

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22881 of 2008

M.P.No.1 of 2008

The Managing Director
Tamil Nadu State Transport
Corporation(Coimbatore)Ltd
Erode Region, Chennimalai Road,
Erode. ...Petitioner

vs.

1. T.Deivasigamani
2.The Joint Commissioner
of Labour (Conciliation)
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent pertaining to the order in Approval Petition No.103 of 2004 dated 10.04.2006 and quash the same and direct the second respondent to approve the action taken by the petitioner Management viz the dismissal of the first respondent from service for long absence without prior permission and any leave letter.

For Petitioner : Mr.P.Kannan Kumar

For Respondents : Mr.P.Paramasivadoss
for Mr.S.Gunalan for R1.
Mr.J.Ramesh
Additional Government Pleader
for R2.

O R D E R

The order dated 10.04.2006 passed in A.P.No.103 of 2016 is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation.

3. The learned counsel for the writ petitioner states

that the first respondent was employed as a Conductor in the writ petitioner/Transport Corporation. The Checking Inspector conducted an inspection on 21.03.2003 and found that 30 passengers were traveling in the vehicle bearing No.TN 33 No.581, but he had issued tickets only to 24 passengers. In respect of six passengers, the conductor received the ticket fare of each Rs.5/- from the six passengers and issued the tickets which were already issued in the previous trip as per invoice maintained by the 1st respondent. Thus, the first respondent had pocketed Rs.30/- which is the revenue of the Corporation. In respect of misconduct, a charge sheet was issued and a domestic enquiry was conducted. Based on the charge memo dated 22.03.2003, the first respondent/employee submitted his explanation on 22.03.2003 and subsequently, the enquiry was conducted. Based on the findings of the enquiry, a second show cause notice was issued and the first respondent was dismissed from service on 23.04.2004. The approval petition was filed by the writ petitioner/Corporation in petition No.103/2004, the second respondent/The Joint Commissioner of Labour rejected the approval petition on 10.04.2006, against which, the present writ petition is filed.

4. The learned counsel appearing on behalf of the Transport Corporation contended that the legal principles settled by the Hon'ble Supreme Court of India in 'Lalla Ram's case' reported in (1978) 3 SCC 1, is in favour of the writ petitioner herein/Corporation. In respect of prima facie case for dismissal, which is the second point formulated by the Apex Court, the Labour Court exceeded its jurisdiction by appreciating the evidences and arrived at a conclusion that the enquiry officer had not considered certain vital piece of evidence and materials placed before them and accordingly, the approval petition was rejected. The Labour Officer arrived at a conclusion that the findings of the enquiry officer are perverse. Thus, the Labour Officer had gone into the details of the materials considered by the enquiry officer and appreciated the evidences and arrived at a conclusion that the certain vital material evidences were not considered by the enquiry officer and therefore, the findings of the enquiry officer are perverse. Relying on the perversity of the findings of the enquiry officer, the approval petition was rejected.

5. This Court is of the considered opinion that the Labour Officer has assumed the powers of Labour Court, with reference to the adjudication of the issues on merits. What is contemplated is that he has to find out whether the prima facie case for dismissal, based on the legal issues adduced before the Tribunal, is made out. Therefore, the Approval Authority can scrutinize the documents to ascertain whether there is any prima facie case for the purpose of instituting the disciplinary proceedings and for conducting the domestic enquiry. If there is

a prima facie case, then the Approval Petition can be rejected, and the very purpose and object of verifying the prima facie case is to ensure that no false allegations are set out against the employee by the employer or based on the false or incorrect statements, the charge sheet was issued. Once a prima facie case is made out by the employer, then the appreciation of the evidences and other material documents gone into by the enquiry officer, cannot be adjudicated or re-adjudicated by the Labour Officer for grant of approval.

6. In the present case, the Labour Officer gone into the material evidence considered by the enquiry officer and made a finding that "without considering this vital piece of evidence, the Enquiry Officer had held that the charges of reissue of tickets are proved". This non-consideration of material evidence by the Enquiry Officer makes his findings that the charges are proved, is perverse. Thus, the Labour Officer appreciated the entire evidence gone into by the enquiry officer and arrived at a conclusion that the findings of the enquiry officer are perverse. Such an exercise by the Labour Officer is beyond his jurisdiction. He had assumed the powers of the Labour Court and appreciated the evidences considered by the enquiry officer and made a findings of the enquiry officer are perverse.

7. The learned counsel for the first respondent contended that the findings of the Labour officer is well founded and does not warrant interference. If the Labour Officer considered the punishment of dismissal is disproportionate or excess, then he can reject the approval petition. It is further contended by the first respondent that the charges itself is untenable as there is no evidence to establish the charges. Therefore, the Labour Officer has rightly gone into these evidences considered by the enquiry officer and arrived at a conclusion that the charges are not proved against the first respondent and therefore, there is no infirmity in respect of the findings made in the order.

8. This Court is of the considered opinion that the Hon'ble Supreme Court of India in "Lalla Ram's case" formulated four grounds for considering the approval petition by the Labour Officer. Firstly, the Labour Officer has to find out whether the appropriate domestic enquiry was conducted in accordance with law. In this regard, the Labour Officer/second respondent arrived at a conclusion that "I find that the entire disciplinary proceedings initiated against the Opposite Party which resulted in his dismissal was conducted according to the principles of natural justice and in accordance with the standing orders".

9. In respect of second question, whether a prima facie case for dismissal, based on the legal issues adduced before the

domestic enquiry, is made out, the Labour Officer gone into the evidences and re-appreciated the findings of the enquiry officer. The language employed by the Apex Court is to verify whether there is a prima facie case is made out or not. This would not include conducting the full fledged trial or appreciation of complete evidences and documents considered by the enquiry officer for arriving at a conclusion. Such a complete adjudication of appreciation of the findings deposed before the enquiry officer can be done by the Labour Court in an Industrial dispute and such an exercise by the Labour Officer in an approval petition is beyond his jurisdiction. Whether there is an appropriate material to pass an order of dismissal, alone is to be considered. In the present case, a charge memorandum was issued and a domestic enquiry was conducted. The Labour Officer himself found that a domestic enquiry was conducted by following the principles of natural justice and based on the domestic enquiry, the second show cause notice was issued and the order of dismissal was passed. Thus, the prima facie case was made out by the writ petitioner/Management.

10. Under these circumstances, the Labour Officer/second respondent exceeded his jurisdiction by appreciating the evidences considered by the enquiry officer in the domestic enquiry. As far as the other points are concerned, the Labour Officer himself arrived at a conclusion that there was no victimization. The one month salary was also paid in accordance with rules. Having found that all the four points were found in favour of the writ petitioner/Management, in respect of prima facie case, the Labour Officer gone into evidence and arrived at a conclusion that the findings of the enquiry officer are perverse. Such a finding is unwarranted and not within the jurisdiction of the Labour Officer, more specifically, in an approval petition filed by the employer under Section 33(2)(b) of the Industrial Disputes Act.

11. 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."

12. With reference to the above judgment of Supreme Court of India, this Court is of the considered opinion that the Labour Officer cannot conduct an enquiry contrarily to the principles laid down by the Apex Court of India. However, the Labour officer is empowered to find out whether there is prima facie case is made out for the purpose of imposing the punishment of dismissal. The materials placed before the Labour Officer should establish that there were materials to proceed against the employee by insisting the disciplinary proceedings and the domestic enquiry was conducted in compliance with the principles of natural justice and there are materials to impose the punishment. However, the Labour Officer cannot go into the proportionality or excessive, and the Labour Officer can appreciate the findings of the enquiry officer with reference to the documents or otherwise. Such an appreciation, if required, may be done only for the purpose of ascertaining the prima facie case and not for the purpose of rejecting the approval petition on merits. This being the principles to be followed, the findings of the Labour Officer/second respondent, with reference to his finding that the punishment of dismissal is excessive and dis proportionality cannot be upheld by this Court.

13. Accordingly, the writ petition stands allowed and consequently, the order dated 10.04.2006 passed in A.P.No.103 of 2004 is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp Cell)

//True Copy//

Sub Assistant Registrar

Ssb

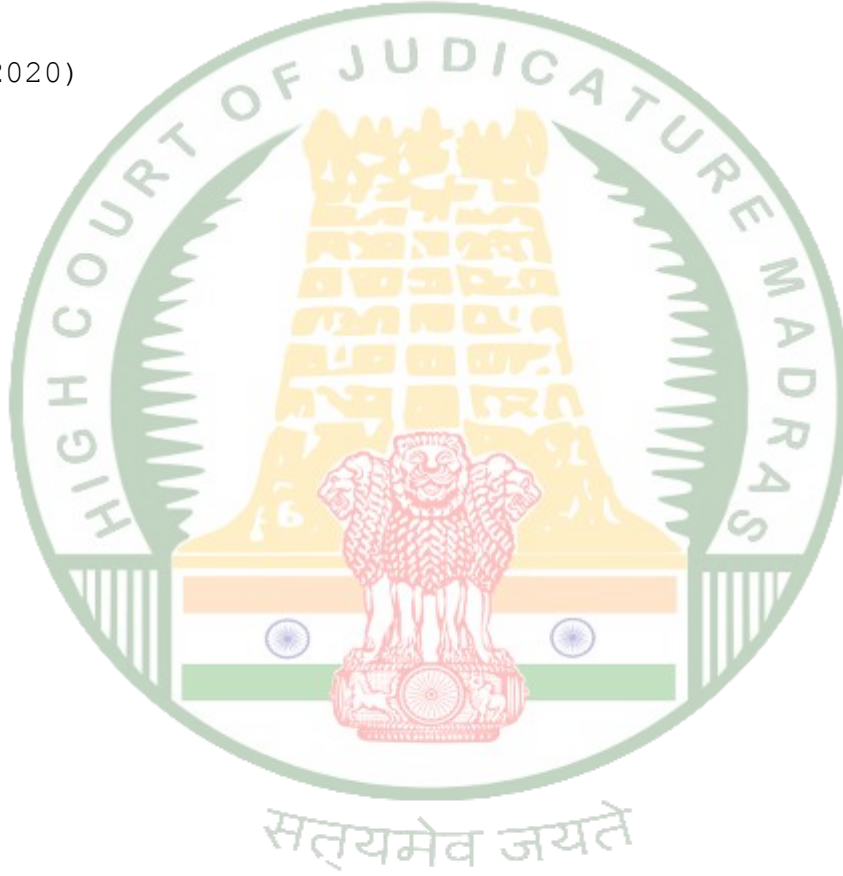
To

The Joint Commissioner
of Labour (Conciliation)
Chennai.

+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No. 94737
+1cc to Mr.S.Gunalan, Advocate, S.R.No. 94172
+1cc to the Government Pleader, S.R.No. 94644

W.P.No.22881 of 2008

VD (CO)
GN (28/01/2020)



WEB COPY