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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2022

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.23770 OF 2019

AND

W.M.P.NO.23651 OF 2019

The Management,
The Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Division,
Ponnerikarai,
Chennai-Bangalore National High Road,
Kancheepuram - 631 552.

... Petitioner

.Vs.

1. P.V.S.Manogaran
2. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

... Respondents

PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari to call for the records of the Second Respondent made in A.P.No.318 of 2013 dated 17.07.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.G.Saravanan

For Respondents : Mr.P.Gurunathan
Additional Government Pleader
(For R2)

No appearance (For R1)



O R D E R

Heard Mr.G.Saravanan, Learned Standing Counsel appearing for the Petitioner and Mr.P.Gurunathan, Learned Additional Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent, who was employed as driver, had been terminated from service by the Petitioner by Order in Se.Mu.Ku.No.12/2612/Sa11/Tha.A.Po.Ka (Vizhu)/Kaa.Ma/11 dated 19.11.2013 on the charge of unauthorized absence. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in which the First Respondent was a member was then pending before the Second 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 termination, but it was rejected by order dated 17.07.2017 in A.P. No. 318 of 2013 passed by the Second Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the Second 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 Second Respondent came to the conclusion that the requirement in item (iv) alone had been satisfied and in respect of the aspects in items (i) and (ii), it was held that since enquiry proceedings has not been produced, 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 in respect of aspects in item (iii), it was held that the records of charges against the employee on earlier occasions had not been produced during the domestic enquiry as to his past conduct before imposing the maximum punishment of dismissal from service. In such circumstances, relying on the decision of this Court in Tamil Nadu State Transport Corporation (Villupuram Division - 1) -vs- Joint Commissioner of Labour (Conciliation), Chennai [(2011) LLJ 644 (Mad)], it was held that the punishment of dismissal from service was too harsh and an act of victimization. In respect of item (v), as there was a delay of 6 days, it was concluded that the Approval Petition has not been filed within a short span of time.

5. Insofar as the question relating to validity of the domestic enquiry is concerned, it would be necessary to focus here that the Hon'ble Supreme Court of India in the decision in John D'Souza -vs- Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-

"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The



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second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act."

It has also been emphasized in that decision that while holding enquiry under Section 33(2)(b) of the Act, neither the adjudicatory powers vested in the Labour Court under Section 10 (i)(c) and (d) of the Act can be invoked nor can the proportionality of punishment be dwelled upon in the process of formation of prima facie opinion for such a power can be exercised only under Section 11-A of the Act by the Labour Court or Tribunal. Viewed from this perspective, if the Second Respondent had been of the opinion that the domestic enquiry suffered from any infirmity, it ought to have disclosed the same to the parties and thereafter called upon them to adduce their evidence in support of their respective contentions and then finally decided the validity of the domestic enquiry, and could not interfere on the question of punishment.

6. At this juncture, it must be recapitulated here that the Constitution Bench of the Hon'ble Supreme Court of India in Karnataka State Road Transport Corporation -vs- Lakshmiddevamma [(2001) 5 SCC 433] has held that in order to avoid unnecessary



delay and multiplicity of proceedings, when an employer seeks approval under Section 33(2)(b) of the Act, leave to lead additional evidence to support the action in the alternative and without prejudice to his rights and contentions has to be made in application itself. In this case, it is seen from para 7 of Form-T that the Petitioner has sought for such leave.

7. It is not possible to countenance that the Approval Petition has not been filed within a short span merely because there has been a gap of 6 days from the date of the order of termination and the date on which the Approval Petition was received by the Second Respondent in the absence of any discussion in that regard. It is incumbent upon the Second Respondent to examine as to whether the order had been sent immediately to him after it was passed and if not, whether the reasons for the delay were beyond the control of the Petitioner and arrive at a conclusion on that aspect of the matter.

8. As it is apparent that the exercise in accordance with the procedure required to be followed had not been undertaken by the Second Respondent in this case, it would not be possible to uphold the impugned order refusing approval for termination of the First Respondent.

9. The result of the foregoing discussion is that the impugned order dated 17.07.2017 in A.P. No. 318 of 2013 passed by the Second Respondent, which cannot be sustained, is set aside and the matter is remitted back to the Second Respondent for deciding the matter afresh in the required manner. In order to expedite disposal, the matter shall be listed for hearing before the Second Respondent at 11.00 a.m. on 22.06.2022 when the Petitioner and the First Respondent shall appear in person or through their authorized representative as well as on the subsequent dates to which it is adjourned. If the Second Respondent is not in a position to take up the matter for hearing on that date, it shall inform all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. It shall be ensured by the Second Respondent that there is at least one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the concerned parties under written acknowledgment and that proof of such compliance is filed before the Registrar (Judicial) of this Court. Though obvious, it is made clear that while deciding the matter, the Second Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.



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

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager,
The Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Division,
Ponnerikarai,
Chennai-Bangalore National High Road,
Kancheepuram-631 552.
2. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

Copy To:-

1. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.
2. P.V.S.Manoharan,
No.6/2B, Raghavendra Nagar,
Shree Rangaraja Street,
Chinna Kancheeuram - 631 502.

+1cc to the Government Pleader, S.R.No.22742

W.P.NO.23770 OF 2019

CA(CO)
PBS/19/05/2022