paid. In fact, the second respondent was a daily wage employee and therefore, there cannot be any fixed monthly salary and the salary is to be calculated based on the number of days, the daily wage employee worked with the Management.

8. This being the factum, the findings in this regard are perverse and contrary to the nature of employment to the second respondent as a daily wage employee. Under these circumstances, the order dated 12.02.2005 passed in Approval Petition No.311 of 2003 is quashed. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

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

+1cc to Mr.S.Rajeni Ramadoss , Advocate SR.No. 93263

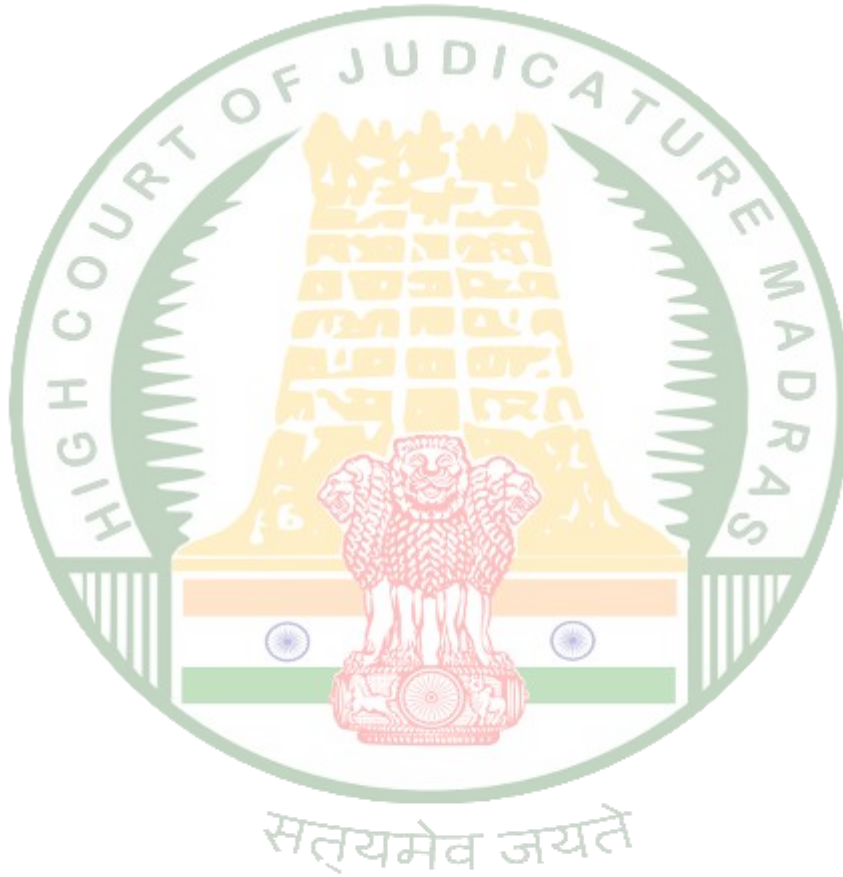
+1 cc to Government Pleader Sr.No. 93388

+1cc to Mr.Dalit Tiger , Advocate SR.No. 93567

W.P.No.35332 of 2006

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A.SK(17/12/2019)



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