

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
05.09.2019	18.09.2019

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.694 of 2017

and

C.M.P. (MD) No.5407 of 2017

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited
27, Railway Station New Road
Kumbakonam-612 001

: Appellant/Petitioner

-vs-

1.The Joint Commissioner of Labour (Conciliation)
Chennai

2.R.Kamaraj : Respondents No.2/ Respondents No.2

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.12.2014, passed in W.P.(MD) No.11707 of 2012, on the file of this Court.

For Appellant : Mr.D.Sivaraman

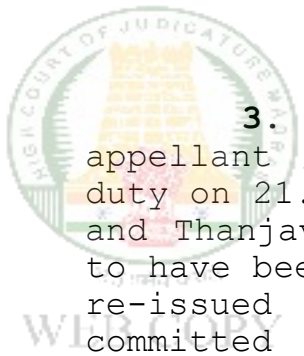
For Respondents : No appearance for R1
Mr.G.M.Xavier for R2

J U D G M E N T

T.S.SIVAGNANAM, J.,

The Management of the Tamil Nadu State Transport Corporation, (Kumbakonam) Limited, is the appellant before us and was the writ petitioner, who had challenged the order, dated 20.05.2011, passed by the first respondent, in Approval Petition No.254 of 2004. The writ petition was dismissed, by order dated 18.12.2014.

2. We have heard Mr.D.Sivaraman, learned counsel appearing for the appellant and Mr.G.M.Xavier, learned counsel appearing for the second respondent / employee.



3. The second respondent was appointed as Conductor in the appellant / Transport Corporation during 1985 and while he was on duty on 21.06.2003 in the Corporation Bus plying between Pudukkottai and Thanjavur, the amounts collected from the passengers were said to have been verified and it revealed that the second respondent had re-issued the tickets and had misappropriated Rs.16.50, thereby committed a delinquency under Clauses 16(4) and 16(14) of the certified Standing Orders of the appellant / Transport Corporation. Pursuant to this incident, a charge memo dated 26.06.2003 was issued calling for explanation from the second respondent. The explanation submitted by the second respondent was found to be not satisfactory and a domestic enquiry was directed to be conducted. The second respondent initially took adjournments in the domestic enquiry and subsequently, appeared along with a defence assistant and the Enquiry Officer, after taking note of the materials placed before him and also taking note of the previous delinquencies, held that the charges were proved. A copy of the enquiry report, dated 25.09.2003, was furnished to the second respondent along a show-cause notice, dated 18.12.2003, for which, the second respondent submitted a reply on 08.07.2004, which was found to be not satisfactory by the appellant / Management. Accordingly, by order dated 27.09.2004, the second respondent was dismissed from service.

4. The appellant / Management would contend that they had complied with the requirements under Section 33(2)(b) of Industrial Disputes Act, 1947 (hereinafter, referred to as "the Act") and the punishment of dismissal imposed on the second respondent was fully justified. As disputes were pending, it was incumbent upon the appellant / Management to seek approval from the first respondent / Joint Commissioner of Labour (Conciliation), Chennai. Accordingly, a petition was filed, under Section 33(2)(b) of the Act, by the appellant / Management before the first respondent, which was taken on file as Approval Petition No.254 of 2004. The first respondent, by order dated 20.05.2011, dismissed the approval petition and held that the order of dismissal from service was illegal. This order was put to challenge in the writ petition and as the appellant was unsuccessful before the Writ Court, they are before us by way of this appeal.

5. The argument of the appellant is that the Honourable Supreme Court in ***Lalla Ram vs. D.C.M. Chemical Works***, reported in ***AIR 1978 SC 1004***, circumscribed the scope of enquiry of the first respondent under Section 33(2)(b) of the Act to fall under five categories and a reading of the order passed by the first respondent would clearly show that the first respondent has exceeded his jurisdiction and proceeded to hold that the order of dismissal from service is not sustainable by incorporating his personal views, which is impermissible.



6. It is further submitted that in terms of the decision in **Lalla Ram** (supra), the first respondent cannot go into the sufficiency of the evidence and the proportionality of the punishment. It is further submitted that the first respondent can only examine whether the departmental enquiry was conducted by following the principles of natural justice and that there is a *prima facie* case for proceeding against the employee and the employee was paid one month wages and beyond these, the first respondent cannot examine the proportionality of the punishment and sufficiency of the evidence. Therefore, it is submitted that the order of the first respondent is wholly without jurisdiction. It is further submitted that the first respondent assumed itself as if it is a Labour Court and went into the merits of the order of dismissal from service, which it is not empowered to do. It is further submitted that the learned Single Judge ought to have considered that in the departmental enquiry proceedings, the proof required is only preponderance of probabilities and not the proof beyond reasonable doubt and this aspect was not considered by the learned Single Judge.

7. Mr.D.Sivaraman, learned counsel appearing for the appellant, referred to the following decisions in support of his contentions:

- (i) **State of Haryana vs. Rattan Singh**, reported in **AIR 1977 SC 1512** for the proposition that examination of passengers is not required and some evidence is sufficient to prove the case of misappropriation done by a conductor.
- (ii) **Karnataka State Road Transport Corporation vs. B.S.Hullikatti**, reported in **(2001) 2 SCC 574** and **Regional Manager, RSRTC vs. Ghanshyam Sharma**, reported in **(2002) 10 SCC 330**, for the proposition that when a Conductor is held guilty of misappropriation, punishment of dismissal from service is not disproportionate considering the past conduct of the employee.
- (iii) **Mahindra and Mahindra Ltd., vs. N.B.Narawade**, reported in **(2005) 3 SCC 134**, for the proposition that Courts cannot interfere with punishment on sympathetic grounds.
- (iv) **U.P. SRTC vs. Suresh Chand Sharma**, reported in **(2010) 6 SCC 555**, for the proposition that examination of passengers and checking of cash bag are not necessary, when a conductor is charged of misappropriation and for a proven case of misappropriation, the only punishment is dismissal from service.
- (v) **Management of TNSTC (Coimbatore) Ltd., vs. M.Chandrasekaran**, reported in **(2016) 16 SCC 16**, with



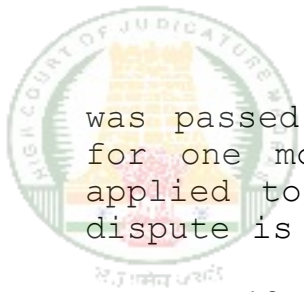
regard to the scope of enquiry under Section 33(2) (b) of the Act, wherein the decision in the case of **State of Haryana** (supra) was referred to.

8. We have heard Mr.G.M.Xavier, learned counsel appearing for the second respondent, on the above submissions.

9. The oft quote decision of the Apex Court with regard to the scope of enquiry in a proceedings under Section 33(2) (b) of the Act is the decision in **Lalla Ram** (supra), wherein it was held that 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 Supreme Court 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 the above 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. It was pointed out that if 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



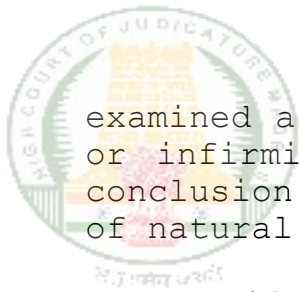
was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within time applied to the to the authority before which the main industrial dispute is pending for approval of the action taken by him.

10. The first respondent, in his order dated 20.05.2011 (impugned in the writ petition) set down the five conditions laid down in **Lalla Ram** (supra) and came to the conclusion that the punishment imposed on the second respondent is disproportionate to the cause of action and there were main areas where there is lack of evidence and the prayer of the appellant cannot be accepted.

11. What we require to examine in the instant case is whether the conditions stipulated in **Lalla Ram** (supra) were satisfied or not and in addition, as to whether the first respondent found the domestic enquiry conducted by the appellant / Management suffers from any defect or infirmity.

12. The first respondent examined the submissions made by the appellant / Management in the approval petition as well as the written arguments submitted before him. Equally, the written arguments submitted by the second respondent was also examined. After perusing the documents filed and the evidence adduced, the first respondent held that though the appellant / Management alleges that the second respondent misappropriated Rs.16.50, the specific case of the second respondent was that when the cash bag was checked by the Checking Inspector, there was no excess or shortage of amount and no misappropriation was pointed out. On going through the evidence adduced, the first respondent held that the appellant had failed to elucidate that there was shortage of cash, after counting the passengers on board and held that this is a fundamental flaw in the enquiry.

13. Next, the first respondent proceeded to examine the contention of the appellant / Management with regard to the ticket issued to Thiru.G.Radhakrishnan for Rs.5.50. The explanation offered by the second respondent was that three individuals, who boarded the bus at the boarding point had got down without making the travel and as the tickets were punched, the second respondent had to issue the same to avoid any loss to himself. This submission of the second respondent was examined by the first respondent for its correctness along with the other evidence available and held that the allegation made against the second respondent by the appellant / Management is unlikely to happen. Accordingly, the benefit of doubt was extended to the second respondent. The individual Thiru.G.Radhakrishnan, from whom a statement had been recorded, was not made available for cross-examination during the domestic enquiry and this was held to be a serious violation of the principles of natural justice. On a perusal of the findings recorded by the first respondent, we find that the first respondent



examined as to whether the domestic enquiry suffers from any defect or infirmity and has given reasons as to why he has come to the conclusion that there has been serious violation of the principles of natural justice.

14. An argument was advanced by Mr.D.Sivaraman, learned counsel for the appellant that the first respondent incorporated its own views. We find nothing in the order passed by the first respondent to agree with such a submission. The first respondent, on examining the evidence available on record, held that the allegations made by the appellant / Management against the second respondent / employee is unlikely to happen. This finding is not the personal opinion of the first respondent, but the manner in which he has appreciated the evidence, which was available in the domestic enquiry. Therefore, we find that the first respondent has not exceeded his jurisdiction, but proceeded in accordance with the guidelines framed by the Honourable Supreme Court with regard to the scope of enquiry under Section 33(2)(b) of the Act. The decisions, with regard to the proportionality of punishment and as to whether examination of the passengers and checking of cash bag were necessary or not, are not required to be examined for its applicability to the case on hand as we are fully satisfied that the first respondent, on due appreciation of the documents and evidence placed before it and understanding his scope of enquiry as laid down in **Lalla Ram** (supra), has recorded a finding that there is inherent defect and infirmity in the domestic enquiry and there was no justification on the part of the appellant / Management for imposition of punishment of dismissal from service and the same is disproportionate as there are many areas where there is lack of evidence. Thus, we are fully satisfied that there is no error in the decision making process by the first respondent. Consequently, we cannot reexamine the findings recorded by the first respondent as if we are exercising second appellate jurisdiction in this appeal and we cannot be called upon to reexamine the evidence and give our views as to whether the charge was proved by the appellant / Management, which exercise was done by the first respondent on considering the oral and documentary evidence.

15. For the above reasons, we find no valid grounds to interfere with the order passed by the learned Single Judge. For such reasons, the writ appeal fails and dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar(CS)



To:

The Joint Commissioner of Labour (Conciliation),
Chennai.

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+1 CC to Mr.D.SIVARAMAN, Advocate SR-87675.

JUDGMENT

IN

W.A. (MD) No.694 of 2017

and

C.M.P. (MD) No.5407 of 2017

18.09.2019

CS (27.09.2019) 7P 3C