



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.12359 of 2018

and

WMP.No.14501 of 2018, WMP.No.70 of 2021

The Management,
Tamil Nadu State Transportation
Corporation (Kumbakonam) Limited,
Represented by its General Manager,
No.27, New Railway Station Road,
Kumbakonam, 612 001.

...Petitioner

vs.

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

2. M.Raja

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 18.07.2017 passed by the 1st respondent in Approval Petition No.263 of 2011 and quash the same, consequently direct the 1st respondent to approve the order off the petitioner dated 25.07.2011 dismissing the 2nd respondent from service.

For Petitioner : Mr.L.Ramanathan
for M/s.D.Venkatachalam

For Respondents : Mr.S.Arumugam,
Government Advocate for R1
Mr.D.Soundar Raj for R2

O R D E R

The second respondent herein was dismissed from service on 25.07.2011 on charges of unauthorised absence. The Approval Petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 was rejected through the impugned order of the first respondent dated 18.07.2017, only on the ground that the punishment of dismissal was not proportionate to the charges.



2. The Hon'ble Supreme Court in *Lalla Ram v. Management of D.C.M. Chemical Works Ltd.* And Another reported in 1978 (3) SCC 1 had held that the Tribunal can draw an inference of malafides in certain cases from the imposition of harsh or disproportionate punishment. The relevant portion of such an observation reads as follows:

"13. 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 Probesh Singh*(1), *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar*(2), *Hind Construction & Engineering Co. Ltd. v. Their Workmen*(3), *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors* (4), and *Eastern Electric and Trading Co. v. Baldev Lal*(5) 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..." (emphasis supplied)

3. In the present case in hand, the Tribunal did not draw an inference of malafides on the punishment of dismissal, but rather had simply observed that a lesser punishment could have been imposed for the charges.

4. The decision in *Lalla Ram's* case (cited supra) came to be referred to by the Hon'ble Supreme Court in *John D' Souza v. Karnataka State Road Transport Corporation* reported in 2021 (1) LLN 1, wherein it was held that the power to consider the proportionality of the punishment can be exercised only under Section 11A of the I.D. Act and not under Section 33(2)(b) of the Act. The relevant portion of such order reads as follows:



39. Consequently, the Labour Court shall in the instant case re-visit the matter afresh within the limit and scope of Section 33(2)(b), as explained above and keeping in mind that the exercise in hand is not adjudication of an "industrial dispute" under Section 10(1) (c) or (d) read with Section 11A of the Act. However, if the Labour Court finds that the domestic enquiry held against the appellant is suffering from one of the incurable defects as illustrated by this Court in Mysore Steel Works Pvt. Ltd. Or Lalla Ram's cases, then it may look into the evidence adduced by the parties for the purpose of formation of its prima facie opinion."

6. At this juncture, the learned counsel for the second respondent submitted that the workman/second respondent was not paid the last drawn wages under Section 17B of the I.D. Act. The second respondent has filed an affidavit before this Court dated 20.08.2020, wherein he has stated that he is not gainfully employed from the date of dismissal till date.

8. In the light of the above observations, the impugned order dated 18.07.2017 passed by the first respondent herein is quashed. Consequently, the dismissal order issued to the second respondent herein dated 25.07.2011 is declared as approved. There shall also be a direction to the petitioner-Management to pay the last drawn wages of the second respondent under Section 17B of the Act from 18.07.2017 onwards, within a period of 4



weeks from the date of receipt of a copy of this order. The second respondent is also at liberty to challenge the dismissal order, by raising an appropriate Industrial Dispute, for which purpose, the limitation prescribed in the Act shall commence from the date of this order, i.e., 06.10.2021.

9. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Jvm

To

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

+1cc to M/s.D.Venkatachalam, Advocate, S.R.No.52357
+1cc to the Government Pleader, S.R.No.52746

W.P.No.12359 of 2018

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