IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 26-11-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.18763 of 2019
And
W.M.P.No.18109 of 2019

The Management
GVK Emergency Management and Research Institute,
Behind Labour Commissioner's Office,
DMS Compound,
Teynampet,
Chennai-600 006. .. Petitioner

vs.

1.The Deputy Commissioner of Labour
(Head Quarter),
DMS Campus,
Teynampet,
Chennai-600 006.

2.Mr.S.R.Paramasivam .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order passed by the first respondent under Section 33(2)(b) of the Industrial Disputes Act, bearing Ref.Na.Ka.No.B4/ 533/2016 dated 25.04.2018 and quash the same.

For Petitioner : Mrs.Rajeni Ramadoss for
Mr.K.Rajasekaran

For Respondent-1 : Mr.J.Ramesh,
Additional Government Pleader.

For Respondent-2 : Mr.V.Ajoy Khose for
Mr.K.Kathiresan

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O R D E R

The order dated 25.04.2018 passed by the Deputy Commissioner of Labour-first respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947, is under challenge in the present writ petition.

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2. The writ petitioner-Management is GVK Emergency Management and Research Institute, which is a Non-Profit Organisation, registered under the Societies Registration Act and is providing Emergency Ambulance Services (108 Ambulance Service) in the State of Tamil Nadu, under a Private Public Partnership (PPP) Agreement with the Tamil Nadu Health Systems Project, Department of Health, Government of Tamil Nadu.

3. The writ petitioner states that it is a Public Utility Service declared under Section 2(n) of the Industrial Disputes Act, 1947 by the appropriate Government. The writ petitioner further states that the service rendered by the writ petitioner is a 24 hours service offered free for the needy people. Each Ambulance is based at a fixed location spread across all the 32 Districts in the State of Tamil Nadu and is manned by an EMT (Emergency Medical Technician) and a Pilot (Driver) at any given point of time. The objective is to ensure quality pre-hospital care service at the earliest to the victims. The organisation was incepted with the objective of delivering comprehensive, speedy, reliable and quality Emergency Care Services. This has been done by establishing the Emergency Response System that coordinates every emergency through a single toll free number 108 which when called in an emergency ensures prompt communication and activation of a response that includes, assessment of emergency, dispatch of ambulances, along with a well trained Emergency Medical Technician to render quality pre-hospital care and transport of the patient to the appropriate health care facility. Today, '108' is synonymous with the best in class emergency service and has been acknowledged as the most efficient, speedy, reliable and caring service provider in its category.

4. The writ petitioner states that as they are engaged in providing Public Utility Services and traversing Ambulance Services, which is essential for the general public 'on no profit basis' under Public Private Participation. It attends to every emergency situation, be it a medical crisis, a law and order situation or a fire disaster. The writ petitioner provides services on par with global standards and follows modern principles of management and leadership to serve the Nation and therefore, the employees of the writ petitioner organisation are highly equipped and are required to be more vigil, disciplined, responsible and active in their official duty. Hence the writ petitioner-Institution is attentive and is highly sensitive and particularly in maintenance of discipline amongst the employees, as the organisation is saving more lives.

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5. The second respondent/employee was appointed on 01.12.2008 and his services were regularized on 01.12.2009. The charge memo was issued on 08.12.2014. He submitted that reply on 24.12.2014 and the enquiry was conducted respectively on 08.04.2015 and 22.04.2015. The show cause notice was issued on 12.11.2015/26.11.2015 and the reply was submitted on 03.12.2015 and he was dismissed from service on 02.01.2016.

6. The charges against the second respondent-employee was that while he was in duty on 04.11.2014 at 06.14 a.m received a call from an assault case near Tuticorin Bus Stand for Medical Emergency to the 108 Control Room. After receiving the call, the assignment(Case I.D.4821142) was given to the 2nd respondent. The 2nd respondent was on scene at 06.21 a.m., but did not take care of the patient and tried to leave the spot. The second respondent made an unnecessary quarrel with the public and not attended the case. Hence the Police Officers contacted the private ambulance and they arrived immediately to the scene of accident/emergency and confirmed that the patient was alive. After the Police Officers and Public insisted and thereafter, the injured was transported and admitted in the Tuticorin Government Hospital at 07.41 a.m. After admittance in the Hospital, the Patient died in few minutes. The 2nd respondent willfully ignored the rules and regulation of the institution and not informed the incident to the Higher Officials. There were Media reported that due to the negligence and irresponsibility of 108 staff human deaths are being caused.

7. The writ petitioner-Institution gave several warnings to the second respondent, but he has not changed his attitude. Thus, a show cause notice was issued and the second respondent submitted his explanation. Having not satisfied with the explanation, an enquiry was conducted and an opportunity was provided to the second respondent to attend the enquiry and defend his case. The witnesses were enquired and accordingly the principles of natural justice had been followed.

8. Based on the findings of the Domestic Enquiry Officer in his enquiry report, the writ petitioner-Management dismissed the services of the second respondent by complying with the statutory requirements of one month notice along with one month salary. It is contended that the enquiry was conducted by following the principles of natural justice. Opportunities were provided to the second respondent-employee. Non-utilisation of the opportunity provided, cannot be a ground for the second respondent, as the same was intentional.

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9. It is further contended by the writ petitioner-Management that they have issued the order of dismissal and simultaneously filed an approval petition before the first respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947. The approval petition was taken up for hearing and the first respondent passed an order, rejecting the approval, against which the present writ petition is filed by the writ petitioner-Management.

10. The learned counsel appearing on behalf of the writ petitioner mainly contended that the rejection of the approval petition is in violation of the settled proposition of law. The writ petitioner-Management followed the principles of natural justice by affording complete opportunity to the employee concerned. Thus, there is no infirmity or irregularity in the matter of conduct of domestic enquiry. This apart, the proved misconduct against the second respondent employee was grave in nature.

11. The learned counsel for the writ petitioner reiterated that the jurisdiction of the Deputy Commissioner of Labour under Section 33(2)(b) of the Industrial Disputes Act, 1947, is a limited one and the said power cannot be equated with that of the Section 10 of the Industrial Disputes Act, 1947.

12. The first respondent-authority has to follow the five legal principles settled by the Hon'ble Supreme Court of India in the case of Lalla Ram vs. Management of D.C.M.Chemical Works Ltd [1978 CJ (SC) 182]. Now that the legal principles are settled regarding the procedures to be followed for deciding the approval petitions filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, the first respondent has committed an error in arriving a conclusion with reference to the legal principles settled by the Supreme Court.

13. Undoubtedly, the questions were formulated as required. The first question was raised whether the domestic enquiry was conducted in a just and proper manner and in compliance with the principles of natural justice or not. The first respondent-authority arrived a conclusion that the charges are not proved against the employee. The main reason stated for the finding is that there is no Certified Standing Orders and it is not stated that the enquiry was conducted with reference to the terms of contract of appointment.

14. The writ petitioner has stated in their approval petition that 77 misconducts are stipulated in the Service Rules

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of the writ petitioner-organisation. However, in the said Service Rules, it is stated that "the list below is only an illustrative and not conclusive". Relying on the said portion of the Service Rules, the first respondent-authority came to the conclusion that the list of misconducts numbering 77 enumerated in the Service Rules are only illustrative and not conclusive. The finding in this regard is arrived based on the mis-interpretation of the entire Service Rules. The misconduct with reference to the employees are to be interpreted constructively and pragmatically.

15. The mere usage of language that the 'list below is only an illustrative and not conclusive' cannot be interpreted as if those misconducts cannot be construed as misconducts. It is to be interpreted that beyond the list of misconducts numbering 77, the connected misconducts, if any, also to be construed as misconduct with reference to the disciplinary proceedings. In other words, the scope of the number of misconducts cannot be confined. Misconducts may be in several forms. Thus, such misconducts cannot be listed out ordinarily. In such circumstances, the writ petitioner listed out 77 misconducts and even with regard to the other misconducts, which all are not listed, then also the employees are liable for disciplinary proceedings.

16. This being the constructive interpretation to be adopted for the purpose of interpreting the Conduct Rules, this Court is of the opinion that the first respondent has erroneously arrived a conclusion stating that 77 misconducts are listed out in the Service Rules. However, it is stated in the Service Rules that the list below is only an illustrative and not conclusive.

17. The learned counsel for the writ petitioner cited the judgment of the Delhi High Court in the case of Delhi Transport Corporation vs. Rajbir Singh and Others [decided on 05.04.2010 in WP(C) No.4856 of 2003], wherein, in paragraph-9, the Delhi High Court made an observation as follows:-

> "9. There is a difference between Section 33(1) & Section 33(2). Section 33(1) deals with misconduct connected with the dispute which is already pending. In such cases legislature prohibits discharge or dismissal save with the express permission in writing of the authority before which the dispute is pending. Per contra, Section 33(2) deals with a situation of misconduct not connected with the dispute pending adjudication. In such

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cases, the legislature does not require express permission in writing but only requires application for approval of the action taken. The reason for the difference is perceptible. If the misconduct is connected with the dispute already pending conciliation or adjudication, the intent is to maintain status quo. However, a misconduct not connected with the pending dispute is like a fresh cause of action. The law does not impose any obligation on the employer to seek approval before dismissing an employee. Post dismissal the employee is empowered to raise a dispute. A misconduct not connected with the pending dispute being a fresh or different cause of action from the pending dispute, the employer, but for Section 33 (2) would be entitled to dismiss the employee and the only remedy of employee would be to raise an industrial dispute."

18. The Gujarat High Court in the case of Ase Information Service vs Arvindkumar D.Parekh [decided on 26.07.2006], wherein in paragraph-24, made an observation as follows:-

"24. The provisions of Section 12(A) of the Industrial Employment (Standing Orders) Act, 1946 is relevant, which is quoted as under:

Section 12(A): Temporary application of Model Standing Orders :- (1) Notwithstanding anything contained in Secs. 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending with the date on which the standing orders as finally certified under this Act come into operation under Section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of Section 9 Sub-section (2) of Section 13 and Section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in Sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government

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is the Government of the State of Gujarat or the Government of the State of Maharashtra.

The effect of the Provision is -

(i) The model standing orders framed under the Act automatically become applicable to an industrial establishment from the date when the Act becomes applicable to that industrial establishment, and

(ii) the model standing orders which had so become applicable to an industrial establishment cease to be applicable from the date on which the standing orders prepared by the management of that establishment as finally certified comes into operation.

It is not the case of the petitioner before the Industrial Tribunal, Baroda that, the petitioner is having certified standing orders under the provisions of Standing Orders Act, 1946. Therefore, Section 12(A) is operated and applicable to the petitioner company. The Section 13-B is not applicable to company. No exemption given to petitioner company under Section 14 of the Act. Therefore, Model Standing Orders are applicable to the petitioner company. The Model Standing Orders, which are applicable to the petitioner company under the provisions of Standing Orders Act, 1946, have the force of law like any other statutory instruments.

See : Biswanath Das v. Ramesh Chandra reported in 1979 Lab. I.C. 319 at P. 322 (Orissa) : See also : Escorts Limited, Faridabadm v. Industrial Tribunal, Hariyana reported in 1983 Lab.I.C. 223 at P.229 (P. & H.) The terms of the Standing Orders (Model Standing Orders) would prevailed over the corresponding terms in the contract of service. The object of the Standing Orders Act is to required employers in Industrial Establishment to defined with sufficient precision the conditions of employment of workmen employed therein and to make them known to such workmen."

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19. In the judgment, cited supra, as per Section 12-A of the Temporary Application of Model Standing Orders in the Industrial Employment (Standing Orders) Act, 1946, it is enumerated that the Model Standing Orders shall be deemed to be adopted in the establishment. It is stated that the effect of the provision is that the Model Standing Orders framed under the Act, automatically become applicable. It is clarified that the Model Standing Orders are applicable from the date on which the Standing Orders prepared by the Management of that establishment as finally certified comes into operation. Relying on the said judgment, cited supra, the learned counsel for the writ petitioner-Management reiterated that the Service Rules, which is comprehensive in nature and in consonance with the legal principles of natural justice, would not have been rejected by the first respondent-employee as the Service Rules are in force in respect of the employees working in the writ petitioner-organisation.

20. The learned counsel for the writ petitioner-Management reiterated that admittedly the delinquent-employee submitted an application, seeking a defence Deputy. The defence Deputy was permitted by the Management However, it is made clear that such defence Deputy must be from the location whereby the delinquent-employee is working. In order to frustrate the enquiry proceedings, the delinquent-employee wantonly has chosen the defence Deputy from a far away place with an intention to disrupt the Ambulance Services in other areas. Therefore, the Management made it very clear that defence Deputys are permitted. However, such defence Deputys must be from the location/Districts where the delinquent-employee is working.

21. This Court is of the considered opinion that when the permission to have the defence Deputy during the enquiry is permitted by the Management, the condition imposed cannot be held as unreasonable. For example, if the delinquent-employee has chosen the defence Deputy from the far away District or place, it may not be practically possible to conduct the enquiry, within a reasonable period of time. This apart, the Ambulance Service in that place would also get affected. Therefore, the stand taken by the writ petitioner that they have admitted the defence Deputy but with a condition that defence Deputy must be picked up from the same District or in the same location. Thus, the writ petitioner-Management have followed the principles of natural justice and there is no violation as it is.

22. The charges are serious in nature. All the opportunities were provided, documents were filed, misconducts

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were established by the management before the Enquiry Officer and the findings of the Enquiry Officer are also categorical. Under these circumstances, the answer to the first question by the approval authority is not in consonance with the facts established by the management as well as the Disciplinary Rules applicable to the employee working with the petitioner-Management.

23. As far as the point of victimisation, payment of one month salary and filing of approval petitions in time, are concerned, as the said three points are decided in favour of the writ petitioner-Management. Thus, no consideration is required in this writ petition with reference to the said three points.

24. The learned counsel appearing on behalf of the second respondent-employee disputed the contentions raised on behalf of the writ petitioner-Management by stating that the charges are vague, unclear and without any specific particulars. Thus, the very charges itself are untenable. The vague charges vitiate the enquiry as well as the final order of dismissal from service. No disciplinary action can be initiated based on the Rules of the writ petitioner-Management as it is to be issued only in terms of Clause 16 and 17 of the Tamil Nadu Model Standing Orders under Schedule-I provided in Tamil Nadu Standing Order Rules. Not providing the defence Deputy to a co-employee of his choice would also vitiate the enquiry and it would amount to denial of enquiry. The Rules containing 77 conducts cannot be applied against the workmen, since the Tamil Nadu Model Standing Orders would prevail over and override the same. Non-payment of subsistence allowance also would vitiate the enquiry. Not furnishing the copy of the complaints either along with the charge memo or during the enquiry would vitiate the enquiry. Non-examination of material witness would vitiate the enquiry as well as the findings. Unless the author of the document is examined in the enquiry and unless he/she affirms the correctness of the statement, such a statement is inadmissible in law and is not legally acceptable.

25. When the statement produced by the Management and the workmen stand on the same footing, the Enquiry Officer cannot accept the statement produced by the Management and return the same to accept the statement produced by the workman on the ground that he did not examine the author. He cannot apply different yardstick and hence it is perverse.

26. The findings of the Enquiry Officer in each case is a non-speaking, cryptic and ipse dixit order. He did not give findings on each charge with reasons. Hence, it is perverse. The

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Management cannot rely upon the Rules, which were not produced and marked as Exhibits. The Management cannot withdraw the first dismissal order and issue another order on the same issues, without even paying wages from the date of first dismissal and second dismissal. In such cases, approval cannot be taken to be filed simultaneously.

27. There is no perversity or patent error in the findings/ orders of the authority and it has correctly held that the enquiry was not conducted fairly and properly as per the Model Standing Orders and also in holding that there was no prima facie case since the charges were not proved by any legal and acceptable evidence by examining the direct/material/eye-witnesses. The authority has only discussed and seen the evidence on record and has not exceeded the power and jurisdiction under Section 33(2)(b) of the Industrial Disputes Act, 1947 and therefore, the power exercised is within the jurisdiction and accordingly, the writ petition is liable to be dismissed.

28. In support of the above contentions, the learned counsel for the second respondent-employee cited the judgment of the Supreme Court of India in the case of Indian Telephone Industries Ltd. vs. Prabhakar H. Manjuare [(2003) 1 SCC 320], wherein the Supreme Court held that Industrial Tribunal to be invalid for non-compliance with the proviso to Section 33(2)(b), the dismissal order stood void and inoperative and consequently the employee concerned would be deemed to have continued in service as if no dismissal order was passed.

29. In the case of ONGC Ltd. vs. Petroleum Coal Labour Union [(2015) 6 SCC 494], wherein the Supreme Court held that the Corporation did not follow the due procedure as provided under the Appointment and Recruitment Rules for appointment of the workmen concerned in the Corporation or that their appointment orders excluded applicability of the Standing Orders, which is not permissible. It is further held that violation of Certified Standing Orders is void and can be ignored.

30. In the case of Glaxo Laboratories (I) Ltd vs. Presiding Officer, Labour Court, Meerut and others [(1984) 1 SCC 1], the Standing Orders regarding, providing for punishment, should be strictly construed. This being the findings, the learned counsel for the second respondent-employee reiterated that the writ petitioner-Management has not followed the Standing Orders and therefore the actions are to be declared as untenable.

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31. The approval petition was rejected on the ground that the enquiry was not conducted in just and fair manner and no prima facie case is made out for the purpose of imposing penalty of dismissal of service. The first respondent-Deputy Commissioner of Labour rejected the Service Rules produced by the writ petitioner-Management. In this regard, the learned counsel for the writ petitioner -Management strenuously contended that the Service Rules are in force and the same is comprehensive in nature. Perusal of the Service Rules produced reveals that it is comprehensive and self contained. The Service Rules constituted by the learned counsel for the writ petitioner-Management, cannot be said to be vague or unclear. In fact, the Service Rules are comprehensive in nature and containing all the terms and conditions regarding the Service Rules, including initiation of disciplinary proceedings and imposition of penalty and other aspects.

32. Under these circumstances, this Court cannot come to the conclusion that the application of Service Rules can be totally neglected by the first respondent. Even as per the Model Standing Orders, the nature of misconducts are well enumerated. It is pertinent to note that those misconducts as well as the misconducts available in the Service Rules of the writ petitioner-Management are also similar and beyond all these Rules in a common parlance, certain misconducts in a disciplined services are always traceable and therefore, the Service Rules produced by the writ petitioner-Management is also speaks about the misconducts and all such misconducts are undoubtedly similar to that of the misconducts prescribed. Rule 17 of the Tamil Nadu Industrial Employment (Standing Orders) Act, 1946, the non quoting of the provisions of the Industrial Employment (Standing Orders) Act, would not vitiate the entire proceedings. Ultimately, the Courts are bound to ensure that the principles of natural justice has been followed or not. The charges are grave in nature or not and the charges are proved and by affording opportunity to the delinquent employee or not. These all are required, which all are to be verified. Contrarily, the Service Rules produced by the writ petitioner-Management, if otherwise, similar to that of the misconducts prescribed in the Industrial Employment (Standing Orders) Act, there may not be any difficulty in arriving a conclusion that the entire disciplinary proceedings are to be vitiated on this ground. Therefore, the very contention of the second respondent-employee deserves no merit consideration as the misconducts in the Standing Orders as well as in the Service Rules are similar in nature and therefore, the enquiry cannot be vitiated on that ground by the first respondent-Deputy Commissioner of Labour.

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33. In respect of the defence Deputy, perusal of the records reveals that the applications were made by the delinquent employees. Such applications were considered by the Management and even during the examination of witnesses, it is categorically found that permission to have a defence Deputy was granted to all the delinquent employees. However, the Management has put a condition that the defence Deputy must be from the same District or in the nearby location where the delinquent employee is working.

34. Contrarily, it is contended that the delinquent-employee intentionally has chosen to defence Deputy from a far away place in order to frustrate the enquiry proceedings and to prolong and to protract the same. This apart, bringing a defence Deputy from a far away place will paralyse the Public Utilisation Services being run by the writ petitioner-Management, more specifically, Ambulance Services. Thus, the employees from far away places have to spent lot of time for coming to Chennai and for travelling. Therefore, the Management insisted that the defence Deputy must be from the place or the District or nearby location where the delinquent-employee is working.

35. This Court is of the considered opinion that such a condition is reasonable and cannot be construed as total denial of defence Deputy to the delinquent-employee. Denial of defence Deputy is one aspect of the matter. However, the defence Deputy is permitted in this case and the request of the delinquent-employee to choose the defence Deputy from the far away place alone is rejected. Therefore, this Court is of the opinion that the enquiry cannot be vitiated on the ground that the defence Deputy had not been provided. In fact, the defence Deputy was provided, which was not utilised by the delinquent-employee.

36. In respect of the findings of the Enquiry Officer, this Court is of an opinion that the documents produced by the parties have been considered by the Enquiry Officer and a conclusion was arrived. The scope of Section 33(2)(b) of the Industrial Disputes Act, 1947, is limited. The roving enquiry in respect of the evidences appreciated by the Enquiry Officer cannot be undertaken in the approval petition by the competent authority. What is required is that the procedures contemplated followed or not. Whether the principles of natural justice has been complied with or not and the other requirements stipulated by the Supreme Court has been fulfilled or not. The first respondent-authority cannot take a roving enquiry only to cull

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out the manner in which the charges were considered or not. All such facts and circumstances or disputes can be adjudicated in the industrial dispute and undoubtedly, cannot be considered by the Deputy Commissioner of Labour in an approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. Therefore, the exercise shown by the first respondent in this regard is untenable. The Service Rules were produced. Perusal of the Service Rules wherein the list of misconducts listed out reveals that those misconducts are similar to that of the misconducts prescribed in the Industrial Employment (Standing Orders) Act, 1946. Therefore, there is no irregularity or illegality in following the Service Rules, which is in force in the writ petitioner-Management. However, the Service Rules produced by the writ petitioner-Management, was not even taken on file and making certain observations regarding the Service Rules, the point was decided against the writ petitioner-Management. In the opinion of this Court, such appreciation is improper and cannot be sustained.

37. With reference to the prima facie case, this Court has gone through the enquiry report filed along with the writ petition. The enquiry report reveals that the charges are framed in clear terms and the charges are in relation to certain serious misconducts. The nature of the charges are enumerated in clear terms. The witnesses were examined, documents were marked and based on the witnesses and the documents, the Enquiry Officer arrived a conclusion that the charges are proved.

38. This Court is of the considered opinion that 108 Ambulance Services are Life Saving Services. It is an Emergency Service. The persons, who all are working in Ambulance Vans must maintain utmost integrity and devotion to duty. These Ambulances are the life savers and the essence of time is of paramount importance to save the lives. Any negligence, lapse or misconducts, undoubtedly, would affect the very emergency services to be provided to the citizens of this Great Nation and the very purpose and the object of the scheme itself would be defeated.

39. The 'Right to Life' is the fundamental right. Providing medical services by the State is now construed as an integral part of Article 21 of the Constitution of India. Life does not mean an animal life. State must ensure a decent life to all its citizens. Providing a decent medical facility to the citizen of this Great Nation is the Constitutional mandate and a fundamental right of a citizen. Therefore, the State must ensure that decent medical facilities are provided to the citizen, more specifically, on emergency services.

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40. The Ambulance Services are Noble Services. The delay in operating the Ambulance Services would cause death to a patient. Therefore, this Court is of an opinion that any negligence or lapse in providing the Ambulance Services is also to be construed as an integral part of Article 21 of the Constitution of India, because it is a life saver facility provided and the protection of life and providing a decent medical facility, is also a Constitutional perspective.

41. In this context, the Courts have to consider that the administration of the writ petitioner-Management should ensure prompt and timely services to be provided to the needy citizen. A man in distress, if not saved immediately, then the very purpose and the object of this Ambulance Service would be defeated.

42. As far as the enquiry report is concerned, an opportunity was given to the second respondent-employee. However, non-utilisation of the opportunity provided to defend the case, would not be a ground to hold that the entire enquiry is improper. In the present case, the employees have made an attempt to prolong and protract the enquiry and that the writ petitioner-Management is proceeded with the enquiry and concluded the same based on the evidences as well as the documents available. This being the factum, there is no reason whatsoever to reject the approval petition.

43. This apart, the first respondent-Deputy Commissioner of Labour cannot adjudicate the over all facts and circumstances and the evidences. The power of the Deputy Commissioner of Labour under Section 33(2)(b), more specifically, in an approval petition is limited. The approval petition under Section 33(2)(b) is to be decided based on certain procedures to be followed by the writ petitioner-Management for arriving a conclusion and the entire adjudication of facts and circumstances and the evidences, cannot be done by the Deputy Commissioner of Labour in an approval petition and such an exercise is to be done, if any industrial dispute is raised before the Labour Court.

44. Therefore, the scope of Section 33(2)(b) of the Industrial Disputes Act, 1947, is limited and the Deputy Commissioner of Labour cannot go into all the aspects and it is to be seen whether the procedures are followed properly and if the procedures are followed properly with reference to five questions, which all are enumerated by the Hon'ble Supreme Court of India in the case of Lalla Ram vs. D.C.M.Chemical Works Ltd

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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

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> 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."

45. 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.

46. In view of the facts and circumstances discussed in the aforementioned paragraphs, this Court is of an opinion that the misconduct stipulated in the Service Rules submitted by the writ petitioner-Management is similar to that of the misconducts contemplated in the provisions of the Industrial Employment (Standing Orders) Act, 1946. The Management granted permission to have a defence Deputy to a delinquent-employee, by imposing a condition that the delinquent-employee has to choose a defence Deputy not from the far away from the place of his work and the defence Deputy should be from nearby to the place of his work. Thus, the contention that the defence Deputy was denied to the delinquent-employee is incorrect and the condition imposed is reasonable and practicable. Thus the delinquent-

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employee was permitted to have the defence Deputy, which was not utilised properly by the delinquent-employee in order to defend their case. Contrarily, they have adopted the tactics with an intention to prolong and protract the enquiry proceedings, which cannot be encouraged by the Courts. In respect of the prima facie case, the Ambulance Services are sensitive and timely services to the needy person is the prime object of the Scheme. Thus, any indiscipline or lapses is to be construed as grave in nature as the delay or timely inaction would cause danger to the life of a person, who deserves an emergency service during through Ambulance.

47. Therefore, the charges against the delinquent-employees are grave in nature and the level of discipline to be maintained in the Ambulance Services comparing to the other organisations are entirely different and the level of discipline to be maintained in the Ambulance Services, undoubtedly, must be high in nature and therefore, the gravity of the charges are to be decided in comparison with the services to be provided with reference to the nature of the services and its importance. Thus, the authority competent have erroneously arrived a conclusion that no prima facie case is made out and the enquiry was conducted not in a just and fair manner. In fact, this Court is of an opinion that the approval petition deserves to be allowed.

48. Under these circumstances, this Court has no hesitation in coming to the conclusion that the order passed by the first respondent is perverse and not in consonance with the principles laid down by the Apex Court of India in the case of Lalla Ram vs. D.C.M.Chemical Works Ltd and Another (cited supra).

49. Accordingly, the impugned order dated 25.04.2018 passed by the first respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 in Ref.Na.Ka.No.B4/ 533/2016 stands quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/
Assistant Registrar

True Copy

Sub Assistant Registrar

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W.P.No.18763 of 2019
W.M.P.No.18109 of 2019

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