



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 1959 of 2016

and

W.M.P. (MD) No. 1721 of 2016

The Management,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Pudukkottai Region,
Pudukkottai.

... Petitioner

-vs-

1. The Special Deputy Commissioner of Labour,
Chennai.

1.T.Kumaresan (Died)

2. K.Sathiya Bama

3. K.Prabaharan

4. K.Dharmaraj

5. K.Meenakshi

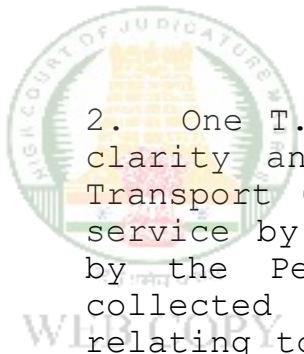
... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the order passed by the First Respondent herein dated 14.01.2015 in A.P. No. 127 of 2013 and quash the same.

For Petitioner	:	Mr. D.Sivaraman
For R1	:	Mr. B.Saravanan,
		Counsel appearing for the Government
For R2 to R5	:	Mr. S.Arunachalam

O R D E R
(through video conference)

Heard Mr. D.Sivaraman, Learned Counsel for the Petitioner, Mr. B.Saravanan, Learned Counsel representing the First Respondent and Mr. S.Arunachalam, Learned Counsel for the Second to Fifth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

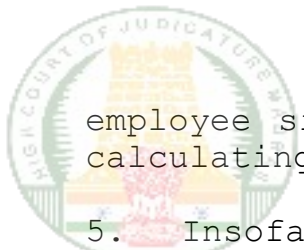


2. One T.Kumaresan (hereinafter referred to as 'the employee' for clarity and convenience), who was employed as conductor in the Transport Corporation of the Petitioner, had been terminated from service by order in Ref. No. TNSTC/PDK/ DS/D1/181 dated 25.03.2013 by the Petitioner on the ground of misappropriation of funds collected from passengers. Since the conciliation proceedings relating to industrial dispute between the Petitioner and the Trade Union in which the employee was a member was then pending before the First 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 the termination. The said T.Kumaresan died on 29.03.2013 during the pendency of the proceedings before the First Respondent, and the Second to Fifth Respondents, who are his legal heirs, had been substituted as parties in his place. The application for approval was subsequently rejected by order dated 14.01.2015 in A.P. No. 127 of 2013 passed by the First Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the First 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 First Respondent came to the conclusion that the requirement in item nos. (iii) and (v) had been satisfied and in respect of the aspects in item nos. (i) and (ii), it was held that since the passengers in the bus, who had lodged the complaint against the employee, had not been examined as witness in the domestic enquiry to prove the charges, the domestic enquiry has not been conducted following the Rules, Standing Orders and the principles of natural justice, and *prima facie* case has not been made out. It was opined that the requirement for item no. (iv) was not satisfied as there is deficit of one month wages paid to the



employee since revised dearness allowance had not been included in calculating that amount.

5. Insofar as the question relating to the validity of the domestic enquiry is concerned, reference must be straightaway made to the decision of the Hon'ble Supreme Court of India in **State of Haryana -vs- Rattan Singh** [(1977) 2 SCC 491], where it has been held that it would not be necessary to examine the passengers of a public transport vehicle relating to an incident for which an employee is charged for misconduct so long as evidence recorded in the domestic enquiry independently proves that charge. It is accepted in the impugned order that one Thinakaran, Checking Inspector, Zonal Office, Pudukkottai was examined as witness to prove the charge. Though it has been stated that no proof has been shown for having issued any show cause notice to the employee, it is borne out from the record that the employee had submitted a reply dated 16.03.2011 to such notice, which has been marked as exhibit in the domestic enquiry, even though it has been contended by the Second to Fifth Respondent that the employee was intimidated to admit the guilt. Once the employee had given a letter admitting the charge, the burden of proof would necessarily fall on him to establish the circumstances under which it had been submitted to wriggle out of its consequences. Moreover, this aspect of the matter does not fall within the realm of the limited scope of enquiry under Section 33(2) (b) of the Act. The Hon'ble Supreme Court of India in **Martin Burn Ltd. -vs- R.N.Bangerjee** (AIR 1958 SC 79) has explicated as follows:-

"27.A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See *Buckingham & Carnatic Co., Ltd.* [(1952) Labour Appeal Cases 490])"

This would obviously mean that the question relating to adequacy or reliability of evidence would have to be agitated only in a proceedings challenging the termination of the employee concerned.

6. It has been held by this Court in **Management of Metropolitan Transport Corporation (Chennai) Ltd. -vs- A.Ramesh Babu** (Order dated 03.02.2016 in W.P. Nos. 33497 to 33505 of 2015) that if the employer has undertaken to pay the difference in one month wages that may arise in the approval petition under Section 33(2)(b) of the



Industrial Disputes Act, 1947, and if there is any calculation mistake or any other error, it would not vitiate the termination when the employer makes good the deficit payable. It is informed by Learned Counsel for the Petitioner that the deficit sum of Rs. 738/- has been sent by the Petitioner to the Second Respondent through courier and proof for the same has been placed on record. Having regard to the fact that the Petitioner had made the required undertaking to pay difference in wages in the approval petition and the shortfall in one month wages has been now paid, the First Respondent is not justified in denying approval.

7. The result of the foregoing discussion is that the impugned order dated 14.01.2015 in A.P. No. 127 of 2013 passed by the First Respondent insofar as it relates to refusing to grant approval is set aside and shall be treated that the First Respondent has granted approval under Section 33(2)(b) of the Act for the termination of the employee. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise of the termination of the employee and in terms of the dictum laid down by the Hon'ble Supreme Court of India in **Rameshwar Manjhi -vs- Management of Sangramgarh Colliery** [(1994) 1 SCC 292], the Second to Fifth Respondents as legal heirs of the deceased employee are not precluded from working out their remedies to impeach the order of termination before proper forum in the manner recognized by law (including resort to complaint under Section 33-A of the Act, if available), and that the period from the date of termination till the date on which certified copy of this order is made ready shall be excluded for the purpose of computation of limitation in that regard.

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

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1. The Special Deputy Commissioner of Labour,
Chennai.

2. The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Pudukkottai Region,
Pudukkottai.

Copy to

The Section Officer, V.R.Section , (2C)
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.SPL GP (SR-24712[F] dated 30/07/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-24807[F] dated
30/07/2021)

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KB(21.09.2021) 5P 7C