

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 26-09-2019
Coram
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.7403 of 2017
And
W.M.P.No.8058 of 2017

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri-5.

.. Petitioner

vs.

1.The Special Deputy Commissioner of Labour,
DMS Compound,
Anna Salai,
Chennai.

2.P.Loganathan
.. 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 passed by the second respondent made in Approval Petition No.334 of 2012 dated 10.08.2015 and to quash the same and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Ms.Rajeni Ramadoss

For Respondent-1: Mr.D.Suriya Narayanan,
Additional Government Pleader.

For Respondent-2: Mr.V.Ajoy Khose

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O R D E R

The approval petition No.334 of 2012 dated 10.08.2015 passed by the first respondent-Special Deputy Commissioner of Labour, is sought to be quashed in the present writ petition.

2. The writ petitioner states that the second respondent P.Loganathan was working as a Conductor at the Hosur

(T) Branch in the writ petitioner's Transport Corporation and on account of an allegation of unauthorised absence, a charge memo dated 14.10.2011 was issued to the second respondent-workman. The charge memorandum was issued based on the report received from the Branch Manager of Hosur (M) Branch.

3. The writ petitioner-management appointed an Enquiry Officer to enquire into the charges framed against the second respondent-workman. The second respondent-workman had participated in the enquiry and he was permitted to examine/cross-examine the management witnesses and also peruse the required documents/records in order to defend his case.

4. The writ petitioner states that the enquiry was conducted by following the procedures contemplated and the principles of natural justice has been complied with in all respects. The Enquiry officer submitted his report on 22.02.2012 and a second show cause notice was issued along with the copy of the enquiry to the second respondent-workman on 07.06.2012, calling upon the second respondent-workman to submit his explanations/objections in respect of the report of the Enquiry Officer. The said show cause notice was received by the second respondent and he had submitted his objections also.

5. Based on the materials on record, the writ petitioner-management was constrained to pass an order of dismissal in proceedings dated 26.10.2012 along with one month salary to the second respondent-workman.

6. The learned counsel for the writ petitioner states that there was a wage dispute pending on the file of the first respondent/ Special Deputy Commissioner of Labour in Reference No.C1/ 37589/2007 and the said approval of the first respondent with regard to the dismissal order under Section 33(2) (b) of the Industrial Disputes Act, 1947.

7. The learned counsel for the writ petitioner further states that the second respondent-workman had committed the similar type of misconducts/offences on 26 separate occasions previously for which only minor punishments were awarded to the second respondent-workman by the writ petitioner-management.

8. The first respondent without considering the gravity of the proved misconducts, rejected the approval petition filed by the writ petitioner-management under Section 33(2)(b) of the Industrial Disputes Act, 1947. Thus, the writ petitioner-management is constrained to file the present writ petition.

9. The learned counsel for the writ petitioner mainly relied upon the findings of the first respondent in the approval petition. The issues were raised by the first respondent are in consonance with the settled legal principles. As far as the fairness of the domestic enquiry is concerned, the Labour Court hold that the principles of natural justice has been complied with and the enquiry was conducted in a just and proper manner.

10. In respect of the issue whether the order of dismissal is issued based on the acceptable evidences or not, the first respondent found that the decision was taken based on the proved charges as well as the evidences available.

11. The third issue raised by the first respondent was whether there was any victimisation and in that issue, it was held that the punishment of dismissal is too harsh and one opportunity ought to have been provided to the second respondent-workman.

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 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.

21. The learned counsel for the second respondent-workman contended that the second respondent-workman was a victim in a major accident occurred during the year 2008 and he was continuously taking treatment. He suffered certain disabilities and on account of such disabilities, he remained absent for about 16 days and therefore, there was a mistake on the part of the employer even in calculating the period of unauthorised absence. The one month salary along with the notice was not given properly and on that ground also, the writ petition is liable to be rejected.

22. Considering the arguments of the respective learned counsel appearing on behalf of the writ petitioner as well as the second respondent-workman, there was no dispute in respect of the legal principles settled by the Supreme Court in the case

of Lalla Ram (cited supra). The five points to be adjudicated in an approval petition are well settled and even the respective learned counsel appearing for the parties have no quarrel on that.

23. Now let us look into the findings of the first respondent/ Deputy Commissioner of Labour. The Deputy Commissioner of Labour found that the enquiry was conducted in compliance with the principles of natural justice and in a just and fair manner. The punishment of dismissal was imposed based on the acceptable evidences and further the first respondent arrived a conclusion that the condition of one month salary along with the notice also had been complied with. The approval petition was also filed in time. While holding these issues in favour of the writ petitioner, the first respondent came to a conclusion that the punishment of dismissal is a harsh punishment and rejected the approval petition.

24. In this regard, it is contended that it is beyond the jurisdiction of the first respondent-Deputy Commissioner of Labour to hold that the punishment of dismissal was too harsh when the first respondent had rejected the issues on merits and arrived a conclusion that the domestic enquiry was in compliance with the principles of natural justice and based on the evidence and other requirements had already been fulfilled, there is no reason whatsoever to reject the approval petition on the ground that the punishment was harsh.

25. Even on earlier occasions, similar charges of unauthorised absence were framed against the second respondent-workman and punishments were imposed. The previous history of the second respondent-workman is narrated by the writ petitioner-management is extracted hereunder:-

Previous History

1	26.06.1990	Shortage Rs.69.10	Warned
2	03.02.1991	Shortage Rs.100/-	Warned Fined Rs.10/-
3	06.04.1991	F.N.C.	Regularisation PP for year
4	19.04.1991	F.N.C.	Regularisation PP for 6 months
5	07.07.1993	Shortage Rs.136.90	Suspension treated as specific punishment
6	16.09.1994	Not entered into Soolagiri	Fined Rs.25/-
7	06.10.1995	Performed duty W.O. Name badge	Fined Rs.5/-

1	26.06.1990	Shortage Rs.69.10	Warned
8	17.01.1996	Shortage Rs.100/0	1 day suspension treated as specific punishment
9	01.11.1997	Shortage Rs.336.25	Recovered Rs.336.20
10	06.08.2001	Luggage Ticket alteration	Inc PP for 3 Months w.o.c.e.
11	27.08.2001	Luggage Ticket alteration	Inc PP for 3 Months w.o.c.e.
12	18.02.2002	Not entered into M.R.Halli B/S	Warned
13	06.05.2002	Wrong Punched the tickets	Inc PP for 6 Months w.o.c.e.
14	22.06.2002	Before departure K.Giri B/S	Fined Rs.20/-
15	19.10.2002	F.N.C.	Inc PP for 1 year w.o.c.e.
16	19.05.2003	F.C-6 & Shortage Rs.211/-	Reduced Basic Pay 3 stage 5 years.
17	23.07.2003	Excess In Cash bag Rs.94.75	Suspension treated as specific punishment
18	06.06.2007	F.N.C.I	Inc PP for 6 Months w.o.c.e.
19	25.10.2007	To 18.01.2008 Absent	Cnsured
20	20.04.2009	Operate the bus W/O Route Board	Fined Rs.100/-
21	28.06.2009	F.C.	Icc postponed for 2 years w.c.e.
22	01.01.2010	Damaged Glass	Inc PP for 1 year w.o.c.e.
23	02.01.2010	Unauthorised absent for 02.01.2010 to 22.06.2010 Absent	Inc PP for 6 Months w.o.c.e.
24	23.09.2010	Preformed duty w/o. Name badge	Fined Rs.100/-
25	04.03.2011	Consumed alcohol during the duty	Inc PP for 1 year w.c.e.
26	05.03.2011	05.03.2011 to 01.07.2011 unauthorised absent	Inc PP for 1 year w.c.e.
27	29.09.2011	Unauthorised absent days	Dismissed

26. Taking note of the fact that the second respondent-workman suffered several punishments on several occasions and the current dismissal order was passed based on the proved charges of unauthorised absence for about 398 days and taking note of the fact that the Deputy Commissioner of Labour also found that the charges were proved and the other requirements to be complied with also had been fulfilled, there is no reason whatsoever to come to the conclusion that the punishment of dismissal is harsh.

27. Probably, the first respondent-Deputy Commissioner of Labour would have taken such a decision based on misplaced sympathy. Lenience in such circumstances should not sent a wrong message in respect of such serious misconducts. Punishments are imposed on certain circumstances considering the gravity of the misconduct, which all are proved by way of evidences. Thus, any such finding regarding the proportionality must be recorded with sufficient reasoning. It is not as if the Deputy Commissioner of Labour or the Labour Court can merely modify or quash the punishment by stating that the punishment is dis-proportionate. Such a blanket reasoning can never be accepted. In the event of identifying any such dis-proportionality, adequate reasonings are to be given in the order itself. In the absence of any such valid reasons, the mere usage of the term 'punishment' is not in dis-proportionality cannot be accepted. Thus, the harshness of the punishment or the dis-proportionality cannot be adjudicated in an approval petition when the Deputy Commissioner of Labour arrived a conclusion that the procedures had been complied with and further there was no other reason to interfere with the punishment order issued by the employer.

28. It is relevant to remind the fundamental duties of a citizen enunciated under Article 51-A of the Constitution of India. Sub Clause (i) to Article 51-A enumerates that "to safeguard public property and to abjure violence". Sub Clause (j) stipulates that "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

29. Emphasizing the fundamental duties of the citizen under Article 51-A of the Constitution of India, this Court is of the strong opinion that rights and duties are inseparable concepts and the person, who is claiming right, must keep in mind that he has got certain duties towards the fellow citizen and to the Nation at large. Rights and duties are the relative terms and therefore, in the current day situation, while dealing with the rights of the individuals, his duties are also to be

considered by the Constitutional Courts in order to adopt a pragmatic and balancing approach. It is not as if while upholding a rights of a citizen, Court can neglect his duties. Only if a citizen respects his duties as law requires, then alone he can claim his right under the law and it is not as if he can violate his duties and responsibilities and claim rights in isolation. Such a concept, if at all in the mind of a person, the same can never be encouraged by the Constitutional Courts.

30. Keeping this view, this Court is of an opinion that certain allegations, manhandling or physically attacking or assaulting the co-employees or the higher officials can never be tolerated and such offences are already classified as punishable offence under the Indian Penal Code. This apart, respecting the fellow citizen or colleagues in the work place is of paramount importance. Only through maintaining the discipline and decorum, the industrial activities can be developed, so also, the developmental activities across the country can be taken forward. Thus, discipline and decorum in industrial places are of paramount importance. It is an organizational discipline, which will make the industry to grow further and to develop the prospectus of our great Nation as well as the people at large. Thus, compromising the discipline will lead to destruction within the industry / public institutions. Any indisciplined industry or organization can never see the light of growth. Most of the industries / public institutions had collapsed on account of indiscipline, mal administration or corruption. Thus, discipline, decorum, honesty and integrity are the vital characters to be maintained in the industry / public institutions, factories and trade activities, so as to take our Nation forward on par with the global standards. Our great Nation is a fast growing Country in the world. Under these circumstances, Courts are also duty bound to ensure that such discipline, decorum, honesty and integrity are maintained at all institutional levels and all such institutional respects are also protected.

31. This being the concept to be borne in mind, this Court is of an opinion that any indiscipline, if noticed and disciplinary actions are initiated against the employees, Courts must be keen in analyzing the factors and arrive a conclusion that such indiscipline activities are brought down and dealt in accordance with law without showing any leniency or misplaced sympathy. Thus in disciplinary matters, misplaced sympathy by the Courts also will lead to destruction of industries / public institutions. The personal likes and dislikes of certain charters should not have any impact in deciding such cases of disciplinary proceedings. It is not as if we are compromising

the principles, we are compromising the National developments and therefore, there cannot be any such misplaced sympathy in the matter of discipline and decorum in industries and in public institutions.

32. This being the factum, this Court is of the considered opinion that the order passed by the first respondent holding that the punishment of dismissal is harsh, cannot be accepted and such a finding is not in consonance with the settled principles of law.

33. Thus the order passed by the first respondent-Deputy Commissioner of Labour in Approval Petition No.334 of 2012 dated 10.08.2015 is quashed and accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Svn

To

1.The Special Deputy Commissioner of Labour,
DMS Compound,
Anna Salai,
Chennai.

+1 cc to Mr.V.Ajoy Khose Advocate sr83358

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W.P.No.7403 of 2017

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