



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.08.2021

CORAM

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. No. 32235 of 2016
and

W.M.P. No. 27955 of 2016

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Railway Station New Road,
Kumbakonam - 612 001.

... Petitioner

-vs-

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

2. R.Sampath

... 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 09.06.2014 passed by the first respondent in Approval Petition No. 477 of 2011 and quash the same, consequently direct the first respondent to approve the order of the petitioner dated 09.11.2011 dismissing the second respondent from service.

For Petitioner : Mr.D.Venkatachalam
For Respondents: Mr.L.S.M.Hasan Fizal
Government Advocate for R1
Mr.V.Ajay Khose for R2

O R D E R

This Writ Petition has been filed, seeking to quash the order dated 09.06.2014 passed by the 1st Respondent in Approval Petition No.477 of 2011, by which, the approval sought for dismissal of the Workman / 2nd Respondent herein was rejected. The Petitioner / Management also sought for a direction to the 1st Respondent to grant approval to the action of the Management.

2. Learned Standing Counsel for the Management submitted that the main reason for rejection of the Approval Petition by



the Authority was that the punishment imposed was harsh. The Authority has gone beyond the scope of principle laid down by the Apex Court in the case of in the case of Lalla Ram vs. Management of D.C.M. Chemical Works Limited, reported in AIR (1978) SCC 1004. It is further submitted that frequent absence from duty without proper intimation or leave by the Workman caused inconvenience to the Management and therefore, the Workman was dismissed from service after following due process of law.

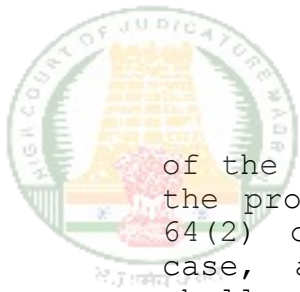
3. The contention of the Workman is that the punishment for dismissal for unauthorized absence is harsh and therefore, the Authority has rightly interfered with the punishment and rejected the Approval Petition. Hence, this Court need not interfere with the order of the Authority, by exercising the Writ jurisdiction under Article 226 of the Constitution of India. In the case of Approval Petition, the Authority's power is very limited and certain guidelines have been framed in the aforesaid judgment. Even if the enquiry is vitiated, the Employer will have to be given an opportunity to establish the charges and to let in evidence, before the Authority.

4. In the present hand on hand, the Management has not violated any of the guidelines referred to in Lalla Ram's case, but the Authority has mechanically interfered with the punishment on the ground that for unauthorized absence, the punishment is excessive.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The power under Section 11-A of the Industrial Disputes Act, 1947 is not available to the Authority under Section 33(2) (b) of the Act. It is seen that the order of dismissal was passed on 09.11.2011 and the rejection order of Approval Petition was on 09.06.2014, which has been tested by the employer before this Court. Once approval is granted, it does not mean that the employee's rights are taken away and he is entitled to raise an Industrial Dispute, questioning the dismissal order, if it is approved by the Authority, as this Court is inclined to reverse the order of the Authority in question.

7. The next issue is as to whether the employee will be out of time, in view of the amendment of section 2-A of the Industrial Disputes Act, 1947, which came into effect from 15.09.2010. Once there is a dismissal order, the employee will have to approach the Authority within a period of three years as prescribed under the Act and that may not be applicable to cases falling under Section 33(2)(b) of the Industrial Disputes Act. Once the dismissal order is passed, it is mandatory on the part



of the employer to seek approval of the action by complying with the provisions under Section 33(2)(b) of the said Act and Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958. In case, approval is granted, it is open to the employee to challenge the same either by way of a Writ Petition or by raising an industrial dispute, which means, the order of dismissal becomes final only on the date, the Authority grants approval on the action and the dismissal order will come into effect only from the date of approval that may be granted by the Authority. If the Approval Petition is rejected, the employer and employee relationship continues, till such time it is reversed by a Higher Forum.

8. In the present case on hand, the relationship between the employer and employee continues, pursuant to the rejection of Approval Petition and the same has been reversed by this Court which means, the employee will have three years limitation prescribed under Section 2A of the Industrial Disputes Act, 1947 and the same will commence only from the date of the order of this Court. Hence, the employee is permitted to raise the industrial dispute within three years from today and if dispute is raised, it is mandatory on the part of the Conciliation Officer to entertain the matter and conciliate it and thereafter, come to a conclusion within 45 days, failing which, it is open to the employee to approach the Labour Court straightaway seeking redressal of his grievance.

9. It is needless to mention that it is open to the Workman to raise a Dispute, even if an Approval Petition is filed by the Management. However, the Workman must make an endorsement in the Approval Petition, to the effect that approval may be granted without prejudice to his or her rights in the Industrial Dispute that may be raised or already raised. The Workman cannot be allowed to ride two horses at the same time, namely, contesting in the Approval Petition filed by the Management under Section 33(2)(b) on one hand and raising a Dispute under Section 2(k) of the I.D.Act, 1947 on the other hand.

10. With the above observation, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vji



To:

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

+1 cc to Mr.D.Venkatachalam, Advocate Sr.NO.37099

+1 cc to Mr.V.Ajay Khose , Advocate Sr.NO. 37267

W.P.No.32235 of 2016

GJ(CO)

A.SK(25.11.2021)