

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.11.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.33967, 33968 and 33971 of 2019
and

W.M.P.Nos.34557, 34559 and 34562 of 2019

The Management,
Metropolitan Transport Corporation
(Chennai) Limited,
Pallavan Illam, Anna Salai,
Pallavan Salai,
Chennai - 600 002. Petitioner in all WPs

Vs.

V.Selvamani Respondent in WP.No.33967 of 2019

The General Secretary,
State Transport Employees Union
Regn. No.73/MDS (C.I.T.U.)
No.2, Pallavan Salai,
Kalairanga Valagam,
Chennai - 600 002.

... Respondent in WP.No.33698 & 33971 of 2019

Prayer in WP.No.33967/2019 : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.207 of 2013, dated 22.03.2019 on the file of the 1st Additional Labour Court, Chennai in charge of Presiding Officer and quash the portion of the impugned Award directing the petitioner Corporation for giving him continuity of service, other benefits and payment of full backwages to the respondent.

Prayer in WP.No.33968/2019 : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.255 of 2017, dated 09.07.2019 on the file of the Principal Labour Court, Chennai and quash the same.

Prayer in WP.No.33971/2019 : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of

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Certiorari calling for the records pertaining to the order passed in I.D.No.238 of 2016, dated 30.05.2019 on the file of the 1I Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.M.Chidambaram

For 1st Respondent : Mr.S.T.Varadarajulu

COMMON ORDER

Though these three writ petitions have been filed by the petitioner management viz., Metropolitan Transport Corporation (Chennai) Limited, in respect of three different employees challenging, of course, three different industrial dispute award passed by the Labour Court concerned, since the learned counsels have argued the cases collectively and with the consent of the learned counsel appearing for both sides, all these three writ petitions are taken up for joint hearing and decided by this Court by this common order.

2.In W.P.No.33967 of 2019, hereinafter called as first case, the employee was a Driver and he was working from 1990 under petitioner management, as against whom disciplinary proceedings were initiated, ultimately an order of punishment removing the employee from service was inflicted by the petitioner management on 17.11.2007.

3.In W.P.No.33968 of 2019, hereinafter called as second case, where, the employee by name Arivazhagan was working as Tradesman of the petitioner's Corporation against whom also disciplinary proceedings were initiated, ultimately on 08.10.2012 a punishment was imposed against the employee withholding his annual increment for six months with cumulative effect.

4.In W.P.No.33971 of 2019, hereinafter called as third case, the employee by name Sampath was working as Driver at the petitioner's Corporation against whom also a disciplinary proceeding was initiated by the petitioner management and ultimately by order dated 17.12.2012 a similar punishment i.e., withholding of annual increment for six months with cumulative effect was inflicted against him.

5.Challenging the respective punishments awarded against each of the employees, the respondent employees through their employees' Union have raised industrial dispute in I.D.No.207 of 2013, I.D.No.255 of 2017 and I.D.No.238 of 2016 respectively on the file of the Principal Labour Court, Chennai, Principal

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Labour Court, Chennai and II Additional Labour Court, Chennai respectively. In respect of the first case, the Labour Court set aside the award of punishment inflicted against the employee by allowing the I.D. on two major grounds viz., (i) that there was no enquiry conducted, as contemplated under the service regulations before coming to the conclusion as to whether the employee has been inflicted with any punishment or not, (ii) when there was a dispute by way of collective bargaining pending before the concerned authority, permission petition was not filed to get permission to inflict the major punishment of removal of service against the employee was obtained, as required under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act').

6. In respect of the said two grounds, on which, the Labour Court allowed the I.D. by setting aside the punishment imposed against the employee, Mr.M.Chidambaram, learned counsel appearing for the petitioner management would contend that, the order of punishment of removal of service was inflicted against the employee on 17.11.2007. However, the employee did not raise any industrial dispute and having accepted the said punishment, he raised the I.D. only after six years i.e., in the year 2013. Therefore, on the ground of delay in approaching the Labour Court by raising the I.D. under Section 2A (ii) of the Act, the said I.D. ought to have been rejected by the Labour Court. However, though the said point was raised by the management side, the Labour Court since has gone into the other aspects viz., whether enquiry was properly conducted or not and whether a permission under Section 33(2)(b) of the Act was obtained or not and based on those grounds alone, the punishment inflicted against the employee was set aside by the Labour Court and therefore, the said impugned award is liable to be interfered with, he contended.

7. However, Mr.S.T.Varadarajulu, learned counsel appearing for the respondent employee would contend that, it is an admitted case on the part of the petitioner management that, no enquiry was conducted even though the petitioner was a permanent employee as he was working from 1990 onwards. And in respect of the permission under Section 33(2)(b) of the Act, admittedly, there has been an issue by way of collective bargaining pending before the concerned authority. When that being so, if at all the petitioner management wanted to inflict a major punishment of removal of service, certainly, under the Statute, permission ought to have been obtained under Section 33(2)(b) of the Act and such attempt has now been made by the employer to file an application to get such permission, therefore, the entire punishment awarded against the employee was vitiated. Therefore,

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on these grounds, since the punishment was set aside and the impugned award was passed by the Labour Court, the same does not require any interference from this Court, he contended.

8. Like that, in respect of the second case is concerned, it was the punishment of withholding of increment with cumulative effect, which was passed on 08.10.2012, as against which, the I.D. was raised by the employee one Arivazhagan. In that case, the Labour Court, after having gone into the evidence of both sides, has come to the conclusion that, the punishment given to the employee withholding the annual increment for six months was not in commensurate with the proven charge and therefore, on the proportionality of the punishment alone, the Labour Court has modified the punishment of withholding the increment of three months. In this context also, Mr.M.Chidambaram, learned counsel appearing for the petitioner management has contended that, when the Labour Court has come to the conclusion that, the charge framed against the employee was proved, the punishment of withholding annual increment for six months being a minimum punishment ought not to have been interfered with and for such interference, by giving a modification into three months, the reason given by the Labour Court through the impugned order may not be justifiable, therefore, it may be interfered with.

9. However, Mr.S.T.Varadarajulu, learned counsel appearing for the employee respondent, by relying upon the reasoning given by the Labour Court through the impugned order, has contended that, the Labour Court has rightly exercised its power with regard to the proportionality of the punishment and accordingly, the reduction of punishment from six months to three months of withholding the increment with cumulative effect is not a major reduction and therefore, it need not be interfered with, he contended.

10. Insofar as the third case is concerned, similar order was passed against the employee, where also the punishment was awarded by withholding the annual increment for six months with cumulative effect dated 17.12.2012, as against which, the I.D. was raised where the Labour Court interfered with the said punishment and set aside the said punishment on the ground that, the charge has not been proved, because the employee since was the Driver against whom charge was framed, as if that, he involved in an accident at a particular place, particular date, where a particular bus belongs to the petitioner management involved in the accident whereas a different bus number has been given in the charge memo and no rectification to that effect since has been filed by the management, it would be a vital issue to the very charge itself. Therefore, it cannot be

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construed that, the charge framed against the employee was proved and accordingly, the Labour Court has interfered with the said punishment against the employee in the third case and set aside the same.

11.In this regard, the learned Standing Counsel for the petitioner management would submit that, mere change of number of the bus concerned would not give a clean chit to the employee concerned, who involved in the accident, as the time, date as well as the place of accident is one and the same and therefore, the mere change of number of the bus alone would not make entitle the employee to claim innocence from the charges and therefore, on that ground, the Labour Court ought not to have interfered with the punishment imposed against the employee, he contended.

12.However, Mr.S.T.Varadarajulu, learned counsel appearing for the employees/respondent would contend that, the very basis of the charge itself is wrong, admittedly, as the bus number they mentioned as if that is allowed for duty to the respondent employee was not at all to the respondent employee, therefore, the very charge does not have any legs to stand. Therefore, on that ground, the Labour Court has rightly interfered with the said punishment, hence, the said award also may not be required to be interfered with by this Court.

13.I have considered the facts of the aforesaid case and heard the learned counsel for both sides in all these three cases.

14.In respect of the first writ petition, it is on the ground of no enquiry was conducted as well as permission under Section 33(2) (b) of the Act was not obtained, the Labour Court interfered with the punishment. In this context, the following discussion made by the Labour Court in the impugned award made in I.D.No.207 of 2013 dated 22.03.2019 can be usefully referred to hereunder:

"8.In this case, the respondent has not let in any oral or documentary evidence Absolutely there is no material on the side of the respondent regarding the petitioner's request for medical leave and its consequential order. Further the petitioner also claimed that there was a collective dispute pending before the Conciliation Officer and the respondent management has not filed any approval petition u/s.33 (2) (b) of the I.D. Act and therefore the order of dismissal made by the respondent management becomes

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void and therefore the petitioner is entitled for reinstatement. The respondent has not denied the said contention of the pendency of the collective dispute before any such forum and has not offered any objection regarding the pendency of the collective dispute in the counter. But in the cross examination of W.W.1 a suggestion was made to W.W.1 that there was no collective dispute pending before any forum. Further the petitioner himself filed Exs.W2 and W3 regarding the pendency of collective dispute. But absolutely there is no explanation for the document marked as Ex.W3 which states that the collective dispute was resolved finally on 05.09.2013 and an order was addressed on 19.09.2013. In these circumstances the petitioner also cited the Judgment of the Hon'ble Apex Court reported in (2002) 2 SCC Page 244 namely Jaipur Zila Sahakari Bhoomi Vikas Bank Limited Vs. Ram Gopal Sharma and others wherein the Hon'ble Supreme Court has over ruled the Judgment of the Apex Court itself in Punjab beverages case and held that the requirement u/s.33(2)(b) of the I.D. Act is mandatory and its non compliance will make the order of dismissal as non est and void. Though the respondent also offered to reinstate the petitioner without back wages in view of this legal position when admittedly the respondent has not filed any approval petition before the concerned authority his removal is unlawful and therefore the petitioner is entitled for reinstatement with back wages and all other benefits. Further there is a delay in raising the Industrial Dispute by the petitioner for nearly six years. There is no valid explanation for such delay in raising the I.D. before this Court. It is also argued that the petitioner is gainfully employed somewhere and the respondent is ready to reinstate the petitioner without backwages. There is no evidence of gainful employment. In view of the above judgment and there is no approval petition on the side of the management the order of dismissal itself is void and the petitioner is entitled for reinstatement with back wages and all other benefits as claimed in the petition. Thus the points are answered accordingly in favour of the petitioner."

15.On going through the said discussion made by the Labour Court, in respect of the first case pertaining to the two grounds viz., no enquiry was conducted even though the employee was the permanent employee of the petitioner Corporation and no

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petition was even filed to get an approval under Section 33(2) (b) of the I.D. Act, this Court feel that, the Labour Court has rightly interfered with the said punishment, as these two grounds are very basis, which cannot be dispensed with by any employer, especially, in the context of the provisions of the I.D. Act. Since the employee, being an permanent employee, he is entitled to full-fledged enquiry, which admittedly has not been undertaken, therefore, the reason or ground taken in aid by the Labour Court has to be accepted. Like that, admittedly, no permission under Section 33(2) (b) of the Act was obtained by the management, even though there was a collective bargaining dispute pending before the concerned authority. Therefore, on these two grounds, since the Labour Court has interfered with the impugned punishment awarded against the employee, this Court feel that, such interference can very well be accepted and to be sustained. Therefore, no interference is called for in this writ petition to interfere with the said finding given by the Labour Court in I.D.No.207 of 2013.

16.Insofar as the second writ petition is concerned, the Labour Court in its impugned award dated 09.07.2019 made in I.A.No.255 of 2017 has given the following finding:

"11.Furthermore, the M.W.1 is only forwarding the complaint made by M.W.2. So the Court found that the petitioner was exceeding his limit, and raising his voice against the administration made by M.W.1. It is settled in law no administration without discipline. If the discipline is maintained then the administration will be smooth in order. Otherwise the administration will be paralised. So the petitioner who is not obey the rules and who is not follow the discipline and talk with M.W.1 with presence of M.W.2 at the depot where the repairing work of the buses were in progress. In these circumstances, the Administration passed an order that the stoppage of increment for 6 months instead of imposing serious punishment is accepted because a man who was committed an offence he should be dealt under law. Otherwise the smooth administration will be paralised. So the order passed that the stoppage of increment for 6 months made by the General Manage dt.08.10.2012 may be correct but the Court feels that the punishment of stoppage of increment for six months will give effect on the monetary benefits of the petitioner in future is considerable. Therefore the Court is set aside the order made by the General Manager dt.08.10.2012 and modified that the period of punishment of the General

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Manager dt.08.10.2012 is reduced and fixed that the punishment of 6 months of stoppage of increment into 3 months to the petitioner for his misconduct since there is no previous antecedent alleged by the respondent. If the petitioner is raised his rights then he bound to ventilate his grievance as per rules, he will not disrespect his superior with presence of others without permissible under law. Therefore the Industrial Dispute is awarded accordingly."

17.The reason given by the Labour Court for giving the modification of the punishment is to be accepted, as the Labour Court has not completely set aside the punishment and it has been reduced from six months stoppage of increment to three months stoppage of increment, of course, with cumulative effect, for which, the aforesaid reason has been given by the Labour Court, which, according to the Labour Court, would be the commensurate punishment to be awarded against the employee for the proven charge. Law is well settled in this regard, where, the Labour Court exercising power under the provisions of the I.D. Act can also very well go to the aspect of the proportionality of the punishment based on the evidences as well as the proven charge and here, in the case in hand, no such major reduction of punishment has been taken place, as it has been reduced only from six months to three months of stoppage of increment. Therefore, at any rate, the employee is going to be punished for the proven guilty or violation, hence, such modification made by the Labour Court, through the impugned order, in the considered opinion of this Court, does not warrant any interference.

18.Insofar as the third writ petition is concerned, similar punishment of withholding of annual increment for six months with cumulative effect was interfered with by the Labour Court, by its order dated 30.05.2019 made in I.D.No.238 of 2016, where, the Labour Court has made the following discussion:

"11.As a conclusion the bus number in which the petitioner was driven on 03.03.2006 was not clearly proved by the management. The records maintained by the management regarding the allocation of duty to the drivers ought to have been filed to prove that the petitioner was allotted the duty in the bus number in which the accident happened. This part of the evidence was failed by the management. When the petitioner questioned fairness of the domestic enquiry it is the prime duty of the management to prove it beyond all reasonable doubts. But the management have not taken any steps by marking documents to prove the fairness

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of the enquiry. In these circumstances, the punishment given to the petitioner is against the principles of natural justice. Though it is a meager punishment as put forth by the learned counsel for the management, the punishment shall be given only to the person who has committed the mistake. In this case it is not proved that the petitioner has committed the mistake and so the punishment against the petitioner is against the principles of natural justice and it is illegal and so the punishment has to be cancelled and as such the Issue Nos.1 and 2 are answered."

19. Since it was the case of the management that, on 03.03.2006, the employee concerned driven a particular vehicle, which met with an accident, pursuant to which, disciplinary proceedings was initiated against him. However, on the basis of the evidence adduced by the management side, the management was not able to prove that, the bus number as has been projected by them was driven by the employee concerned and which met with an accident on the particular date, for which, the disciplinary proceedings was initiated. This factor has been clearly culled out by the Labour Court in the aforesaid discussion and accordingly, has come to the conclusion that, the bus number in which the petitioner driven on 03.03.2006 was not clearly proved by the management.

20. It is the settled proposition that, in respect of disciplinary proceedings by an employer concerned that, the degree of proof is not beyond reasonable doubt but it is only preponderance of probability, even in respect of that kind of degree of proof, the employer side must give basic evidences to the satisfaction of the Court concerned. Here, in the case in hand, if it is the case on the part of the employer/management that, on a particular day, the employee involved in an accident in a particular bus which triggered the management to initiate disciplinary proceedings, the management ought to have produced substantial evidences to establish the case that, on the particular date, at particular time, in the particular bus, when the employee was driving, he met with an accident, resultantly, it required a disciplinary proceeding to be initiated against him. In the absence of such basic evidence, the management cannot expect the Court to draw a conclusion as if that, the management has proved the case and therefore, on that basis, the management also cannot expect the Court below to confirm the punishment awarded against the employee.

21. Therefore, in this context, after seeing the impugned award in this regard, especially, the discussion made by the

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Labour Court, as extracted herein above, this Court feel that, the interference made by the Labour Court on the punishment awarded against the employee in this case is concerned, is to be accepted and therefore, this Court does not find any perversity on the said findings given by Labour Court.

22.In view of the aforesaid discussion and also having taken into account the factual matrix of each of the case and the discussion made by the Labour Court in the respective impugned awards, this Court feel that, those awards made by the respective Labour Court do not require any interference from this Court, as there is no compelling or clinching evidence produced on the side of the management, has not been considered and that is not the case of the management also. Moreover, since admittedly no enquiry was conducted and permission under Section 33(2)(b) of the Act was not obtained in respect of the first case, the major punishment of removal of service made against the employee/respondent in the first case has been rightly set aside by the Labour Court. Like that, in other two cases also, either for reduction of the punishment from six months to three months for withholding the increment with cumulative effect and also to set aside the similar punishment in respect of the third case made by the Labour Court concerned in the respective impugned award are also liable to be sustained and therefore, no interference is called for.

23.In the result, all these writ petitions fail, therefore, they are liable to be dismissed, accordingly, are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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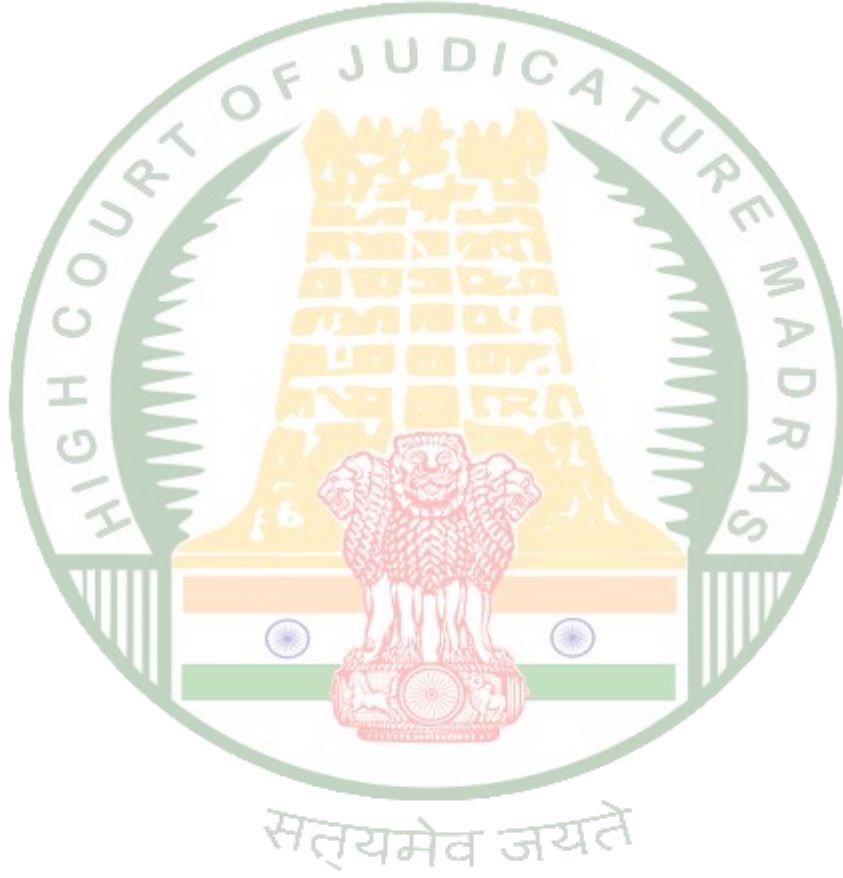
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