



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).Nos.18139 to 18143 of 2014
and M.P.(MD).No.1 of 2015 in WP(MD)No.18142 OF 2014
and W.M.P.(MD).No.14254 of 2018
in WP(MD)No.18143 OF 2014

The Management/General Manager
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
By.Pass Road,
District Collector Officer,
Dindigul - 624 004.

.. Petitioner is all petitions

Vs.

1.The Special Deputy Commissioner of Labour,
O/o Commissioner of Labour,
Chennai - 600 006. .. 1st Respondent in all petitions

2.R.Gnanaraj	.. 2 nd Respondent in W.P.(MD).No.18139/2014
2.A.Narayanan	.. 2 nd Respondent in W.P.(MD).No.18140/2014
2.K.Chandran	.. 2 nd Respondent in W.P.(MD).No.18141/2014
2.C.Ganesan	.. 2 nd Respondent in W.P.(MD).No.18142/2014
2.P.Pandian	.. 2 nd Respondent in W.P.(MD).No.18143/2014

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records of the first respondent in his proceedings in Approval Petition Nos.536/2011, 566/2011, 501/2011, 224/2011 & 450/2011, dated 29.04.2013, 31.10.2013, 10.05.2013, 17.05.2013 & 23.04.2013 respectively, quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondents : Mr.M.Jeyakumar for R1
Additional Government Pleader

No Appearance for R2 in WP(MD)
Nos.18139 and 18140 of 2014

<https://hcservices.ecourts.gov.in/hcservices/> Mr.D.Anbarasu for R2 in WP(MD)No.18141 of 2014



Mr.S.Govindan for R2 in WP(MD)No.18142 of 2014

Mr.A.John Vincent for R2 in WP(MD)No.18143 of 2014

COMMON ORDER

All these writ petitions have taken up together and disposed of by this common order as the issues arise in all these cases are common and the petitioner in all the cases is the same Transport Corporation and the second respondent in all writ petitions are similarly placed.

2.All these writ petitions have been filed by the Management, Tamilnadu Transport Corporation (Madurai), Ltd., as against the order of Special Deputy Commissioner of Labour rejecting the Approval Petitions filed by the petitioner to approve the respective orders of punishment imposed by the petitioner against the second respondent in all the petitions who are working as Conductors in the petitioner Transport Corporation.

3.This Court need not elaborate the facts in individual cases as the decision on the common issue arise in all these cases will be sufficient to dispose of all the cases.

4.The second respondent in all these writ petitions who are all employees under the petitioner Corporation were found guilty of some delinquencies. After conducting domestic enquiry, the petitioner / Management imposed the punishment of either termination of service or other major punishments. The petitioner thereafter filed individual Approval Petitions in Application Nos.536/2011, 566/2011, 501/2011, 224/2011 & 450/2011. By separate orders, the Special Deputy Commissioner of Labour, rejected the Approval Petition filed by the petitioner only on the ground that the petitioner has not produced the relevant documents and the records, to prove that the petitioner has conducted the domestic enquiry in a proper manner, after giving adequate opportunities to the delinquents, adhering to the principles of natural justice.

5.It is admitted before this Court that when an Approval Petition is filed by the Management, the first respondent should be satisfied that proper domestic enquiry had been conducted in accordance with relevant rules/standing orders and principles of natural justice had been followed. The judgment of Honourable Supreme Court passed ***in Lalla Ram Vs. D.C.M. Chemical Works*** reported in ***AIR 1978 SC 1004*** is relevant and has been cited by the learned counsel for the employees. The relevant portion of the said judgment of Honourable Supreme court is extracted for convenience.

<https://hcservices.ecourts.gov.in/hcservices> The position that emerges from the above quoted



decisions of this Court may be stated thus: In proceedings under S.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 victimize the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co., V.Ram Probesh Singh* (1964) 1 SCR 709: (AIR 1964 SC 486): *Titaghur Paper Mills Co.,Ltd. v. Ram Naresh Kumar* ((1961) 1 Lab LJ 511) (SC); *Hind Construction & Engineering Co. Ltd. v. Their Workmen* (1965) 2 SCR 83: AIR 1965 SC 917: *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors* (1973) 3 SCR 587: AIR 1973 SC 1227, and *Eastern Electric and Trading Co. v. Baldev Lal* (1975) Lab IC 1435: (AIR 1975 SC 1892) 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 game 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."

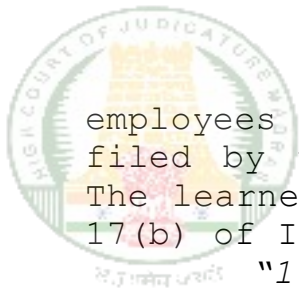
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6.In all the Approval Petitions, the Special Deputy Commissioner of Labour has framed specific issues whether the domestic enquiry was conducted, adhering to the principles of natural justice and by giving opportunity to the employees. The other two issues framed by the Deputy Commissioner of Labour were that whether the departmental proceedings initiated against the delinquent was for bonafide reasons and whether the Management has established *prima facie* case for dismissal on the basis of legal evidence adduced before the Enquiry Officer.

7.Though the charges against the delinquents are serious, the Labour Court rejected the Approval Petitions mainly on the ground that the Management has not produced the records relating to the domestic enquiry to find out whether the domestic enquiry was completed following the principles of natural justice, affording sufficient opportunities to the delinquents. From the findings recorded by the Special Deputy Commissioner of Labour in all these cases, this Court is able to see that the conclusion was not by considering the matter on merits, but on the failure of Management to produce the relevant records before the Special Deputy Commissioner. The learned counsel appearing for the Management in all these cases produced before this Court the records relating to the domestic enquiry. It is further submitted that these records were not produced before the Special Deputy Commissioner of Labour due to reasons attributable to this counsel.

8.It is in these circumstances, this Court is of the view that the matter should be remitted to the Special Deputy Commissioner of Labour for a fresh decision as the conclusion of Labour Court should be always on merits after considering the relevant and available materials. Upon production of the records of domestic enquiry, it is open to the employees to file their objections with regard to the genuineness of the records. Since the charges against the employees are so serious, this Court is unable to confirm the order without giving an opportunity to the Management to establish the case as against the delinquents on merits, as the petitioner is a public transport corporation, expected to serve the public more effectively.

9.The learned counsel appearing for the employees submitted that the Management has not distributed the salary for the



employees for all these years even though the Approval Petition filed by the Management was dismissed in the year 2013 itself. The learned counsels for the second respondent relied upon Section 17(b) of Industrial Disputes Act, 1947 which reads as follows:

"17B. Payment of full wages to workman pending proceedings in higher courts.-Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

Referring to Section 17(b) of Industrial Disputes Act, the learned counsel would submit that the Management has to pay workmen during the period of pendency of proceedings full wages last drawn. This Court is unable to accept the submission of learned counsel appearing for the first respondent in all the writ petitions, because Section 17(b) need not be applied as this Court by remitting the matter restore status quo as on the date when approval petitions are filed and the punishment will be subject to the out come of order in the approval petitions.

10.The Honourable Supreme Court in the case of M.D., Tamilnadu State Transport Corporation Vs. Neethivilangam, Kumbakonam in C.A.No.3593 of 2001, dated 04.05.2001, has found that the workmen should not suffer the consequences of an invalid order of dismissal till the matter is decided again in an Industrial Dispute. In para 15, the Honourable Supreme Court has held as follows:

"15.From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental inquiry and pass an order of dismissal or discharge against the workman the order



remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed under Section 33(2) (b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employee the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunal's rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in Section 33(1) irrelevant. In the present case as noted earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal / discharge of the workman, and therefore, dismissed the application filed by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him."

11. In these cases, the enquiry against the delinquents are not proved by the Management to satisfy the requirements of law. Even though the Management have materials, unless they are produced and the management prove that the domestic enquiry was conducted in the manner required in law, the petitioner / Management cannot give effect to the order of punishment. In that view of the matter this Court is inclined to pass the following order.

12. These writ petitions are partly allowed and the matter is remitted to the first respondent/Special Deputy Commissioner of



Labour, the first respondent in all these writ petitions. It is open to the petitioner/Management to produce the documents / official records to prove their contention that the domestic enquiry was conducted in the manner required in law.

13. By remitting the matter, this Court has not set aside the order of punishment. Therefore, the status quo as on the date of order of punishment earlier will continue for all purpose. Considering the request of the employees for provisional pay/provisional pension, the petitioner/ Management is directed to disburse the same on the basis of last drawn salary to the second respondent in each case from this date or to reinstate the second respondents wherever possible, in the individual writ petitions. The approval petitions shall be disposed of by the first respondent within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar (CS)

TM

To

The Special Deputy Commissioner of Labour,
O/o Commissioner of Labour,
Chennai - 600 006.

+1 CC to M/s.S.GOVINDAN, Advocate (SR-90915[F] dated 03/10/2019)

+1 CC to M/s.J.SENTHIL KUMARAIAH, Advocate (SR-90950[F] dated 03/10/2019)

+1 cc to Mr.A.JOHN VINCENT , Advocate SR.No.90693

+1 cc to The Special Government Pleader Sr.No.91194

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01.10.2019

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