

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 29.11.2019  
CORAM:  
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM  
W.P.No.29623 of 2014  
M.P.No.2 of 2015

The Management,  
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,  
Kancheepuram Region,  
Kancheepuram,  
Rep.by its General Manager.

...Petitioner

vs.

1. M.Nageswaran

2. The Special Joint Commissioner of Labour (Conciliation)  
DMS 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 passed by the second respondent in A.P.No.510 of 2011 dated 31.10.2013 and to quash the same.

For Petitioner : Mr.K.Kulanthi vel

For Respondents : Mr.S.T.Varadarajulu  
for R1.  
Mr.J.Ramesh  
Additional Government Pleader for R2.

O R D E R

The order dated 31.10.2013 passed in A.P.No.510 of 2011 is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited. The writ petitioner/Management filed the present writ petition challenging the rejection of the approval petition filed by the Management under Section 33(2)(b) of the Industrial Disputes Act, seeking the approval of the dismissal order passed by the first respondent on 18.11.2011.

3. The learned counsel for the writ petitioner/Management made a submission that the first respondent was working as driver in the petitioner's Corporation at Koyamedu Dept-I. The first respondent was assigned duty in bus No.TN 21/N 1091 (Pondicherry-Chennai) on 01.04.2010. At about 02.45 hrs, while the bus was proceeding from Pondicherry to Chennai in a place near Marakanam, the petitioner had hit in the rear side of the Truck, which was proceeding in front of the bus. Due to the said collusion, the passenger in the truck fell down and hit against a stone and he died at the spot. The writ petitioner/Management placed the first respondent under suspension. Then, a charge sheet was issued on 31.05.2011. The enquiry was conducted and the Enquiry Officer submitted his report holding that the charges against the first respondent/employee are proved. Based on the proved charges, the first respondent issued a show cause notice on 28.06.2011 and subsequently, he was dismissed from service on 18.11.2011. Immediately, the writ petitioner/Management filed an approval petition before the second respondent under Section 33(2)(b) of the Industrial Disputes Act. The approval petition was rejected. Thus, the writ petitioner is constrained to move the present writ petition.

4. The learned counsel for the writ petitioner contended that out of five issues decided by the second respondent/Authority, four issues were held in favour of the Corporation and in respect of prima facie case, the second respondent erroneously arrived at a finding that there is no eye-witness for the accident and therefore, the case of the Management was not established.

5. The scope of Section 33(2)(b) is undoubtedly limited. The authority cannot appreciate the evidences in depth and the authority competent, while considering the approval petition, must find out whether the procedures are followed for arriving at a conclusion. Contrarily, the nature of the witnesses and evidence produced for establishing the charges cannot be gone into in depth by the authorities so as to appreciate the facts and circumstances. However, the second respondent/Authority recorded a finding that as per Ex.A5, the first respondent/employee himself admitted the fact that the entire facts and circumstances regarding the accident, were narrated and therefore, there is no reason to arrive at a conclusion that no eye-witness was examined to establish the accident. Once the accident is established prima facie and the same was admitted before the Enquiry Officer and the report of the Enquiry Officer also unambiguously reveals about the said accident, there is no reason whatsoever to make a finding that there is no eye-witness

to establish the accident. Such a finding is beyond the scope of Section 33(2)(b) of the Industrial Disputes Act. Even otherwise also, the fact regarding the accident was established and the same was admitted by the first respondent/employee himself. While so, the findings in this regard by the second respondent are perverse and contrary to the findings made by the Enquiry Officer regarding the factual aspects, by merely stating that the witnesses were not examined, is impermissible in an approval petition under Section 33(2)(b) of the Industrial Disputes Act.

6. The scope of the approval petition with reference to Section 33(2)(b) of the Industrial Disputes Act is adjudicated by this Court in W.P.No.7403 of 2019 dated 26.09.2010 and 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 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."

7. As far as the other issues are concerned, the second respondent arrived at a conclusion that the domestic enquiry was conducted in compliance with the principles of natural justice and one month salary was paid in accordance with law and further, the approval petition was filed within a reasonable period of time.

8. This being the factum, the order passed by the second respondent rejecting the approval petition is perverse and not in consonance with the legal principles settled by the Hon'ble

Supreme Court of India in the case of "Lalla Ram". Accordingly, the order dated 31.10.2013 passed by the second respondent in A.P.No.510 of 2011 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Special Joint Commissioner of Labour (Conciliation)  
DMS Compound,  
Chennai.

+1cc to Mr.S.T.Varadarajulu, Advocate sr.100121  
+1cc to Government Pleader SR.NO. 100405

W.P.No.29623 of 2014

bp(co)  
nr 28/01/2020



WEB COPY