

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23943 of 2018
and
W.M.P. No. 27886 of 2018

The Management,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Represented by its General Manager,
Trichy Division, Trichy - 620 001. Petitioner

-vs-

1. B.Gnanasekaran
2. The Special Joint Commissioner of Labour,
Chennai - 600 006. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 28.02.2018 passed by the Second Respondent in Approval Petition No. 536 of 2012 and quash the same, consequently direct the Second Respondent to approve the order of the Petitioner dated 04.12.2012 dismissing the First Respondent from service.

For Petitioner : Mr. D.Venkatachalam, Standing Counsel

For Respondents: Mr. V.Manisekaran (for R1)

Mr. D.Sathyaraj,
Special Government Pleader (for R2)

O R D E R
(through video conference)

Heard Mr. D.Venkatachalam, Learned Standing Counsel appearing for the Petitioner, Mr. V.Manisekaran, Learned Counsel for the First Respondent and Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent, who was employed as conductor, had been terminated from service by the Petitioner by Order No. TNSTC/Kumba/ Trichy/D6/5923/2011 dated 04.12.2012 on the charge of unauthorized absence. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in which the First Respondent was a member was then pending before the Second Respondent, the Petitioner had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) for approval of termination, but it was rejected by order dated 28.02.2018 in A.P. No. 536 of 2012 passed by the Second Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the Second Respondent has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in Lalla Ram -vs- D.C.M. Chemical Works Ltd. [(1978) 3 SCC 1], which are as follows:-

- (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;
- (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.

4. The Second Respondent came to the conclusion that the requirement in items (iv) and (v) alone had been satisfied. In respect of the aspects in items (i) and (ii), it was held that since the Traffic Assistant of the Branch to whom the First Respondent claims to have informed leave had not been examined in the domestic enquiry, it was concluded that the domestic enquiry had not been conducted following the Rules, Standing Orders and the principles of natural justice, and prima facie case had not been made out. It was held for item (iii) that since the Petitioner had not considered the explanation given by the First Respondent for the charge memo and for the second show cause notice issued by him, the dismissal of the First

Respondent was an act of victimization.

5. Insofar as the question relating to validity of the domestic enquiry is concerned, it would be necessary to focus here that the Hon'ble Supreme Court of India in the decision in John D'Souza -vs- Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-

"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part

of the enquiry to be held under Section 33(2) (b) of the Act."

Viewed from this perspective, if the Second Respondent had been of the opinion that the domestic enquiry suffered from any infirmity, it ought to have disclosed the same to the parties and thereafter called upon them to adduce their evidence in support of their respective contentions and then finally decided the validity of the domestic enquiry.

6. At this juncture, it must be recapitulated here that the Constitution Bench of the Hon'ble Supreme Court of India in Karnataka State Road Transport Corporation -vs- Lakshmiddevamma [(2001) 5 SCC 433] has held that in order to avoid unnecessary delay and multiplicity of proceedings, when an employer seeks approval under Section 33(2)(b) of the Act, leave to lead additional evidence to support the action in the alternative and without prejudice to his rights and contentions has to be made in application itself. In this case, it is seen from para 6 of Form-T that the Petitioner has sought for such leave.

7. As it is apparent that the exercise in accordance with the procedure required to be followed in the aforesaid binding decisions of the Hon'ble Supreme Court of India had not been undertaken by the Second Respondent in this case, it would not be possible to uphold the impugned order refusing approval for termination of the First Respondent.

8. The result of the foregoing discussion is that the impugned order dated order dated 28.02.2018 in A.P. No. 536 of 2012 passed by the Second Respondent, which cannot be sustained, is set aside and the matter is remitted back to the Second Respondent for deciding the matter afresh in the required manner. In order to expedite disposal, the matter shall be listed for hearing before the Second Respondent at 11.00 a.m. on 03.12.2020 when the Petitioner and the First Respondent shall appear in person or through their authorized representative as well as on the subsequent dates to which it is adjourned. If the Second Respondent is not in a position to take up the matter for hearing on that date, it shall inform all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. It shall be ensured by the Second Respondent that there is atleast one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the concerned parties under written acknowledgment and that proof of such compliance is filed by 31.03.2021 before the Registrar (Judicial) of this Court. Though

obvious, it is made clear that while deciding the matter, the Second Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.

9. The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

vjt

To

1. The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Division,
Trichy - 620 001.
- 2.The Special Joint Commissioner of Labour,
DMS Compound,
Chennai.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.
2. B.Gnanasekaran
No.1/61, West Street, Boothangudi Post,
Chidambaram Taluk,
Cuddalore District. सत्यमेव जयते

+1cc to Mr.D.Venkatachalam, Advocate SR.No.32487

+1cc to Mr.V.Manisekaran, Advocate SR.No.32245

W.P. No. 23943 of 2018

AD(CO)
GMY(05/11/2020)