

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.11540 OF 2019  
WMP.Nos.27817 & 11799 of 2019

The General Manager  
Tamil Nadu State Transport Corporation  
(Villupuram)Ltd., Vazhuthareddy, Salaamedu,  
Villupuram Region,  
Villupuram-605 602.

...Petitioner

vs.

1. C.Sivaprakasam

2. The Special Deputy Commissioner of Labour,  
D.M.S.Compound,  
Chennai.

... 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 Special Joint Commissioner of Labour, Chennai made in A.P.No.83/2014 dated 14.09.2017 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.Antony Arockia

For Respondents : Non-appearance for R1.  
Mr.J.Ramesh,  
Additional Government Pleader  
for R2.

O R D E R

The award of the Labour Court dated 14.09.2017 passed in A.P.N.83 of 2014, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the first respondent/employee was temporarily appointed on 17.09.2007 and he remained unauthorizedly absent from 21.01.2013 onwards. The petitioner Management issued a charge Memorandum on

25.03.2013 and a domestic enquiry was conducted. The enquiry officer submitted a final report holding that the charges against the workman were proved. Based on the findings of the enquiry officer, a second show cause notice was issued on 12.09.2013 and thereafter, the order of dismissal was issued on 21.03.2014. Simultaneously, on the same day, the approval petition in Form-T was filed before the Competent Authority. The competent authority/second respondent rejected the approval petition in A.P.N.83 of 2014 on 14.09.2017 which is under challenge in the present writ petition.

3. As far as the approval petition filed under Section 33(2) (B) of the Industrial Disputes Act is concerned, the authority competent is bound to follow the legal principles settled by 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].

4. In the present case, the second respondent formulated all the five questions as per the judgment of the Hon'ble Supreme Court of India. With reference to the domestic enquiry, the second respondent came to a conclusion that the enquiry was conducted in a just and proper manner and by complying with the principles of natural justice. As far as the points regarding the prima facie case and the findings are concerned, the second respondent arrived at a conclusion that the authorities competent has taken a decision, based on the findings and the prima facie case against the workmen were established through documents. The allegations against the workmen were unauthorizedly absence for a continuous period. With reference to the payment of one month salary also, the second respondent answered in favour of the writ petitioner/Management. This apart, the approval petition was filed within a time limit, more specifically, on the same day. However, as far as the victimization point is concerned, the second respondent made a finding that the punishment of dismissal from service is disproportionate, with reference to the gravity of the allegations. On that ground, the approval petition was rejected.

5. With reference to the findings of the second respondent that the punishment of dismissal from service is disproportionate cannot be accepted, in view of the fact that the second respondent while dealing with the approval petition under Section 33(2)(b) of the Industrial Disputes Act is estopped from deciding proportionality or otherwise, of the punishment imposed by the Management. Such principles can be adjudicated in a dispute and as far as the approval petition is concerned, the findings of the second respondent regarding proportionality is undoubtedly perverse and the second respondent has no jurisdiction to decide the proportionality of the punishment in a petition filed under Section 33(2) (b) of the

ID Act. Adjudication in this regard cannot be done in an approval petition. However, the petition was rejected by the second respondent only on the ground that the order of dismissal from service is excess and not in proportionality with the gravity of the proved misconduct.

6. In view of the fact that such a findings cannot be given by the second respondent, at the stage of approval petition and the second respondent cannot adjudicate such an issue in an approval petition, this Court is inclined to consider the writ petition. In this regard, this Court has already passed an order in W.P.No.7403 of 2017 dated 26.09.2019, the relevant paragraphs are extracted hereunder:

12. The first respondent arrived a conclusion that the major penalty of dismissal is a harsh punishment. As far as the payment of one month salary is concerned, the first respondent made a finding that the said condition was complied with and the one month salary was paid along with the notice and the approval petition was filed within the time limit.

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.

7. In view of the legal principles, the award dated 14.09.2017 passed in A.P.N.83 of 2014 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb

To

The Special Deputy Commissioner of Labour,  
D.M.S.Compound, Chennai.

+1cc to the Government Pleader, S.R.No.90691

W.P.No.11540 of 2019

GP(CO)  
CS/20/01/2020