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W.A. No. 32 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. No. 32 of 2022

V. Palani

..Appellant

Vs.

1. The Tamil Nadu State Transport Corporation (Villuppuram) Ltd.,
Vellore Region, Vellore 632 009,
rep. By its General Manager.
2. The Joint Commissioner of Labour,
(Conciliation),
DMS Compound,
Teynampet, Chennai – 600 006.

..Respondents

Prayer: Writ Appeal as against the order dated 29.04.2019 passed in

W.P. No. 35369 of 2006.

For Appellant :: Mr.P. Paramasivadoss



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For Respondents :: Mr.M.Ashwin,
Standing Counsel for R1
Mrs.E. Ranganayaki
Addl. Govt. Pleader for R2

J U D G M E N T

(Judgment of the Court was delivered by S. VAIDYANATHAN,J.)

The present appeal has been preferred against the order of the learned Single Judge reversing the order of the authority under the Industrial Disputes Act in Approval Petition No. 386 of 2003 dated 01.08.2005 wherein approval of dismissal of appellant-workman was rejected.

2. The appellant was appointed as a Conductor in the 1st respondent Transport Corporation and he absented from duty from 28.07.2001 to 14.08.2001 without any prior permission. Based on charge memo dated 18.08.2001 and finding that the explanation of the appellant dated 29.08.2001 was not satisfactory, a domestic enquiry was conducted and the Enquiry Officer submitted his report dated 28.12.2001 holding that the charges were proved. Meanwhile, pending enquiry, the workman resumed



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duty on 04.09.2001. Based on the Enquiry Report and taking into account the past conduct of the workman, a second show cause notice dated 15.01.2002 was issued proposing the punishment of dismissal from service. The workman did not submit any explanation in respect thereof. Thereafter, the appellant-workman was issued with an order dated 04.02.2003 dismissing him from service.

3. As an industrial dispute between the 1st respondent Transport Corporation and the unions of workmen was pending before the 2nd respondent, the 1st respondent had filed a petition before the 2nd respondent for approval in respect of dismissal of the appellant-workman under Section 33(1)(b) of the Industrial Disputes Act, 1947 (in short, "the Act") and the said application was rejected by the 2nd respondent on 01.08.2005. As stated supra, aggrieved by the rejection, the writ petition has been preferred and the learned Single Judge, allowed the writ petition. Challenging the same, the present writ appeal has been filed.



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4. Learned counsel appearing for the appellant-workman would contend that there was a delay of 8 days in filing the approval application.

According to the learned counsel, in terms of Rule 64(2) of the Tamil Nadu Industrial Dispute Rules, *"An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form "T" in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or workmen concerned and the fact indicated on the copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be."* That being so, when the approval application has not been filed simultaneously or within such reasonably short time as to form part of the same transaction for approval of the action taken by it, the application needs to be rejected, which was rightly done by the authority concerned. As there was delay of 8 days in filing the approval application, amounting to violation of the said provision,



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the authority was right in rejecting the approval petition and that the learned Single Judge ought not to have interfered with the order of the authority concerned.

5. On the other hand, learned counsel appearing for the 1st respondent Transport Corporation, supporting the impugned order, relied upon two decisions of the Hon'ble Apex Court namely,

(i) ***The Strawboard Manufacturing Co. Ltd. Vs. Saharanpur (AIR 1962 SC 1500)***

(ii) ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs. Ram Gopal Sharma and Others ((2002) 2 SCC 244)***

He submitted that there is no provision under the Act that the approval application has got to be made on the very same date and that the word "simultaneously" cannot be interpreted in such a way so as to give a narrow meaning to it.

6. We have considered the rival submissions.



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7. Before the learned Single Judge, judgments pertaining to interference of punishment under Section 11A of the Act had been referred to, which were discussed in detail by the learned Single Judge. We have no quarrel with the judgments of the Hon'ble Apex Court referred to by the learned Single Judge. But those cases will be applicable in case of an industrial dispute raised by a workman questioning the dismissal under Section 2(A) of the Act or by the Union under Section 2(k) and the power of the Labour Court to interfere with the punishment under Section 11A of the Act.

8. Insofar as the application under Section 33(2)(b) of the Act is concerned, the issue is squarely covered by the decision of the Apex Court in ***Lalla Ram V. Management of D.C.M. Chemical Works Ltd. and another*** reported in ***1978 3 SCC Pg.1*** wherein certain conditions have been laid down by the Hon'ble Apex Court while deciding an application for approval under Section 33(2)(b) of the Act. The five conditions that have been stipulated by the Hon'ble Apex Court are extracted hereunder:



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"(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."

If any of the conditions stipulated as per the order of the Apex Court in the case of *Lallaram* is not satisfied, then the order of the employer needs to be interfered with. In the instant case, the approval application has not been filed simultaneously and it has been filed with a delay of 8 days.



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9. As far as the contention of the learned counsel for the respondent

Corporation based on the decision in *Strawboard case*, the same cannot be accepted as the said case is against the Management. The Apex Court has considered the word "simultaneously" in the said decision and for the sake of convenience, the relevant portions are extracted hereunder:

"10. The contrary view has been taken by the Calcutta High Court in Metal Press Works Limited v. Deb (H.R.)(1) where it has been held that payment of wages and the making of the application should be simultaneous with the order of discharge or dismissal. It has further been pointed out that 'the word "simultaneously" must of course be taken reasonably and a notion of split-second timing should not be imported. It should be done at once and without delay", and it will depend upon the facts of each case whether the application has been made at once or without delay. This, we think, is the correct view to take.

11. Let us therefore see what has happened in this case, The appellant-concern is situate at Saharanpur while one tribunal was at Meerut and the other at Allahabad. What the appellant did was to pass an order of dismissal on- February 1, 1960. On the same day he sent two applications by post addressed to the two tribunals. The application at Meerut was received on February 3 and the application at Allahabad on February 4, 1960. In these circumstances we are of opinion that the appellant had made the application to the tribunal simultaneously and without delay on its



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passing the order of dismissal and its action was therefore in accordance with the proviso. The view taken by the labour court that the application must be made before dismissing the respondent is not correct. The appellant in this case had complied with the proviso to s. 33 (2) (b) when it dismissed the workman, paid him or offered to pay the necessary wages and at the same time sent the application by post to the tribunal concerned for approval of the action taken by it."

In the aforecited case, it is seen that the employer had posted the dismissal order dated 01.02.1960 **ON THE VERY SAME DAY** and despatched to two Tribunals, one at Meerut and the other at Allahabad and it had reached the two Tribunals on two different dates. The Court had considered the act of the Management in despatching the order of dismissal by post and came to the conclusion that the Management had made the application to the Tribunal simultaneously and without delay on its passing the order of dismissal and had complied with the proviso to Section 33(2)(b) of the Act. However, in the case on hand, we would have accepted the contention of the Transport Corporation if there had been holidays declared for a period of 8 days and the application had been filed subsequently before the Court. There is no iota of evidence that the employer had despatched the



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dismissal order to the employee concerned in this appeal on the very same day or the very next day and that there was no delay on the part of the employer. When there is a delay in filing the approval application simultaneously, we are of the view that the order of the approval authority is perfectly justified. The learned Single Judge has observed in paragraph No. 15 as follows:

"15. The last issue to be considered is whether the petitioner herein approached the first respondent within a reasonable time so as to conclude that it is part of the same transaction as the dismissal of the second respondent. In this case, the Enquiry Officer submitted the report on 28.12.2001, the order of dismissal was issued on 04.02.2003 and the application for approval was filed on 13.02.2003. If computed from the date of dismissal, the finding of the first respondent that the application was not part of the same transaction appears to be erroneous on the face of the record."

Even going by the observation made by the learned Single Judge, in the light of the pleadings made by the respondent Corporation, the dismissal order was issued on 04.02.2003 and the application for approval was filed on 13.02.2003. Rule 64 of the Tamil Nadu Industrial Dispute Rules, 1958, more particularly, Rule 64(2) would categorically state that the employer will have to make an application simultaneously. It does not mean that it should be



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made in a notion of a split second. In this case, admittedly, there is a delay of 8 days and no reason has been given for the delay.

10. As far as reliance placed on the judgment of the Hon'ble Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd V. Ram Gopal Sharma and Others*** reported in ***(2002) 2 SCC 244*** by the learned counsel appearing for the 1st respondent Transport Corporation to contend that it is open to the employee to approach the authority concerned by raising an industrial dispute and that the approval of the action of the employer, if confirmed, will take effect from the date of dismissal order passed by the employer, is concerned, there is no doubt that the dismissal order passed by the employer will take effect from the date of the dismissal order in case approval is granted and in case, it is rejected, the order is non est in the eye of law. The Hon'ble Apex Court, in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Limited*** case, referred to by the learned counsel for the employer, has categorically held in paragraph No. 14 *that the order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employoee brings an end of relationship of the employer and employee from*



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the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. In this case, approval has been rejected. However, the order has been set at nought by the learned Single Judge.

11. The Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Limited*** case held that "*it is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous*". In this context, it is worthwhile to notice a decision of the Supreme Court reported in **2019 (18) SCC 47 (John D.Souza Vs. Karnataka State Road Transport Corporation)**, wherein the Apex Court observed as follows:

"38. 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 11-A of the Act. However, if the Labour Court finds that the domestic inquiry held



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against the appellant is suffering from one of the incurable defects as illustrated by this Court in Mysore Steel Works (P) Ltd. [Mysore Steel Works (P) Ltd. vs. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] or Lalla Ram [Lalla Ram vs. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] cases, then it may look into the evidence adduced by the parties for the purpose of formation of its prima facie opinion."

This Court, in W.P. No. 30541 of 2019, (***The Management, Tamil Nadu State Transport Corporation (Villupuram) Limited V. P. Eppan and another***), following the decisions of the Hon'ble Apex Court in *Lalla Ram's case (cited supra)* and *John D'Souza (cited supra)*, as to when the matter could be remitted and when it should be interfered with, remitted the matter back to the second respondent therein for deciding the matter afresh in the required manner by order dated 01.10.2020. Therefore, we are of the view that the order of the learned Single Judge needs to be interfered with.



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12. Accordingly, the impugned order is set aside and the order of the approval authority stands restored. *The writ appeal is allowed.* The appellant workman is deemed to be in service and in the light of the judgment of the Hon'ble Apex Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Limited case*, the appellant-workman would be entitled to all monetary benefits and terminal benefits, as if he deemed to be in service till the date of superannuation. No costs.

nv

(S.V.N.J.) (M.S.Q.J.)
23.12.2022

To

The General Manager
The Tamil Nadu State Transport
Corporation (Villuppuram) Ltd.,
Vellore Region, Vellore 632 009.

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